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	))))	**File No. ER-2016-0285**

REPLY POSTHEARING BRIEF

OF

MIDWEST ENERGY CONSUMERS GROUP

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COME NOW the Midwest Energy Consumers' Group (collectively referred to herein as "MECG") by and through the undersigned counsel, pursuant to the Commission's August 10, 2016 *Order Adopting Procedural Schedule and Delegating Authority*, and provides its Reply Post-hearing Brief. In this brief, MECG will address the following issues: (1) Cost of Capital (Issue II) including Customer Experience (Issue XXVII); (2) Revenues (Issue XX); (3) Rate Design / Class Cost of Service (Issue XXI); and (4) Clean Charge Network (Issue XXII).

I. RETURN ON COMMON EQUITY

- MECG Initial Brief, pages 14-37.
- KCPL Initial Brief, pages 1-19.
- Staff Initial Brief, pages 9-40.
- OPC Initial Brief, pages 3-4.

In its Initial Brief (pages 14-37), MECG asserted that the Commission should set a return on equity for KCPL at the lower end of the range sponsored by Mr. Gorman. Specifically, MECG documented that Mr. Gorman proposes a range of 8.9% - 9.5% based upon several different DCF, CAPM and risk premium analyses.[1] Furthermore, MECG demonstrated that the Commission has repeatedly relied on Mr. Gorman's analysis as the "most credible" and "most reliable" of the return on equity witness.[2]

While Mr. Gorman sets forth a reasonable range of 8.9% - 9.5%, MECG urges the Commission to set a return on equity at the lower end of this range. MECG notes that several facts dictate a lower return on equity. Specifically, since it deliberated the last KCPL rate case, the Commission has raised concerns about KCPL's management of the utility, the way in which it treats it customers, its ability to control A&G costs and its eagerness to violate previous settlements and Commission rules. Indeed, in the last case, the Commission took the unprecedented step of ordering a management audit of KCPL.[3]

Further supporting these concerns, JD Power recently announced that KCPL had fallen from 2nd among Midwest utilities in customer satisfaction to 2nd to the last.[4] In a

[1] MECG Initial Brief, pages 17-18.
[2] *Id.* at pages 16-17.
[3] *Id.* at pages 30-35.
[4] *Id.* at pages 31-32.

similar situation, the Indiana Commission awarded NIPSCO a reduced return on equity "to send a clear and direct message to utility management concerning the need for improvement in the provision of its utility service."[5] By authorizing a return on equity at the lower end of Gorman's range, the Commission can send a similar message to KCPL.

In fact, the Commission can be comforted knowing that it can authorize a return on equity of 9.0% and still comply with the *Hope* and *Bluefield* standards. In his testimony, Mr. Gorman ran several financial integrity analyses based upon a 9.0% return on equity. "At my recommended return on equity of 9.00% and the Company's embedded debt cost and capital structure, KCPL's financial credit metrics continue to support credit metrics at an investment grade utility level."[6]

In contrast, KCPL continues to support a return on equity of 9.9% as sponsored by its witness Mr. Hevert. Interestingly, KCPL supports an increase in its return on equity despite the fact that it readily admits that it has not had any trouble accessing capital markets at a lower authorized return. In response to a question from the Chairman, KCPL admitted this fact.

> **Q.** Has KCP&L had any difficulty attracting capital, either debt or equity?
>
> **A.** No. KCP&L has really had no trouble attracting. I think if you look across the utility sector, utilities have generally had favorable access to the capital markets. The price at which that capital is accessed has been affected, based on different utility and different company specifics.[7]

As this Commission and numerous other state commissions have found, however, Mr. Hevert's recommendation is "excessive" and relies on assumptions that are "too

[5] *Id.* at pages 30-31 (citing to NIPSCO Order, 2010 Ind. PUC LEXIS 294, issued August 25, 2010, pages 31-33.).
[6] Exhibit 650, Gorman Direct, page 57.
[7] Tr. 165.

high".[8] In fact, over the past 5 years, Mr. Hevert's recommendation has averaged 73 basis points higher than that ultimately awarded by the state utility commission.[9] Clearly then, subtracting this 73 basis point inflation factor from its 9.9% recommendation would result in an authorized return on equity of 9.17% - a figure comfortably in the lower end of Gorman's range as recommended by MECG.

In its initial brief (pages 1-19), KCPL makes several arguments designed to undermine MECG's recommendation and to convince the Commission to award it a return on equity of 9.9%. As this reply brief indicates, KCPL's arguments are misplaced.

A. EXCLUSION OF OTTER TAIL FROM PROXY GROUP

KCPL attempts to question Mr. Gorman's analysis by pointing out that he had excluded Otter Tail from his proxy group.[10] KCPL's implies that by excluding Otter Tail, Mr. Gorman artificially reduced his return on equity recommendation.

In his direct testimony, Mr. Gorman explained his basis for excluding Otter Tail. "I excluded Otter Tail because it did not have analysts' growth rates from Zacks, SNL Financial or Reuters at the time I developed my studies."[11] While KCPL argues that these growth rates were available on Yahoo Finance, the fact is that they are not available from numerous reputable financial reporting sites. As such, these growth rates are not consensus economists' data like all other financial data used in Mr. Gorman's analysis. Furthermore, Mr. Gorman's analysis would be subjected to claims of "picking and choosing" if he relied upon growth rates from Yahoo for Otter Tail, while relying on the consensus economists' data for all other proxy companies.

[8] *Id.* at pages 20-21.
[9] Exhibit 655 and Tr. page 117.
[10] KCPL Initial Brief, pages 7, 11-12.
[11] Exhibit 650, Gorman Direct, page 25.

Ultimately, KCPL's argument is a red herring. As the evidence demonstrates, "[i]ncluding or excluding Otter Tail Power does not have a measurable impact on either of our analyses or recommended returns."[12]

B. ECONOMIC CONDITIONS ARE REFLECTED IN GORMAN'S RECOMMENDATIONS

KCPL argues that improving economic conditions dictate a higher return on equity. "Given the evidence of growth in the economy, rising interest rates, and lower unemployment, a 9.80% ROE is clearly justified."[13] KCPL's argument is misplaced for at least four reasons.

First, asserting that improving economic conditions dictate a higher return is a standard argument on KCPL's part. In its Initial Brief in Case No. ER-2014-0370, KCPL also argued that "the clear evidence of growth in the economy, rising interest rates, and lower unemployment" dictate a return on equity higher than that recommended by Mr. Gorman.[14] In that case, KCPL was wrong. The evidence indicates that, while KCPL was suggesting that these economic conditions mandate a higher return on equity, returns actually dropped. In fact, in this case, KCPL's recommended return on equity has dropped by 40 points from that which it recommended in the last case.[15]

Second, while certain economic conditions (i.e., unemployment) may be improving, that change has not been reflected in higher interest rates.

> ***We don't have higher interest rates today either. The interest rates for utility bonds today are comparable to what they were doing KCP&L's last rate case. They are comparable to what they were in 2015***. They are

[12] Exhibit 652, Gorman Surrebuttal, page 16.
[13] KCPL Initial Brief, page 3. In addition, KCPL notes: (1)
[14] Case No. ER-2014-0370, KCPL Initial Brief, filed July 22, 2015, page 2, paragraph 6.
[15] KCPL proposed a return on equity of 10.3% in its last case. See, *Report and Order*, Case No. ER-2014-0370, issued September 2, 2015, at page 15. In this case, KCPL has reduced its recommended return on equity by 40 basis points to 9.9%. (Exhibit 106, Bryant Direct, page 3).

> higher than they were in July of this year. But again, they were reduced in July of this year, because of the international event that caused interest rates to drop. They have recovered since then. But ***interest rates are not higher today than they have been over the last couple years***.[16]

Thus, economic data does not support the notion that return on equity authorizations should increase.

Third, any changes in economic conditions are already reflected in Mr. Gorman's updated return on equity analysis. Specifically, while there was an interest rate increase on December 14, Mr. Gorman reflected that change through an updated analysis that considered market conditions as of December 16, 2016.[17] Given this update, Mr. Gorman's analysis reflects the most recent events that have occurred in the financial markets. Of utmost importance, Mr. Gorman's analysis reflects the recent change to a Trump administration as well as the December 14 increase in the Federal Funds rate.

> [I]t was only recently that the Federal Funds rate did increase interest rates, in December 2016, by 25 basis points. That change, along with the change in Administration, did have an impact on utilities' security valuations. However, since that change was made on December 14, those valuations were reflected in my updated analysis and recommended return on equity range of 8.9% to 9.5% as outlined in my rebuttal testimony.[18]

KCPL may attempt to argue that there have been further changes in interest rates that have occurred since Mr. Gorman's December 16, 2016 updated analysis. For instance, as reflected in KCPL's March 16, 2017 Request To Take Official Notice, the Federal Open Market Committee increased the federal funds interest rate by 0.25% on March 15, 2017.[19] Interestingly, however, this increase had absolutely no effect on bond yields. As MECG pointed out in response to KCPL's request:

[16] Tr. 243 (emphasis added).
[17] Exhibit 651, Gorman Rebuttal, page 29.
[18] Exhibit 652, Gorman Surrebuttal, pages 6-7.
[19] See, KCPL Request To Take Official Notice, filed March 16, 2017.

> [T]he various return on equity methodologies do not directly rely on the federal funds interest rate. Rather, these methodologies consider bond yields. With this in mind, it would be incomplete to take administrative notice of an alleged increase in the federal funds interest rate without also taking administrative notice of the impact on the Treasury Bond yield. With this in mind, MECG states that it does not object to the Commission taking administrative notice of the increase in the federal funds interest rate so long as the Commission also takes notice of the fact that Treasury Bond yields have not changed. Specifically, as the attached indicates, while the federal funds rate may have increased, there has not been a similar increase in the Treasury Bond yield.[20]

In fact, as the schedule attached to that response indicates, 30 year Treasury bond yields decreased during the week that the Federal Open Market Committee increased the federal funds rates. Given the decrease in Treasury bond yields, recent events would dictate a lower return on equity, not the higher return suggested by KCPL.

Fourth, predictions of economic improvement and interest rate increases, even when made by economists, are rarely correct. In fact, more often than not, future interest rates are usually more reflective of current interest rates than economist' predicted rates. As Mr. Gorman points out, "[o]ver the last several years, observable current interest rates have been a more accurate predictor of future interest rates than economists' consensus projections."[21] Therefore, predictions of interest rate changes, as KCPL now suggests, are rarely accurate.

Given this, KCPL's prediction of improving economic conditions and higher interest rates should be disregarded. The most reliable economic information is that which can be observed today. That economic information is reflected in Mr. Gorman's analysis and recommended return of 8.9% to 9.5%.

[20] MECG Response to KCPL Request To Take Official Notice, filed March 17, 2017.
[21] Exhibit 651, Gorman Rebuttal, page 27 and Schedule MPG-R-3.

C. MR. HEVERT'S CREDIBILITY AND ANALYSIS

As indicated, this Commission and numerous other commissions have repeatedly found that Mr. Hevert's recommendation is "excessive" and relies on assumptions that are "too high".[22] In fact, on average, over the past five years, Mr. Hevert's recommendation has been 73 basis points higher than that ultimately awarded by the state utility commission.[23]

At pages 6-11 of its Initial Brief, KCPL attempts to gloss over the flaws in Mr. Hevert's analysis. For instance, KCPL claims that Mr. Hevert "employed multiple methodologies to mitigate the effects of assumptions and inputs associated with any single approach."[24] While Mr. Hevert did utilize multiple methodologies, the evidence indicates that each methodology suffered from assumptions designed to inflate the ultimate return on equity.

In fact, at pages 22-27 of its Initial Brief, MECG documented the problems associated with the assumptions underlying each of Mr. Hevert's methodologies. These problems have been well recognized. For instance, in its Report and Order in KCPL's last rate case, the Commission itself pointed out these same problems in Mr. Hevert's DCF, CAPM and risk premium analyses.

> KCPL's expert witness, Robert Hevert, supports an increased return on equity at 10.3 percent. The Commission finds that such a return on equity would be excessive. Hevert's return on equity estimate is high because 1) his constant growth DCF results are based on excessive and unsustainable long-term growth rates, 2) his multi-stage DCF is based on a flawed accelerated dividend cash flow timing and an inflated gross domestic product growth estimate as a proxy for long-term sustainable growth, 3)

[22] *Id.* at pages 20-21.
[23] Exhibit 655 and Tr. page 117.
[24] KCPL Initial Brief, page 7.

> his CAPM is based on inflated market risk premiums, and 4) his bond yield plus risk premium is based on inflated utility equity risk premiums.[25]

Insight regarding the problems in Mr. Hevert's assumptions and methodologies is not limited to the Missouri Commission. Recently, the Oklahoma Commission issued a decision finding that each of Mr. Hevert's inputs had "been biased upward."

> Specifically, in this Cause, the Commission did not find Mr. Hevert's opinions persuasive. His recommended ROE of 10.25 percent was excessive in that ***each of his methods and the inputs he used appear to have been biased upward***, resulting in a significantly inflated recommendation.[26]

Given the well documented flaws in Mr. Hevert's analysis as well as his refusal to correct his analysis for the criticisms leveled by this Commission and other state utility commissions, the Commission should once again summarily reject Mr. Hevert's recommendation.

D. MR. GORMAN'S CREDIBILITY AND ANALYSIS

While Mr. Hevert's analysis is routinely recognized as flawed, MECG's witness Gorman presents the thorough analysis that has convinced this Commission that he is the most credible return on equity witness.

In a recent Ameren decision, the Commission pointed out that Mr. Gorman was "a reliable rate of return expert."[27] In other decisions, the Commission's findings as to Mr. Gorman's reliability and credibility were even more glowing.

> [T]he Commission finds Michael Gorman to be the most credible and most understandable of the three ROE experts who testified in this case.[28]

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[25] Case No. ER-2014-0370, *Report and Order*, issued September 15, 2015, pages 19-20 (emphasis added).
[26] *In re: Oklahoma Gas & Electric*, Cause No. PUD 201500273, issued March 20, 2017, at page 5 (emphasis added).
[27] Case No. ER-2014-0258, *Report and Order*, issued April 29, 2015, at page 66.
[28] Case No. ER-2012-0166, *Report and Order*, issued December 12, 2012, at page 70.

> Michael Gorman, the witness for SIEUA, AG-P and FEA, did the best job of presenting the balanced analysis the Commission seeks.[29]
>
> In particular, the Commission accepts as credible the testimony of MIEC's witness, Michael Gorman. . . . Of the witnesses who testified in this case, Michael Gorman, the witness for MIEC, does the best job of presenting the balanced analysis that the Commission seeks.[30]

In fact, KCPL itself specifically recognizes the reason that Mr. Gorman's recommendation is routinely accepted by this and other commissions. . . his analysis is thorough and considers all current market conditions. Specifically, in its brief, KCPL documents numerous recent changes in economic conditions. After documenting these recent economic changes, KCPL then admits that Mr. Gorman's "updated analysis reflects these developments."

> He agreed with the Federal Reserve announcement of February 1, 2017 that the labor market has continued to strengthen, economic activity has continued to expand at a moderate pace, inflation has increased, and that job gains have been solid, while the unemployment rate is low.
>
> Mr. Gorman agreed that the Bureau of Labor Statistics announced that non-foreign payroll employment had increased by $227,000 in January, and that the unemployment rate was little changed at 4.8%. He also agreed that since July 2016, Treasury yields have increased by over 100 basis points, and that the Bureau of Economic Analysis (U.S. Department of Commerce) announced on December 22, 2016 that the third quarter gross domestic product rose by 3.50%.
>
> Mr. Gorman agreed that higher interest rates since July 2016 and GDP growth indicate that the financial community sees strong growth prospects in the economy and that, therefore, it is reasonable to expect higher dividend yields and higher growth rates. Accordingly, such data and trends indicate that increases to the cost of equity are appropriate.[31]

[29] Case No. ER-2007-0004, *Report and Order*, issued May 17, 2007, at page 62.
[30] Case No. ER-2007-0002, *Report and Order*, issued May 22, 2007, at pages 40-41.
[31] KCPL Initial Brief, pages 12-13 (citations omitted).

After providing this litany of recent economic developments, KCPL is compelled to admit that "***Mr. Gorman's updated analysis reflects these developments***."[32] Recognizing the thoroughness of his analysis and the fact that his analysis "reflects" these recent developments, the Commission should again adopt Mr. Gorman's range of 8.9% to 9.5%.

E. KANSAS CORPORATION COMMISSION DECISION

In its Initial Brief (pages 14-15), KCPL appears to abandon its 9.9% recommendation and, instead, seeks to be authorized anything above the 9.3% return recently authorized to KCPL by the Kansas Commission. KCPL argues that since Kansas provides for certain "rate mechanisms", that the Missouri return should be higher.

KCPL fails to acknowledge that most of these "rate mechanisms" have also been implemented in Missouri. For instance, while Kansas has an Energy Cost Adjustment rider, Missouri has a Fuel Adjustment Clause that allows for adjustment of rates to account for changes in fuel costs. Still again, while Kansas has an energy efficiency rider, Missouri has a MEEIA mechanism that allows for adjustment of rates to account for changes in energy efficiency investment and lost revenues. Finally, while Kansas provides a Transmission Delivery Charge rider, Missouri allows for recovery of a significant percent of changes in transmission costs through the fuel adjustment clause.

In addition, KCPL fails to recognize that Missouri has other mechanisms including Pension and OPEB trackers, renewable energy charge adjustments, and rate case true ups that significantly reduce the risk of operating in Missouri relative to the risk of operating in Kansas. As such, there is no legitimate reason for Kansas ratepayers to pay a lower return on equity than Missouri ratepayers.

[32] *Id.* at page 13 (emphasis added).

Furthermore, evidence indicates that analysts' found the Kansas Commission's 9.3% return on equity to be supportive of KCPL's credit rating. For instance, after discussing KCPL's operations, S&P concludes that "[t]he utility now operates with ***generally supportive regulation***, cash flow stability from its customer base, and no competition."[33] This sentiment was echoed by Moody's. "KCPL's Baa1 senior unsecured rating is based on the company's vertically integrated utility operation in generally ***stable regulatory environments***."[34]

While Missouri ratepayers are paying higher rates associated with the inflated Missouri return on equity, KCPL admits that the Missouri ratepayers are not being provided full credit for the higher return on equity that they provide relative to Kansas. For instance, KCPL readily admits that its cost of debt will decrease as its authorized return on equity increases. That is to say, as the authorized return on equity increases, the overall risk of default decreases and bondholders require a lower cost of debt. Given this, since Missouri ratepayers are paying a higher return on equity than Kansas ratepayers, they should see a lower cost of debt than Kansas customers.[35]

While KCPL readily admits this fact, they nevertheless admit that debt is incurred on a total company basis, not state specifically.[36] Therefore, ratepayers in both states incur the same cost of debt. While KCPL acknowledges that it is possible to calculate a state specific cost of debt,[37] KCPL has nonetheless failed to undertake this simple analysis. For this reason, Missouri ratepayers are not provided the benefits associated with the higher return on equity that they have been paying over the past several years.

[33] Exhibit 650, Gorman Direct, page 20 (emphasis added).
[34] *Id.* at page 21 (emphasis added).
[35] Tr. 171.
[36] Tr. 171-172.
[37] Tr. 166.

Q. So Kansas coming in at 9.3 causes Missouri rate payers to have a higher cost of debt?

A. It certainly contributes to the investor mentally. Investment methodology.

Q. And you have done nothing to insulate Missouri rate payers from that higher cost of debt?

A. Nothing specifically, other than the commitments to maintain equity ratios at the utilities and the holding company.

Q. So what is happening in Kansas is certainly causing a higher cost of capital for Missouri rate payers?

A. It could contribute. There certainly would be other factors in Kansas that could also go the other way.[38]

Given: (1) the lack of appreciable operating risk difference between Missouri and Kansas; (2) the fact that a lower return on equity is considered to be supportive of KCPL's credit rating; and (3) the fact that KCPL does not recognize the resulting difference in cost of debt between its jurisdictions, there is no rational basis for Missouri customers paying a higher return on equity than Kansas. In fact, as argued by MECG, given KCPL's customer satisfaction score in Missouri, as well as KCPL's recent eagerness to violate Missouri stipulations and regulations, this Commission should authorize a lower return on equity.

[38] Tr. 172-173.

I. REVENUES

- MECG Initial Brief, pages 38-43.
- KCPL Initial Brief, pages 71-85.
- Staff Initial Brief, pages 51-66.
- OPC Initial Brief, pages 35-38.

Typically rate cases are characterized by parties taking disparate positions on issues. For instance, there are numerous different positions on return on equity and class cost of service. The immediate issue is interesting in the virtually unanimous belief that KCPL, through its attempt to annualize revenues for MEEIA Cycle 1 programs, is violating its previous MEEIA stipulations, as well as the MEEIA Cycle 2 tariffs. Specifically, as reflected in the initial briefs filed by MECG, Staff and OPC, KCPL is attempting to utilize the agreed upon revenue annualization mechanism for recovering MEEIA Cycle 2 lost revenues and apply it to those MEEIA Cycle 1 programs that had yet to expire prior to the test year. Recognizing that KCPL has already recovered its MEEIA Cycle 1 lost revenues through the Throughput Disincentive feature of its Demand Side Investment Mechanism ("DSIM"), MECG, Staff and OPC all agree that KCPL is effectively attempting to double recover its MEEIA Cycle 1 lost revenues.

In order to properly understand this issue, it is critical that the Commission understand that MEEIA provides for recovery of three different items: (1) program costs; (2) lost revenues; and (3) an earnings opportunity associated with foregone opportunities to invest in future generation projects. The only dispute in this case is associated with the

potential recovery of lost revenues. Neither program costs nor earnings opportunity are in dispute.

To date, KCPL has had two cycles of MEEIA programs. The issue arises from the fact that ***MEEIA Cycle 1 and MEEIA Cycle 2 have different mechanisms for the recovery of lost revenues***. Specifically, lost revenues associated with Cycle 1 programs were recovered through the Throughput Disincentive feature of the DSIM. In contrast, Cycle 2 lost revenues are recovered through a revenue annualization.[39]

In its Initial Brief, KCPL continues to ignore the fact that it has already recovered its lost revenues associated with Cycle 1 programs through its DSIM. Not once does KCPL even acknowledge the Cycle 1 lost revenue mechanism. Instead, in pursuit of its double recovery of such lost revenues, KCPL raises two misplaced arguments.

First, KCPL attempts to analogize the recovery of lost revenues to the need to annualize revenues that occurs in a rate case for a multitude of other reasons (i.e., weather effects, customer growth, increase in customer usage, migration of customers, etc.).[40] Given this, KCPL argues that this "issue involves ensuring that the billing determinants are correct and produce the revenues to meet the Company's authorized revenue requirement."[41] Similarly, KCPL asserts that "the billing determinants need to reflect the reductions in usage brought about by the MEEIA energy efficiency programs."[42] KCPL theorizes that adjusting revenues for lost revenues associated with energy efficiency "is

[39] There is no dispute regarding the recovery of MEEIA Cycle 2 lost revenues. Consistent with the MEEIA Cycle 2 stipulation and tariffs, all parties have provided for recovery of those lost revenues through a revenue annualization. "The Staff has made an annualization adjustment for Cycle 2 energy savings." (KCPL Initial Brief, page 71). "Staff has reflected the energy efficiency savings from the MEEIA Cycle 2 programs in its revenue annualization adjustment, but it has not included the MEEIA Cycle 1 programs." (KCPL Initial Brief, page 72).
[40] See, KCPL Initial Brief, pages 71-77.
[41] *Id.* at page 71.
[42] *Id.* at page 73.

no different than making an adjustment because an industrial customer has left the system."[43]

Second, KCPL argues that, since there were some Cycle 1 programs in effect at the beginning of the test year, the lost revenues associated with these programs fall within the revenue annualization provided under the Cycle 2 stipulation.[44] Specifically, relying on the phrase "all active MEEIA programs" as contained in the Cycle 2 stipulation, KCPL argues that the revenue annualization mechanism in that settlement must also be applicable to these Cycle 1 programs.

> In this rate case proceeding, KCP&L has made the annualization adjustment for all active MEEIA programs, including Cycle 1 and Cycle 2, using the same methodology for all active MEEIA programs in the test period and true-up update period as required by the Cycle 2 Stipulation.[45]

As mentioned, KCPL can only justify its request that revenues be annualized for Cycle 1 programs by ignoring the fact that lost revenues for these programs have already been recovered through the Throughput Disincentive feature of the DSIM.[46] Instead, KCPL claims that this is simply a matter of public policy.

> Q. From a ***public policy standpoint***, is there any reason why Cycle 1 and Cycle 2 should be treated differently, putting aside our disagreements about the stipulation?
>
> A. From a ***policy perspective***, I see no difference.[47]

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[43] *Id.*
[44] *Id.* at pages 78-85.
[45] *Id.* at page 80.
[46] KCPL attempts to mislead the Commission and ignore the fact that Cycle 1 lost revenues have already been recovered through the Throughput Disincentive feature of the DSIM is best reflected by the fact that KCPL only attached the MEEIA Cycle 2 Stipulation to its testimony. (See, Exhibit 143, Rush Rebuttal, Schedule TMR-6). This is the stipulation that provides for the revenue annualization that KCPL now seeks to apply to the Cycle 1 programs. Noticeably, KCPL failed to attach to its testimony the MEEIA Cycle 1 Stipulation that clearly reveals that Cycle 1 lost revenues have already been recovered through the Throughput Disincentive feature of the DSIM. Clearly, KCPL was only interested in providing a partial story to the Commission – a story that was entirely focused on revenue annualizations. It was left to other parties to complete the story and provide the Cycle 1 Stipulation.
[47] KCPL Initial Brief, page 76.

Given its single-minded focus on increasing earnings for its shareholders, as well as its persistent disregard for customers, settlement provisions and Commission rules, it is not surprising that KCPL misses the "public policy" reasons for treating the lost revenues associated with Cycle 1 and Cycle 2 differently. To customer and other utilities, these reasons are obvious.[48]

The ***first*** "public policy" basis for treating lost revenues under Cycle 1 and Cycle 2 differently is that KCPL has explicitly agreed, in settlement documents, to treat these lost revenues differently. Specifically, while the Cycle 2 stipulation provides for recovery of lost revenues through a revenue annualization; the Cycle 1 stipulation has already provided for recovery of Cycle 1 lost revenues through the Throughput Disincentive feature of the DSIM.

KCPL's willingness to ignore previous settlement commitments is well established. Recently, in considering KCPL's violation of a settlement that provided for the reorganization of KCPL into a holding company structure, the Commission found KCPL's willingness to ignore its previous commitments to be "troublesome". In fact, relevant to the current issue, the Commission held that the enforcement of previous stipulations was a valid "public policy" consideration.

> ***GPE's position is troublesome from a public policy perspective***. At the time of the 2001 Agreement, the Commission and the parties relied on KCPL's and GPE's assurances that Section 7 authorized the Commission's oversight over the future holding company. The Commission ordered the parties to comply with the terms of the agreement. Were the Commission to agree with GPE's analysis, it would render the terms of a negotiated stipulation and agreement meaningless

[48] As Staff notes, while Ameren has a similar revenue annualization mechanism in place for the recovery of Cycle 2 lost revenues, Ameren did not attempt to extend that mechanism to Cycle 1 programs. Instead, Ameren recognized that Cycle 1 lost revenues had already been recovered through the Throughput Disincentive feature of its DSIM. It would be inapplicable, therefore, to apply the Cycle 2 revenue annualization to the Cycle 1 programs. (See, Staff Initial Brief, page 55).

> and unenforceable; a result that should be avoided. ***For public policy reasons, all sides have a vested interest in maintaining trust in the settlement process. Parties must be confident that when they enter into a settlement agreement, each party can be relied upon to comply with the terms included, and that the Commission will indeed enforce all conditions. Should trust in the settlement process falter, the ultimate victims will be the ratepayers who will be forced to pay for the resulting lengthy litigation***.[49]

KCPL's predisposition to violating previous settlements is not limited solely to the reorganization stipulation or the current MEEIA stipulations. In the last several years, numerous such allegations have been leveled against KCPL. For instance, in the last case, numerous parties alleged that KCPL violated its Regulatory Plan settlement by prematurely seeking a fuel adjustment clause.[50] In the prior case, the same parties alleged that KCPL violated this same settlement by attempting to share off-system sales revenues.[51] In that same case, Staff / OPC / MECG filed a similar motion alleging that KCPL's request to implement an interim energy charge was simply a disguise for a fuel adjustment clause that was prohibited by the terms of its Regulatory Plan settlement.[52] Finally, in the context of its comments in a recent working group, KCPL violated its agreement not to seek to limit the availability of the Mpower tariff to opt out customers.[53] Thus, in less than 5 years, there have been at least 5 different accusations leveled against

[49] *Id.* at page 20 (emphasis added).
[50] See, *Report and Order*, Case No. ER-2014-0370, issued September 2, 2015, pages 22-28.
[51] See, *Motion to Strike Pre-Filed Testimony and Reject Tariffs,* Case No. ER-2012-0174, filed May 25, 2012. Pleading in support filed by Staff on June 19, 2012.
[52] See, *Motion to Strike Pre-Filed Testimony and Reject Tariffs,* Case No. ER-2012-0174, filed July 6, 2012.
[53] See, Case No. EW-2015-0105. Ultimately, KCPL acknowledged this violation. See, *Addendum to Comments of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company*, Case EW-2015-0105, filed December 12, 2014. ("COME NOW Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (collectively, the "Company") and hereby withdraws its comments regarding the "opt out" process that it filed on November, 14, 2014. The Company was advised by counsel for Midwest Energy Consumers' Group ("MECG") that the November 14, 2014 comments potentially conflicted with the non-unanimous stipulation and agreement filed in File No. EO-2014-0095. The Company appreciates MECG bringing this issue to its attention.").

KCPL asserting that it was violating previous settlement provisions. The current dispute is the sixth such instance.[54]

Clearly, while KCPL does not seek a "public policy" reason for treating Cycle 1 and Cycle 2 lost revenues in a different manner, the Commission has held that the enforcement of a stipulation is a valid "public policy" reason. In this case, KCPL agreed that Cycle 1 lost revenues would be collected through the DSIM Throughput Disincentive feature. Meanwhile, KCPL agreed that Cycle 2 lost revenues would be collected through a revenue annualization. As the Commission has held:

> Parties must be confident that when they enter into a settlement agreement, each party can be relied upon to comply with the terms included, and that the Commission will indeed enforce all conditions. Should trust in the settlement process falter, the ultimate victims will be the ratepayers who will be forced to pay for the resulting lengthy litigation.[55]

The ***second*** public policy basis for treating lost revenues under Cycle 1 and Cycle 2 differently is the Commission's statutory obligation to establish just and reasonable rates.[56] With its request in this case, KCPL rates will have increased nearly 90% in the last 10 years.[57] Nevertheless, by ignoring the fact that it has already recovered Cycle 1 lost revenues through the agreed upon DSIM Throughput Disincentive feature, KCPL now seeks to double recover over $6.6 million of Cycle 1 lost revenues. Certainly, while KCPL may miss the "public policy" reasons for treating Cycle 1 lost revenues differently from Cycle 2 lost revenues, MECG asserts that preventing the double recovery of such costs is a valid "public policy" basis.

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[54] The Commission should compare KCPL's history for allegation of stipulation violations to that of either Ameren or Empire. Counsel cannot think of a single instance in which either of these other two utilities have been accused of violating a settlement provision within the last 10 years.
[55] *Id.* at page 20 (emphasis added).
[56] Section 393.130.1; 393.140(5); 393.150.2; and 393.270.2.
[57] See, MECG Initial Brief, pages 4-5.

MECG apologizes to the Commission for preaching from its soap box on this issue. Nevertheless, after experiencing an endless string of KCPL settlement violations, as well as skyrocketing KCPL rates, customers are naturally incensed when their monopoly electric provider seeks to violate another settlement document all for the purpose of double recovering another $6.6 million of costs. Certainly, as courts have repeatedly noted, the purpose of the Public Service Commission is to protect captive ratepayers from such actions by monopoly providers. In this case, the Commission should: (1) reject KCPL's attempt to violate the Cycle 1 and Cycle 2 stipulations and (2) prevent KCPL from double recovering its Cycle 1 lost revenues.

III. CLASS COST OF SERVICE / RATE DESIGN

- MECG Initial Brief, pages 44-86.
- KCPL Initial Brief, pages 56-71.
- Staff Initial Brief, pages 66-74.
- OPC Initial Brief, pages 38-40.

A. WHAT INTERCLASS SHIFTS IN REVENUE RESPONSIBILITY, IF ANY, SHOULD THE COMMISSION ORDER IN THIS CASE?

1. Staff's Flawed Class Cost of Service Study

In its Initial Brief, MECG devoted 42 pages to the appropriate production allocator and class cost of service study. There, MECG provided an extensive discussion regarding the Brubaker class cost of service study that relies on the well-accepted A&E production allocator. In addition, MECG discussed the flawed Staff analysis that relies upon the "arcane" BIP methodology.[58] Specifically, MECG noted the following problems with the Staff class cost of service methodology:

1) The Staff's flawed BIP production allocator leads to results that are an "outlier" as compared to other well-accepted production allocators;[59]

2) The Staff's flawed BIP production allocator is inconsistent with KCPL's participation in the SPP Integrated Marketplace;[60]

3) The Staff's flawed BIP production allocator fails to recognize the importance of class peak demand in system planning or the role that all production units play in meeting peak demand;[61]

[58] The Wyoming Commission described the BIP methodology as "an arcane methodology that is not used by any regulatory commission." *Re: Rocky Mountain Power*, Wyoming Public Service Commission, Case No. 20000-384-ER-10, issued September 22, 2011.
[59] MECG Initial Brief, pages 49-50.
[60] *Id.* at pages 50-53.
[61] *Id.* at pages 53-55.

4) Staff's flawed BIP production allocator penalizes high load factor customers that use the KCPL system in an efficient manner;[62]

5) Staff's flawed BIP production allocator is outside the mainstream and has been rejected by numerous state utility commissions;[63]

6) Staff's class cost of service study allocates an excessive amount of baseload plant investment to high load factor customers, but then denies those customers the lower fuel costs associated with those baseload plants;[64]

7) Staff's class cost of service study allocates an excessive amount of distribution plant to the industrial rate classes by assuming that all Large Power customers have the same peak demand.[65]

Based upon the numerous flaws associated with the BIP methodology, it has been repeatedly rejected by other state utility commissions.[66] In contrast, MECG provided citations to numerous state utility commission decisions that have adopted the well-accepted Average & Excess production allocator sponsored by Mr. Brubaker.[67]

Interestingly, each of these flaws was identified in the rebuttal testimony of Mr. Brubaker[68] and in the opening statement provided by MECG.[69] Nevertheless, Staff devoted only three (3) pages to this important matter.[70] Instead, Staff seems to simply accept the numerous flaws inherent in its class cost of service study.

> The truth is there is no right or wrong when it comes to CCOS studies. Each type of study is a different boat to a different island and every boat is powered in a different manner; it is nearly impossible to prove the superiority of one study over another.[71]

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[62] *Id.* at page 56.
[63] *Id.* at pages 56-59.
[64] *Id.* at pages 59-60.
[65] *Id.* at pages 60-64.
[66] Noticeably, Staff's BIP methodology is so inherently flawed that not even Public Counsel, the residential advocate that will most directly benefit from that flawed methodology, can support Staff's study. Instead, Public Counsel supports the KCPL study that quantifies a residential subsidy and suggests that residential rates should be increased by 9.2% prior to any overall rate increase. See, Tr. 1167 ("our formal position was actually to support company's A&P method.").
[67] *Id.* at pages 70-77.
[68] Exhibit 854, Brubaker Rebuttal, pages 11-18.
[69] Tr. pages 856-872.
[70] Staff Initial Brief, pages 66-69.
[71] *Id.* at page 66.

In this case, Staff's boat is clearly directed to an island which has electric rates that are beneficial to residential customers at the expense of the high load factor customers that utilize the KCPL system in an efficient manner. The Staff boat is powered by a BIP methodology that overwhelming relies upon class energy usage while entirely ignoring class peak demands.

While Staff only provided 3 pages of brief to support its "arcane" BIP methodology, it did say a couple things that deserve response.

a. STAFF'S FLAWED BIP ALLOCATOR IS NOT COMPATIBLE WITH KCPL'S PARTICIPATION IN THE SPP INTEGRATED MARKETPLACE

In its Initial Brief, Staff wrongly claims that "[a]mong the submitted studies, Staff's BIP study also best accounts for KCPL's participation in the SPP integrated energy market through its recognition of the variability of fuel costs."[72] Such a statement is contrary to the overwhelming amount of evidence in this case.

Historically, utilities self-generated to meet native load requirements. Considering both fixed and variable costs of production, the utility would construct and operate baseload, intermediate or peaking facilities.[73] As such, native load peak demand and energy needs were met exclusively through some mixture of baseload, intermediate and peaking facilities.

In recent years, however, the paradigm for meeting native load has changed. Now, rather than depending on self-generation, utilities now rely on purchases of energy. Specifically, starting March 1, 2014, the Southwest Power Pool launched its Integrated

[72] Staff Initial Brief, page 67.
[73] In general, baseload facilities have a higher upfront capital cost, but a lower variable cost. On the other hand, peaking facilities had a lower upfront capital cost, but a much higher variable cost.

Marketplace. This marketplace allows utilities to meet native load by selling the output of their generating facilities in the marketplace and then make offsetting purchases to meet native load.

While the paradigm has changed dramatically, Staff's BIP methodology continues to rely on the outdated view that native load is met entirely through self-generation. As mentioned, Staff's BIP methodology attempts to segregate costs associated with baseload, intermediate and peaking facilities. That said, however, KCPL facilities are no longer independently dispatched as baseload, intermediate or peaking facilities. Instead, all production facilities are dispatched in the same manner into the SPP Integrated Marketplace. Similarly, when purchases are made, the utility is simply purchasing energy and is oblivious to whether that energy was generated using a facility that was once considered a baseload, intermediate or peaking facility. Truly, energy has become fungible.

The launch of the SPP Integrated Marketplace and the fungible nature of energy, whether generated from a facility once deemed baseload, intermediate or peaking, are repeatedly referenced by utilities as a basis for rejecting the BIP methodology. For instance, while once advocating for the BIP methodology, KCPL now rejects the use of this methodology for its Kansas jurisdiction. In fact, KCPL specifically points to the introduction of the SPP Integrated Marketplace as the basis for the BIP no longer being relevant.

> The BIP method has been endorsed by the Company in the last two rate proceedings. The method has served us well and has been generally well-received. I believe parties recognize the detail and precision it brings in allocating production plant. However, using the BIP allocator is not a simple task. At its core, the BIP allocator requires the Company to divide its production fleet between the base, intermediate, and peak levels. The

> Company believes that, although the BIP model is capable to model changing conditions, ***it will become increasingly difficult to make this assignment given the way we expect to utilize and plan our generation assets in the future in light of the SPP Integrated Marketplace***.[74]

KCPL's rejection of the BIP methodology was even more emphatic in a recent Missouri case. In fact, KCPL's specifically discusses the implementation of the SPP Integrated Marketplace as a reason that the BIP methodology is no longer "suitable".

> The Company has utilized the BIP method previously in Missouri. I believe the BIP method is reasonable but I also have concerns that it is difficult to use for our generation portfolio in that the Company has a lot of base load generation. ***The recent transition of the SPP to an Integrated Marketplace (IM) with centralized dispatch has raised some concern about the BIP allocator***. To utilize the BIP allocator one must assign the generating units into base, intermediate, and peak groups based on their use. Prior to the IM market, the Company provided its own generation to meet its load requirements. ***With the introduction of the IM market, we no longer use our generation to meet the Company's load requirements, but instead sell generate into the SPP market and buy our load requirements from the SPP market. I believe the IM market change impacts the suitability of the BIP method as the production allocator***.[75]

Concerns with the relevance of the BIP methodology, in light of the introduction of the SPP Integrated Marketplace, are not limited solely to KCPL. In fact, the U.S. Department of Energy also pointed out that the BIP methodology was a historical relic rendered outdated by the SPP IM.

> In today's SPP-IM, SPP member entities like KCP&L do not directly generate to load – it is the SPP system that determines, based on offered prices, which generators are chosen in the "stack" from an extensive portfolio of resources. That stack may or may not match the load characteristics of an individual utility within SPP. . . KCPL is a buyer and takes electricity from SPP market without regard to its generation source.[76]

[74] Tr. 937-938 (citing to Lutz Direct, Kansas Case No. 15-KCPE-116-RTS, page 9 (emphasis added)).
[75] Tr. 938-939 (citing to Rush Rebuttal, Case No. ER-2014-0370, pages 46-47 (emphasis added)).
[76] Exhibit 502, Schmidt Rebuttal, page 2.

As mentioned, Staff's BIP methodology is premised on the notion that generating units can be segregated into three distinct categories - baseload, intermediate or peaking facilities. That said, the introduction of the SPP Integrated Marketplace has eliminated any distinction between generating facilities. Now, all facilities are generated and dispatched into the SPP marketplace in an identical fashion.

Thus, while Staff can simply claim that it's BIP study "best accounts for KCPL's participation in the SPP integrated energy market", the evidence demonstrates otherwise. Recognizing that the BIP methodology is no longer relevant in light of this centralized dispatch marketplace, it should be rejected by the Commission.

b. THE BIP ALLOCATOR IS OUTSIDE THE MAINSTREAM AND IS DEFINITELY NOT USED BY THE TEXAS COMMISSION

Next, in light of the repeated attacks that the BIP production allocator is outside the mainstream and not accepted by other state utility commissions, Staff offers a meek rebuttal. Specifically Staff points out:

> A few parties suggest that the BIP study is not commonly used among regulatory agencies. However, as Staff points out in Appendix 3 of its Class Cost of Service Report and attorney for the Consumers Council of Missouri, Mr. Coffman, stated in his opening, in fact the BIP study can be found in NARUC's cost allocation manual and is regulatory used by the Commission in Texas.[77]

Again, Staff's argument is weak and largely misplaced.

As an initial matter, it should be pointed out that there is no Appendix 3 attached to the Class Cost of Service Report. As such, there is no evidentiary support for the contention that the Texas Commission relies upon the BIP methodology. Instead, the only information in the record regarding the adoption of the BIP methodology by a Texas utility was provided by counsel, without citation, in his opening statement.

[77] Staff Initial Brief, page 67.

The record indicates, however, that the BIP methodology has not been adopted by the Texas Commission. Rather, the BIP allocator was only used by the City of Austin, a municipal utility. The relevance of such use is severely undermined by the fact that, unlike KCPL, the City of Austin is a municipal utility that is a stand-alone utility and not interconnected with other utilities. Given this, the City of Austin entirely self generates. As such, unlike KCPL which is integrated into SPP, the City of Austin is able to differentiate between base, intermediate and peaking facilities.[78]

Furthermore, basic level research indicates that, contrary to Staff's current assertions, the Texas Commission has not adopted the BIP methodology. Instead, the Texas Commission routinely utilizes the A&E methodology. For instance, in a recent SWEPCO case, the Commission held:

> The ALJs begin by examining the final decision in the ETI case in Docket No. 39896. In that document, the utility proposed to allocate capacity-related production and transmission costs to the retail classes based on A&E/4CP. The utility had used the same method in its last contested rate proceeding. In the Final Order approving ETI's previous application, the Commission found that the continued use of the A&E/4CP method was reasonable for allocating transmission costs and that the A&E/4CP method was "devoid of any double counting problem." The "double counting problem" is a reference to an error in the A&P calculation method by which a part of the demand data is counted twice. The Commission has been aware of the flaw since at least 1988, when an examiner's report rejected the use of another method for the same reason. Accordingly, because of the A&P method's flaws, we narrow the scope of our analysis by rejecting Mr. Johnson's recommendation that SWEPCO use the A&P method.
>
> ***The continued use of the A&E 4CP allocator is the most reasonable methodology for allocating production and transmission plant among classes. The A&E 4CP allocator sufficiently recognizes customer demand and energy requirements and assigns cost responsibility to peak***

[78] Tr. 1096-1097

> ***and off-peak users. It best recognizes the contribution of both peak demand and the pattern of capacity use throughout the year***.[79]

In a recent Entergy case the Texas Commission also adopted the A&E methodology.

> The Average and Excess (A&E) 4 CP method for allocating capacity-related production costs, including reserve equalization payments, to the retail classes is a standard methodology and the most reasonable methodology.[80]

Still again, in a Reliant Energy case, the Texas Commission used the A&E approach:

> In Docket No. 12065, the most recent docket addressing Applicant's rate design, the Commission approved the use of the Average & Excess 4 CP (A&E 4CP) to allocate Applicant's costs. Development of demand allocations using the generation-related base revenues by class resulting from the A&E 4CP is reasonable and appropriate and should be approved.[81]

Furthermore, a previous SWEPCO also used the A&E production allocator.

> SWEPCO proposed the use of the Texas retail load factor in its A&E / 4CP methodology for allocating capacity-related production costs. Because SWEPCO's generation is built to meet system needs based on analysis of the system loads, it is reasonable to allocate costs using the system load factor. The appropriate load factor for use in the A&E / 4CP methodology is the system load factor.[82]

Even the City of Austin's use of the BIP methodology is highly questionable as this citation from a 2013 case indicates that Austin uses the preferable A&E methodology.

> Austin Energy's use of the modified A&E 4CP for production cost allocation under the terms of the agreement is reasonable.[83]

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[79] Re: Southwestern Electric Power Company, Texas Public Utility Commission, PUC Docket No. 40443, issued May 20, 2013 (citations omitted, emphasis added).
[80] Re: Entergy Texas, Inc. Texas Public Utility Commission, PUC Docket No 39896, issued September 14, 2012.
[81] Re: Reliant Energy, Incorporation, Texas Public Utility Commission, PUC Docket No. 21665, issued May 31, 2000.
[82] Re: Southwestern Electric Power Company, Texas Public Utility Commission, PUC Docket No. 40443, issued October 10, 2013.
[83] Re: Homeowner's United, Texas Public Utility Commission, PUC Docket No. 40627, issued April 29, 2013

Other Texas cases in which the Texas Commission adopted the use of the A&E methodology include:

1) Re: Entergy Texas, Inc. Texas Public Utility Commission, PUC Docket No 16705, issued October 14, 1998;
2) Re: Southwestern Electric Power Company, Texas Public Utility Commission, PUC Docket No. 36961, issued November 17, 2009; and
3) Re: Entergy Gulf States, Inc., Texas Public Utility Commission, PUC Docket No. 31315, issued February 9, 2006.

Thus, on at least 8 separate occasions in the last 15 years, the Texas Public Utility Commission has utilized the A&E methodology.[84] As such, Staff's assertion that the Texas Commission "regularly uses" the BIP is entirely incorrect.

Given its inability to find any other cases in which a state utility commission has adopted the flawed BIP methodology, Staff instead weakly points to the NARUC cost allocation manual as support for its widely-rejected methodology. As Mr. Brubaker points out, however, the fact that the BIP methodology is contained in that manual does not in any way constitute an endorsement of the methodology or negate the fact that this methodology has been roundly rejected. Instead, it is simply evidence that the methodology exists.

> The fact that a particular method is noted in the NARUC Manual simply means that the individuals who prepared the NARUC Manual included it because it had been recommended by participants in one or more rate cases at or near the time the NARUC Manual was published – 1992. There are a number of allocation methods that are described in the NARUC Manual that are not commonly used and that have not found wide support in the industry.[85]

[84] The use of the A&E methodology is not limited solely to Texas. As demonstrated in MECG's Initial Brief, pages 72-77, the A&E methodology has been routinely adopted by dozens of other states.
[85] Exhibit 854, Brubaker Rebuttal, pages 4 and 17.

Clearly then, the Commission should not be swayed by Staff's weak attempts to convince it that the BIP has been adopted by other state commissions. Rest assured, if adopted, Missouri would be in a league of its own. The unfortunate part is that, by adopting such a methodology, Missouri would place its commercial and industrial customers at a competitive disadvantage relative to those states which utilize a more mainstream production allocation like the A&E methodology.

c. STAFF'S REVENUE REQUIREMENT CALCULATION DOES NOT MAKE STAFF'S CLASS COST OF SERVICE STUDY MORE ACCURATE

Given its inability to rebut the numerous flaws in its class cost of service study, Staff instead attempts to cast aspersions on other parties' class cost of service studies by pointing out that those studies are based upon KCPL's initially requested rate increase.

> One of the clear differences between Staff's study and the other parties' is that Staff conducted its own Cost of Service study, while the other parties applied KCPL's Cost of Service study. KCPL's study included its revenue requirement calculation, which was based on KCPL's entire revenue requirement request. By the time true-up is completed in this case these inputs will have changed and class responsibility will have shifted.[86]

The fact that Staff based its class cost of service study on its own revenue requirement calculation should not provide a greater level of comfort for its study relative to other studies. As Staff now admits, the original revenue requirement calculation that was the basis for Staff's class cost of service study was extremely wrong. Specifically, Staff's class cost of service study was based upon a revenue requirement calculation that suggested that KCPL was overearning and should receive a rate reduction of

[86] Staff Initial Brief, pages 67-68. See also, "In this case the parties submitted the results of their CCOS studies with their direct testimony, and each of the studies, except Staff's, was based on KCPL's entire revenue requirement request. By the time true-up is completed in this case these inputs will have changed and class responsibility will have shifted." (Staff Initial Brief, pages 68-69).

$13,542,622.[87] By the time that the true-up was completed, Staff was recommending a rate increase of $15,736,914.[88] Therefore, any implication that Staff's class cost of service study is based upon a more accurate revenue requirement calculation is completely false.

d. THE ALLEGED BENEFITS OF THE BIP ARE MISPLACED

Unable to rebut the numerous flaws in its methodology, Staff instead seeks to invent some alleged strengths.

> Staff's motivation behind utilizing the BIP study is an attempt to most accurately allocate the capacity costs of plants which run at a stable level much of the year, those that run only a few hours a year, and those that fall in between the two extremes, specifically in consideration of the varying construction and fuel costs of those plants, to the rate class proportionate to each class' use of each plant type. Of all the studies filed in this matter, only Staff's BIP study recognizes disparity in capacity and fuel costs.[89]

As with its claims regarding the flaws underlying the BIP production allocator, Staff's claims regarding its strengths are equally misplaced.

The weighted-capacity cost assignment/allocation approach in Staff's BIP allocation of generation fixed costs essentially results in an allocation of base load plant cost to every hour of the year. Since only the high load summer hours create the need to incur costs for steel in the ground, the BIP method is at odds with the reality of resource planning. It seeks to allocate costs to all hours that a plant might be expected to operate, rather than on class loads in representative hours that cause costs to be incurred, such as coincident peak and average and excess methods do. Staff's BIP method is more accurately described as a "use of service" study than as a "cost of service" study, and as

[87] Exhibit 201, Staff Accounting Schedules, Accounting Schedule 1.
[88] Exhibit 242, Staff Accounting Schedules, Accounting Schedule 1.
[89] Staff Initial Brief, pages 66-67.

such, it provides no useful information and has no place in cost analysis or revenue responsibility allocation.

Furthermore, the Staff's BIP results are contradictory to the premise of BIP theory in that the lowest load factor class, that should receive the highest average fuel cost, is allocated / assigned the lowest average fuel cost, and the lighting class (that is largely off-peak) gets the highest.[90] While Staff had an opportunity to explain this illogical result in its surrebuttal testimony or at hearing, it has thus far made no attempt to do so.

Given the numerous flaws in its BIP-premised class cost of service study, MECG recommends that the Commission reject Staff's methodology and, instead, adopt Mr. Brubaker's class cost of service study that relies upon the widely-accepted A&E production allocator.

2. KCPL's Flawed Class Cost of Service Study

In the previous section, MECG pointed out that Staff's BIP methodology provides results that are clearly an "outlier" as compared to other widely-accepted production allocators. In its Initial Brief, KCPL conclusively demonstrates this point. At page 59, KCPL states that "the following identifies the relative rates of return for the provided studies. Rates below 1.0 indicate the class is not providing revenues to cover its costs. Rates greater than 1.0 indicate the class is providing more revenue than is needed to cover its costs.

[90] Exhibit 854, Brubaker Rebuttal, Schedule MEB-COS-R2.

Comparison of Class Cost of Service Studies - Relative Rate of Return								
Party	**Production Allocation**	**Total**	**RES**	**SGS**	**MGS**	**LGS**	**LPS**	**Lighting**
KCP&L	Ave. & Peak	1.00	0.72	1.48	1.26	1.30	0.88	1.70
Staff	BIP	1.00	1.02	1.25	1.24	1.03	0.65	1.32
MIEC	Ave. & Excess (4NCP)	1.00	0.45	1.38	1.30	1.58	1.46	1.70
US- DOE	4CP	1.00	0.50	1.34	1.25	1.54	1.27	3.85

Source: KCPL Initial Brief, page 59.

Thus, KCPL agrees that Staff's BIP methodology is an outlier. While KCPL's Average & Peak; MIEC's Average & Excess; and DOE's 4CP methodology all show that residential rates are significantly below cost, only the Staff's flawed BIP methodology reaches a different conclusion. As indicated in MECG's Initial Brief, the fact that the Staff's methodology is an "outlier" is one of many reasons that caused Ameren to reject this methodology in its recent rate case. "It is clear that Staff's analysis is an outlier when compared to the other studies."

While KCPL's study concurs with the other studies in that it concludes that residential rates are significantly below cost of service, the KCPL study is also flawed.[91] In fact, explaining KCPL's illogical conclusion that Large Power rates are actually below cost of service, the Commission has repeatedly rejected the KCPL Peak & Average methodology as "unreliable" because it "double counts" class energy usage.

> The Peak and Average method, in contrast, initially allocates average costs to each class, but then, instead of allocating just the excess of the peak usage period to the various classes to the cost causing classes, the method reallocates the entire peak usage to the classes that contribute to the peak. Thus, the classes that contribute a large amount to the average usage of the system but add little to the peak, have their average usage allocated to them a second time. ***Thus, the Peak and Average method double counts the average system usage, and for that reason is unreliable***.[92]

[91] As mentioned, *supra*, OPC supports the KCPL methodology even though it expressly identifies the existence of a residential subsidy.
[92] Case No. ER-2010-0036, *Report and Order*, issued May 28, 2010, at page 85.

In a more recent decision, the Commission (including four of the current Commissioners) again rejected the Peak and Average approach.

> The weakness with the P&A methodology is that after dividing the average and excess components, instead of allocating just the excess average demand to the cost causing classes, it allocates the entire peak demand to the various classes. That has the effect of double counting the average demand and allocates more costs to large industrials that have a steady but high average demand that does not contribute as much to the system peaks. That method works to the benefit of the residential class whose usage varies more by time of day and time of year.[93]

Given the double counting concern that makes the Peak & Average methodology "unreliable", the Commission should reject this methodology for establishing rates.

B. HOW SHOULD ANY INCREASE ORDERED IN THIS CASE BE APPLIED TO EACH CLASS?

In its Initial Brief (pages 77-80), MECG requested that the Commission adopt the Brubaker class cost of service study that relies upon the widely-accepted A&E production allocator. Based upon this study, MECG recommends that the Commission eliminate 25% of the residential subsidy. Specifically, the Commission should order the revenue neutral shifts in the third column:

Class	Cost of Service Result	25% Elimination
Residential	+14.8%	+3.7%
Small General Service	-7.7%	-1.9%
Medium General Service	-6.2%	-1.5%
Large General Service	-10.4%	-2.6%
Large Power	-7.4%	-1.9%
Lighting	-12.4%	-3.1%

Source: Exhibit 853, Brubaker Direct, Schedules MEB-COS-5 and MEB-COS-6.

As MECG pointed out, a decision to move classes 25% towards cost of service is also consistent with recent decisions of this Commission as well as that of other state utility commissions. For instance, in the recent Empire rate case, the Commission

[93] Case No. ER-2014-0258, *Report and Order*, issued April 29, 2015, at pages 70-71.

decided to eliminate 25% of the residential subsidy.[94] Similarly, in a recent American Electric Power decision, the West Virginia Commission decided to eliminate 33% of the residential subsidy.[95]

In contrast, relying on its flawed class cost of service study, Staff simply suggests that "it is appropriate in this matter to apply any revenue increases equally across the board."[96] Therefore, Staff's recommendation is to simply maintain the status quo and preserve the residential subsidy that currently exists in rates.

A recommendation to preserve the status quo does nothing to address the uncompetitive nature of KCPL's industrial rates.[97] In a recent Empire decision, this Commission addressed the importance of ensuring that Missouri industrial rates remain competitive.

> Competitive industrial rates are important for the retention and expansion of industries within Empire's service area. If businesses leave Empire's service area, Empire's remaining customers bear the burden of covering the utility's fixed costs with a smaller amount of billing determinants. This may result in increased rates for all of Empire's remaining customers.[98]

As in the Empire case, Staff's suggestion that the current residential subsidy be maintained could result in businesses leaving KCPL's service area and thereby increasing rates for all of KCPL's remaining customers.

C. HOW SHOULD ANY INCREASE TO RATES LGS AND LPS BE DISTRIBUTED?

In its Initial Brief (pages 80-86), MECG advocated that the Commission continue to eliminate the subsidies that exist in the LGS and LPS rate schedules. This subsidy

[94] See, Case No. ER-2014-0258, *Report and Order*, issued June 24, 2015, page 20.
[95] See, Case No. 14-1152-E-42T, *Commission Order on the Tariff Filing of Appalachian Power Company and Wheeling Power Company to Increase Rates, and Petition to Change Depreciation Rates*, issued May 26, 2015, at page 101.
[96] Staff Initial Brief, page 68.
[97] See, Exhibit 650, Gorman Direct, Schedule MPG-2.
[98] *Report and Order*, Case No. ER-2014-0351, issued June 24, 2015, at page 18.

exists because the LGS and LPS rate schedules collect a significant amount of fixed costs through energy charges.[99] Comparisons with market prices of energy lead to the same conclusion.[100] Proper ratemaking dictates that energy charges, collected on a per kWh basis, be used to collect variable costs. As such, fixed costs should be collected through the demand charge.

Specifically, MECG adopts the recommendation provided by Mr. Brubaker. Under Mr. Brubaker's proposal, the Commission should "maintain the energy charges for the high load factor block at their current levels, increase the middle blocks by three quarters of the average percentage increase, and to collect the balance of the revenue requirement for the tariff by applying a uniform percentage increase to the remaining charges in the tariff."[101] In this way, KCPL would begin to collect a larger portion of its fixed costs through its demand charge rather than through its energy charge.

Mr. Brubaker's proposal is not new. In fact, this rate design proposal has been adopted by the Commission in KCPL Case Nos. ER-2010-0355;[102] ER-2012-0174;[103]

[99] While KCPL's average variable cost is 2.0¢ - 2.1¢ / kWh, the tailblock energy charge in the LPS energy blocks range from 2.4¢ - 2.6¢ / kWh. Similarly, the LGS energy blocks range from 3.5¢ - 4.3¢ / kWh. Interestingly, Staff appears to agree. Specifically, Staff notes in its true-up testimony that the base factor for KCPL's fuel clause is only 1.545¢ / kWh. (Exhibit 253, Sarver True-Up Rebuttal, page 2 and Schedule CCOS-3). Therefore, by any calculation, the KCPL LGS and LPS energy charges collect more than just variable costs. They also collect a significant amount of fixed costs that should otherwise be collected through demand charges. (Exhibit 853, Brubaker Direct, page 30).

[100] As Mr. Brubaker indicates, "KCPL's analysis shows average energy costs to be 2.0¢ - 2.1¢ per kWh, and Staff's market price average is about 2.3¢ per kWh. Tail block rates are higher, and no increase is necessary, even if the market price benchmark were to be used." (Exhibit 855, Brubaker Surrebuttal, page 9).

[101] *Id.* at page 32.

[102] See, *Non-Unanimous Stipulation and Agreement as to Class Cost of Service / Rate Design*, Case No. ER-2010-0355, filed February 4, 2011. Stipulation attached to and approved by *Report and Order*, issued April 12, 2011, pages 8-9).

[103] See, *Order of Clarification*, Case No. ER-2012-0174, issued January 11, 2013, pages 2-3 ("Specifically, Mr. Brubaker testified on behalf of the large industrial customers who will be most affected by the rate design for the LGS and LP classes. He proposes to maintain the energy charges for the high load factor block at their current levels, increase the middle blocks by three quarters of the average percentage increase, and to collect the balance of the revenue requirement for the tariff by applying a uniform percentage increase to the remaining charges in the tariff. The Commission finds Mr. Brubaker's testimony

ER-2014-0370[104]; the recent Empire Case No. ER-2016-0023;[105] as well as the recent Ameren Case No. ER-2016-0179.[106] Clearly, this proposal is based upon solid ratemaking theory and movement towards cost of service based rates for the LGS and LPS rate schedules should be continued in this case.

The benefits of Mr. Brubaker's proposal are that this structure will collect more costs through demand charges and provide better price signals to customers. It also will be a more equitable rate because it will charge high load factor and low load factor customers more appropriately. This structure also improves the stability of KCPL's earnings. Because customer demands are generally more stable than their energy purchases, this rate design makes KCPL's revenue collection and earnings less volatile.

In its Initial Brief, Staff devotes 1 paragraph to Mr. Brubaker's rate design proposal. In essence, Staff continues to advocate the status quo. Specifically, Staff claims that any rate increase assigned to the LGS and LPS rate schedules should be applied on "an equal percentage" basis.[107] In support of this recommendation, Staff claims that Mr. Brubaker's rate design proposal "would send a price signal encouraging consumption of energy."[108]

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on this matter to be credible and persuasive and unopposed. The Commission independently finds and concludes that the terms proposed in the I.6.e statement support safe and adequate service at just and reasonable rates.").

[104] See, *Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, and Rate Switcher Revenue Adjustments*, Case No. ER-2014-0370, filed August 3, 2015, page 2 (provision 4). Stipulation attached to and approved by *Report and Order*, issued September 2, 2015, attachment A.

[105] See, *Stipulation and Agreement*, Case No. ER-2016-0023, filed June 20, 2016, page 9 (provision 19) ("For the LP class, the volumetric energy charges shall not be increased as part of this case.").

[106] See, *Unanimous Stipulation and Agreement*, Case No. ER-2016-0179, filed February 23, 2017, page 13 (provision 5E) ("The Signatories agree that 40% of the revenue requirement increase allocated to the Large General Service and Small Primary Service rate classes shall be applied to those classes' demand charges."). Stipulation attached to and approved by *Report and Order*, issued March 8, 2017.

[107] Staff Initial Brief, page 73.

[108] *Id.*

As an initial matter, it should be pointed out the hypocrisy of Staff's positions. In essence, Staff asserts that, in order to encourage energy consumption, the energy charges in the rate schedules should be artificially inflated. The hypocrisy in Staff's position is reflected in the fact that, while espousing the need for higher energy charges in order to promote energy conservation, Staff then opposes DE's proposal to implement inclining block rates for the residential class.[109] As the record indicates, DE's inclining block rate proposal was recommended for the very purpose relied upon by Staff in regards to the LGS / LPS rate design. . . the promotion of energy conservation. Clearly, there are inconsistencies in Staff's positions in regards to the residential class versus the LGS / LPS rate classes.

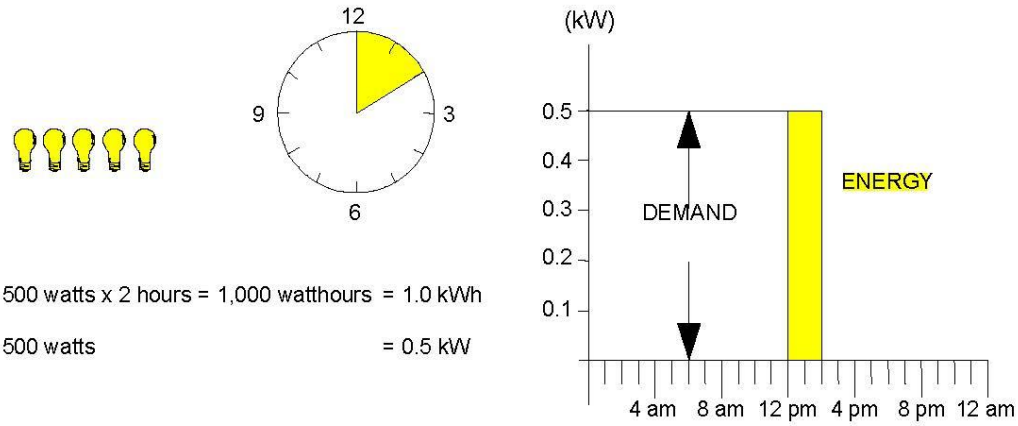
The larger problem with the single-minded focus on energy conservation is that Staff fails to recognize the distinction between demand savings and energy savings. As Mr. Brubaker explains at pages 12-13 of his direct testimony, the distinction between demand and energy is a fundamental concept that is missed by Staff and readily apparent from the following graphical example.

> [C]ompare the electrical requirements of two customers, A and B, each using 100-watt light bulbs. Customer A turns on all five of his/her 100-watt light bulbs for two hours. Customer B, by contrast, turns on two light bulbs for five hours. Both customers use the same amount of energy – 1,000 watthours or 1 kWh. However, Customer A utilized electric power at a higher rate, 500 watts per hour or 0.5 kW, than Customer B who demanded only 200 watts per hour or 0.2 kW. ***Although both customers had precisely the same kWh energy usage, Customer A's kW demand was 2.5 times Customer B's. Therefore, the utility must install 2.5 times as much generating capacity for Customer A as for Customer B***. The cost of serving Customer A, therefore, is much higher.

[109] See, Staff Initial Brief, page 70 ("Staff cannot recommend an inclining block structure as proposed by DE for KCPL at this time).

DEMAND VS. ENERGY

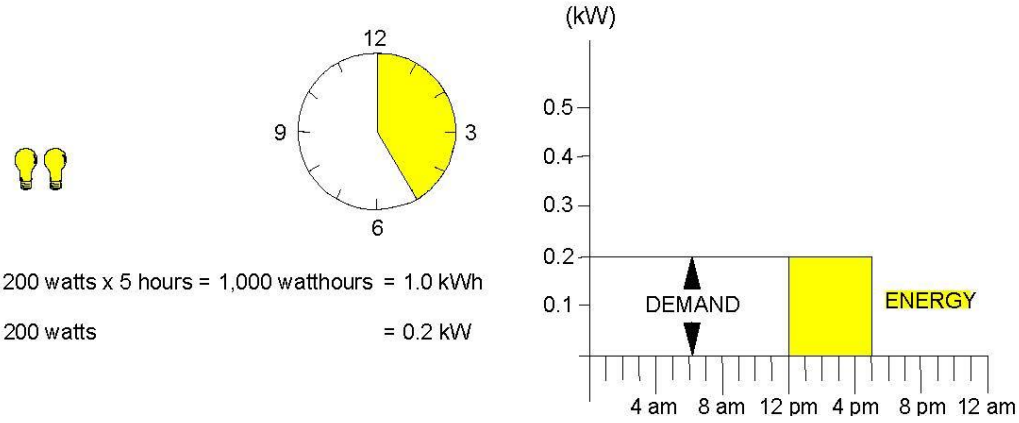
CUSTOMER A



ENERGY: 500 watts x 2 hours = 1,000 watthours = 1.0 kWh

DEMAND: 500 watts = 0.5 kW

CUSTOMER B



ENERGY: 200 watts x 5 hours = 1,000 watthours = 1.0 kWh

DEMAND: 200 watts = 0.2 kW

By opposing Mr. Brubaker's rate design proposal, Staff focuses solely on whether energy consumption may be impacted by leaving the tailblock energy charge at its current level. In the meantime, Staff completely ignores the effect on peak demand caused by increasing the LGS / LPS demand charges.

In both the MEEIA statutes, as well as the Commission's rules, there is equal recognition of the benefits of reducing energy consumption as well as shaving peak demand. Specifically, the Missouri Energy Efficiency Investment Act (MEEIA) statutes are designed to promote demand side programs. As defined at Section 393.1075.2(3), demand side programs include both "demand response" as well as "energy efficiency." Demand response is defined as "measures that decrease peak demand or shift demand to off-peak periods."[110]

Thus, while maintaining LGS / LPS energy charges at the current level may not promote energy conservation as much as Staff's proposal to artificially inflate those charges, the offsetting increase in the demand charge provided by Mr. Brubaker's rate design proposal will encourage the equally important goal of decreasing peak demand or shifting demand to off-peak periods. Staff fails to understand this elementary concept when it criticized Mr. Brubaker's rate design proposal.

On the other hand, KCPL fails to provide any substantive criticism. Instead, continuing its sole minded focus on increasing rates and earnings, KCPL uses its opposition to the LGS / LPS rate design as an opportunity to advocate for a higher rate increase. Specifically, KCPL suggests that, by increasing the demand charge and leaving the tailblock energy charge at its current level, LGS / LPS customers may be encouraged to migrate to other rate schedules.[111] As such, KCPL suggest that "revenue adjustments would be necessary to take into account the expected rate switching, and otherwise

[110] Section 393.1075.2(2).
[111] KCPL Initial Brief, page 70.

ensure that the Company's rates are properly designed to achieve the authorized revenue requirement."[112]

KCPL's argument is untimely and self-serving. The untimely nature of KCPL's argument is reflected in the fact that KCPL does not offer a single citation to support its argument. The reason is that not a single piece of evidence exists to support the notion that Mr. Brubaker's rate design proposal will lead to rate switching. While Mr. Brubaker raised this issue in direct testimony, KCPL did not raise a concern of rate switching in either rebuttal or surrebuttal testimony. Moreover, despite having 6 attorneys on the service list in this case, KCPL did not ask a single question about this rate design proposal at the hearing. KCPL's argument is untimely and unsupported. The Commission should not be held hostage from implementing proper rate design measures simply because the utility lazily fails to raise its concerns in testimony.

In addition to being untimely, KCPL's response to the LGS / LPS rate design proposal is entirely one-sided. As mentioned, other utilities have routinely implemented such rate design proposals. In fact, as mentioned, Ameren and Empire implemented this type of rate design proposals in their last cases. As with most rate design proposals, the utility should be largely apathetic towards rate design proposals that reflect proper ratemaking. Therefore, in both of those cases, neither Ameren nor Empire sought to extract a higher revenue requirement in order to account for imagined "rate switching."

Consistent with its single-minded focus on higher rates and higher profits, KCPL seeks to use this as an opportunity to receive a higher revenue requirement through a "revenue adjustment." KCPL has had substantial time to address this proposal. In addition, KCPL had all of the billing data and the software necessary to quantify any

[112] *Id.*

revenues adjustments associated with rate switching. For instance, in the recent GMO rate case, GMO witnesses discussed the capabilities of the UI software. "With the deployment of the UI application, the Company can now model and better predict the impact of rate designs that adjust the fixed/variable relationships."[113] Relevant to the immediate issue, the UI software can be used to "model migration impacts" associated with rate design proposals. "The UI application was used near the end of the cases by the KCP&L jurisdictions in the 2014/2015 Missouri and Kansas rate case filings to help model migration impacts."[114]

Despite the opportunity as well as its possession of the necessary software, KCPL stood by silently. At the last moment, KCPL raised the specter of rate switching simply as an opportunity to extract a larger rate increase. Given the capabilities of its UI software and the availability of all the necessary customer data, the fact that KCPL never provided any evidence of possible rate switching should be interpreted as evidence that such concerns do not exist. The Commission should not be swayed by such opportunistic tactics by its monopoly utilities.

Given the lack of substantive concerns supported by evidence, the Commission should again adopt Mr. Brubaker's LGS / LPS rate design proposal.

D. SHOULD KCPL BE REQUIRED TO IMPLEMENT THE BLOCK RATE STRUCTURE PROPOSED BY THE DIVISION OF ENERGY FOR RESIDENTIAL CUSTOMERS?

In its testimony, the Division of Energy proposed to change residential rates from a declining energy block rate design to a rate design that features inclining energy blocks.

[113] Lutz Direct, Case No. ER-2016-0156, page 35.
[114] *Id.* at page 23.

The Division of Energy makes this proposal for the alleged purpose of providing rate signals to residential customers to conserve energy.

In its Initial Brief, KCPL opposes the Division of Energy proposal. Of utmost concern to KCPL is the concern that the inclining block energy charges may "introduce volatility into the recovery of the Company's revenue requirement."[115] While not a part of any proposal that was fully developed in this case, Chairman Hall suggested the possibility of implementing a tracker for residential revenues to protect against such volatility. Given utility's infatuation with trackers, it is not surprising that KCPL has latched on to this concept.

> The Company believes that this is an intriguing proposal that should be explored in the future. The price elastic effect of an IBR may be captured by a tracker that ensures that if there were a shortfall in revenues due to the adoption of the IBR, it would not prevent the Company from recovering the authorized revenues and therefore having a reasonable opportunity to earn its authorized rate of return.[116]

While MECG takes no position on the Division of Energy's residential inclining block rate proposal, it wishes to respond to KCPL's request to implement a tracker for residential revenues. As explained, *infra*, the tracker proposal is misplaced for fourth reasons.

First, the concept of implementing a tracker to be applied to residential revenues is not a concept that has been fully developed. As the following discussion indicates, there are many aspects of such a proposal that would need to be studied and considered. Among other things, how do you distinguish revenues lost associated with implementation of the inclining block rate proposal from revenues lost due to other factors? What is the effect on KCPL's return on equity associated with the reduced risk

[115] KCPL Initial Brief, page 64.
[116] *Id.* at page 69.

associated with guaranteeing residential revenues? There are many aspects to this proposal that should be considered through a fully developed process. While the proposal may have some merits, it should not be implemented simply as an idea that was raised during the course of the evidentiary hearing.

Second, as envisioned by KCPL, while residential revenue tracker may be intended to solely recover the effects of the inclining block energy charge, in practice that tracker would guarantee the recovery of the entire residential revenue requirement. As such, it would not distinguish revenue changes associated with weather, customer energy conservation measures outside of MEEIA or customers added to or leaving the KCPL system. If desired, the use of such a tracker should be carefully studied so that it is narrowly tailored to track only the specific item in question. It should not be used to shield the utility from the effects of weather or energy conservation. Those risks are properly placed on the utility and included in the risk profile underlying the authorized return on equity.

Third, it is important to recognize that the implementation of KCPL's residential revenue tracker would effectively provide for the implementation of residential decoupling. As with the tracker, revenue decoupling seeks to guarantee a level of residential revenues and shield the utility from the effects of conservation. While proposed numerous times over the last several years, the General Assembly has yet to pass legislation providing for such a decoupling mechanism. Certainly, it would be inconsistent for an administrative agency to implement a tracker in order to provide a work-around the General Assembly's refusal to implement rate decoupling.

Fourth, it is questionable whether the implementation of a tracker would meet the "extraordinary" standard for the implementation of a tracker. After being presented with several tracker proposals in the last case, the Commission expressly utilized the "extraordinary" standard previously set forth by Missouri Courts.

> The USoA allows deferral for "extraordinary items", which are defined as: Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.
>
> * * * * *
>
> KCPL also requested a transmission tracker in its most recent rate case, ER-2012-0174, under a very similar fact situation. That Commission denied that requested tracker, finding that KCPL had failed to demonstrate that the projected cost increases were extraordinary:
>
> "Rare" does not describe cost increases in the utility business generally. Specifically, Applicants' evidence shows the following as to transmission. Transmission is an ordinary and typical, not an abnormal and significantly different, part of Applicants' activities. Also, Applicants showed that paying more for transmission than in the previous year is a foreseeably recurring event, not an unusual and infrequent event. Thus, "items related to the effects of" transmission cost increases are not rare and, therefore, are not extraordinary.[117]

Certainly, the implementation of rate design proposals is not rare. The Commission is confronted with various rate design proposals in virtually every rate case. The implementation of a residential rate design proposal is not extraordinary and does not provide the basis for the implementation of a tracker that shields the yield from all risk associated with collecting residential revenues and guarantees the utility the collection of a large amount of its revenue requirement.

[117] See, *Report and Order*, Case No. ER-2014-0370, issued September 2, 2015, at pages 52-53 (citations omitted).

Given the numerous problems with the residential tracker proposal, MECG would suggest that the Commission not implement such a mechanism. Instead, if interested, the Commission should call for the development of such a proposal in KCPL's next rate case.

IV. **CLEAN CHARGE NETWORK**

- MECG Initial Brief, pages 87-89.
- KCPL Initial Brief, pages 48-56.
- Staff Initial Brief, page 74.
- OPC Initial Brief, pages 40-42.
- Division of Energy Initial Brief, pages 9-12.
- Renew Missouri / Sierra Club / NRDC Joint Initial Brief, pages 5-18.

On this issue, the parties appear to have segmented into two separate camps: (1) KCPL shareholders and environmental groups that favor KCPL's electric vehicle charging station network as well as including those costs in rates and (2) customers that believe that the charging station network should be an unregulated service and are opposed to including such costs in the rates of captive customers. In its opening statement on this issue, MECG noted that it is not surprising that environmental groups support KCPL's EVCS initiative in that they don't pay any of the costs.

> Now, I notice that out of all the parties that support this initiative, none of them pay bills. KCP&L shareholders aren't willing to put up the money to help offset any subsidy. They're wanting to put it on captive customers. Similarly, none of the environmental groups here today have offered to put up any money to cover these subsidies. It's awful easy to support this initiative when you're spending someone else's money. KCP&L shareholders and environmental groups are eager to support this charging station network when they know that any unrecovered costs are collected from captive customers like my clients.[118]

Recognizing that the Commission is charged with protecting the captive customers from the actions of the monopoly utility, the Commission should disregard the self-serving positions of these environmental groups that are not KCPL customers.

[118] Tr. 1307-1308.

Recently, the Kansas Corporation Commission also considered KCPL's Clean Charge Network. There, the KCC stated that "[t]he issue facing the Commission is. . . whether KCP&L should be able to recover the costs of building and operating the CCN [Clean Charge Network] from all of its customers, rather than its shareholders and EV owners."[119] In resolving this matter, the Kansas Commission stated that the "threshold issue is whether the CCN network is necessary to provide sufficient and efficient service."[120] Pointing to evidence that 70-80% of charging occurs at home[121] and that battery life improvements limit the need for charging outside the home,[122] the Commission held that there is not "a legitimate demand for the CCN."[123] Ultimately, the Kansas Commission held:

> While stimulating EV ownership and usage may be a laudable goal, it is not within the scope of KCP&L providing sufficient and efficient service. Promoting EV ownership and usage is better left to the automobile industry.[124]

Consistent with the logic underlying the Kansas Commission's decision, MECG urges this Commission to find that the Clean Charge Network is not a regulated service. Rather, consistent with the Chairman's "Make Ready" model, MECG suggested that the Commission "draw a clear line between: (1) the extension of distribution system (including the meter) to the charger (a regulated service) and (2) the construction and operation of the charger (a deregulated service)."[125] Given this distinction, the construction and operation of a charger is no different than any other type of battery

[119] *Order Denying KCP&L's Application for Approval of its Clean Charge Network Project and Electric Vehicle Charging Station Tariff*, Kansas Corporation Commission Docket No. 16-KCPE-160-MIS, issued September 13, 2016, at page 7.
[120] *Id.*
[121] *Id.* at page 9.
[122] *Id.*
[123] *Id.* at page 8.
[124] *Id.* at page 7.
[125] See, MECG Initial Brief, page 89 (citing to Exhibit 169).

charger. . . it is simply another device to be plugged into regulated electric distribution system. And, the simple fact that the charger is plugged into the distribution system does not make the charger "electric plant" or mean that the costs should be included in regulated rates. Given this, MECG urges the Commission to find that the non-distribution costs associated with KCPL's clean charge network should not be included in regulated rates.

In its Initial Brief, KCPL attempts to undermine the logic of the Chairman's "Make Ready" proposal by claiming that it would dampen the installation of such charging stations. For instance, KCPL notes that such proposals "may substantially impact the pace of development of the EV market."[126] Such concerns are misplaced given the limited demand to use KCPL's Clean Charge Network. For instance, while KCPL's Clean Charge Network could support 12,000 electric vehicles with no wait time for users, as of February 2016, only an estimated 969 electric vehicles had been sold in KCPL's service territory.[127] Given this, KCPL's threats that this Commission's decision may hinder the installation of future charging stations are of questionable applicability.

Given the miniscule demand for such charging stations,[128] the Commission should not be concerned with dampening KCPL's incentive to install these facilities. On the other hand, the Commission should be concerned with KCPL's intention to have current customers pay the costs associated with the current facilities. In fact, KCPL signals this intention by noting that its Clean Charge Network will involve the creation of another

[126] KCPL Initial Brief, page 48.
[127] *Order Denying KCP&L's Application for Approval of its Clean Charge Network Project and Electric Vehicle Charging Station Tariff*, Kansas Corporation Commission Docket No. 16-KCPE-160-MIS, issued September 13, 2016, at pages 10-11.
[128] In its opening statement, MECG noted personal observations by Commissioners in recent agenda sessions finding that these charging stations are rarely used. The fact that Commissioners have remarked that they seldom see these charging stations in use is direct personal evidence of the the lack of demand for these facilities.

rate subsidy. "In the future, there may be some subsidy required for KCPL's CCN, but the amount of that subsidy is unknown at this time."[129]

In this case, the Commission has devoted a great deal of time and resources towards addressing current rate subsidization. Specifically, approximately three days were devoted towards addressing both inter-class (i.e., the appropriate production allocator used to measure the degree of the existing residential subsidy) and intra-class (the Brubaker LGS and LPS rate design proposal) subsidies. As such, the Commission should be hesitant to take steps that create additional subsidies.

Ultimately, the same policy reasons underlying the Kansas Commission's decision to deny KCPL's request to have ratepayers finance the CCN" are equally applicable to Missouri. Specifically, the Kansas Commission found that KCPL "took it upon itself to make the investment and the sheer size" of the electric vehicle charging program. In a similar fashion, this Commission found:

> KCPL developed the Clean Charge Network project without soliciting input from any of the parties to this case, including those parties representing customers who would bear the costs of the project if the Commission includes those costs in KCPL's revenue requirement.[130]

Given this, as well as the limited demand for KCPL's Clean Charge Network and the fact that KCPL intends to subsidize electric vehicle customers by including such costs in the rates of captive customers, this Commission should find that "KCPL's shareholders should absorb the CCN program costs."

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[129] KCPL Initial Brief, page 50. KCPL attempts to minimize concerns over the magnitude of the subsidy by claiming that the "Company's revenue requirement is lowered by approximately $400,000 as a result of the CCN." (KCPL Initial Brief, page 50). This is a temporary condition caused by the significant tax benefits underlying the construction of the Clean Charge Network. In future cases, when these tax benefits are gone, the revenue requirement effect and magnitude of the subsidy will increase exponentially.

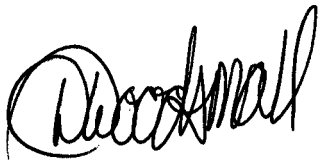
[130] *Report and Order*, Case No. ER-2014-0370, issued September 2, 2015, at page 75.

V. CONCLUSION

For all the reasons contained in this brief, as well as its Initial Brief, MECG asks that the Commission adopt its positions on each of the issues contained herein.

Respectfully submitted,

WOODSMALL LAW OFFICE



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

David L. Woodsmall

Dated: April 4, 2017