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 a General Rate Increase for Electric Service.	))))	Case No. ER-2012-0175

APPLICATION FOR REHEARING AND/OR MOTION FOR CLARIFICATION OF KANSAS CITY POWER & LIGHT COMPANY AND KCP&L GREATER MISSOURI OPERATIONS COMPANY

Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO") (collectively the "Companies"), pursuant to Section 386.500.[1] and 4 CSR 240-2.160, apply for rehearing and move for clarification of the Commission's Report and Order ("Report and Order") issued January 9, 2012. In support of this Application and Motion, the Companies state as follows:

I. Legal Principles that Govern Applications for Rehearing.

1. All decisions of the Commission must be lawful, with statutory authority to support its actions, as well as reasonable. State ex rel. Ag Processing, Inc. v. PSC, 120 S.W.3d 732, 734-35 (Mo. banc 2003). An order's reasonableness depends on whether it is supported by substantial and competent evidence on the record as a whole. State ex rel. Alma Tel. Co. v. PSC, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001). An order must not be arbitrary, capricious, or unreasonable, and the Commission must not abuse its discretion. Id.

2. In a contested case, the Commission is required to make findings of fact and conclusions of law pursuant to Section 536.090. Deaconess Manor v. PSC, 994 S.W.2d 602, 612 (Mo. App. W.D. 1999). For judicial review to have any meaning, it is a minimum requirement

[1] All references are to the Missouri Revised Statutes (2000), as amended.

that the evidence, along with the explanation thereof by the Commission, make sense to the reviewing court. State ex rel. Capital Cities Water Co. v. PSC, 850 S.W.2d 903, 914 (Mo. App. W.D. 1993). In order for a Commission decision to be lawful, the Commission must include appropriate findings of fact and conclusions of law that are sufficient to permit a reviewing court to determine if it is based upon competent and substantial evidence. State ex rel. Monsanto Co. v. PSC, 716 S.W.2d 791, 795 (Mo. banc 1986); State ex rel. Noranda Aluminum, Inc. v. PSC, 24 S.W.3d 243, 246 (Mo. App. W.D. 2000); State ex rel. A.P. Green Refractories v. PSC, 752 S.W.2d 835, 838 (Mo. App. W.D. 1988); State ex rel. Fischer v. PSC, 645 S.W.2d 39, 42-43 (Mo. App. W.D. 1982), cert. denied, 464 U.S. 819 (1983).

3. In State ex rel. GS Technologies Operating Co. v. PSC, 116 S.W.3d 680, 691-92 (Mo. App. W.D. 2003), the Court of Appeals described the requirements for adequate findings of fact when it stated:

> While the Commission does not need to address all of the evidence presented, the reviewing court must not be "left 'to speculate as to what part of the evidence the court found true or was rejected.'" … In particular, the findings of fact must be sufficiently specific to perform the following functions:
>
> > [F]indings of fact must constitute a factual resolution of the matters in contest before the commission; must advise the parties and the circuit court of the factual basis upon which the commission reached its conclusion and order; must provide a basis for the circuit court to perform its limited function in reviewing administrative agency decisions; [and] must show how the controlling issues have been decided[.]
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> [St. Louis County v. State Tax Comm'n, 515 S.W.2d 446, 448 (Mo. 1974), citing Iron County v. State Tax Comm'n, 480 S.W.2d 65 (Mo. 1972)].

4. The Commission cannot simply recite facts on which it bases a "conclusory finding," and must rather "fulfill its duty of crafting findings of fact which set out the basic facts from which it reached its ultimate conclusion" in a contested case. Noranda, 24 S.W.3d at 246.

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"Findings of fact that are completely conclusory, providing no insights into how controlling issues were resolved are inadequate." Monsanto, 716 S.W.2d at 795.

5. A review of the evidentiary record in this case demonstrates that the Report and Order failed to comply with these principles in certain respects and that rehearing should be granted as to the issues discussed below.

II. Issues on Which Rehearing and/or Clarification is Sought.

A. Return on Equity.

6. The Report and Order failed to abide by these standards when it set the Companies' return on common equity ("ROE") at 9.7%. The Commission provided no justification for setting the ROE well below the national average of ROEs ordered by other state utility commissions, and ignored the submissions provided by the Companies demonstrating that ROEs set or authorized by utility commissions from California to South Carolina were higher than the 9.70% ROE set in this case.

7. The Commission's Findings of Fact are inadequate. They consist of only 14 paragraphs covering slightly more than three pages. Although they purport to be factual findings, they are grossly inadequate in that they fail to cite even one piece of evidence to support any of the 14 paragraphs. There are no citations to the record. There are no citations to exhibits admitted into evidence. The Report and Order stands in stark contrast to orders issued in other major cases by the Commission. See, e.g., Report and Order, In re Union Elec. Co., ER-2012-0166 (Dec. 12, 2012); Report and Order, In re Kansas City Power & Light Co., No. ER-2010-0355 (Apr. 12, 2011); Report and Order, In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co. and Aquila, Inc., No. EM-2007-0374 (July 1, 2008); Report and Order, In re Kansas City Power & Light Co., No. ER-2007-0291 (Dec. 6, 2007).

8. Consequently, the Commission Report and Order has "made no basic findings from the evidence adduced at the hearing," and must be set aside as inadequate. St. Louis County Water Co. v. State Highway Comm'n, 386 S.W.2d 119, 124 (Mo. 1964). See AT&T Communications of the Southwest, Inc. v. PSC, 62 S.W.3d, 545, 548 (Mo. App. W.D. 2001); State ex rel. Noranda Aluminum, Inc. v. PSC, 24 S.W.3d 243, 246 (Mo. App. W.D. 2000).

9. Anyone who reviews the Commission's Report and Order is either compelled to take each and every finding of fact at face value and assume that some place in the record there is evidence to support it, or is left to speculate what witness or what piece of documentary evidence supports the finding. This is insufficient as a matter of law. As the Court of Appeals has declared: "The only means by which we could review the Commission's conclusion would be to comb through the record looking for evidence that supported it and presuppose that the Commission accepted this evidence as true. This is unacceptable." State ex rel. Noranda Aluminum, Inc. v. PSC, 24 S.W.3d at 246.

10. Even if one were "to comb through the record" to look for supporting evidence, the effort would prove fruitless. For example, in Finding of Fact 11 the Commission concluded that the average ROE for the first nine months of 2012 was 9.97. See Report and Order ¶11 at 18. There is nothing to support that finding.

11. To the contrary, the record shows that the only evidence regarding the national averages of other state commission ROE awards for the first nine months of 2012 is 10.22%. See Hadaway GMO Surrebuttal Testimony, Sch. SCH-14 at 5. Moreover, the Third Quarter 2012 average ROE for vertically-integrated electric utilities like the Companies was 9.90%, with the last four quarters reported there averaging 10.14%. Id.

12. The Commission also made findings of what the "best projections of nominal GDPs [Gross Domestic Product] are," setting forth percentages for the years 2012 (3.9%), 2013

(4.1%), 2014-15 (5.1%), and 2018-23 (4.7%) in Finding of Fact 12. It cites no evidentiary source in the record for these findings.

13. A review of the record does not reveal where the Commission found these numbers in the record. Staff's analysis, which was ultimately rejected by the Commission, "found a relatively wide dispersion in projected EPS [Earnings Per Share] growth" of 3.0% to 8.0%, and ultimately settled on a growth rate range of 5.0% to 5.5%. See Staff KCP&L Ex. 202, Staff Cost of Service Report at 40-41. Mr. Kahal, the expert of the Federal Executive Agencies (FEA), used a growth rate range of 4.5% to 5.5%. See USDOE Ex. 550, Kahal Direct at 23. Public Counsel's expert Mr. Gorman used a growth rate of 5.14% for his Constant Growth DCF model, 4.85% for his Sustainable Growth DCF model, and a long-term growth rate of 4.9% for the final stage of his Multi-Stage Growth DCF model. See OPC Ex. 300, Gorman Direct at 19, 21, 25. None of these figures supports the findings made by the Commission which are apparently based on sources not in the record.

14. The Commission explicitly rejected the 5.7% growth rate recommended by the Companies' expert Dr. Hadaway. In rejecting that figure, the Commission committed error by failing to accurately describe how it was calculated. Although the findings supplied on this issue by the Commission are located in the Conclusions of Law section of the Report and Order on page 21, they are actually phrased as factual findings, not legal conclusions, and are in error.

15. The Commission found that the Companies "use a 5.7% GDP projected from 1971-1980 data, which is not helpful to the 30 most recent lower growth years, and does not reflect investor expectations." See Report and Order at 21. However, this is an erroneous finding because the record is clear that Dr. Hadaway did *not* recommend a 5.7% growth rate based solely on 1971-80 data.

16. To the contrary, Dr. Hadaway explained both in his pre-filed testimony, as well as in live testimony at the evidentiary hearing that the 5.7% growth rate recommendation was based upon 60 years of data ranging from 1951 through 2011. See KCPL-20, Hadaway Rebuttal at 13, 23 & Sch. SCH-11. Contrary to the Commission's findings, Dr. Hadaway gave greater weight to more recent years, especially the past decade, as opposed to the 1970s, which the Commission mistakenly concluded he did. Dr. Hadaway testified:

> However, to account for recent data having a greater influence on current expectations, I applied a weighted averaging process that gives about five times as much weight to the most recent 10 years as compared to the earliest 10 years. Giving more weight to the more recent, low inflation years also lowers the overall forecast. [Id. at 23.]

17. Dr. Hadaway concluded that his updated forecast for a future growth rate of 5.7% was lower than the overall long-run average of over 60 years of data (1951-2011), which yielded a growth rate of 6.6%. Id. The Commission's finding that Dr. Hadaway arrived at a projected 5.7% GDP growth rate "from 1971-1980 data" is clearly erroneous.

18. At the evidentiary hearing, under cross-examination Dr. Hadaway explained that the most recent ten-year average of growth rates, which reflects the most recent very low growth period, including negative growth rate in 2008 and zero growth in 2009, was "given six times as much weight" as the other ten-year averages which included periods of much higher growth rate. See Tr. 399. Consequently, the low growth rate for the most recent ten-year period (2000-2011) is in "every one of those averages, it's in there six times." Id. at 448.

19. The Commission's order is also unreasonable in that it ignored the Fourth Quarter 2012 ROEs approved by other state utility commissions around the United States. With the exception of Kansas, state utility commissions authorized ROEs from a low of 9.80% to 10.40% for vertically-integrated utilities. See Exhibit A, Regulatory Research Associates, Regulatory

Focus, “Major Rate Case Decisions -- Calendar 2012” (Jan. 17, 2013. The average ROE for vertically-integrated utilities was reported as 10.16% for the Fourth Quarter. Id.

20. With the upswing in the economy and improvement in growth, other state commissions recognized the positive news and took appropriate action in setting ROEs. Contrary to what the Commission apparently believes, the average ROE for all utilities *increased* from 9.78% (the Third Quarter 2012 figure quoted by the Commission at pages 18 and 23 of the Report and Order) to 10.05% in the Fourth Quarter. See Exhibit A. The Commission’s ROE decision for the Companies is, therefore, 35 points below the national average.

21. For vertically-integrated utilities like the Companies, the average ROE also *increased,* from a Third Quarter average of 9.90% to a Fourth Quarter average of 10.16%. Id. The disparity here is even more glaring, with Commission’s ROE decision being an unreasonable 46 points below the national average.

22. The Commission erroneously found that the adjustment made by Dr. Hadaway to the Companies’ proxy group “omitted three of the companies with the lowest RoE ….” See Report and Order at 20. The record shows that of the four companies removed by Dr. Hadaway in his second proxy group, only two had earnings growth estimates that were low (Edison International and Cleco).

23. Vectren and Ameren had relatively high earnings growth potential and were not among the three lowest ROE companies in the proxy group. Compare KCPL-19, Hadaway Direct, Sch. SCH-5 at 1 with KCPL-20, Hadaway Rebuttal, Sch. SCH-12 at 1. Low-ranking utilities like IDACORP (parent of Idaho Power Company) and Xcel Energy were not removed. Id. The Commission’s finding that the changes Dr. Hadaway made to his proxy group caused a

"skewing" of "his results" -- that is, distorting them from their true value or slanting them[2] -- is not supported by the record. See Report and Order at 21, n. 51.

24. Despite these criticisms, the Commission uses Dr. Hadaway's ROE of 9.8% from his second proxy group Constant Growth DCF model to support its award of a 9.7% ROE. Id. at 21-22. However, it failed to note that Dr. Hadaway's other DCF recommendations from his second proxy group analysis yielded average and mean ROEs of 10.1% and 10.0%, respectively, under the Constant Growth DFC model using long-term GDP growth rates. See KCPL-20, Hadaway Rebuttal, Sch. SCH-12 at 1.[3]

25. Given the well-established requirement that the Commission should authorize a return on common equity that is commensurate with returns on other investments of corresponding risks, its decision to award a 9.7% ROE to the Companies is unjust, unreasonable, arbitrary, not supported by substantial and competent evidence of record, and not supported by adequate findings of fact and conclusions of law. See Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944); Bluefield Water Works & Improvement Company v. Public Service Commission of West Virginia, 262 U.S. 679, 670 (1923).

26. In order to put itself back in the mainstream of where the Companies' allowed return on common equity should be, the Commission must grant rehearing and authorize the Companies to earn an ROE of at least 9.8%. This figure falls within the ranges recommended both by Mr. Kahal, on behalf of the Federal Executive Agencies, and Dr. Hadaway on behalf of the Companies. See Report and Order at 19-20.

[2] The Merriam-Webster Dictionary defines "skew" as "to distort especially from a true value or symmetrical form."

[3] Both the average and median Low Near-Term Growth DCF model (2-Stage growth) supported a 9.9% ROE. See KCPL Ex. 20, Hadaway Rebuttal, Sch. SCH-12 at 1.

B. **Transmission Tracker.**

27. It is clear from the Report and Order that the Commission wants the Companies to be able to defer or track transmission costs above those in base rates. The Commission believes that the Companies can already track transmission cost increases under the Uniform System of Accounts ("USoA"). See Report and Order at 29. Moreover, the Commission, in its Findings of Fact on this issue, accurately noted that the Southwest Power Pool's ("SPP") regional transmission upgrade projects and administrative fees represent an approximately 14% increase per year and theses transmission costs will continue to increase at an accelerating pace. See Report and Order at 28-29. The Companies appreciate the Commission's analysis of this important issue but do not agree, as explained below, with the Commission's belief that it cannot grant "any practical relief" to the Companies regarding these accelerating costs. In order to effectuate its desire that the transmission costs be deferred under the USoA, the Commission must provide the essential language that the Companies need to defer these costs under the USoA. As explained below, the Commission must specifically find that the Companies are authorized by the Commission to record as a regulatory asset (Account 182.3) or regulatory liability (Account 254) the excess, or shortfall, amount of transmission expense compared to what is currently included in base rates, respectively, to be addressed in the Companies' next general rate proceeding.

28. The Companies move for clarification of that portion of the Report and Order concerning the Transmission Tracker, or alternatively, a rehearing on the grounds that the Report and Order is unlawful and unreasonable, and lacks sufficient findings of fact to support the Report and Order. See Report and Order at 28-32. In particular, the Report and Order is unreasonable and not based upon competent and substantial evidence in its finding

that "Applicants have not carried their burden of proving that the Commission should order deferred recording ("a tracker") for transmission costs. The issue is moot because Applicants can already determine how to record that costs by themselves, as they do with almost every cost every day, under the Uniform System of Accounts." See Report and Order at 28.

29. There is no competent and substantial evidence on the record that supports the finding and conclusion that the Companies' already have the authority under the USoA to determine how to record and defer the transmission costs by themselves if they are more than 5% of net income without a further order from the Commission. See Report and Order at 31-32. In fact, there is no testimony in the entire record in which any party proposed or suggested that the Companies already have the discretion to determine whether to defer transmission costs for review and possible recovery in the Companies' next rate cases without a specific order from the Commission. As a result, this portion of the Order is unlawful and unreasonable.

30. The Report and Order specifically finds that the Companies' request for a transmission tracker "is moot because the Commission can grant no practical relief. No practical relief is possible because Applicants can already 'track' transmission cost increases under the plain language of the only authority that any party cites for a tracker." See Report and Order at 29. The Report and Order goes on to interpret the USoA as indicating that no Commission order is needed to defer the transmission costs, assuming they are more than 5% of income, when it states: "If the projected transmission increases prove to be more than five percent of income, they will be subject to deferral without the Commission's order." See Report and Order at 32.

31. In interpreting the USoA, the Commission erroneously links General Instruction No. 7[4] with the appropriate USoA authority cited for establishment of regulatory assets and regulatory liabilities, the account definitions of accounts 182.3 and 254, respectively, which are provided in the USoA and provided in Appendix C to the Commission's Report and Order. The Commission errs when it states at page 29 of the Report and Order that "Whether a utility may defer an item is the subject of General Instruction No. 7." This statement is inconsistent with the USoA. The correct application of General Instruction No. 7 is that it provides for relocation on a Company's income statement of items considered extraordinary. Nowhere in General Instruction No. 7 does it provide for the deferral of income statement activity to the Balance Sheet. Deferral to the Balance Sheet is addressed only, and appropriately, in the USoA under the descriptions of Accounts 182.3 and 254. The USoA does not link General Instruction No. 7 and the descriptions of Accounts 182.3 and 254. Because of its inaccurate linkage of these sections of the USoA, the Commission errs in deciding that "If the projected transmission increases prove to be more than five percent of income, they will be subject to deferral without the Commission's order."

32. The Commission errs in determining that General Instruction No. 7 provides that a Commission order is only necessary for an item that is less than 5% of income because it misapplies General Instruction No. 7 of the USoA. See Report and Order at 29-30. The correct application of General Instruction No. 7 is that a Company may reflect items meeting the criteria of General Instruction No. 7 and which are greater than 5% of net income in the extraordinary item section of their income statement, specifically to Accounts 434 and 435. Thus, General

[4] The Companies are not aware that General Instruction No. 7 was introduced into the record of this proceeding. There is no competent and substantial evidence to support the Commission's reliance upon General Instruction No. 7. As explained herein, the Commission has misinterpreted the application of General Instruction No. 7, and the Commission should grant rehearing on this aspect of the Report and Order.

Instruction No. 7 only addresses the appropriate income statement classification of extraordinary items. The restriction in General Instruction No. 7 that Commission approval must be obtained to treat an item of less than 5% as extraordinary is equally misinterpreted by the Commission. This restriction does not suggest that state regulatory Commission approval is appropriate. Rather, it requires Companies to obtain <u>FERC Commission</u> approval before classifying an item of less than 5%, as an extraordinary <u>income statement</u> classification change and reflect the item in Accounts 434 and 435.

33. Historically, public utilities have sought prior approval from the Commission to establish various trackers or accounting authority orders. This is the case because General Instruction No. 7 of the USoA is not authoritative to deferral of charges that would normally be recorded in expense under the USoA, as erroneously asserted by the Commission. Accounts 182.3 and 254 are the only authority under the USoA to record the deferrals. The plain language of the definition of Account 182.3 in the USoA and provided in Appendix C of the Report and Order is crystal clear on what is necessary to defer amounts to Account 182.3:

> This account shall include the amounts of regulatory-created assets, not includible in other accounts, resulting from the ratemaking actions of regulatory agencies.

34. It is notable that for Accounts 182.3 and 254, there is no reference to General Instruction No. 7 and there is no reference to any such 5% threshold. That is because neither General Instruction No. 7 nor the 5% threshold apply to deferral to Accounts 182.3 and 254. The one and only criteria for deferral to Accounts 182.3 and 254 is that deferrals result from the ratemaking actions of regulatory agencies. This is precisely why, historically, public utilities have sought prior approval from the Commission to establish various trackers or accounting authority orders and why, in this case, the Companies initially

sought approval of an Accounting Authority Order ("AAO") related to the recent Missouri River flood, as well as a Renewable Energy Standards Tracker and Property Tax Tracker in addition to the Transmission Expense Tracker. See KCPL-29, Ives Direct at 12-21; GMO-123, Ives Direct at 11-20. See also Re Kansas City Power & Light Company, Case No. EU-2012-0130 (AAO related to interruptions coal supplied to some of its power plants caused by the 2011 Missouri River flooding); Re Union Electric Company, File No. EU-2012-0027; Re Empire District Electric Company, File No.EU-2011-0387; Re Union Electric Company, Case No. EU-2008-0141; Re Aquila, Inc., Case No. EU-2008-0233; Re Kansas City Power & Light Company, Case No. EU-2006-0560.

35. Although, as noted above, the Commission has misinterpreted and misapplied General Instruction No. 7 and the guidance provided in the USoA for Accounts 182.3 and 254, the Companies believe that the Commission understood that the Companies have the ability to defer transmission costs under the USoA and is authorizing in its Report and Order the Companies to defer transmission costs to a regulatory asset for deferral and determination of recovery in a future rate case. Under the appropriate application of the USoA for Accounts 182.3 and 254 though, the Companies require evidence of ratemaking actions of regulatory agencies to be able to record the deferrals intended by the Commission in its Report and Order. **Therefore, the Companies hereby seek clarification of this portion of the Report and Order, and request that the Commission specifically find that the Companies are authorized by the Commission to record as a regulatory asset (Account 182.3) or regulatory liability (Account 254) the excess, or shortfall, amount of transmission expense compared to what is currently included in base rates, respectively, to be addressed in the Companies' next general rate proceeding.**

36. The Companies believe that this finding and conclusion by the Commission will be essential for the Companies' outside external auditors to permit the Companies to defer such excess, or shortfall, in transmission costs to a regulatory asset or liability, respectively. Otherwise, the Companies will not have the discretion to defer such costs to a regulatory asset or liability without a Commission order. This result would be inconsistent and contrary to the apparent intent of the Report and Order to give the Companies the discretion to book and defer such transmission expenses to a regulatory asset or liability, and allow the Commission to consider recovery of these transmission expenses in a future rate proceeding.

37. In the alternative, the Companies seek rehearing of the Commission's decision to deny a transmission tracker. For all of the reasons stated in the Companies' testimony, a transmission tracker is an appropriate regulatory tool and would promote the public interest. The Companies request a rehearing on this issue and request that the Commission authorize the use of a transmission tracker mechanism to ensure appropriate recovery of transmission costs as a result of charges from SPP and other providers of transmission service.

38. The record demonstrates that these actual charges from transmission providers are appropriate candidates for a tracker mechanism because they are material, expected to change significantly in the near future, and are primarily outside the control of KCP&L and GMO. Transmission costs can change significantly from year-to-year, and such costs are a material cost of service component. Historically, transmission costs have fluctuated due to load variations, both native and off-system. However, the Companies are currently experiencing increasing costs for SPP's regional transmission upgrade projects and

increasing SPP administrative fees. The Companies expect these costs to continue to increase. See KCPL-29, Ives Direct at 13-17; GMO-123, Ives Direct at 11-15.

39. The Companies should be authorized to use a transmission expense tracker due to the historical growth in and current high level of the Companies' transmission expenses, the uncertainty in the levels of its future transmission expenses, and because the Companies have less control over the level of transmission expenses the SPP assigns to it than the Company has over most of its other expenses. The Commission's Order related to the denial of the Transmission Tracker is neither lawful nor supported by competent and substantial evidence. In addition, the Commission's Order does not include appropriate findings of fact and conclusions of law that are sufficient to permit a reviewing court to determine if it is based upon competent and substantial evidence. For these reasons, the Companies request a rehearing on the transmission tracker issue if the Commission does not clarify its order, as requested herein.

40. Typically, trackers have been utilized for expenses that are material, expected to change significantly in the near future, and are primarily outside the control of the public utility. Many varied trackers have been established over the years (e.g. pension, Iatan O&Ms, Off-system Sales, vegetation management expense, storm trackers, etc.). AAOs have been utilized to capture costs associated with extraordinary occurrences, but not necessarily related to specific environmental events such as an ice storm, tornado, or flood. Some examples of the different AAOs given to utilities over the years have included ice storms (Nos. EU-2002-1053 and EU-2008-0233), environmental work at power plants (Nos. EO-90-114 and EO-91-38), and additional expenses for special projects (No.EO-91-247). However, from a practical standpoint, both trackers and AAOs have the effect of giving the utility the ability to defer expenses from the current period to a future period with a determination of recovery in a future rate case. The

Companies request that the Commission either clarify its order and specifically find that the Companies are authorized by the Commission to record as a regulatory asset (Account 182.3) or regulatory liability (Account 254) the excess, or shortfall, amount of transmission expense compared to what is currently included in base rates, respectively, to be addressed in the Companies' next general rate proceedings, or alternatively grant a rehearing on the Transmission Tracker issue.

C. Winter, Space Heat, and All-Electric Issue.

41. The Companies also seek rehearing of a portion of the Commission's Report and Order related to the Winter, Space Heat, and All-Electric issue. See Report and Order at 33-40, as modified, Order of Clarification (Jan. 11, 2013).

42. On January 11, 2013, Staff filed its Motion For Clarification in which it announced that since the Commission varied from the terms of the Non-Unanimous Stipulation and Agreement Regarding Class Cost of Service / Rate Design, "Staff reverted to its initial position of recommending increases to the first block of the KCPL winter all electric LGS rate schedule." See Staff Motion at 2. In its Motion, "Staff seeks clarification that the Commission intended to order, and did order (1) Staff's recommended increases to the first block of the KCPL winter all electric SGS and MGS rate schedules, and (2) Staff's recommended increase to the first block of the KCPL winter all electric LGS schedule." Id.

43. On January 11, 2013, the Commission issued its Order of Clarification which stated at page 3:

> Staff's motion asks the Commission to rule on Staff's proposal to increase certain rates. The part at issue addresses the winter first energy block of the all-electric rate schedules for Small General Service ("SGS"), Medium General Service ("MGS"), and Large General Service ("LGS"). No ruling on that proposal appears in the Report and Order. In its brief, Staff sought a ruling on SGS and MGS, and referred to the rate design statement on LGS. But in Staff's motion, Staff correctly notes that the rate design statement is not binding, so Staff refers to its earlier

> position on LGS. The Commission intended to grant that proposal on page 39 of the Report and Order. The discussion on that page shows where it addressed the RESB and RESC shows that to be true. Therefore the Commission corrects the Report and Order nunc pro tunc.

44. For the reasons stated herein, the Companies seek rehearing on the decision to adopt Staff's motion and Staff's rate design proposal as it relates to the winter first energy block of the all-electric rate schedules for Small General Service ("SGS"), Medium General Service ("MGS"), and Large General Service ("LGS"). Staff's motion for clarification should have been denied. Instead, the Commission should have held that the rate increases for the SGS, MGS, and LGS classes should be spread on an equal percentage basis, as recommended by KCP&L's testimony. See KCPL-41, Rush Direct at 9; KCPL-42, Rush Rebuttal at 5; KCPL-43, Rush Surrebuttal at 6-10).

45. This position was also embodied in the recommendations contained in the Non-Unanimous Stipulation and Agreement Regarding Class Cost of Service / Rate Design at page 2: "The overall increase granted by the commission should be applied as an equal percentage increase to the base rate revenues of each class after adjusting to the inter-class adjustments described in paragraph 1."

46. As explained by KCP&L witness Tim M. Rush, if major changes in rate design occur, then there is a likelihood that customers will switch between classes, and this "rate switching" phenomena can affect the Company's ability to recover its revenue requirement. See KCPL-42, Rush Rebuttal at 5. As Mr. Rush testified: "Any significant change to the Small, Medium, Large, and Large Power classes will put the company at risk to rate switching." Id. at 5. In his Surrebuttal Testimony, Mr. Rush explained this problem as follows:

> Staff's proposal does not explore the disruption of the relationship between the Large General Service and the Large Power rate groups, leading to the potential rate switching impact of its proposal. Mr. Scheperle does not address my concern in his Rebuttal. In fact, in response to the Industrials' proposal, on page 19 of Mr.

> Scheperle's Rebuttal, he expresses the exact, rate switching concern I offer in respect to the Staff proposal. Rate switching is a very real risk to the Company and its ability to realize the authorized rate increase amount. [KCPL-43, Rush Surrebuttal at 9].

47. The Company's testimony regarding the "rate switching" phenomena was not refuted by any party in this proceeding, including Staff. However, it was not addressed by the Report and Order or the Order Of Clarification, and the Commission's decision fails to consider this important concern that will result from the adoption of the Staff's proposal to increase the first winter energy block of the all-electric rate schedules from SGS, MGS, and LGS. Consequently, the Report and Order is not based on competent and substantial evidence, makes inadequate findings of fact, and is unreasonable. The Commission should therefore grant rehearing on this portion of the rate design issue.

D. Revenue Shift Among Rate Schedules.

48. The Companies request that the Commission rehear and reconsider the following conclusion found on page 38 of the Report and Order:

> The Commission concludes that the shifts that OPC proposes for KCPL best furthers the policy of moving rates toward recovery. That is because it represents a middle ground between the undesirable results of the status quo (leaving disparities in recovery unaltered) and eliminating all disparities immediately (causing rate shock). The Commission concludes that OPC's proposal will best support safe and adequate service at just and reasonable rates, so the Commission will order the shifts that OPC proposes for KCPL.

49. KCP&L requests a rehearing related to the adoption of OPC's proposal to make revenue shifts among the rate schedules, as this conclusion is not based upon competent and substantial evidence and is an abuse of the Commission's discretion. The competent and substantial evidence on record as a whole supported the proposal of the Company, Staff, and other signatories to the KCP&L Class Cost of Service Stipulation and Agreement ("KCP&L CCOS Stipulation") to increase residential rates slightly more than other rate schedules.

50. The signatories to the KCP&L CCOS Stipulation agreed that the Commission should increase residential true-up revenues by 1.00% in addition to any other increase implemented by the Commission with a corresponding equal-percentage revenue neutral decrease in the true-up revenues for all other non-lighting rate classes. This shift is consistent with the CCOS studies which demonstrated that the residential class was not paying its appropriate share of the Company's costs of service. See KCPL-38, Normand Direct, Sch. PMN-2; Staff-211 Staff Rate Design and Class Cost of Service Report at 3; USDOE-501, Goins Direct, Sch. DWG-1. In fact, all of the class cost of service studies in the record showed that residential rates as a whole were not recovering their cost of service. However, the Commission ignored or disregarded this competent and substantial evidence when it granted OPC's proposed revenue shift among the various rate schedules. The Commission should therefore grant rehearing of this issue. Id.

51. By adopting the OPC's position regarding revenue shifts among the classes, the Company is concerned that there will be "rate switching" by various customers. As explained by Mr. Rush in his Rebuttal Testimony, "Any significant change to the Small, Medium, Large, and Large Power classes will put the company at risk to rate switching . . . [I]f major shifts between classes occurred, it would be necessary to take rate switching into account as part of the final rate design definition." See KCPL-42, Rush Rebuttal at 5.[5] The Commission's Report and Order

[5] Rate switching concerns have also been addressed in rate design stipulations and agreements in previous KCP&L rate cases. See e.g., Non-Unanimous Stipulation And Agreement As To Class CCOS and Rate Design, Case No. ER-2010-0355, paragraph 5, p. 2:

> 5. Any potential revenue shortfall associated with potential migration of customers resulting from the LGS / LP rate design methodology provided in paragraph 4, currently quantified as $395,000 shall be assigned to the LGS and LP classes on the basis of relative energy usage by those classes) i.e.) based on the LGS class allocator being (annual LGS class kWh usage) I (annual LGS class kWh usage + annual LP class kWh usage); and the LP class allocator being: (annual LP class kWh usage) I (annual LGS class kWh usage + annual LP class kWh usage), using trued-up amounts for the annual class kWh usages of the LGS and LP classes.

adopted OPC's proposed revenue shifts, but it failed to take into account the rate switching that will occur. Therefore, the Commission should grant a rehearing on this issue.

E. Crossroads Energy Center.

a. The Commission's Decisions Regarding the Valuation of Crossroads and the Disallowance of Crossroads Transmission Costs Are Not Based Upon Appropriate Findings of Fact and Conclusions of Law.

52. The Commission's Report and Order failed to make sufficient findings of fact and conclusions of law related to the valuation of the Crossroads Energy Center ("Crossroads") as well as to the disallowance of transmission costs associated with the delivery of power from Crossroads. Very little of what the Commission said in its Report and Order on these issues actually constituted findings of fact or conclusions of law.

53. Other than its Accumulated Deferred Income Tax ("ADIT") calculation, the Commission arrived at the same erroneous Crossroads conclusions as it did in GMO's last rate case, No. ER-2010-0356 (which the Commission referred to as the "previous rulings"). Although the Commission did correct the ADIT errors from that case and properly calculated the ADIT associated with Crossroads based upon the regulatory value that it found, the Commission failed to change its previous rulings on Crossroads' valuation and electric transmission costs.

54. In so doing, 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." See Report and Order at 52. However, no party incorporated the evidence from the last case into this case, nor did any party present evidence on which the Commission could decide *in this case* that the value of Crossroads is something other than the Company's proposed net original cost. Consequently, it is not surprising that the

Commission rejects GMO's positions on valuation and transmission costs in only eight pages which contain no citations to the record.

55. Because the Commission's factual findings and conclusions of law on the Crossroads issues fail to cite even one piece of evidence, they are clearly inadequate. St. Louis County Water Co. v. State Highway Comm'n, 386 S.W.2d 119, 124 (Mo. 1964). Furthermore, because the Commission merely relied upon its previous rulings, it clearly did not consider additional evidence presented only in this case. As such, its Report and Order is not based on competent and substantial evidence on the record as a whole.

56. As the previous rulings on valuation and transmission costs were unlawful and unreasonable for the reasons GMO stated in its May 13, 2011 Motion for Clarification and/or Reconsideration and Application for Rehearing in its last rate case, No. ER-2010-0356, so too are the Commission's present rulings unlawful and unreasonable. Rehearing thus should be granted as to the valuation and disallowance of transmission costs from Crossroads, discussed below.

b. The Commission's Valuation Is Unreasonable and Contrary to the Record.

57. The Commission determined that the fair market value of Crossroads as of August 31, 2012 is $62.6 million. See Report and Order ¶ 7 at 55, 57. In making that determination, the Commission rejected GMO's inclusion of Crossroads in rate base at its "net original cost" as defined by the USoA. However, the Commission failed to analyze, and did not consider, GMO testimony regarding its valuation disclosure to the Securities and Exchange Commission ("SEC") and regarding the independent third-party appraisal of Crossroads. Furthermore, the Commission's use of the Goose Creek and Raccoon Creek units in making its valuation determination is not appropriate because those units and the circumstances surrounding their sale are not comparable to Crossroads. Indeed, the Missouri Court of Appeals, as well as the

Commission itself, have previously found that "their purchase price is not a good measure of the market price" for other units. State ex rel. Public Counsel v. PSC, 274 S.W.3d 569, 579 (Mo. App. W.D. 2009), quoting In re Union Elec. Co., Case No. ER-2007-0002, Report and Order at 62 (May 22, 2007) ("AmerenUE Report and Order"). As a result, the Report and Order is unreasonable, arbitrary, capricious, and not supported by adequate findings of fact and conclusions of law.

(i) The Commission Unreasonably Rejected GMO's Valuation Evidence.

58. Contrary to the Report and Order's statement at 55-56 that GMO relied on a valuation that pre-dates the Commission's adoption of FERC's USoA, the Company included Crossroads at its net book value, or its "net original cost" as defined by the USoA. See GMO-125, Ives Surrebuttal at 26. As of March 31, 2012, GMO valued Crossroads at approximately $82.7 million. See GMO-111, Crawford Rebuttal at 1. No party rebutted the Company's testimony that net original cost has been calculated using generally accepted accounting principles. See GMO-125, Ives Surrebuttal at 26. Nor did any party dispute the fair market valuation that the independent, third-party accounting firm PricewaterhouseCoopers determined was actually higher than the net original cost used by the Company in its filing in this case. See Tr. 937; GMO-111, Crawford Rebuttal at 2; GMO-125, Ives Surrebuttal at 37.

59. The evidence is undisputed that GMO transferred Crossroads to its regulated books at the fair market value of $117 million, as the fair market value of Crossroads was less than the fully distributed cost described in the Rebuttal Testimony of Mr. Crawford. See GMO-111, Crawford Rebuttal at 5, 7. GMO has routinely sought to include Crossroads in its rate cases at this fair market value (less depreciation in the present case). See GMO-111, Crawford Rebuttal at 1-5, 7, Sch. BLC2010-9(HC); GMO-125, Ives Surrebuttal at 29-30. GMO's

valuation evidence thus is consistent with the USoA. Finding otherwise is contrary to the substantial and competent evidence on the record. Consequently, the Report and Order is unreasonable, arbitrary, capricious, and not supported by adequate findings of fact and conclusions of law.

60. Furthermore, the Commission entirely disregarded the valuation of Crossroads at the time it was offered in response to the March 2007 Request For Proposals ("RFP") for supply resources put out by GMO. See GMO-111, Crawford Rebuttal at 3. There is no dispute in this case that Aquila's regulated operations acquired Crossroads from Aquila Merchant using an RFP process. See Tr. 913-914; Staff-271, Featherstone Rebuttal at 22; GMO-125, Ives Surrebuttal at 29. Crossroads was offered at its net book value, but also included projected transmission costs of $11 million. See Tr. at 913-14. Even with the $11 million in included transmission costs, which is more than double the actual transmission costs (id.), Crossroads was the lowest cost of several options considered. See GMO-111, Crawford Rebuttal at 3; Sch. BLC2010-9(HC); Tr. 913. Therefore, the Affiliate Transactions Rule, 4 CSR 240-20.015(3), dictates that the fair value of Crossroads at the time was the net book value, or its "net original cost" as defined by the USoA. This is exactly the basis for the value the Company requests in this rate case (less depreciation since that time).

61. The net original cost and the RFP response are the only evidence of what a willing buyer would pay a willing seller for the Crossroads facility. The Commission disregards this competent and substantial evidence on the record as a whole in following its previous unreasonable valuation methodology adopted in GMO's last rate case.

(ii) <u>The Commission Unreasonably Relied on Statements to the SEC.</u>

62. The Commission also makes much of Great Plains Energy Incorporated's ("GPE") preliminary, unilateral valuation filed in its S-4 Joint Proxy Statement[6] with the SEC regarding the "fair value" of Crossroads, yet completely disregards GMO's evidence as to why its valuation of the facility is higher than the preliminary salvage value included in the Joint Proxy Statement. <u>See</u> Report and Order ¶ 4 at 54-55.

63. The Joint Proxy Statement is not relevant to the valuation analysis. The evidence was undisputed that the Joint Proxy Statement value was preliminary and was not an agreement between a buyer and seller about the value. <u>See</u> GMO-125, Ives Surrebuttal at 31-38. While Staff provided a good deal of testimony about the Joint Proxy Statement, Staff never asserted that the preliminary proxy value was the correct value. <u>See</u> Tr. 943.

64. The text of the Joint Proxy Statement noted the preliminary and unilateral nature of the value stated. It clearly referred to GPE's "estimates" and disclosed that the value was a "preliminary internal analysis" that was "significantly affected by assumptions regarding the current market." <u>See</u> Staff-258, Cost of Service Report at 78-79.

65. Furthermore, while GPE disclosed to the SEC that the fair market <u>salvage</u> value of the combustion turbines alone was \$51.6 million, it reported the net book value of the entire facility at \$118.9 million. <u>Id.</u> at 78. Reading the Joint Proxy Statement in its entirety, it is clear that the \$51.6 million allocation was preliminary, subject to change, could differ materially from the final purchase price allocation on the date the merger is completed, and did not represent the net book value of the entire facility.

[6] Form S-4, referred to as a joint proxy statement/prospectus, must be submitted to the SEC in the event of a merger or an acquisition between two companies. GPE and Aquila filed their Form S-4 with the SEC on May 8, 2007. It will be referred to as the "Joint Proxy Statement" herein.

66. Yet the Commission relied on these salvage value statements in determining that the sale of two "comparable assets" in Illinois supports its valuation. See Report and Order ¶ 4 at 55. Because the Commission failed to analyze and rejected the Company's evidence that GPE's preliminary statements to the SEC were not probative on the valuation issue, and instead relied upon these statements, its valuation of Crossroads is unreasonable, arbitrary, capricious, and not supported by adequate findings of fact and conclusions of law.

(iii) The Commission Unreasonably Calculated Valuation Using the "Forced Sale" of Two Dissimilar Combustion Turbines.

67. The "comparable assets" upon which the Commission calculated the Crossroads value are the Goose Creek and Raccoon Creek combustion turbines in Illinois. See Report and Order ¶ 5 at 55. "Using the same valuation as in the previous rulings," the Commission calculated the value of Crossroads using the average installed dollar per kilowatt basis that AmerenUE,[7] another public utility, paid for those combustion turbines. See Report and Order 52, ¶ 7 at 55.

68. In its previous rulings adopted here, the Commission determined that Goose Creek and Raccoon Creek transactions were a "good indicator of the fair market value" and showed "the depressed market" for gas turbines at that time, without any evidence that the different years and different location in which those transactions occurred are sufficiently similar to warrant their comparison. See Case No. ER-2010-0356 Report and Order ¶ 270 at 94, ¶ 275 at 96.

69. However, the Goose Creek and Raccoon Creek transaction was "essentially a forced sale." State ex rel. Public Counsel v. PSC, 274 S.W.3d 569, 579 (Mo. App. W.D. 2009).

[7] AmerenUE, now doing business under the name Ameren Missouri, is Union Electric Company, a regulated Missouri public utility. See State ex rel. Public Counsel v. PSC, 274 S.W.3d 569, 572 & n.1 (Mo. App. W.D. 2009).

Because of the circumstances surrounding their sale, "their purchase price is not a good measure of the market price" for other units. Id., quoting AmerenUE Report and Order at 62. Nevertheless, the Commission now unreasonably and arbitrarily relies on the average installed dollar per kilowatt basis that AmerenUE paid for those units in arriving at its valuation for Crossroads.

70. Such reliance is further unreasonable, as the record demonstrates that Goose Creek and Raccoon Creek are not "comparable assets" because the cost to operate the facilities in the provision of retail electric service to GMO customers would be markedly different.[8] GMO, unlike AmerenUE, would need annual revenue of $9.7 million to transmit the electricity if it were to purchase those facilities, which is nearly double the $5.2 million revenue requirement to transmit power from Crossroads. See GMO-111, Crawford Rebuttal at 7. Similarly, gas transportation is significantly higher for those facilities. See GMO-103, Blunk Rebuttal at 3; GMO-111, Crawford Rebuttal at 7. This analysis makes clear that, for GMO, Crossroads was the lowest cost option. See GMO-111, Crawford Rebuttal at 7.

71. Contrary to the substantial and competent evidence on the record, and diverging from the findings by the Court of Appeals, the Commission calculated the value of Crossroads using the average installed dollar per kilowatt basis that AmerenUE paid for Goose Creek and Raccoon Creek. As a result, the Report and Order is unreasonable, arbitrary, capricious, and not supported by adequate findings of fact and conclusions of law.

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[8] Even Staff concedes that "there is a material difference in the comparison of GMO's acquisition of Crossroads with AmerenUE's acquisition of Goose Creek and Raccoon Creek." See Staff Initial Brief at 54.

c. The Commission Unreasonably and Unlawfully Disallows Crossroads Transmission Costs.

72. In a brief two-page discussion, the Commission denied GMO cost recovery for transmitting power from Crossroads to its MPS rate district. See Report and Order at 59. In making that determination, the Commission failed to make appropriate findings of fact and conclusions of law, failed to analyze and consider GMO's evidence regarding its least cost analysis of Crossroads, and unreasonably removed from the lowest-cost Crossroads option the one element of cost that was higher than its other elements.

73. The section of the Report and Order entitled "Transmission Cost" set forth at pages 58-59 does not include appropriate findings of fact and citations to the record, and thus failed to meet the statutory requirements of Sections 386.420 and 536.090. See Noranda, 24 S.W.3d at 243. The Commission's statements were completely conclusory, and provided no reasonable explanation for why the transmission costs were disallowed from recovery when the Crossroads plant itself was found to be prudent and was included in rate base.

74. Furthermore, the Commission's decision to eliminate the transmission cost component from retail rates is unlawful. In excluding from rates the cost of transmission required to bring energy from Crossroads to GMO's service territory, the Commission improperly ordered the elimination of the tariff rate approved by FERC, thus "trapping" such costs in violation of the Filed Rate Doctrine and the Supremacy Clause of the U.S. Constitution.

(i) The Commission Failed to Analyze the Undisputed Evidence that the Cost of Transmission is Outweighed By Savings in Fuel Costs.

75. The Commission disregarded the evidence of transmission costs as part of the overall cost analysis of the Crossroads plant, contrary to its finding that it was the most prudent resource alternative. Furthermore, in simply adopting its findings in the previous rulings, the

Commission failed to consider new, additional evidence included in this case that was not part of GMO's last general rate case.

76. At hearing, Staff's witness acknowledged that a utility would be prudent to utilize a power plant outside of its service area if this presented the lowest cost to ratepayers. See Tr. 956-57. That is exactly why GMO chose the Crossroads option. Nevertheless, the Commission found that "[t]he high cost of transmission is not outweighed by lower fuel costs in Mississippi," and disallowed transmission costs. See Report and Order ¶ 3 at 58. This finding is contrary to the evidence.

77. It was undisputed that producing electricity through the use of natural gas is significantly less expensive in Mississippi because of its proximity to natural gas fields. See Tr. 316. As a result of this proximity, fuel transportation costs are much lower than they would be for a facility located in Missouri. See Tr. 318. By using a plant in Mississippi, GMO captures significant cost savings compared with producing electricity within its Missouri territory, for example at the South Harper facility. See GMO-102, Blunk Direct at 29-30. Company witness Wm. Edward Blunk explained his calculations in pre-filed testimony and at hearing. See Tr. 319-321. He summarized his findings as follows:

> Q: So based on the calculations you've done in your testimony, does it save the ratepayers money on transportation costs to use the Crossroads facility in Mississippi?
> A: Yes.
> Q: And is that savings sufficient to justify the transmission costs?
> A: Yes. You save more off the – you save more off the natural gas transportation than what the electric transmission is going to cost. [See Tr. 321:13-22.]

The evidence clearly showed that GMO is prudently incurring electric transmission costs because the overall Crossroads option results in savings to customers. Id. No party provided an alternative analysis and no witness rebutted the gas transportation costs to which Mr. Blunk testified. Consequently, it is undisputed that these transmission costs are more than offset by the

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gas transportation cost savings. The Commission's finding otherwise is contrary to the evidence on the record and is, therefore, unreasonable.

(ii) The Commission Unreasonably and Illogically Removed One Cost Element from the Least-Cost Option.

78. In making its determination to disallow transmission costs, the Commission ignored that fact that transmission costs were factored into the analysis when considering capacity options in 2007 and that when all costs are considered, Crossroads was the lowest total cost option. See GMO-111, Crawford Rebuttal at 3; Sch. BLC2010-9(HC); Tr. 913.

79. When Crossroads was offered in response to the March 2007 RFP, its book value included projected transmission costs of $11 million. See Tr. at 913-14. Even with the $11 million in transmission costs, which is more than double the actual transmission costs, Crossroads was the lowest cost option. See GMO-111, Crawford Rebuttal at 3; Sch. BLC2010-9(HC); Tr. 913-14.

80. The Commission cannot accept the Company's total cost option analysis of Crossroads as prudent, and then arbitrarily remove a single element of that analysis. Such decision-making is not reasonable, and is not supported by substantial and competent evidence on the record as a whole because electric transmission costs were an essential element of the Company's overall cost analysis of Crossroads, which the Commission found to be prudent. The Commission determined that Crossroads was prudent because it was the lowest-cost option, but then removed a cost component that led to that finding. In so doing, the Commission has impeached its own prudence determination. Accordingly, the Report and Order is unreasonable.

(iii) The Commission's Disallowance of FERC-approved Transmission Costs Violated the Filed Rate Doctrine and the Supremacy Clause of the U.S. Constitution Because it Unlawfully "Traps" Such Costs and Prevents Them From Being Recovered by the Company.

81. By allowing recovery of the value of Crossroads, the Commission found that GMO acted prudently when it put Crossroads in its generation fleet. However, the Commission then improperly excluded from GMO's rates the transmission component of the cost of service to utilize Crossroads power, even though Crossroads was overall (including the transmission cost component) the least cost solution to meet GMO's resource needs. By excluding Crossroads transmission costs from rates, the Commission denied recovery of costs that are the subject of a FERC-approved tariff in violation of the Filed Rate Doctrine.

82. The Filed Rate Doctrine developed as an outgrowth of federal preemption and the U.S. Constitution's Supremacy Clause. It "holds that interstate power rates fixed by the FERC must be given binding effect by state utility commissions determining intrastate rates." See Associated Natural Gas Co. v. PSC, 954 S.W.2d 520, 530 (Mo. App. W.D. 1997). Consequently, "a state utility commission setting retail prices must allow, as reasonable operating expenses, costs incurred as a result of paying a FERC-determined wholesale price." Nantahala Power and Light Co. v. Thornburg, 476 U.S. 953, 965 (1986). Missouri courts have explicitly recognized and honored these concepts of federalism and the Filed Rate Doctrine. See Associated Natural Gas Co. v. PSC, 954 S.W.2d 520, 531 (Mo. App. W.D. 1997).

83. Ironically, in this proceeding the Commission has done exactly what it previously declared it lacks authority to do. See Order Consolidating Cases, Finding Jurisdiction to Proceed, and Directing the Parties to File a Proposed Procedural Schedule, In re Missouri Gas Energy's Purchased Gas Adjustment Tariff Revisions, Case No. GR-2001-382, 2002 WL 31492304 *2 (Sept. 10, 2002). It has decided that the FERC-approved interstate transmission

rate that GMO is paying for power from Crossroads is too high, and has, in effect, ordered the FERC tariff to be reduced to zero by denying recovery of the costs that the Company incurs regarding such service. By determining that it was not just and reasonable for GMO customers to pay the cost of purchased power from Crossroads, the Commission has explicitly infringed on the authority of FERC under the Federal Power Act, violated the Filed Rate Doctrine, and run afoul of the Supremacy Clause. See Report and Order at 59.

84. In finding that it is not barred from determining the prudence of buying power from Crossroads, the Commission misinterprets a key holding of the United States Supreme Court in Nantahala Power and Light Co. v. Thornburg, 476 U.S. 953 (1986), which prohibited the "trapping" of the FERC-determined costs where a state commission denied a utility recovery of FERC-determined costs, in violation of the Filed Rate Doctrine. Id. at 970.

85. The Commission erroneously concluded that it may disallow FERC-approved transmission costs from language in Nantahala that a state commission may deem a quantity of power from a particular source "unreasonably excessive if lower cost power is available elsewhere." The Commission reads this language as stating that "FERC's rate-setting for a facility requires neither the purchase of power, nor approval of that purchase, from that facility." See Report and Order at 59. Such conclusion misses the point that Crossroads *was* the lowest cost alternative, and is identical to the erroneous "oversimplification" that caused the Supreme Court to reverse the decision of the North Carolina Supreme Court in Nantahala. 476 U.S. at 967.

86. Given the Commission's conclusion that Crossroads should be included in rate base, no other alternative offered lower costs for Missouri ratepayers. This finding is important because it distinguishes GMO's case from other cases where state bodies inquired about lower cost alternatives. See Nantahala Power and Light Co. v. Thornburg, 476 U.S. 953, 972-73

(1986); Kentucky West Virginia Gas Co. v. Pennsylvania Pub. Util. Comm'n., 837 F.2d 600, 607-609 (3d Cir. 1988); Appalachian Power Co. v. Public Serv. Comm'n, 812 F.2d 898, 903 (4th Cir. 1987). That a state commission may inquire about lower cost alternatives in no way supports the Commission's decision to disallow FERC-approved transmission costs that are part and parcel of the *lowest* cost alternative for Missouri ratepayers.

87. The Commission could not lawfully lower the costs of the Crossroads option by disallowing FERC transmission costs that were included in GMO's analysis, as the evidence showed. Compelling GMO to absorb the cost of electricity transmitted under a federal tariff violates both the U.S. Constitution's Supremacy Clause and the Filed Rate Doctrine.

88. The Commission's refusal to allow the Company to recover electric transmission costs from Crossroads, which was placed in rate base as the most prudent option available, is unlawful, unreasonable, arbitrary, and capricious, and runs afoul of federal jurisdiction. As a result, the Report and Order is unjust, unlawful, unreasonable, arbitrary, capricious, not supported by substantial and competent evidence of record, and not supported by adequate findings of fact and conclusions of law.

WHEREFORE, Kansas City Power and Light Company and KCP&L Greater Missouri Operations Company respectfully request that the Commission clarify its Report and Order, as requested herein, and grant rehearing of its Report and Order, as more fully described herein.

Respectfully submitted,

/s/ Karl Zobrist

Karl Zobrist MBN 28325
Lisa A. Gilbreath MBN 62271
SNR Denton US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
816.460.2400 (phone)
816.531.7545 (fax)
karl.zobrist@snrdenton.com
lisa.gilbreath@snrdenton.com

James M. Fischer MBN 27543
Fischer & Dority, PC
101 Madison, Suite 400
Jefferson City, MO 65101
(573) 636-6758 (phone)
(573) 636-0383 (fax)
jfischerpc@aol.com

Roger W. Steiner MBN 39586
Corporate Counsel
Kansas City Power & Light Company
1200 Main Street
Kansas City, MO 64105
(816) 556-2314 (phone)
Roger.Steiner@kcpl.com

Attorneys for Kansas City Power & Light Company
and KCP&L Greater Missouri Operations Company

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing was served upon counsel of record on this 18th day of January, 2013.

/s/ Lisa A. Gilbreath
Attorney for Kansas City Power & Light
Company and KCP&L Greater Missouri
Operations Company