

*Exhibit No.:*

*Issue(s):* *Dues and Donations,  
EEI Dues, Payroll,  
Materials and Supplies,*

*Witness:* *Antonija Nieto*

*Sponsoring Party:* *MoPSC Staff*

*Type of Exhibit:* *Surrebuttal and  
True-Up Direct Testimony*

*Case Nos.:* *ER-2018-0145 and  
ER-2018-0146*

*Date Testimony Prepared:* *September 4, 2018*

**MISSOURI PUBLIC SERVICE COMMISSION**

**COMMISSION STAFF DIVISION**

**AUDITING DEPARTMENT**

**SURREBUTTAL AND TRUE-UP DIRECT TESTIMONY**

**OF**

**ANTONIJA NIETO**

**KANSAS CITY POWER & LIGHT COMPANY**

**CASE NO. ER-2018-0145**

**and**

**KCP&L GREATER MISSOURI OPERATIONS**

**CASE NO. ER-2018-0146**

*Jefferson City, Missouri*

*September 2018*

**\*\* Denotes Highly Confidential Information \*\***

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1                   **SURREBUTTAL AND TRUE-UP DIRECT TESTIMONY OF**

2                                   **ANTONIJA NIETO**

3                                   **KANSAS CITY POWER & LIGHT COMPANY**  
4                                   **CASE NO. ER-2018-0145**

5                                   **and**

6                                   **KCP&L GREATER MISSOURI OPERATIONS**  
7                                   **CASE NO. ER-2018-0146**

8           Q.     Please state your name and business address.

9           A.     Antonija Nieto, Fletcher Daniels Office Building, 615 East 13th Street,  
10     Room 201, Kansas City, Missouri, 64106.

11          Q.     By whom are you employed and in what capacity?

12          A.     I am a Utility Regulatory Auditor with the Missouri Public Service  
13     Commission (“Commission”).

14          Q.     Are you the same Antonija Nieto who contributed to Staff’s Revenue  
15     Requirement Cost of Service Report (“Report”) filed June 19, 2018 and submitted rebuttal  
16     testimony filed on July 27, 2018, in these cases?

17          A.     Yes.

18          Q.     What is the purpose of your surrebuttal testimony?

19          A.     I will respond to Kansas City Power & Light (“KCPL” or “Company”)  
20     and KCPL Greater Missouri Operations Company (“GMO” or “Company”) witnesses  
21     Linda J. Nunn’s and Elizabeth Danforth’s rebuttal testimony concerning dues and donations  
22     and EEI contributions. I will also respond to KCPL and GMO witness Nunn’s rebuttal  
23     testimony concerning materials & supplies and bad debt expense, and KCPL and GMO  
24     witness Ronald A. Klote’s rebuttal testimony regarding payroll expenses. In addition to my

1 responsive testimony to these witnesses, I will also identify the adjustments I will be  
2 sponsoring in Staff's True-Up Accounting Schedules

3 **DUES AND DONATIONS**

4 Q. Please identify KCPL's and GMO's position on rate recovery of  
5 membership dues.

6 A. Witnesses Linda J. Nunn<sup>1</sup> and Elizabeth Danforth<sup>2</sup> state in their rebuttal  
7 testimonies that KCPL and GMO do not agree with Staff's adjustments to eliminate certain  
8 membership dues that KCPL and GMO paid during the test year. Witnesses Nunn and  
9 Danforth support rate recovery of all dues and donations booked "above the line" in the  
10 test year.

11 Q. Has the Commission provided guidance in prior cases as to the rate recovery  
12 of dues?

13 A. Yes. As stated in Staff's Cost of Service Report, the Commission's *Report*  
14 *and Order* in Case No. EO-85-185, page 261, four criteria were established by Staff, and  
15 accepted by the Commission, for disallowance of dues and donations:

- 16 (1) involuntary ratepayer contributions of a charitable nature;  
17 (2) supportive of activities which are duplicative of those performed  
18 by other organizations to which the Company belongs or pays dues;  
19 (3) active lobbying activities which have not been demonstrated to  
20 provide any direct benefit to the ratepayers; or,

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<sup>1</sup> Nunn Rebuttal, pages 11-16.

<sup>2</sup> Danforth Rebuttal, pages 2-8.

1 (4) costs of other activities that provide no benefit or increased  
2 service quality to the ratepayer.<sup>3</sup>

3 Staff used the four criteria listed in the Commission's *Report and Order* from Case No.  
4 EO-85-185, to establish the appropriate disallowances of dues and donations. The attached  
5 Confidential Schedule AN-s1 lists the specific criteria Staff used as justification for  
6 removing the dues paid to each individual organization that was included in  
7 Staff's adjustment.

8 Q. What is a chamber of commerce and how might contributions to this type of  
9 organization benefit ratepayers?

10 A. A chamber of commerce is a membership organization that exists primarily to  
11 represent and promote the interests of its member businesses. Many chambers of commerce,  
12 especially those organized at the local level, also work to develop and deepen local  
13 relationship networks to promote business activity and business-to-business exchanges.  
14 Chambers of commerce also commonly engage in charitable activities that focus on local  
15 needs. "Economic development councils" and "civic councils" can serve some of the same  
16 functions as chambers of commerce. Staff has historically supported rate recovery for  
17 memberships to local chambers of commerce to assist KCPL and GMO in fostering business  
18 relationships that could benefit KCPL, GMO, and their customers.

19 Contributions to chambers of commerce or economic development organizations are  
20 not required for or directly related to the provision of safe and adequate electric utility service.  
21 However, chambers of commerce promote economic development, which has the potential of  
22 fostering or attracting businesses that will likely be KCPL or GMO customers. If the

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<sup>3</sup>Commission Reports, 28 Mo. P.S.C. (N.S) page 261.

1 customers do not contribute to system peak and do not require the installation of additional  
2 facilities, additional customers on KCPL's and GMO's systems increase the economic use of  
3 KCPL's and GMO's systems and can spread KCPL's and GMO's revenue requirement over  
4 more usage, potentially reducing rates for all ratepayers.

5 Q. What criteria did Staff utilize to recommend removal of some chambers of  
6 commerce dues?

7 A. Based on Staff's criteria in EO-85-185, Staff recommends removal of chamber  
8 of commerce dues if the following categories apply:

- 9 1) Chamber of commerce dues that serve areas outside of the GMO,  
10 KCPL Missouri or KCPL Kansas service territory;
- 11 2) Chamber of commerce dues for statewide chambers of commerce; or
- 12 3) Chamber of commerce dues that are duplicative of other chamber  
13 dues in the same area.

14 Staff recommends rate recovery be limited to one local chamber of commerce or economic  
15 development organization that serves a given area. Staff is opposed to rate recovery of  
16 multiple memberships for chambers of commerce or economic development organizations  
17 that serve the same area or focus on one industry or demographic as those are duplicative.  
18 Also, while Staff recognizes the potential benefit of such activities, it is Staff's position that  
19 ratepayers do not receive a direct benefit from membership dues for a chamber of commerce  
20 working to improve an area located outside the KCPL and GMO service territory. Removal  
21 of these dues would relate to the Staff's fourth criteria used by the Commission, as they  
22 provide no benefit to KCPL or GMO ratepayers.

23 Staff examined the instances when KCPL and GMO paid dues to multiple chambers of  
24 commerce in the same city, or county. Staff recommends that allowing the cost of one

1 membership to a chamber of commerce is adequate for a single local area. For example,  
2 KCPL and GMO contribute to eight different Kansas City area chambers of commerce or  
3 economic development organizations. Staff removed the costs of seven of them but did not  
4 remove the dues to The Kansas City Development Council (“KCDC”), which promotes  
5 economic development for the entire greater Kansas City area; this area includes over  
6 18 counties in Missouri and Kansas, covering the broadest area in the KCPL and GMO  
7 service territory.

8 Q. Briefly describe the KCDC.

9 A. The KCDC states on its website<sup>4</sup> that it is a “private, non-profit organization  
10 that represents the two-state area of the 18 county Greater Kansas City region.” The KCDC’s  
11 mission statement is:

- 12 • Engage the world to invest in the one KC region;
- 13 • Attract new companies and talent to the 18-county, two state region;
- 14 • Enhance awareness of our metro’s assets to create positive perceptions;
- 15 • Promote the KC region as a business and lifestyle location of choice;
- 16 • Brand the KC region as one product to stimulate economic growth;
- 17 • Equally support all of our regional communities and investors; and
- 18 • Facilitate relocation/expansion process between a company and its  
19 selected KC community

20 Q. Why did Staff remove contributions to the other seven Kansas City area  
21 chambers of commerce and economic development organizations from KCPL’s or GMO’s  
22 cost of service?

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<sup>4</sup> <http://thinkkc.com>.

Surrebuttal and  
True-Up Direct Testimony  
of Antonija Nieto

1           A.     Staff removed contributions to the Downtown Council of Kansas City,  
2 Civic Council of Greater KC, Chamber of Commerce of Greater KC, Kansas City Industrial  
3 Council, North Kansas City Business Council, Northeast Kansas City Chamber of Commerce,  
4 and Northland Regional Chamber of Commerce because Staff considers their efforts to  
5 promote economic development in the Kansas City area to be duplicative of the KCDC's  
6 efforts. In addition, Staff removed contributions to the Chamber of Commerce of Greater  
7 Kansas City ("KC Chamber") because it does not foster economic development in a manner  
8 characteristic of a traditional chamber of commerce. The KC Chamber specifically states on  
9 its website<sup>5</sup> that it is not typical of most local chambers in the sense that, "We are not directly  
10 involved in either the economic development or convention/visitors functions. Those efforts  
11 are handled by two separate organizations, the Kansas City Area Development Council and  
12 the Convention & Visitors Association of Greater Kansas City."

13           Q.     What other dues and donations did Staff remove from the cost of service?

14           A.     Staff removed contributions to the following organizations:

- 15           • Asian American Chamber of Commerce
- 16           • Boston College
- 17           • Chamber of Commerce of Greater KC
- 18           • Civic Council of Greater KC
- 19           • Eastern Jackson County Betterment
- 20           • Edison Electric Institute
- 21           • Electric Drive Transportation Association
- 22           • Heartland Black of Commerce Chamber
- 23           • Kansas City Industrial Council
- 24           • Kansas City Regional Transit Alliance
- 25           • Kansas City Smartport
- 26           • Kansas Economic Development Alliance
- 27           • Kansas Economic Progress Council
- 28           • Lee's Summit Chamber of Commerce

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<sup>5</sup> <http://www.kcchamber.com/Home.aspx>.



Surrebuttal and  
True-Up Direct Testimony  
of Antonija Nieto

- 1 • Liberty Area Chamber of Commerce
- 2 • Midamerica Gay and Lesbian Chamber of Commerce
- 3 • Minority Contractors Association
- 4 • Nonprofit Connect
- 5 • Union Station Kansas City Inc.
- 6 • Missouri Chamber of Commerce and Industry
- 7 • Missouri Community Action Network
- 8 • Missouri Energy Development Association
- 9 • Missouri Energy Initiative
- 10 • Missouri Municipal League
- 11 • North Kansas City Business Council
- 12 • Northeast Industrial Association
- 13 • Northeast Johnson County
- 14 • Northeast Kansas City Chamber
- 15 • Northland Regional Chamber of Commerce
- 16 • Northeast Roundtable Inc.
- 17 • Parkville Chamber of Commerce
- 18 • Platte County Economic Development
- 19 • Public Affairs Council
- 20 • Regform
- 21 • Sedalia Area Chamber of Commerce
- 22 • South Kansas City Chamber of Commerce
- 23 • Southwest Johnson County Economic
- 24 • St. Joseph Downtown Association
- 25 • State of North Carolina Bar Fees

26 Q. Did the Company agree to remove any of the above mentioned organizations  
27 from the cost of service?

28 A. Yes. According to the Company witness Linda J. Nunn's rebuttal testimony,  
29 page 12, line 23, the expenditure to Boston College for membership dues was determined to  
30 be "a charitable donation that should be removed from the revenue requirement."

31 Q. In her rebuttal testimony, KCPL and GMO witness Elizabeth Danforth  
32 provides the Hawthorn Foundation as an example of dues removed by the Staff for  
33 an organization in which "our membership investment provides support for the efforts  
34 focused on the attraction of new business/KCP&L customers," page 7, line 22. Why is the

1 Hawthorn Foundation not on the above list of organizations removed by Staff from the  
2 revenue requirement?

3 A. In their direct filed work papers, KCPL and GMO made an adjustment  
4 removing 12 organizations from the revenue requirement, Hawthorn Foundation being one of  
5 them. On the list above, Staff did not include the names of the organizations that KCPL and  
6 GMO voluntarily removed. There is an apparent inconsistency between Ms. Danforth's  
7 rebuttal testimony and KCPL's and GMO's proposed disallowance of this due expense.  
8 In any event, Staff agrees with the Company's adjustment removing Hawthorn Foundation  
9 dues from cost of service as its efforts are duplicative of those of KCDC and do not provide  
10 direct benefit to KCPL and GMO customers.

11 Q. What is the Missouri Energy Development Association ("MEDA"), and why  
12 did Staff remove contributions to this organization?

13 A. From the MEDA website<sup>6</sup>:

14 MEDA is the association of Missouri's Investor-Owned Utilities and  
15 their strategic partners.

16 Our mission is to work closely with Missouri Investor-Owned Utilities  
17 and their strategic partners, representing their interests and advocating  
18 balanced policies in legislative and regulatory arenas.

19 Staff removed these contributions because MEDA is an organization that primarily lobbies on  
20 behalf of investor-owned utilities in Missouri. It has been a long-standing practice in  
21 Missouri that costs associated with lobbying are not included in customer rates.  
22 The Commission has defined lobbying as "an attempt to influence the decisions of regulators  
23 and legislators in general." *Re: Kansas City Power & Light Company*, Case No. ER-81-42.

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<sup>6</sup> <http://www.missourienergy.org/meda>.

1 Staff removed the dues made to this organization because it provides no clear benefit  
2 or increased service quality to the ratepayer.

3 Q. What is the Electric Drive Transportation Association, and why did Staff  
4 remove contributions to this organization?

5 A. From the Electric Drive Transportation Association website<sup>7</sup>:

6 The Electric Drive Transportation Association (EDTA) is the trade  
7 association promoting battery, hybrid, plug-in hybrid and fuel cell  
8 electric drive technologies and infrastructure. EDTA conducts public  
9 policy advocacy, provides education and awareness, and enables  
10 industry networking and collaboration. EDTA's membership includes  
11 vehicle and equipment manufacturers, energy companies, technology  
12 developers, component suppliers, government agencies and others.

13 Staff removed these contributions because they are directly associated with the Clean Charge  
14 Network. Staff, KCPL, and GMO removed the rate base investment and operation and  
15 maintenance expenses related to the vehicle chargers in the Clean Charge Network from  
16 utility cost of service. The Commission's ruling in Case No. ER-2016-0285 regarding the  
17 Clean Charge Network was recently remanded back to the Commission. If it is ultimately  
18 determined that the Clean Charge Network should be included in the cost of service, Staff  
19 recommends inclusion of this contribution in the cost of service.

20 Q. KCPL and GMO Witness Nunn states on page 14, line 2, of her rebuttal  
21 testimony, "These membership dues should be a part of a utility's cost of service as they are  
22 necessary to continually improve and be a good community corporate citizen." Do you agree  
23 with this statement?

24 A. No. While Staff does believe that chambers of commerce and charitable  
25 organizations can provide an economic benefit to the communities they serve, the benefits

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<sup>7</sup> <https://www.kemperart.org/>.

1 Ms. Nunn identifies primarily benefit the Company and its shareholders, and are not  
2 necessary to the provision of safe and adequate service. While Staff certainly agrees that  
3 companies such as KCPL and GMO should be good community corporate citizens, it is  
4 Staff's position that KCPL's and GMO's shareholders should be responsible for paying  
5 membership dues demonstrating such, to the extent the dues fall within one of Staff's three  
6 criteria previously listed. By requiring its customers to pay these dues in rates, it is KCPL's  
7 and GMO's customers putting forth the effort to demonstrate good corporate citizenship, not  
8 KCPL or GMO itself. When customers pay the membership dues, it is the utility company  
9 that receives all the benefits of good will without having to make any payment (contribution).  
10 Customers, in effect, become forced contributors to a given organization.

11 Q. Does the Company agree that other types of contributions that do not benefit  
12 ratepayers should not be recovered through rates?

13 A. Yes. KCPL and GMO contribute to several non-profit organizations that  
14 promote charitable causes throughout the community, such as Boy Scouts of America,  
15 Carnegie Public Library, and Salvation Army. KCPL books these expenses "below the line"  
16 and does not recover them through the cost of service; customers do not pay for these costs.

17 Q. What guidance has the Commission provided as to the recoverability through  
18 cost of service of these types of donations?

19 A. As the Commission ordered in the *Report and Order* in Case No. EO-85-185,  
20 involuntary ratepayer contributions of a charitable nature should be disallowed.  
21 The aforementioned contributions clearly are of the same nature that the Commission  
22 disallowed through application of Staff's first criterion.

1 Q. Has the Commission more recently determined the standard for recovery of  
2 dues and donations?

3 A. Yes. In the *Report and Order* in GR-96-285, a Missouri Gas Energy rate case,  
4 the Commission affirmed its decision in KCPL Case Nos. EO-85-185, ER-83-49, ER-82-66,  
5 and Missouri Power & Light ER-82-180. The Commission stated:

6 The rule has always been that dues to organizations may be allowed as  
7 operating expenses where a direct benefit can be shown to accrue to the  
8 ratepayers of the company. Conversely, where that sort of benefit does  
9 not appear, disallowance of the dues is required.<sup>8</sup>

10 In Missouri Public Service Case No. ER-97-394, the Commission found the following  
11 regarding contributions to various country clubs, rotary clubs, and a host of charities:

12 The Commission has traditionally disallowed donations such as these.  
13 The Commission finds nothing in the record to indicate any discernible  
14 ratepayer benefit results from the payment of these donations. The  
15 Commission agrees with the Staff in that membership in the various  
16 organizations involved in this issue is not necessary for the provision of  
17 safe and adequate service to the MPS ratepayers.<sup>9</sup>

18 Q. For the dues and donations Staff has removed from the cost of service, is Staff  
19 claiming that it was imprudent for KCPL and GMO to contribute to these organizations?

20 A. No. Much like utilities' contributions to charitable organizations, it is  
21 management's prerogative to contribute dues to organizations that promote economic  
22 development, provide community benefits, or promote general goodwill. However, like  
23 charitable contributions, ratepayers should not be responsible for expenses that KCPL and  
24 GMO cannot demonstrate have clear benefits to ratepayers, or are not necessary in the  
25 provision of utility service, as the Commission recognized in the 2014 KCPL Rate Case.

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<sup>8</sup> Commission Reports, 5 Mo. P.S.C 3d., page 455.

<sup>9</sup> Commission Reports, 7 Mo. P.S.C 3d., page 212.

1           In KCPL Case No. ER-2014-0370 *Report and Order*, page 68, the Commission  
2 recognized a distinction between the prudence to incur an expense and the benefit to  
3 ratepayers from the expenditure:

4                     Prudence is not the only consideration in determining what  
5 costs should be included in rates; the benefit to customers must also be  
6 considered when deciding what costs are reasonable for customer rates.

7                     KCPL has pursued issues in this case that benefit only the  
8 shareholders, such as La Cygne construction accounting and some  
9 elements of the rate of return recommendation. Utility expenses that  
10 are highly discretionary and do not benefit customers, such as  
11 charitable donations, political lobbying expenses, and incentive  
12 compensation tied to earnings per share are typically allocated entirely  
13 to shareholders.

14                     [Footnotes omitted]

15           Q.     Please summarize your surrebuttal testimony on dues and donations.

16           A.     Staff recommends that the Commission should not allow the membership dues  
17 Staff excluded, as KCPL and GMO have not shown a clear benefit for the ratepayers  
18 associated with these contributions, some of the contributions are of a charitable nature, and  
19 some are duplicative of other contributions.

20     **EDISON ELECTRIC INSTITUTE (“EEI”) DUES**

21           Q.     KCPL and GMO witnesses Nunn and Danforth both disagree with Staff’s  
22 removal of EEI dues in their rebuttal testimonies. What is the EEI?

23           A.     EEI is a trade association that represents all US investor-owned electric  
24 utilities companies. According to the EEI website:<sup>10</sup>

25                     EEI provides its members with public policy leadership, strategic  
26 business intelligence, and essential conferences and forums. EEI will  
27 be the best trade association. We will be the best because we are

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<sup>10</sup> <http://www.eei.org/Pages/default.aspx>.

1 committed to knowing our members and their needs. We will provide  
2 leadership and deliver services that consistently meet or exceed their  
3 expectations. We will be the best because we will attract and retain  
4 employees who have the ambition to serve and will empower them to  
5 work effectively as individuals and in teams. Above all, we will be the  
6 best trade association because, in the tradition of Thomas Edison, we  
7 will make a significant and positive contribution to the long-term  
8 success of the electric power industry in its vital mission to provide  
9 electricity to foster economic progress and improve the quality of life.

10 Q. Why does Staff recommend removal of EEI dues from cost of service?

11 A. Historically, the Commission has disallowed EEI dues from rate recovery on  
12 the basis of EEI's involvement in lobbying activities on behalf of the electric industry.

13 In the Commission's *Report and Order* in KCPL Case No. ER-81-42, the Commission  
14 stated the following:

15 The rule has always been that dues to organizations may be allowed as  
16 operating expenses where a direct benefit can be shown to accrue to the  
17 ratepayers of the company. Conversely, where that sort of benefit does  
18 not appear, disallowance of the dues is required. It follows that the  
19 mere fact that an activity might fall within the very broad general  
20 definition of lobbying as used by Public Counsel should not necessarily  
21 mean that it is an improper expense for ratemaking purposes. This  
22 question is one of benefit or lack of benefit to the ratepayers.<sup>11</sup>

23 In the Commission's *Report and Order* in KCPL Case No. ER-83-49, the Commission  
24 adopted a criterion to determine whether some portion of EEI dues should be allowed in rates:

25 The Commission finds that the Company's analysis to be faulty in that  
26 the Company has quantified the benefits to the ratepayers but has  
27 ignored any potential benefit to the shareholders. It is entirely possible  
28 that the amount of monetary benefit to the shareholders could exceed  
29 the amount of alleged benefit to the ratepayers. In that event the  
30 shareholders should bear a larger portion of the EEI dues than the  
31 ratepayers. Thus, the Company has not met its burden of proof of the  
32 proper assignment of EEI dues based on the respective benefit to the  
33 two involved groups. In the absence of that allocation the EEI dues

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<sup>11</sup> Commission Reports, 25 Mo. P.S.C. (N.S.), page 244.

1                   should be excluded as an expense for setting the permanent rates in this  
2                   matter.<sup>12</sup>

3 Staff's disallowance of EEI dues in this case is consistent with the Commission's guidance in  
4 Commission's order in Case No. ER-83-49 because KCPL has not quantified the benefits of  
5 this membership as to ratepayers and shareholders. The Commission also found EEI should  
6 not be included in rates in KCPL's 1982 rate case, Case No. ER-82-66.

7           Q.     Can you provide the Commission with a specific example when EEI recently  
8 engaged in activities in the interest of utility shareholders?

9           A.     Yes. The Commission should be familiar with the United States Supreme  
10 Court Case No. 13-787, KCP&L Greater Missouri Operation's ("GMO") appeal<sup>13</sup> of the  
11 Missouri Commission's *Report and Order* in Case No. ER-2012-0175 before the Supreme  
12 Court of the United States. EEI demonstrated that it primarily represents utility interests  
13 when it filed an *Amicus Curiae* brief in support of the petitioner, GMO, before the United  
14 States Supreme Court on February 3, 2014. This brief specifically concerned GMO's attempt  
15 to overturn the Missouri Commission's prior rate decision regarding recovery of plant  
16 investment and transmission costs related to Crossroads Energy Center ("Crossroads").  
17 Crossroads is a combustion turbine generating facility located in Clarksdale, Mississippi, in  
18 excess of over 500 miles from GMO's service area. The Commission has consistently  
19 excluded on grounds of imprudence certain rate base costs relating to this generating facility  
20 and all transmission costs relating to the transmission of its electrical generation back to the  
21 GMO service territory in western Missouri.

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<sup>12</sup> Commission Reports, 26 Mo. P.S.C. (N.S.), page 115.

<sup>13</sup> WD 75038, Missouri Court of Appeals, Western District



1           In response to Staff Data Request No. 0445 in Case No. ER-2016-0156, GMO stated  
2 that “KCP&L requested EEI consider filing an Amicus Brief in Case No. 13-787.”  
3 The response to this data request is attached as Schedule AN-s2. This is a clear example of  
4 EEI representing the interests of its utility members and contributions to EEI should  
5 appropriately be allocated to shareholders. EEI filed an amicus brief on January 3, 2012, in  
6 support of the petitioner in Case No. 11-1146, In the United States Court of Appeals for the  
7 District of Columbia Circuit, *American Electric Power Service Corporation et al. v. Federal*  
8 *Communications Commission and United States of America*. EEI also filed an amicus brief  
9 on February 27, 2003, in support of the petitioner in File No. 3-10909 United States of  
10 America before the Securities and Exchange Commission, In the Matter of Application of  
11 Enron Corp. for Exemptions Under the Public Utility Holding Company Act of 1935  
12 (File Nos. 70-9661 and 70-10056).

13           Q.     Has KCPL and GMO quantified any part of the EEI dues as benefitting either  
14 its customers or its shareholders?

15           A.     No. According to the rebuttal testimony of KCPL and GMO witness Nunn at  
16 page 15, line 15, “the company records approximately 21% of the EEI annual membership  
17 dues invoice below the line. This represents the portion of time that EEI is engaged in  
18 lobbying activities for the electric utility industry,” and “as such, the Company has already  
19 eliminated costs that should not be charged to ratepayers.” Assuming the 21% is an accurate  
20 figure, KCPL and GMO have again failed to do for the Commission is to quantify the benefits  
21 accruing to its ratepayers and shareholders regarding the other 79% of the EEI dues.

22           In KCPL witness Danforth’s rebuttal testimony on page 5 line 7, she states that,  
23 “EEI provides a significant benefit to KCP&L through the services it provides to the

1 Company. Placing a dollar value on these services would be extremely difficult task  
2 to undertake.”

3 In its *Report and Order* in Missouri Power & Light Company Case No. ER-82-180,  
4 the Commission made clear what the Company needs to do to demonstrate rate recovery for  
5 contributions to EEI stating:

6 The Commission also points out that the Company needs to develop  
7 some method of allocating expenses between its shareholders and the  
8 ratepayers once the benefits and activities leading thereto have been  
9 adequately quantified.<sup>14</sup>

10 In KCPL’s and GMO’s current case, they again have failed to undergo the Commission  
11 requested task of quantifying the benefits; KCPL and GMO simply state that 79% of EEI dues  
12 are ratepayers’ responsibility, while the 21% of the dues that EEI indicates it uses for  
13 lobbying expense is the only shareholder expense. The Commission has asked the company  
14 to do a more detailed analysis of the benefits EEI provides to both ratepayers and  
15 shareholders.

16 Q. KCPL contributes to another electric industry group, the Electric Power  
17 Research Institute (“EPRI”). Does Staff recommend removal of those dues from cost  
18 of service?

19 A. No. According to EPRI website<sup>15</sup>:

20 The Electric Power Research Institute, Inc. conducts research and  
21 development relating to the generation, delivery and use of electricity  
22 for the benefit of the public. An independent, nonprofit organization,  
23 we bring together scientists and engineers as well as experts from  
24 academia and the industry to help address challenges in electricity.

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<sup>14</sup> Commission Reports, 25 Mo. P.S.C. (N.S.), page 398.

<sup>15</sup> <http://www.epri.com/Pages/Default.aspx>.

1 Staff based its recommendation not to remove EPRI dues on the Commission's' *Report and*  
2 *Order* in Case No. ER-82-180:

3 Many of the alleged benefits which the Company receives from EEI  
4 could be obtained from other sources. Some of the efforts of EEI and  
5 the Electric Power Research Institute (EPRI) overlap and some of the  
6 assistance rendered by EEI could be obtained from EPRI. The  
7 Commission Staff has not proposed to disallow the expense associated  
8 with EPRI in the instant case.<sup>16</sup>

9 Staff did not remove EPRI dues as this organization's focus is not on lobbying and  
10 participating in litigation.

11 Q. Are there additional EEI dues Staff recommends removal from the cost  
12 of service?

13 A. Yes. In direct filing, Staff overlooked Utility Air Regulatory Group  
14 ("UARG"), which is affiliated with EEI, and for which an additional dues amount reported  
15 above the line by the Company. Staff will now remove those dues from cost of service from  
16 both KCPL and GMO.

17 Q. What is the UARG?

18 A. As identified in the attached article from SNL, Schedule AN-s3, the UARG is  
19 "a not-for-profit association of individual electric generating companies and national trade  
20 associations that participates on behalf of its members collectively in administrative  
21 proceedings under the Clean Air Act, and in litigation arising from those proceedings, that  
22 affect electric generators." The UARG dues are paid through EEI.

23 The UARG, which does not have a readily available website, appears to participate in  
24 litigation solely on behalf of its member utilities. Like EEI, participating in these activities

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<sup>16</sup> Commission Reports, 25 Mo. P.S.C. (N.S.), page 397.

1 may or may not be in the best interests of KCPL's and GMO's customers. Staff recommends  
2 removal of these expenses from the cost of service.

3 Q. Please summarize your surrebuttal testimony on EEI dues.

4 A. Staff recommends that the entire amount of test year EEI dues should be  
5 disallowed, as well as the amounts paid to UARG and Hunton and Williams through EEI.  
6 KCPL and GMO have again failed to quantify the benefits to the ratepayers and shareholders,  
7 contrary to the Commission's orders.

#### 8 **MATERIALS AND SUPPLIES**

9 Q. What is the difference in approach to allocating KCPL Materials and Supplies  
10 amongst Missouri and Kansas jurisdictions between Staff and the Company?

11 A. Staff used a general plant allocator of 54.4406% and removed 100% of Kansas  
12 balances when allocating Materials and Supplies between Missouri and Kansas.

13 The Company used a more detailed methodology, as follows:

- 14 • Demand allocator for Fossil Generation, Wolf Creek, and Wind  
15 Generation related Materials and Supplies – 52.6757% to Missouri.
- 16 • 100% for Transmission and Distribution related to Materials and  
17 Supplies located in Missouri.
- 18 • 0% for Transmission and Distribution related to Materials and  
19 Supplies located in Kansas.
- 20 • General Plant allocator for Transmission and Distribution related to  
21 Materials and Supplies – 53.4406% to Missouri.

22 Q. Has Staff and the Company resolved the difference in the allocation method  
23 for Materials and Supplies?

24 A. Yes. After reviewing the data and discussing with the Company its proposed  
25 methodology of allocating Materials and Supplies between Missouri and Kansas, Staff has

1 accepted Company's more detailed approach and will use it for the True-Up period  
2 calculation using Staff's allocation factors.

3 **BAD DEBT EXPENSE**

4 Q. On page 6 of her rebuttal testimony, witness Nunn identifies the first issue  
5 raised by KCPL and GMO concerning bad debt expense. How did Staff and KCPL and GMO  
6 differ in arriving at an appropriate amount of revenues on which to apply bad debt expense  
7 and late payment fees ratio?

8 A. Staff used weather normalized revenues, while KCPL and GMO added  
9 Missouri Energy Efficiency Investment Act ("MEEIA"), Fuel Adjustment Clause ("FAC")  
10 and Renewable Energy Standard Rate Adjustment Mechanism ("RESRAM") (GMO only)  
11 surcharge revenues to the weather normalized sales to determine the amount of revenues on  
12 which to apply bad debt expense and late payment fees ratio.

13 Q. What is Staff's position in regard to adding MEEIA, FAC, and RESRAM  
14 revenues included in bad debt expense?

15 A. While MEEIA, FAC, and RESRAM were not used by Staff in prior cases to  
16 determine the appropriate amount of revenues on which to apply bad debt and late fee ratios,  
17 after discussion with the Company and review of the data, Staff has agreed to include the  
18 amounts of these surcharges to the weather normalized sales to determine the appropriate  
19 amount of revenues on which to apply bad debt and late fee ratios. Staff recommends using a  
20 three year average of these revenues to calculate bad debt expense.

1 Q. On page 6 of her rebuttal testimony, witness Nunn then identifies KCPL and  
2 GMO's second issue concerning bad debt expense, the bad debt factor up. What is Staff's  
3 recommendation regarding a bad debt factor-up?

4 A. KCPL's and GMO's request to include an adjustment for bad debt expense  
5 proportionate to a revenue requirement increase (or decrease) is commonly referred to as a  
6 bad debt "factor-up" or "gross-up". This adjustment is identified in the direct and rebuttal  
7 testimonies of KCPL and GMO witness Linda J. Nunn. Staff recommends that this projected  
8 expense not be included in KCPL's and GMO's cost of service. As fully explained in my  
9 rebuttal testimony, no direct correlation exists between a change in rates and a change in bad  
10 debt expense to justify the use of a bad debt factor up.

11 KCPL's and GMO's rationale for making this request is based on an assumption that  
12 lacks any factual evidence to support its conclusion. I would note that KCPL and GMO have  
13 not identified any study or evidence that bad debts have a correlation to revenues that would  
14 justify inclusion of a bad debt factor up. Instead, KCPL's and GMO's argument is based on a  
15 theory and "logical" conclusions. On the other hand, Staff has analyzed KCPL's and GMO's  
16 historical retail revenues and net write-offs over several years to determine if a direct and  
17 proportional relationship exists between retail revenues and bad debt expense. Staff's  
18 analysis of the actual net write-offs as compared to related revenues shows no correlation, and  
19 in many cases bad debts and revenues move in opposite directions. Staff recommends that the  
20 Commission deny KCPL's and GMO's request to adopt the proposed bad debt factor up.

21 However, in the event that the Commission does grant KCPL's and GMO's request to  
22 factor up bad debt expense proportionate with the change in revenue requirement, I agree with  
23 witness Nunn's recommendation to also reflect a factor-up for additional forfeited discounts

1 (late payment fees), in the interest of consistency. KCPL and GMO included the late payment  
2 fee factor up in its direct filed case.

3 Q. What analysis did Staff perform comparing bad debts to revenues?

4 A. In my rebuttal testimony, I provided several tables and graphical analyses to  
5 demonstrate the fallacy of KCPL's and GMO's assumption that increased revenues lead to  
6 increased bad debt. In theory, this assumption may appear to be reasonable. In practice,  
7 however, this theory simply does not hold true.

8 Staff has performed the following comparative analyses of bad debt and revenues:

- 9 • An analysis of the monthly change in retail revenues and bad debts
- 10 • An analysis of the percent monthly change in retail revenues and  
11 bad debts
- 12 • An analysis comparing a 12 month period of bad debt to the  
13 corresponding retail revenues, on a quarterly rolling basis
- 14 • Graphical analysis of the items above

15 I have attached the third analysis, which compares 12 month periods of bad debt to  
16 the corresponding revenues<sup>17</sup> on a quarterly basis from January 2007 through December 2017  
17 for KCPL and 2001 through 2017 for GMO, along with the graphical representation of  
18 the data. This data is attached as Confidential Schedule AN-s4, Schedule AN-s5,  
19 Confidential Schedule AN-s6, and Schedule AN-s7. The remainders of the analyses were  
20 attached to my rebuttal testimony.

21 Q. Please explain this data and accompanying graph.

22 A. This analysis is the clearest way to depict how bad debt and revenue have no  
23 apparent positive correlation over time, refuting KCPL's and GMO's rebuttal testimony

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<sup>17</sup> The approximate time to "write-off" bad debts is six months. Therefore, bad debts in a given month relate to revenues six months prior. Staff's analysis through June 2018 updates bad debts that relate to December 2017 revenues.

1 on this issue. I have listed on the graph all KCPL and GMO rate increases during the time  
2 period used.

3 This data is a comparison of bad debt as a percentage of revenues from 2007 through  
4 2017 for KCPL and 2001 through 2017 for GMO. This comparison is consistent with the  
5 methodology Staff, KCPL, and GMO use to annualize bad debts based on current annualized  
6 and normalized revenues. KCPL's graph shows their seven most recent rate increases,  
7 beginning with Case No. ER-2006-0314, and that each of these rate increases did not result in  
8 a proportional change in bad debt. More specifically, the graph shows that bad debts, as a  
9 percentage of revenues, decreased from 2007 through December 2009. Beginning in 2010,  
10 the bad debt to revenue ratio increased before peaking in June 2011 after which the bad debt  
11 percentage has experienced an overall downward trend.

12 On the GMO graph we can see that Case No. ER-2001-672 resulted in a rate decrease,  
13 and as can be seen, bad debts increased during the following time period. Bad debts  
14 subsequently decreased before leveling out from 2003 through mid-2009. Case No.  
15 ER-2009-0090 resulted in a rate increase, and during part of the year following the rate  
16 increase, bad debts actually decreased, coming to a low in March 2010. Since Case No.  
17 ER-2010-0356, after peaking in June 2011, bad debts have steadily decreased with a slight  
18 upward trend in last five quarters ending June 2017.

19 Q. Does the past relationship between revenue and bad debt dollars support  
20 KCPL's and GMO's argument for a bad debt factor up?

21 A. No. KCPL and GMO believe that it is logical to assume that bad debt expense  
22 will increase each time the Commission approves an increase in its revenue requirement.  
23 During the time period presented in the tables attached, KCPL increased its rates on two



1 separate occasions. The first increase was effective February 2013 (Case No. ER-2012-0174)  
2 and the second increase was effective September 2015 (Case No. ER-2014-0370). The recent  
3 trends in bad debt expense do not support KCPL's argument, and the facts from the prior two  
4 rate increases actually prove its logic is flawed.

5 Q. Is revenue tied to bad debt expense?

6 A. Yes, in the sense that in order to have bad debt, a company must have a source  
7 of revenue. However, the level of revenue is not the primary driver of bad-debt expense.  
8 Other factors, which are beyond the control of the utility, also drive levels of bad debt. One  
9 important driver of bad debt expense is the condition of the economy. The KCPL graph  
10 presented in Schedule AN-s5 shows a spike in the percentage of bad debt to revenue between  
11 the quarters ended December 2009 to June 2011. During the same time, KCPL's customers  
12 were recovering from the recession of the US economy, which may have contributed to the  
13 increase in bad debt.

14 Q. Does KCPL acknowledge that other factors, besides an increase in revenues,  
15 contribute to bad debt expense?

16 A. Yes. The following quote can be found on page four, lines 18 - 20 of the  
17 surrebuttal testimony of Ronald A. Klote in KCPL's rate case, Case No. ER-2014-0370:

18 Staff has presented a number of charts attempting to show the  
19 relationship of bad debts to revenue increases and decreases. These  
20 relationships are the result of numerous factors impacting the revenue  
21 stream of a utility.

22 While witness Klote attempted in that case to dismiss Staff's analysis because there are  
23 numerous factors that impact revenues, KCPL still has not provided factual support for its  
24 assertion that the change in bad debt expense correlates with changes in revenues.

1 Q. Would Staff require evidence of a perfect correlation between bad debt and  
2 revenues to recommend the inclusion of a bad debt factor-up?

3 A. No. However, Staff's evidence shows not only lack of a *perfect* correlation,  
4 but also lack of a general correlation. Again, KCPL and GMO have not presented an analysis  
5 of the correlation of bad debts and revenues. KCPL's and GMO's contention is that when  
6 revenues increase as a result of a rate case, bad debts will increase proportionately. If that  
7 were true, I would expect the line representing the ratio of bad debts and revenues to be  
8 relatively the same throughout the analysis, perhaps being a somewhat straight line across the  
9 graphs presented. For example, if the ratio of bad debts to revenues were 0.75% at one time  
10 period, one would expect the ratio to fluctuate around that percentage, but not have any trends  
11 up or down. Staff's analyses do not examine the change in bad debts or revenues dollars; they  
12 measure the change of the ratio between the two. Even if bad debts were somewhat  
13 correlated, KCPL's and GMO's proposed bad debt factor-up, and similarly, late payment  
14 factor-up, are not known and measurable.

15 Q. How is the bad debt factor up not a "known and measurable" change  
16 in expense?

17 A. The anticipated effective date of rates in this case is December 29, 2018.  
18 The revenue requirement authorized by the Commission, if any, will be collected in the  
19 following 12 months. Because of the bad debt expense lag, 12 months of bad debt expense  
20 related to the increase in revenues will not be fully realized until six months after this date  
21 which is June 2020, 18 months beyond the operation of law date, and 24 months beyond the  
22 True-Up date in this case. KCPL's and GMO's adjustments are intended to collect in rates  
23 expenses that may or may not be fully realized 18 months past the effective date of rates.

1 The level of bad debt expense 18 months past the effective date of rates is certainly not known  
2 and measurable.

3 Q. Should the results of Staff's approach to normalization of bad debts in its direct  
4 filed case be considered to be known and measurable?

5 A. Yes. Staff's direct filed bad debt annualization captured the latest bad debts  
6 as of the 12 months ending June 2018 that correspond with the actual revenues as of  
7 December 2017. The ratio between the two is applied to the annualized, normalized revenues  
8 as of June 2018. Bad debts and revenues are routinely included in the True-Up process and  
9 will be in this case also. Staff's method will capture the most up to date information as of  
10 June 2018, the end of the update period.

11 Q. Witness Nunn quotes the *Commission Report and Order* in KCPL's 2006 rate  
12 case, Case No. ER-2006-0314. The Commission authorized KCPL's request for a bad debt  
13 factor-up in that case. Why is that case not relevant to this current case?

14 A. The 2006 KCPL rate case was its first in 20 years. There was no data available  
15 that would confirm or deny whether or not bad debts increase with a general rate increase.  
16 However, in examining the data and graphs for KCPL and GMO, the data shows that there is  
17 no correlation between rate increases and bad debts for an extended period of time. The data  
18 Staff reviewed does not support KCPL's and GMO's assumptions, and does not support its  
19 adjustment to factor up bad debt expense.

20 Q. Are there any other considerations regarding Bad Debt Expense?

21 A. Yes. After the direct filing, Staff was informed that there was an error in the  
22 bad debt data provided for direct filing. November 2017 bad debt expense amount was  
23 incorrect and it will be corrected in updated Staff Data Request No. 0193. Additionally, there

1 were some abnormalities in the data for May and June, 2018 for bad debt expense due to  
2 implementation of the new Customer Information System. Due to inaccurate data for May and  
3 June, 2018, Staff has excluded these months in its analysis of the True-Up data for bad debt  
4 expense will be set as of April 2018 for the True-Up period.

5 **PAYROLL AND RELATED BENEFITS**

6 Q. In his rebuttal testimony, Company witness Klote states that Staff used  
7 different time periods to calculate union vs. non-union overtime for KCPL employees. Has  
8 Staff and the Company resolved this difference?

9 A. In direct filing, Staff used a five year average of overtime hours for  
10 management and a three year average of overtime hours for union employees. After additional  
11 review of the data, Staff agrees that a three year average for both management and union  
12 employees will adequately capture fluctuations in overtime hours. This correction will be  
13 reflected in Staff's True-Up payroll annualization.

14 Q. Witness Klote also notes that Staff should have accounted for Wolf Creek  
15 overtime "much like the Staff did in the KCPL overtime calculation." How did the calculation  
16 of overtime for KCPL and Wolf Creek differ?

17 A. For KCPL, Staff used an average of the last three years of overtime expense to  
18 best represent the cost of overtime in the future. The Company provided Staff with overtime  
19 dollars for Wolf Creek, but not overtime hours. Both Staff and the Company agreed to use of  
20 three year average of overtime dollars (2015, 2016, and 2017) to best represent future  
21 overtime costs for Wolf Creek. However, the Company has used a 3% annual escalation  
22 factor to its three-year average for Wolf Creek in an attempt to bring prior years dollars to

1 current levels. Staff opposes applying the 3% index to yearly overtime dollars, as there are  
2 many different factors that influence the cost of overtime.

3 Overtime expense is incurred by two distinct cost drivers; hourly wage rates and  
4 overtime hours worked. While Staff's analysis showed that hourly wage rates are on an  
5 upward trend, overtime hours have fluctuated from year to year.

6 Staff considers overtime hours to be the primary driver of overtime because, while  
7 wages tend to increase steadily, various circumstances can cause yearly overtime hours to  
8 fluctuate drastically. Examples of events that can lead to increased or decreased levels of  
9 overtime are extended outages, issues from weather events, increases in productivity, or  
10 changes in technology.

11 When the Company applies the 3% annual escalator, they are not differentiating  
12 between the two overtime cost drivers. By indexing total overtime expense for Wolf Creek,  
13 the Company is indexing both overtime cost drivers, including the overtime hours worked.  
14 Staff finds that applying the 3% yearly escalator, which indirectly inflates the number of  
15 overtime hours worked, is inappropriate.

16 Staff has submitted a data request asking for overtime hours assigned to Wolf Creek in  
17 the last six years (2012-2017). When Staff receives and reviews the response to the  
18 Wolf Creek overtime hours, Staff will determine an appropriate amount of Wolf Creek  
19 overtime expense for the True-Up period.

20  
21  
22  
23 *continued on next page*

1 **TRUE-UP**

2 Q. What adjustments are you sponsoring for the True-Up period?

3 A. The following is the list of adjustments I will be sponsoring for the  
4 True-Up period:

- 5 • Bad Debt Expense
- 6 • Customer Advance
- 7 • Customer deposits
- 8 • Revenues – Customer Growth
- 9 • Dues and Donations
- 10 • Forfeited Discounts
- 11 • Material and Supplies
- 12 • Miscellaneous Other Revenue (does not include
- 13 transmission revenue)
- 14 • Prepayments
- 15 • Payroll and Related Benefits

16 Q. Does this conclude your testimony?

17 A. Yes, it does.



**SCHEDULE AN-s1**

**HAS BEEN DEEMED**

**CONFIDENTIAL**

**IN ITS ENTIRETY**



KCPL GMO  
Case Name: 2016 GMO Rate Case  
Case Number: ER-2016-0156

Response to Taylor Jason Interrogatories - MPSC\_20160818  
Date of Response: 8/26/2016

Question:0445

1) Please provide all invoices from EEI since January 2014 through the present for Kansas City Power & Light Company (KCPL) and KCP&L Greater Missouri Operations Company (GMO).  
2) Please provide all correspondences with EEI since January 2014 through the present. 1) Reference GMO's appeal to the Supreme Court of the United States, Case No. 13-787. Did KCPL, GMO, or any of its representatives, request EEI to file an Amicus Brief in support of GMO? Did KCPL, GMO, or any of its representatives assist EEI in developing its Amicus Brief? DR requested by Jason Taylor [Jason.taylor@psc.mo.gov](mailto:Jason.taylor@psc.mo.gov).

Response:

- 1.) Yes, KCP&L requested EEI consider filing an Amicus Brief in Case No. 13-787.
- 2.) KCP&L did not assist EEI in developing its Amicus Brief.
- 3.) Please see attachments below to view each EEI voucher from 2014 – current.

**Prepared by:** Melissa Tye, Corporate Planning and Budget

**Attachments:**

Q0445\_R0370967.pdf  
Q0445\_R0386604.pdf  
Q0445\_R0415475.pdf  
Q0445\_R0425103.pdf  
Q0445\_R0485020.pdf  
Q0445\_R0485541.pdf  
Q0445\_R0497501.pdf  
Q0445\_R0504292.pdf  
Q0445\_R0505310.pdf  
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Q0445\_R0661864.pdf  
Q0445\_R0675487.pdf  
Q0445\_R0685057.pdf  
Q0445\_Verification.pdf

## Power companies wield influence through anonymous group

Tuesday, July 19, 2016 10:22 AM ET

By Annalee Armstrong

It has fought in federal legal proceedings, taken challenges all the way to the Supreme Court and even convinced the justices to strike down a regulation targeting greenhouse gas emissions from power plants.

And yet the Utility Air Regulatory Group, for all its influence, is little known outside its members and takes pains to protect its anonymity.

Run out of the law firm of Hunton & Williams, UARG is perhaps most well-known for bringing the 2014 Supreme Court case that bears its name, in which the justices slapped the EPA's hand for overreaching but generally reaffirmed the agency's authority to regulate carbon and other emissions. The decision in that case, *Utility Air Regulatory Group v. EPA*, has since been widely cited in legal battles against Clean Air Act rules.

UARG is involved in a number of pending court proceedings, the most prominent of which would be the legal challenge to the Clean Power Plan. In court documents from that case, *West Virginia v. EPA* (No. 15-1363), UARG described itself as "a not-for-profit association of individual electric generating companies and national trade associations that participates on behalf of its members collectively in administrative proceedings under the Clean Air Act, and in litigation arising from those proceedings, that affect electric generators."

The group in recent years has not made its membership roster public — the most recent list that could be located was attached to regulatory comments filed in 2006 — and requests to Hunton & Williams for that information were declined. UARG also does not have a public-facing website like other prominent trade groups such as the Edison Electric Institute or National Rural Electric Cooperative Association, both of which are also members of UARG.

Information gleaned from hundreds of court filings, Federal Register comments and other documents, as well as conversations with representatives from various utilities, trade associations and environmental groups, resulted in a far-from-exhaustive list of UARG members past and present — many of which confirmed that they currently belong to the association. Liberal think tank Center for American Progress in a June 24 paper pointed out that some of the nation's top coal generators are members. Indeed, 15 of the top 25 CO<sub>2</sub>-emitting utilities (based on S&P Global Market Intelligence data) are or recently were members of UARG, including the top three: Southern Co., American Electric Power Co. Inc. and Duke Energy Corp., each of which confirmed its membership via email or phone call.

Many utilities participate in lawsuits like the Clean Power Plan litigation through their memberships in EEI, NRECA or other associations. But some environmental groups are concerned about UARG's anonymity and customers' resulting ignorance regarding what their power companies might be doing behind the scenes.

"They are the dark matter of the electric energy industry, and one shouldn't really be able to take on the government's efforts to curb climate change or mercury pollution and do it anonymously," David Doniger, director of the Natural Resources Defense Council's Climate and Clean Air Program, said. "This is a way of having the law firm do their dirty work without taking any responsibility for it in public discourse."

Erin Auel, who authored the Center for American Progress paper, said in an interview that UARG has worked through a team of lawyers for years to block provisions of the Clean Air Act. "The fact of the matter is, there's just no way to determine a full, complete, current list of UARG members," Auel said.

Some UARG member utilities become directly involved in legal cases under their corporate banners as well — Southern and its subsidiaries, AEP and many individual electric cooperatives are just a handful of the companies taking part in the carbon rule litigation outside of UARG. Others limit their participation in the group or specify how their financial

contributions may be used.

Such is the case with Dominion Resources Inc., which surprised Doniger and others in the industry when it filed a brief defending the Clean Power Plan.

2015 US CO2 emissions (tons)		
Ultimate parent	CO2 emissions (tons)	UARG member
American Electric Power Co. Inc.	116,457,875	Yes
Southern Co.	111,453,326	Yes
Duke Energy Corp.	108,317,712	Yes
NRG Energy Inc.	90,290,881	Unclear*
Dynegy Inc.	84,457,586	Yes
Berkshire Hathaway Inc.	71,115,475	Unclear*
Tennessee Valley Authority	70,108,178	Yes
Texas Energy Future Holdings LP	56,390,177	Yes
Xcel Energy Inc.	56,195,481	No
FirstEnergy Corp.	54,174,329	Yes
Calpine Corp.	51,635,410	No
NextEra Energy Inc.	49,272,804	Unclear*
Dominion Resources Inc.	38,219,095	Yes
Entergy Corp.	37,444,331	No
Talen Energy Corp.	36,277,054	Yes
DTE Energy Co.	35,356,944	Yes
PPL Corp.	34,975,459	Yes
WEC Energy Group Inc.	34,139,414	Yes
Ameren Corp.	30,950,498	Yes
AES Corp.	25,962,599	Unclear*
Basin Electric Power Cooperative	22,177,901	No
Westar Energy Inc.	21,672,421	Former
Great Plains Energy Inc.	20,570,583	Unclear*
CMS Energy Corp.	20,252,819	Yes
Salt River Project	20,046,097	Yes

As of June 29, 2016.  
Includes units reporting EPA Continuous Emissions Monitoring System data.  
\* Requests for confirmation were not returned as of publication  
Source: SNL Energy, an offering of S&P Global Market Intelligence

Dominion spokeswoman Bonita Harris confirmed that the company is a member of UARG but has specified that its dues may not be expended towards the Clean Power Plan challenge. Harris said regardless of the outcome of the litigation, Dominion believes carbon emissions from its power plants will need to be addressed. Virginia Gov. Terry McAuliffe recently created a work group to study ways to cut carbon from generators in his state, where Dominion is the largest utility.

Tennessee Valley Authority spokesman Scott Brooks said the federal power marketer is a "long time" UARG member, although its dues are not used to fund any court proceedings. "TVA participates to better understand and comply with complexities of the Clean Air Act. We do not participate in the litigation that UARG may undertake," Brooks said.

For 2015, TVA paid UARG \$462,555 in membership fees, which are used to support work done by the group's technical committees, according to Brooks. He said membership provides the federal power marketer with the opportunity to share in the UARG's technical analyses of existing and new air pollution regulations along with the chance to interact with other electric generators facing similar challenges in environmental compliance and better understand their views.

Most recently, TVA participated on the UARG committees that examined the Clean Power Plan and Mercury and Air Toxics Standards, much as it participates on most of the group's technical committees, Brooks said. He asserted that TVA's interactions with UARG have helped the federal power marketer develop its plans for complying with environmental regulations, and Doniger noted that TVA is moving its power generation portfolio in the direction that the Clean Power Plan would require.

Another example of a UARG member that has supported the EPA is the Los Angeles Department of Water and Power, which Auel found had authorized up to \$175,000 in membership dues for 2014 to go to UARG through EEI as administrator of the funds. Yet the City of Los Angeles in 2015 filed an amicus brief in support of the Clean Power Plan.

A resolution adopted at the Aug. 27, 2013, LADWP board meeting said UARG was "organized for the purpose of coordinating with the EPA the development of suitable guidelines and regulations" relating to the Clean Air Act. The LADWP sought membership in the group in an effort to exchange ideas, conduct research and establish methods of operations with respect to air quality regulatory issues, "as will inure to the benefit of the nation's environment," according to the resolution. The board members also wanted to learn about how air regulations would be applied to LADWP's existing and planned generation resources.

What sets UARG apart from many other similar associations is its reluctance to release information on its membership, meetings and inner-workings. Utility trade groups such as the Electric Power Supply Association also participate in judicial and regulatory proceedings and are represented by law firms, but EPSA maintains a public website where its activities, membership roster and supporting law firms are openly acknowledged while UARG does not.

UARG's reticence has led some to question the group's true objectives. For instance, Doniger said he is skeptical of any company's claim to be a member of UARG that does not participate in the litigation. "UARG exists for no purpose, except, as far as we know, to be the vehicle through which the companies bring their lawsuits," Doniger said, noting that he found the fact that TVA, a federal entity, is a member to be particularly "distressing."

Others that have confirmed membership in UARG are Energy Future Holdings Corp. subsidiary Luminant Generation

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Co. LLC, Dynegy Inc., DTE Energy Co., FirstEnergy Corp., Ameren Corp. and PPL Corp. Several companies, including WEC Energy Group Inc., JEA, Salt River Project, CMS Energy Corp., and ALLETE Inc., disclosed their membership in public comments they filed in 2014 in the EPA's Clean Power Plan proceeding.

But UARG membership appears not to be limited to electric utilities and their trade groups alone; National Mining Association spokesman Luke Popovich confirmed that his group is a past member. He said, though, that the NMA now prefers to "take [its] own litigation path" and declined to comment further on NMA's previous membership in UARG.

How much each company pays for UARG membership, as well as the group's total budget, is unclear. However, documents obtained by S&P Global Market Intelligence from a business presentation made to EEI leadership in January show EEI spent \$7.7 million in 2015 toward a UARG fund not controlled by EEI and accounted for as a separately funded activity.

EEI spokesman Jeff Ostermayer said his organization provides accounting services to groups such as UARG and participates in a number of coalitions covering a range of issues important to its members. He declined to comment specifically on the documents.

"UARG provides a variety of services including regulatory, technical and compliance advice and information," Ostermayer said. "EEI does not participate in any votes on UARG policy matter decisions."

### **A victory?**

Despite its lack of a website, UARG does maintain a public presence through its lawyers, who regularly appear in court on the group's behalf. In some instances, those same attorneys also testify about energy issues on Capitol Hill, although they typically appear in their own personal capacity and not as representatives of UARG.

During a hearing before the Senate Environment and Public Works Committee in June, UARG attorney Allison Wood sparred with Richard Revesz, director of the New York University School of Law's Institute for Policy Integrity, over whether *UARG v. EPA* was a boon for the power industry. Wood noted that she was speaking in her own capacity, but said she represents several utility clients in the litigation involving the Clean Power Plan, including some that launched a successful bid for a stay of the rule from the Supreme Court.

Revesz defended the EPA's record before the Supreme Court, characterizing the *UARG v. EPA* ruling as a win for both sides. But Sen. Dan Sullivan, R-Alaska, said the EPA "lost that big time."

Wood agreed with Sullivan that the EPA's actions with respect to the Clean Power Plan are not based on the statute or the Constitution, and said she counted *UARG v. EPA* "as a victory for my client." In an email exchange with S&P Global Market Intelligence, Wood noted that the ruling is widely cited in the Clean Power Plan challengers' legal filings. "Petitioners' briefs in the case speak for themselves," Wood said.

In 2012, NRDC's John Walke, director of the group's Clean Air Project, Climate and Clean Air Program, called UARG a "front group of convenience" that allows utilities to "shield their names and anti-public health crusades from public awareness." In response to Walke's criticism, Wood said UARG simply operates to address areas of significant concern in an efficient manner and allows members to collectively participate in public rulemakings and judicial proceedings related to the Clean Air Act.

Wood said UARG does more for its "clients" than just litigate. The group participates in administrative and regulatory proceedings related to Clean Air Act rules that impact electric generators and provides its members with legal counsel, regulatory interpretation and compliance guidance, she explained. UARG submitted several filings during the Clean Power Plan comment period in 2014, expressing technical and legal concerns on behalf of its members; many companies, both confirmed UARG members and others, in turn cited UARG information in their own comments. Wood's colleague and fellow UARG attorney Henry Nickel even wrote to EPA Administrator Gina McCarthy in September 2014 asking her to withdraw the rule in its entirety.

"UARG's members direct the work we do for them," Wood said.

Other groups similarly operate largely outside the public domain, including the Utility Water Act Group and Americans for Affordable Climate Policy — both of which, like UARG, are represented by Hunton & Williams. And law firms Barnes & Thornburg and Baker Botts are associated with the Federal Water Quality Coalition and the Class of 85 Regulatory Response Group, respectively.

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The Class of 85 group, however, is much more open about its membership and operations than UARG. The group released a list of supporting members as part of its December 2014 comments on the Clean Power Plan. Among the members were PPL Corp., AES Corp., Alliant Energy Corp., Entergy Corp. subsidiary Entergy Services Inc., JEA, National Grid USA, Tampa Electric Co. and Xcel Energy Inc.

**SCHEDULE AN-s4**

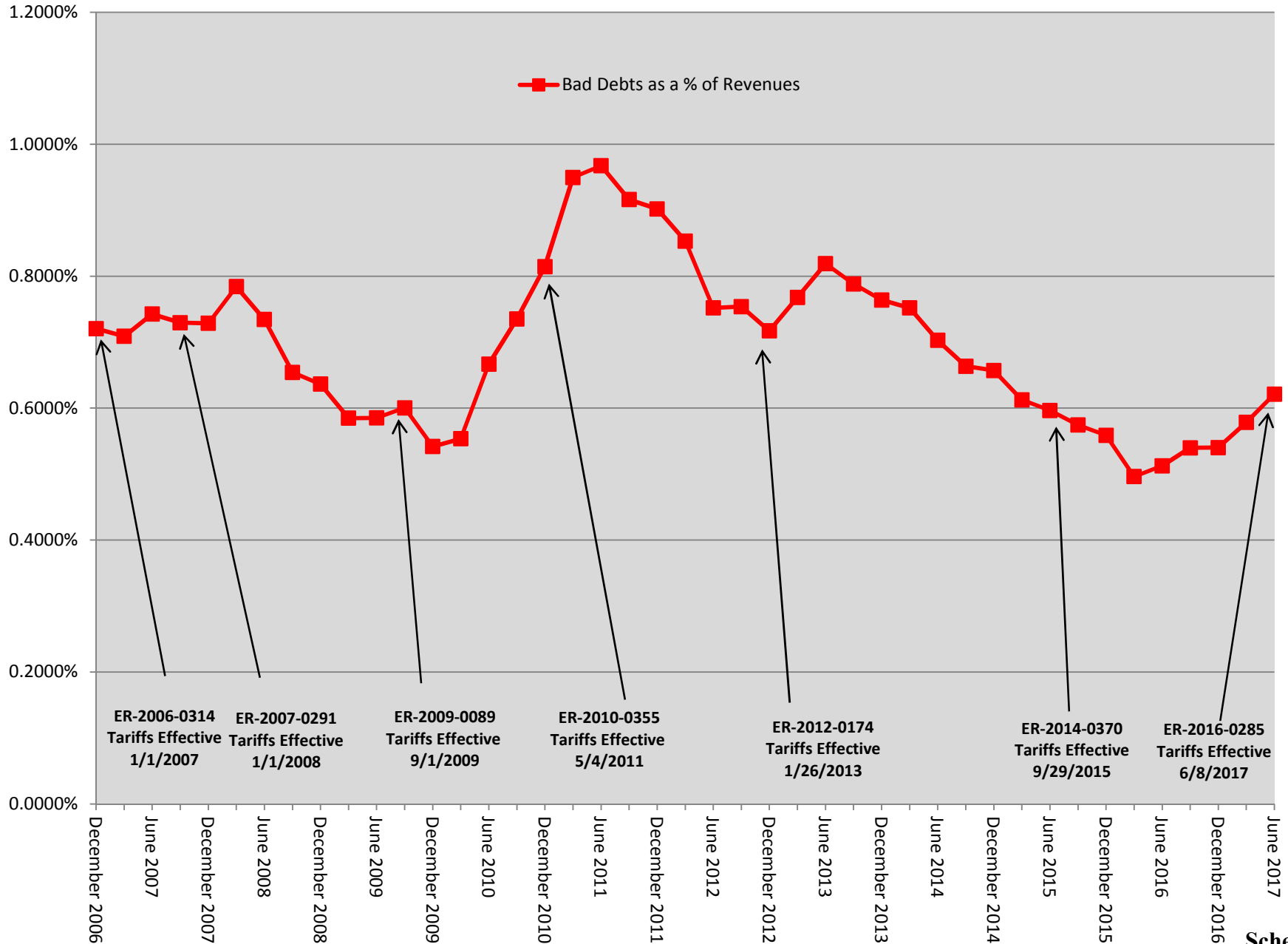
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**CONFIDENTIAL**

**IN ITS ENTIRETY**

# KCPL - Bad Debt Analysis - 12 Month Bad Debts, Quarterly Rolling % December 2006 through June 2017

MO Retail Revenues %





**SCHEDULE AN-s6**

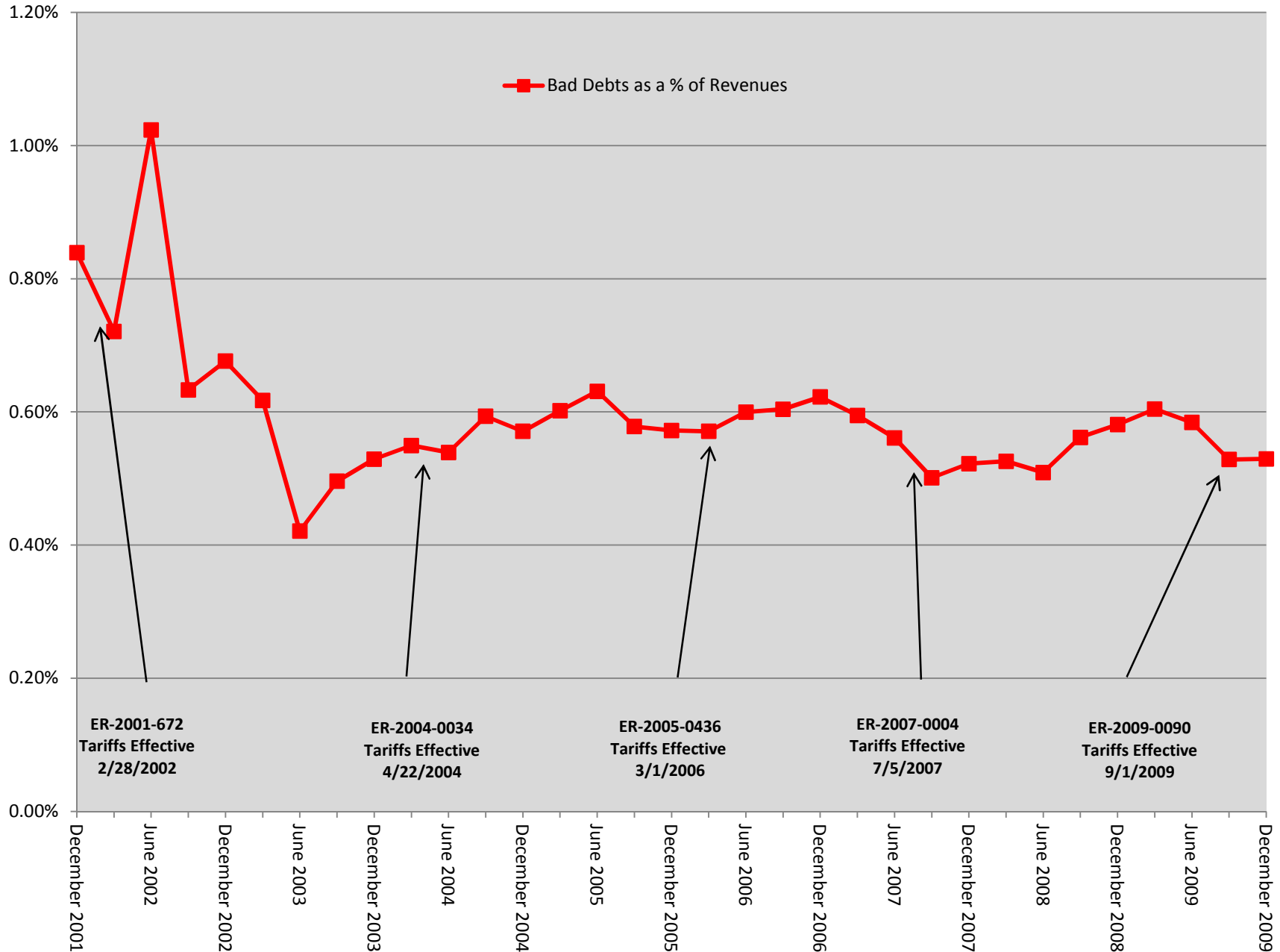
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**CONFIDENTIAL**

**IN ITS ENTIRETY**

**KCPL GMO - Bad Debt Analysis - 12 Month Bad Debts, Quarterly Rolling %  
December 2001 through December 2009**

**MO Retail Revenues %**



**KCPL GMO - Bad Debt Analysis - 12 Month Bad Debts, Quarterly Rolling %  
March 2010 through June 2017**

**MO Retail Revenues %**

