BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service	))))	Case No. ER-2012-0174

REPLY TO OPPOSITION TO MOTION TO STRIKE PRE-FILED TESTIMONY AND REJECT TARIFFS

COMES NOW the Office of the Public Counsel and for its Reply to Opposition to Motion to Strike Pre-Filed Testimony and Reject Tariffs respectfully states as follows:

1. On May 25, Public Counsel and MECG filed a motion to strike testimony and tariffs related to the off-system sales sharing proposal of the Kansas City Power & Light Company (KCPL). On June 15, KCPL filed a response in opposition.

2. It is important to note that KCPL's does not dispute that its sharing proposal would in fact retain some off-system sales revenues for shareholders. Although KCPL characterizes it in paragraph 4 as a "small sharing mechanism," it nonetheless concedes that the proposal is a sharing mechanism. Thus the central question is whether the Stipulation and Agreement in Case No. EO-2005-0329 (in its final form, with the amendments approved by Commission order of August 23, 2005; referred to herein as the "Agreement") prohibits such a sharing mechanism.

3. A brief outline of the purpose and intent of the Agreement is helpful[1] to understanding the meaning of Section III(B)(1)(j), which Public Counsel and MECG and

[1] It is helpful but not essential. Despite KCPL's attempts to retroactively edit the Agreement, it is clear on its face that it prohibits KCPL shareholders from retaining off-system sales revenues for as long as Iatan II is in ratebase. The brief background merely serves to explain **why** such a prohibition was a part of the Agreement.

the Commission Staff all believe prohibits KCPL from "sharing" part of the revenues from off-system sales. The process that culminated in the Agreement began on May 6, 2004, when KCPL filed a request that the Commission open an investigation to discuss "constructive regulatory responses to emerging issues that will affect the supply, delivery and pricing of the electric service provided by KCPL."[2] Between that request in May of 2004 and the Commission's final approval of the Agreement in August 2005, stakeholders hammered out a complicated deal that provided for, among other things, advance ratepayer funding for the construction of Iatan II. The signatories to the Agreement agreed that KCPL could use accelerated depreciation (called "Additional Amortizations to Maintain Financial Ratios" in the Agreement) to collect funds from ratepayers substantially greater than what would have been collected pursuant to traditional ratemaking. Through the Additional Amortizations, ratepayers contributed hundreds of millions of dollars to KCPL to facilitate the building of Iatan II. It is in the light of this unprecedented advance ratepayer funding that the Commission must evaluate the provisions of Section III(B)(1)(j) of the Agreement.

4. It is very clear that the intent of the Agreement was to prohibit KCPL from diverting to shareholders any off-system sales revenues that are made possible by having the ratepayer-funded Iatan II in KCPL's generating fleet – and the explicit language of the Agreement so provides. Only by dissecting and then eviscerating the Agreement can KCPL create an interpretation of the language that is clearly contrary to the intent of the agreement. KCPL states that the three sentences in Section III(B)(1)(j) "must be analyzed both separately and together" but then proceeds to analyze the third sentence as

[2] KCPL Application, Case No. EO-2004-0577.

though it has nothing to do with the first two. KCPL begins by assigning letters to the sentences that do not exist in the actual document. This fabrication lends an appearance of separateness to the three sentences that is entirely false. In actuality, the three sentences are all part of a single provision and cannot be dismembered in the way that KCPL proposes. All three deal with the treatment of off-system sales revenues, and the third sentence establishes the time period in which the first two sentences will be in effect. It does not introduce a new and separate issue as KCPL argues.

5. Indeed, as discussed in Public Counsel's and MECG's motion to strike, the reason that the third sentence was added later was because of concerns identified by then-Commissioner Gaw that the term of the commitment embodied in the first two sentences was not clearly defined. It was added later, and added to that exact spot in the lengthy document, for the express purpose of clarifying the term of the commitment to flow all off-system sales revenues to customers. It is not, as KCPL desperately and falsely tries to argue, a separate subsection "c" but an integral part of a single cohesive section.

6. KCPL cites a discussion from the evidentiary hearing in ER-2010-0356 between Davis Woodsmall (appearing for AGProcessing, Inc., SIEUA and MEUA in that proceeding) and then-Commissioner Davis. That discussion had nothing to do with sharing. Mr. Woodsmall's clients had proposed doing away with the tracking/true-up mechanism that the Commission had allowed in previous KCPL rate cases (and that KCPL wanted to continue in that case), and Commissioner Davis was inquiring about that proposal. The Praxair/AGP proposal was not a sharing mechanism, but a return to traditional ratemaking in which the Commission sets rates in a rate case based upon its

best estimate of OSS revenues and then does not track or true-up the difference between the estimated level used to set rates and the actual level achieved. This type of traditional ratemaking properly places the business risk – and opportunity – on the utility and not the ratepayers. KCPL's past tracking mechanisms shifted that risk to ratepayers, and its current sharing proposal continues to do so. But it adds insult to injury by giving KCPL shareholders a potential windfall without requiring them to bear a proportionate risk. Thus, the KCPL sharing proposal is inappropriate from a policy standpoint in addition to being prohibited by the Agreement.

7. Similarly, the discussion cited by KCPL between Staff witness Schallenberg and then-Commissioner Gaw in the evidentiary hearing in EO-2005-0329 gives no support to KCPL's argument that its sharing proposal is contemplated by the Agreement. At the end of the hearing in EO-2005-0329, Mr. Schallenberg was recalled to the witness stand for questions from Commissioner Gaw about off-system sales margins, and particularly about the term of the agreement that all margins would go to ratepayers. KCPL cites just a portion of that discussion; the entire discussion is attached hereto as Attachment 1. A reading of the whole discussion makes clear that what Commissioner Gaw and witness Schallenberg were talking about was an agreement that "the off-system sales will be considered as an offset to the companies [*sic*] other costs to calculate what its revenue requirements would be" and KCPL's "commitment that **all** of the [off-system sales] revenues would be considered as an offset to the cost of Iatan II."[3] Such a commitment necessarily prohibits the KCPL sharing proposal in this case.

[3] Case No. EO-2005-0329, Transcript page 1032, 1035; emphasis added.

8. KCPL appears to argue at paragraphs 23 and 24 that the off-system sales provisions of the Agreement only apply to off-system sales revenues directly tied to Iatan II. This argument withers under the most casual examination. KCPL bases this argument on the reference to "the related investments and expenses" mentioned in Section III(B)(1)(j) of the Agreement. The "related investments and expenses" are used to determine the term of KCPL's commitment, not the source of revenues that are the subject of that commitment. The entire sentence in which the phrase "related investments and expenses" appears is as follows:

> KCPL agrees that all of its off-system energy and capacity sales revenue will continue to be used to establish Missouri jurisdictional rates as long as the related investments and expenses are considered in the determination of Missouri jurisdictional rates.

The phrase "related investments and expenses" does not modify or in any way limit the phrase "all off-system energy and capacity sales revenues." It simply establishes the criteria for determining when KCPL's commitment will come to an end.

9. Moreover, if there really had been an intent to carve out specific revenues from Iatan II, the parties to the Agreement would have needed to include a mechanism for calculating this carve out. Typically, energy sales are not tied to a particular generating unit; energy is available for off-system sales because of the operation of a utility's entire fleet. It would be a formidable task to develop a mechanism that attempts to tie off-system sales revenues to a particular generating unit, and the fact that the Agreement does not include or mention such a mechanism is a clear indication that such was not the parties' intent.

WHEREFORE, Public Counsel respectfully submits this Reply, and renews its request that the Commission strike KCPL's tariffs and testimony as set forth in the motion to strike filed on May 25, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 3rd day of July 2012.

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