BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service	)))	Case No. ER-2012-0174
In the Matter of KCP&L Greater Missouri Operations Company's Request for Authority to Implement General Rate Increase for Electric Service.	))))	Case No. ER-2012-0175

APPLICATION FOR REHEARING

COMES NOW, the Midwest Energy Consumers' Group ("MECG"), pursuant to Section 386.500, and for its Application for Rehearing, respectfully states as follows:

1. On January 9, 2013, the Commission issued its Report and Order in the above captioned docket. Relevant to this pleading, that Report and Order reflected decisions on capital structure and the deferred taxes associated with the Crossroads generating station that are unlawful, unreasonable and not based upon competent and substantial evidence.

2. The Commission's Report and Order is supremely disappointing to any customer that was hoping that the Commission would finally stem the tide of KCPL's ever increasing rates. In its Brief, MECG demonstrated that KCPL's rates have increased by over 55% in the last six years. More disconcerting is that the fact that, over the same period of time, average wages for KCPL ratepayers have only increased by 11.45%. Still again, relative to the Kansas City area's ability to compete for jobs and business, KCPL's industrial rates have increased by <u>six</u> times that national average and, in fact, now exceed the last published national average industrial rate. Against this backdrop, the Industrial Intervenors separately filed an Application for Rehearing regarding the Commission's decision to impose an additional 4.25% increase on KCPL's industrial customers.

3. Despite the multitude of undisputed facts set forth in the evidence regarding the rapid increase in KCPL's rates and especially in its industrial rates, the Commission seemingly ignored all of this evidence. Nowhere in the context of its Report and Order does the Commission demonstrate that it is considering the affordability of KCPL's rates or the ability of industrial customers to compete in the national marketplace. Rather, the Commission seemingly brushes aside the entirety of this evidence as unimportant. Specifically, while reciting evidence about the slow recovery of the Missouri economy, the increased unemployment in Missouri and the fact that KCPL rate increases have greatly exceeded the Consumer Price Index,[1] the Commission seemingly ignores this evidence in making its decisions.

> The parties offering these matters do so as a factor affecting other matters in these actions, but seek no conclusions of law or ruling on them, so the Commission will make none.[2]

4. MECG devoted a significant portion of its Initial Brief to the rapid increase in KCPL's rates, the affordability of those rates and the ability of industrial customers to compete based upon those rates.[3] Nowhere in its evidence or reply brief did KCPL even attempt to refute these <u>facts</u>. MECG expected more than simple acknowledgement of these facts. Instead, MECG expected the Commission to reflect these facts in its discussion of the various issues and the outcome of those issues. For instance, MECG suggested that the Commission authorize a lower return on equity to account for KCPL's uncontrolled A&G costs.[4] As MECG demonstrated, KCPL could increase its overall profit margin by 50 basis points simply by reducing its A&G costs to those experienced by the other Midwest electric utilities.[5] By insisting that KCPL make such A&G decreases, the Commission could give KCPL a return on equity of 9.20% instead of

[1] Report and Order at page 14.
[2] Report and Order at page 15.
[3] MECG Initial Brief at pages 3-7.
[4] MECG Initial Brief at pages 25-27.
[5] MECG Reply Brief at pages 12-13.

9.70% without affecting KCPL's overall profits. Nowhere did the Commission even acknowledge KCPL's uncontrolled A&G costs. Instead, the Commission gave KCPL a return on equity that is virtually equal to the national average return on equity without any consideration of the inflated nature of KCPL's salaries, benefits and other A&G costs. This was a prime opportunity for the Commission to acknowledge the rapid increase in KCPL's rates and the continued suffering of its customers. The opportunity was seemingly missed.

5. Relevant to this pleading, the Commission had an opportunity to consider KCPL's rates and their affordability both with regard to capital structure and the deferred taxes for Crossroads. In both cases, largely without any supporting findings of fact, the Commission authorized further unnecessary increases in rates. As this pleading demonstrates, both decisions are simply wrong and should be reversed.

CAPITAL STRUCTURE

6. The Commission's decision, with regard to capital structure, is unlawful, unreasonable and not based upon competent and substantial evidence.

7. At pages 24-26 of its Report and Order, the Commission addresses the appropriate capital structure for the establishment of rates for GMO and KCPL. Despite the fact that KCPL rates have increased over 55% in the last six years and that industrial rates have increased by over six times the national average, the Commission simply gives KCPL an additional $4.5 million associated with its recommended equity-rich capital structure.[6] Applying that same equity-rich capital structure to GMO, the Commission gave GMO-MPS an additional $3.1 million and GMO-L&P an additional $1.1 million.

8. In the testimony of Mr. Gorman, he shows that the KCPL capital structure was equity-rich, was temporary, much greater than the KCPL comparable company group and

[6] See, Staff Reconciliation filed January 8, 2013.

provided no benefits to ratepayers. Amazingly, the Commission even acknowledged that KCPL's proposed capital structure is temporary. "The short-term debt excluded from GPE's capital structure is thus a temporary substitute for long-term debt. This makes the capital structure more equity-rich, which is more expensive." Despite such ready acknowledgement, the Commission does nothing to account for the fact that the capital structure is temporary or to protect ratepayers from a capital structure that it acknowledges to be "more expensive." Again, the Commission simply ignores these facts, but gives the combined KCPL and GMO companies over $8.7 million of increased revenue requirement. The Commission does this by inappropriately applying the burden of proof and disregarding the OPC / MECG capital structure as arbitrary. The facts, however, demonstrate that it is the actual capital structure recommended by KCPL and adopted by the Commission, and not the 50/50 capital structure, that is arbitrary.

9. As reflected in the KCPL and GMO FERC Form 1 reports, the 53.16% equity capital structure recommended by KCPL and adopted by the Commission is far from normal. Over the past three years, and since the completion of the Comprehensive Energy Plan, the consolidated capital structure has remained at or below 50% equity.

YEAR	**Equity Ratio**
2011	49.75%
2010	50.15%
2009	45.31%
AVERAGE	**48.40%**

Thus, the 50/50 capital structure proposed by Mr. Gorman and recommended by OPC and MECG is not arbitrary. Rather, it reflects a normalized capital structure and, if anything, is overly generous in that it provides 50% equity versus the normalized level of 48.4%.

10. In its public deliberations, it initially appeared that the Commission recognized the problem with KCPL's capital structure and would adopt the OPC / MECG recommended

50/50 capital structure. Suddenly, during the January 3, 2013 agenda session, the Commission committed to revisit this issue. This was done largely based upon the insistence of one commissioner who claimed that the Commission had "never used" a hypothetical capital structure.

> We have never used a hypothetical capital structure before. We have always used the actual capital structure. It would be a major departure from what we've done in the past. . . . I understand the argument that it's possible after all of this refinancing that you might get closer to a 50 / 50, but I think that's, to me I think that's more speculation than fact. I didn't see any calculations in the record that, once all of this is refinanced, that there's actual numbers that show it will be actually 50/50. So, in my mind the 50/50 is just kinda plucked out of the air rather than supported by actual numbers in the record.[7]

Such assertions are flat wrong and, to the extent that these assertions were relied upon by other Commissioners in reversing its tentative decision, they need to be reconsidered by the Commission in reversing its decision.

11. First, any assertion that the Commission has "never used" a hypothetical capital structure before is wrong. While not an issue in every case, where the Commission has encountered an equity-rich capital structure, it has adopted a hypothetical capital structure to protect ratepayers.

> The evidence clearly demonstrates that Staff, Public Counsel and AGP support the position that SJLPC's capital structure is too heavily weighted with common equity. The Commission agrees that SJLPC's capital structure is too heavily weighted with equity. In comparing SJLPC's own assessment of its capital structure with that of its proxy group's average capital structure, the Commission cannot find that SJLPC's capital structure is even in line with its own proxy group. . . . The average common equity of the proxy group is 53.3%, which the Commission, unlike SJLPC, does not believe places SJLPC's common equity of 57.93% reasonably close to its proxy group's average. The Commission cannot support a capital structure for a company such as SJLPC that is so heavily weighted with common equity. The Commission, in its duty to protect the ratepayers, cannot establish rates based on this skewed capital structure. The Commission is of the opinion that if SJLPC chooses to continue with its current debt/equity ratio then its stockholders should bear the burden of its management's

[7] Commission Public Deliberations from January 3, 2013.

> decision and not the ratepayers. ***<u>Therefore, the Commission finds that the hypothetical capital structure as proposed by Public Counsel should be used in setting rates in this proceeding.</u>***[8]

12. As demonstrated, the consolidated capital structure is not only equity rich, it also departs dramatically from the capital structure employed by Great Plains over the past 3 years since the completion of the Comprehensive Energy Plan. Furthermore, it is significantly more equity rich and expensive than the capital structures of the comparable company group used by all the return analysts. The evidence indicates that 3 of 4 cost of capital witnesses (Hadaway, Gorman and Kahal) all utilized the same comparable company group.[9] The common equity ratio for the comparable company group is 49.6% as reported by Value Line.[10] As compared to the comparable company group then, KCPL's true-up capital structure of 52.56% is clearly equity rich.[11] In fact, KCPL's proposed capital structure contains more common equity than 17 of the 21 entities included in the comparable company group.[12]

13. Second, to the extent that the Commission believed that the 50/50 capital structure was simply "plucked out of the air," one can readily see that the 50/50 capital structure is consistent with a normalized level of equity in the capital structure over the last three years. Furthermore, KCPL itself admits that its capital structure will return to this normalized level once it refinances the short-term debt with long-term debt immediately following the completion of this case. KCPL witness Bryant testified, in response to Mr. Gorman, that it used short-term

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[8] *Id.* at page 252.

[9] OPC Exhibit 300, Gorman Direct, page 15 ("I relied on the same utility proxy group used by KCPL witness Dr. Hadaway to estimate KCPL's return on equity."); Kahal Direct, page 7 ("This is the same proxy company group that was selected by Dr. Hadaway for his DCF study.").

[10] OPC Exhibit 300, Gorman Direct, Schedule MPG-2. Mr. Gorman also included a common equity ratio of 46.6% as reported by AUS Utility Reports. AUS' common equity ratio is lower because it includes short-term debt while the Value Line common equity ratio excludes short-term debt. In this case, short-term debt has been removed from KCPL's capital structure. As such, the appropriate comparison is to the 49.6% common equity ratio reported by Value Line.

[11] Staff True-Up Accounting Schedules, Accounting Schedule 12.

[12] OPC Exhibit 300, Gorman Direct, Schedule MPG-2.

debt to refinance maturing long-term debt during the true up period[13] and he excluded the short-term debt from the true up capital structure. Mr. Bryant testified that the utility plans to refinance the short-term debt back to long-term debt after the end of the true-up period.[14] This refinancing will be conducted after Great Plains accumulates short-term debt of at least $300 million.[15] Mr. Bryant testified that waiting to refinance its short-term debt until it has this target amount will lower the cost of the new long-term debt issuance.[16] Therefore, after the refinancing or if $300 million of short-term debt is included in the true up capital structure, GPE capital structure common equity ratio will return to approximately 50%.

14. As can be seen, the capital structure utilized by the Commission is a radical departure from the capital structure employed by Great Plains over the last three years. Furthermore, it is significantly more expensive than the capital structure of the comparable company group. Finally, as the Commission itself recognized, it is temporary. Given this, the Commission should rehear this issue and reverse its decision by implementing the recommended 50/50 capital structure.

CROSSROADS DEFERRED TAXES

15. The Commission's decision, with regard to Crossroads Deferred Taxes, is unlawful, unreasonable, not based upon competent and substantial evidence and internally inconsistent with other findings made by the Commission.

16. In the Report and Order in its last case, the Commission held that its valuation of Crossroads should include the entirety of the Crossroads deferred taxes. In response to GMO's

[13] KCPL Exhibit 10, Bryant Rebuttal, pages 6-11.
[14] *Id.*
[15] Tr. 360-363.
[16] *Id.*

application for clarification, the Commission again had the opportunity to consider the issue of Crossroads deferred taxes. In that order, the Commission held:

> GMO further requested clarification of the Report and Order regarding the accumulated deferred income tax reserve amount for the Crossroads facility. GMO argues that because the Commission valued Crossroads at $61.8 million, which is less than the valuation put forth by GMO, the amount of accumulated deferred income tax also needs to be recalculated based on that lower valuation. . . The Commission agrees with Ag Processing and SIEUA's assessment. The Commission set the value of Crossroads consideration all relevant factors presents [including the entirety of the Crossroads deferred taxes] and found that GPE had conducted due diligence in its purchase of Aquila, Inc. Therefore, the Commission need not clarify this point in the Report and Order.[17]

Thus, the Commission has considered this issue twice before and both times has unanimously agreed to reflect the entirety of the Crossroads' deferred taxes.

17. It appears that the Commission initially intended to continue to reflect the entirety of the Crossroads' deferred taxes in its valuation.

> The Commission incorporates, as if fully set forth its findings of fact and conclusions of law from the previous rulings and recapitulates only the most salient facts relevant to Crossroads' valuation only as necessary to show how the movants for change have failed to meet their burden of proof. . . But even if GMO met its burden of proof, administrative and judicial economy would support a reservation of ruling in this report and order. That is because the previous rulings are pending before the Court of Appeals. Departure from the previous rulings before the Court of Appeals has reviewed them invites confusion and uncertainty to these matters for all involved.[18]

18. Suddenly, and without explanation, the Commission seemingly decided to change its mind and only included a small portion of the Crossroads' deferred taxes.

> Therefore, the Commission will order that the value of Crossroads for GMO's MPS rate base shall be $62,609,430 without transmission cost. At that value, GMO and Staff agree, the accumulated depreciation is $10,033,437 and the accumulated deferred taxes are $4,333,301. Those values best support safe and adequate service at just and reasonable rates for MPS, so the Commission will order those amounts to be included in GMO's MPS rate base.[19]

[17] *Order Of Clarification And Modification*, Case No. ER-2010-0356, issued May 27, 2011, at pages 2-3.
[18] Report and Order, at pages 52-54.
[19] Report and Order at pages 57-58.

19. Recognizing that the Commission had previous considered and decided this issue twice in the last case and in light of the Commission's desire not to introduce "confusion and uncertainty" in a matter currently pending before the Court of Appeals, it is illogical that the Commission should seemingly accept a lower level of deferred taxes. Instead, MECG suggests that the Commission should reconsider its decision and, in light of its previous decisions and in order to avoid any "confusion and uncertainty," should continue to reflect the entirety of the Crossroads' deferred taxes as part of its overall Crossroads' valuation. The practical effect of continuing its previous policy is to reduce the GMO-MPS revenue requirement by $726,000.[20]

WHEREFORE, MECG respectfully requests that the Commission consider the effect of its previous decision on KCPL skyrocketing and unaffordable rates. In light of the evidence and the argument provided, the Commission should grant rehearing of its decision with regard to capital structure and Crossroads deferred taxes.

Respectfully submitted,

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ATTORNEY FOR THE MIDWEST ENERGY CONSUMERS' GROUP

[20] See, Staff Reconciliation filed January 8, 2013.

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: January 18, 2013