BEFORE THE PUBLIC SERVICE COMMISSION
<u>OF THE STATE OF MISSOURI</u>

In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Continue the Implementation of Its Regulatory Plan	)))))	Case No. ER-2010-0355

and

In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges For Electric Service	))))	Case No. ER-2010-0356

REPLY POSTHEARING BRIEF OF

INDUSTRIAL INTERVENORS

AS TO KCPL AND JOINT ISSUES

David L. Woodsmall (MBE #40747)
Jeremiah D. Finnegan (MBE #18416)
Stuart W. Conrad (MBE #23966)
428 E. Capitol Ave., Suite 300
Jefferson City, MO 64111
(573) 635-2700 voice
(573) 635-6998 facsimile
E-mail: dwoodsmall@fcplaw.com

ATTORNEYS FOR THE
INDUSTRIAL INTERVENORS

March 18, 2011

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Continue the Implementation of Its Regulatory Plan	)))))	Case No. ER-2010-0355

and

In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges For Electric Service	))))	Case No. ER-2010-0356

REPLY POST-HEARING BRIEF OF
THE INDUSTRIAL INTERVENORS

COME NOW Praxair, Inc., the Midwest Energy Users' Association, Ag Processing, Inc. a cooperative, and the Sedalia Industrial Energy Users' Association (collectively referred to herein as "MEUA" or "Industrial Intervenors") by and through the undersigned counsel, pursuant to the Commission's August 18, 2010 Order Setting Procedural Schedule, and submit their Reply Posthearing Brief on the issues set forth below:

TABLE OF CONTENTS

I. **RETURN ON EQUITY** 3

II. **OFF-SYSTEM SALES MARGINS** 13

III. **OFF-SYSTEM SALES ADJUSTMENTS** 21

IV. **MERGER TRANSITION COSTS** 25

V. **RATE CASE EXPENSE** 29

VI. **ADVANCED COAL CREDIT ARBITRATION COSTS** . . . 33

VII. **CONCLUSION** 34

I. RETURN ON EQUITY

- Industrial Intervenors Initial Brief at pages 11-28.
- KCPL / GMO Briefs at pages 144-151.

Reading their Initial Brief, one is immediately struck by KCPL / GMO's inability or unwillingness to attack the positions and recommendations advanced by the Industrial witness Gorman. Instead, KCPL / GMO spend the vast majority of the short 7 pages that they devoted to return on equity attacking the comparable companies, growth rates and final recommendations of the Staff witness. By closely reviewing some of the criticisms leveled against Staff, however, one can also understand similar flaws in KCPL / GMO's recommendation. For this reason, the Industrials take this opportunity to correct certain misstatements and oversights contained in the short return on equity discussion in the KCPL / GMO brief.

First, KCPL / GMO claim, without any support from state utility commission decisions, that "Dr. Hadaway's credentials and experience" are superior to the other witnesses.[1] In its Initial Brief, MEUA referenced a Washington Utilities and Transportation Commission decision which indicates that other state utility commissions think differently.

> The principal disagreement between the Company and its expert critics centers on Dr. Hadaway's use of nominal historical GDP growth rates in the DCF formula. We do not take issue with Dr. Hadaway's opinion that the DCF formula requires a long-term growth rate or that growth in GDP may serve as a better measure of long-term growth than analysts' forecasts in the short-term. ***However, in this case, we find persuasive Mr. Gorman's argument, that if growth in GDP is used for this critical input to the DCF formula, it should be a forward-looking, not an historical average.***[2]

---

[1] KCPL / GMO Brief at page 150 (paragraph 322).

[2] *Washington Utilities and Transportation Commission v. PacifiCorp*, 2006 Wash. UTC Lexis 156, 170 (Washington Utilities and Transportation Commission, April 17, 2006) (emphasis added).

Thus, the Washington Utilities Commission clearly found, despite KCPL / GMO's opinion of Hadaway's "credentials and experience," that Gorman's arguments were more "persuasive." Still again, in a 2006 decision, the Illinois Commerce Commission, consistent with Gorman's analysis, rejected Hadaway's formulation of GDP growth rate.[3]

Most importantly, when this Commission had the opportunity to previously consider the "credentials and experience" of Mr. Gorman versus Dr. Hadaway, it was apparent that the Missouri Commission preferred the "balanced analysis" provided by Gorman. In its 2007 Aquila decision, the Commission expressly considered the opinions and recommendations of both Gorman and Hadaway. In that case, the Commission made several findings regarding Hadaway's analysis. "When the Commission steps back, the first pattern that emerges is the realization that ***the rate of return advocated by the expert who testified for Aquila [Hadaway] is too high.***"[4] Still again, the Commission noted, "the construction risk upward adjustment proposed by Dr. Hadaway appears to be a ***transparent effort to inflate the company's proposed return on equity.***"[5]

In contrast, the Commission obviously preferred Mr. Gorman's analysis. "In particular, the Commission accepts as credible the testimony of SIEUA, AG-P, and FEA's witness, Michael Gorman."[6] "Of the witnesses who testified in this case Michael Gorman, the witness for SIEUA, AG-P and FEA, did the best job of presenting the balanced analysis the Commission seeks."[7] Thus, despite KCPL / GMO's unsupported claims, where this Commission has previously had an opportunity to consider the relative

[3] See, *Commonwealth Edison Company*, 2006 Illinois P.U.C. Lexis 44 (issued June 30, 2006).
[4] *Report and Order*, Case No. ER-2007-0004, issued May 17, 2007 (emphasis added).
[5] *Id.* (emphasis added).
[6] *Id.*
[7] *Id.*

merits of the positions advanced by Mr. Gorman or Dr. Hadaway, it is clear that it prefers the "balanced analysis" provided by Gorman.

Second, KCPL / GMO inaccurately summarize the results of the various return on equity analyses undertaken by Mr. Gorman. While recognizing that Mr. Gorman had restored his recommendation contained in his KCPL testimony,[8] KCPL / GMO fails to provide the study results that correlate to the restored recommendation.[9] In an effort to fix KCPL / GMO's misstatement, the correct results are as follows:

MODEL		ACTUAL RESULT	MISSTATED RESULT
DCF			
	Constant Growth (Analysts' Growth Rates)	10.39%	10.33%
	Constant Growth (GDP / Sustainable)	9.38%	9.33%
	Multi-Stage Growth	9.86%	9.80%
	DCF Average	9.88%	9.80%
Risk Premium (Ex. 1203, page 32)		9.68%	9.58%
CAPM (Ex. 1203, page 37)		9.40%	9.20%
Recommendation (Ex. 1203, page 37)		9.65%	9.65%

Third, KCPL / GMO misstate and then misapply the Commission's historical method for applying its "zone of reasonableness." As initially developed by the Commission, the "zone of reasonableness" extends ***100 basis points*** above or below the

[8] KCPL / GMO specifically note, "Recommendation in KCP&L Direct was 9.65%, but was lowered in GMO Direct to 9.5%. Restored to 9.65% at Hearing (January 28, 2011) at Hearing Tr. 2852-2853." (KCPL / GMO Brief at page 145). Mr. Gorman's decision to restore his recommendation to the 9.65% contained in his KCPL testimony was done to reflect the slight increase in bond yields that had occurred between the time he filed his GMO Direct Testimony and the commencement of the evidentiary hearing. (Tr. 2852-2853).

[9] KCPL / GMO Brief at pages 144-145 (paragraph 304).

national average return on equity.[10] In fact, KCPL / GMO are undoubtedly aware of this exact definition of the "zone of reasonableness" in that it has been repeatedly applied in previous KCPL / GMO decisions.[11] Nevertheless, KCPL / GMO inaccurately cite the Commission's "zone of reasonableness" as "50 points in either direction."[12] Based upon this misstatement, KCPL / GMO then misapply the zone of reasonableness and conclude that "only Dr. Hadaway's recommendation falls completely within this range."[13] Still again, KCPL / GMO mistakenly claim that "Dr. Hadaway's recommended mid-point of 10.5% is the only mid-point that falls within the zone of reasonableness of 9.82% to 10.82%."[14]

As demonstrated, the Commission's zone of reasonableness has historically been **100 basis points** in either direction of the national average return on equity. Given a national average return on equity of 10.32%, the zone of reasonableness extends from 9.32% to 11.32%. Clearly then, Mr. Gorman's recommendation of 9.40 – 9.90% falls comfortably within the Commission's zone of reasonableness.

Fourth, KCPL / GMO selectively apply the dictates of the Supreme Court's decision in *Bluefield*. In that decision, the Supreme Court noted:

> A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time ***and in the same general part of the country*** on investments in other business

[10] *Report and Order*, Case No. ER-2004-0570 (issued March 10, 2005).
[11] See, *Report and Order*, Case No. ER-2006-0314 (issued December 21, 2006); *Report and Order*, Case No. ER-2007-0004 (issued May 17, 2007); *Report and Order*, Case No. ER-2007-0291 (issued December 16, 2007).
[12] KCPL / GMO Brief at page 146 (paragraph 305). Interestingly, at the bottom of page 146 (paragraph 307), KCPL / GMO appear to recognize that the zone of reasonableness should be 100 basis points. Nevertheless, KCPL / GMO continue to apply the erroneous 50 basis point zone. Given their inability to cast any question on Mr. Gorman's objective result, this is obviously a self-serving mistake designed to raise concerns where no such concerns truly exist.
[13] *Id.*
[14] *Id.* at page 151 (paragraph 322).

> undertakings which are attended by corresponding risks and uncertainties.[15]

Based upon the geographic restriction contained in the Supreme Court's decision, KCPL / GMO criticize the Staff's failure to include comparable companies in the Midwest.[16] Interestingly, however, KCPL / GMO then violate this same apparently inviolate requirement in *Bluefield* to argue for application of the **national** average return on equity of 10.32%. Certainly, if Staff's use of comparable companies from around the nation is problematic, then KCPL / GMO's reliance on the **national** average return on equity is equally troublesome.

In order to avoid similar criticisms, MEUA, in its Initial Brief, asked the Commission to take special notice of two recent decisions that have been issued recently "in the same general part of the country." Specifically, the Industrials ask the Commission to be aware that it had awarded a return on equity of 10.1% to AmerenUE and that the Kansas Corporation Commission has recently awarded a return on equity of 10.0% for KCPL. Also, it is worth noting that the Iowa Department of Commerce Utilities Board awarded Interstate Power and Light Company a return on equity of 10.0%.[17] By any interpretation of the geographic restriction contained in *Bluefield*, these three decisions are certainly relevant to the Commission's return on equity award in this case.

Fifth, while relying on this one single aspect of the Supreme Court's *Bluefield* decision, KCPL / GMO then proceed to ignore other critical requirements in that Court's

---

[15] *Bluefield Waterworks & Improvement Co. v. Public Service Commission*, 262 U.S. 679, 692 (U.S. 1923) (emphasis added).
[16] KCPL / GMO Brief at page 147 (paragraphs 310 and 311).
[17] *Interstate Power & Light Company*, Docket No. RPU-2010-0001, at page 91 (issued January 10, 2011). It is interesting that in this Interstate Power and Light Company case, IPL initially sought a 10.75% return on equity. Unlike KCPL / GMO that seek an increase to the requested return on equity, IPL agreed to a reduction to 10.5% "to help mitigate ratepayer impacts." *Id.* at page 82.

Hope decision. In that decision, the Supreme Court stated that the return on equity recommendation should only be that amount necessary to preserve the "financial integrity" of the Company.[18] Based upon this requirement, Mr. Gorman undertook a "financial integrity" analysis designed to determine if his recommended 9.65% return on equity would allow the Company to preserve its current investment grade credit rating. The results of Mr. Gorman's financial integrity analysis conclusively show that "an authorized return of 9.65% will support internal cash flows that will be adequate to maintain KCPL's current investment grade bond rating."[19]

As mentioned, KCPL / GMO and its witness Dr. Hadaway completely fail to consider this requirement. Likely, this omission was due to the fact that, if a 9.65% return on equity is sufficient to maintain "financial integrity," KCPL / GMO's recommended return on equity of 10.75% is clearly excessive. Not wanting to demonstrate the excessiveness of its recommendation, KCPL / GMO simply omit any consideration of the "financial integrity" requirement.

Sixth, KCPL / GMO criticize Staff's decision, based upon "expertise and understanding of current market conditions," to lower the analysts' growth rates on the basis that those rates were "non-sustainable."[20] It is interesting that KCPL / GMO criticize Staff for making such "subjective" determinations,[21] but they fail to recognize similar subjective aspects of Hadaway's analysis.

[18] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).
[19] Ex. 1203, Gorman Direct, page 42.
[20] KCPL / GMO Brief at page 147 (paragraph 313).
[21] *Id.* at page 148 (paragraph 314). KCPL / GMO refers to Staff's decision to reduce the analysts' growth rates "a subjective formulation of growth rates."

As noted in MEUA's Initial Brief, Hadaway's DCF analysis has been repeatedly criticized by state utility commissions for its numerous "subjective" factors.[22] The same "subjective" criticisms previously leveled against Hadaway's analysis are similarly applicable to his return on equity analysis in this case. For instance, while recognizing that analysts' current growth rates are inflated and non-sustainable, Hadaway nevertheless "subjectively" decides to give the results of the constant growth analysis an inappropriate degree of importance.[23] Still again, in his constant growth (GDP) analysis, Hadaway ignores all consensus analysts' estimates of long-term GDP growth in favor of his "subjectively" developed historical GDP growth rate.[24] Furthermore, while Hadaway conducts a risk premium analysis, he then "subjectively" decides that the results of that analysis should be "discounted."[25] Finally, Hadaway refuses to conduct a CAPM analysis based solely on his "subjective" belief that the CAPM "understates the cost of equity capital."[26]

Contrary to Hadaway's numerous "subjective" machinations designed to inflate his return on equity analysis, Mr. Gorman conducted and included the results to every widely-recognized return on equity analysis including: (1) DCF analyses; (2) risk premium and (3) CAPM. Furthermore, while performing these analyses, Mr. Gorman did not "subjectively" develop any inputs, but instead relied upon consensus analysts' estimates for the model inputs.

Seventh, in the one clear retort of his analysis, KCPL / GMO claim that Mr. Gorman relied upon an inappropriate measure of GDP growth in his constant growth

---

[22] See, Industrials' Initial Brief at pages 16-20.
[23] *Id.* at pages 17-18.
[24] *Id.* at pages 18-19.
[25] *Id.* at page 16 (citing to Ex. 28, Hadaway Rebuttal, page 23).
[26] Ex. 28, Hadaway Rebuttal, page 23.

(GDP) analysis. Specifically, while claiming that a recent Congressional Budget Office ("CBO") outlook projects the GDP growth rate at 5.1%, Mr. Gorman uses a GDP growth rate of 4.75%.[27]

It is interesting that the Company notes as a retort of Mr. Gorman's growth rate data, a CBO GDP growth rate of 5.1%. That CBO projection is significantly lower than KCPL / GMO's own witnesses' projected GDP growth rate of 6.0%,[28] and much closer to the projection Mr. Gorman relied upon of 4.75%.[29] Importantly, Mr. Gorman's growth forecast was taken directly from a published consensus economists' growth rate outlook, which included high GDP growth rates (like the CBO) and low GDP growth rates. The consensus projected growth rate estimate reflects both high and low estimates. KCPL / GMO seem to prefer only the high-end projections.

Mr. Gorman relied on *The Blue Chip Economic Indicators*,[30] which is a publication which surveys economists and publishes the consensus projections of those economists for measures such as future GDP growth.[31] Since the objective of the DCF analysis in this case is to capture investors' expectations of future growth, giving consideration to all economists' projections is the best information available to capture investors' consensus outlooks that direct their investment decision-making. This is important because it is investors which value stock and it is investors' stock valuations which establish the investor required return on equity. Therefore, the DCF model in particular should be designed to use data which best reflects investors' consensus

[27] KCPL / GMO Brief at page 148 (paragraphs 316-317).
[28] Ex. 27, Hadaway Direct, page 41.
[29] Ex. 1203, Gorman Direct, page 26 ("For the long-term sustainable growth rate starting in year 11, I used 4.75%, the average of the consensus economists' 5-year and 10-year projected nominal GDP growth rates.").
[30] *Id.* at 26.
[31] *Id.* at 25.

outlooks. While the CBO outlook projections likely is one source considered by investors, the record in this case supports Mr. Gorman's use of consensus economists' projections of GDP growth because it captures all information used by investors. In contrast, KCPL / GMO prefer to rely on only limited high-end data.

Eighth, KCPL / GMO attempt to undermine the results of Mr. Gorman's risk premium analysis. Specifically, KCPL / GMO complain that Gorman's risk premium analysis fails to reflect "current government monetary policy" and therefore "understates" the risk premium cost of equity.[32]

KCPL / GMO's argument is misplaced and fails to recognize the distinction between short-term interest rates, which are directly affected by governmental policy, and the long-term interest rates that are used in the risk premium analysis. These long-term interest rates bear little relationship to governmental policy. As Mr. Gorman explained:

> Government monetary policy has a bigger impact on short-term interest rates. Long-term interest rates are driven more by market forces. The CAPM [and risk premium] model is based on long-term interest rates, not short-term interest rates. So it is driven predominantly by long-term -- by the -- the investment community and how they set long-term interest rates.[33]

Therefore, while government policy does impact short-term interest rates, government policy has very little impact on long-term interest rates.

Mr. Gorman's risk premium and CAPM analysis are based on long-term interest rates. Therefore, the government's monetary policy would **not** have a direct impact on long-term interest rates. Rather, long-term interest rates are predominantly controlled by the marketplace. Therefore, KCPL / GMO's attempt to suggest that the government monetary policy impacts long-term interest rates is without foundation, is in error and

[32] KCPL / GMO Brief at page 150 (paragraphs 319-321).
[33] Tr. 2865.

should be disregarded. While government monetary policy has a direct impact on short-term interest rates, it has little to no impact on long-term interest rates and therefore does not detrimentally impact Mr. Gorman's risk premium analyses.

As can be seen, therefore, many of the points raised by KCPL / GMO are unfounded. It is well established that, despite claims to the contrary, Mr. Gorman's recommendations and credibility have been repeatedly relied upon by state utility commissions. In fact, when presented the recommendations of both Mr. Gorman and Dr. Hadaway, this Commission expressly preferred the "balanced analysis" provided by Mr. Gorman. Furthermore, it has been shown that KCPL / GMO's application of the "zone of reasonableness" is due to either: (1) a misunderstanding of the scope of that zone or (2) poor mathematics. In either case, this brief has shown that Mr. Gorman's recommendations fall comfortably within the zone of reasonableness. Furthermore, this Brief demonstrates that Mr. Gorman's recommendation complies fully with the geographic dictates of the *Bluefield* Court as well as the financial integrity requirement of the *Hope* decision. In the final analysis, it should be apparent that, once again, Mr. Gorman has presented the "balanced analysis" preferred by the Commission. For all of these reasons, MEUA requests that the Commission award a return on equity in the range of 9.4% to 9.9% with a midpoint of 9.65%.

II. OFF-SYSTEM SALES MARGINS

- Industrial Intervenors Initial Brief at pages 29-50.
- KCPL / GMO Briefs at pages 154-157.

Reflecting the importance of this issue and its impact on KCPL's revenue requirement, MEUA devoted 21 pages towards fully briefing the issue of off-system sales margins. In that portion of its Brief, MEUA documented for the Commission how the recent rapid increase in Missouri retail rates has directly coincided with KCPL's poor performance in the wholesale market.[34] In addition, MEUA addressed, in detail, the financial disincentive that exists as a result of the different jurisdictional allocators used by Missouri and Kansas and how KCPL is directly responsible for creating this financial disincentive.[35] Furthermore, MEUA pointed out that by setting rates based upon the 25th percentile, the Missouri Commission established low expectations for KCPL and that, given its financial disincentive, KCPL has historically sought to simply meet that low expectation and nothing more.[36] Finally, MEUA addressed the fact that the reasons for setting rates at the 25th percentile are no longer applicable and that when expectations are increased, KCPL has demonstrated its ability to achieve higher margins in the wholesale market.[37] For all these reasons, and recognizing the flaws in KCPL's true-up analysis,[38] MEUA recommends that the Commission set off-system sales margins at the 40th percentile of KCPL's direct testimony analysis.[39]

---

[34] MEUA Initial Brief at pages 30-33.
[35] *Id.* at pages 34-37.
[36] *Id.* at pages 37-41.
[37] *Id.* at pages 41-44.
[38] *Id.* at pages 48-49.
[39] *Id.* at pages 45-47.

In contrast, despite the significance of this issue, KCPL devoted only three pages to off-system sales margins. In large part, the brevity of its brief reflects the paucity of evidence supporting KCPL's position. As MEUA noted in its Initial Brief, KCPL's position amounts to nothing more than asking the Commission to continue to use the 25th percentile because that is "consistent with the Commission's orders in the KCP&L's last three cases."[40] As this brief will show, however, KCPL's position is flawed and many of the statements relied upon in KCPL's Initial Brief are equally flawed. For all these reasons, the Commission should increase their expectations of KCPL and set rates using the 40th percentile of KCPL's analysis contained in Direct Testimony.

In this brief, the Industrials take issue with several comments and insinuations raised in KCPL's short brief.

First, KCPL asserts that the Commission should utilize the 25th percentile "given the risks continuing to be posed by the volatile natural gas market and the wholesale power markets in general."[41] KCPL fails, however, to recognize that it is compensated, through the return on equity analysis, for the risk that it incurs in the wholesale market. As KCPL admits, return on equity is established through the use of comparable companies which experience similar risks to KCPL.[42] In determining the risk profile of KCPL and identifying the companies that are truly comparable, analysts consider the risk factors set forth in KCPL's 10K filing with the SEC.[43] In its 10K filing, KCPL expressly

---

[40] *Id.* at page 44 (citing to Ex. 7, Blanc Direct, page 10).
[41] KCPL Brief at page 154 (paragraph 332).
[42] Tr. 3378.
[43] Tr. 3379.

points out that it has risk of "earnings volatility" associated with its participation in the wholesale electric market.[44] In fact, KCPL expressly notes:

> Wholesale power prices can be volatile. . . . Declines in wholesale market price, availability of generation, transmission constraints in the wholesale markets, or low wholesale demand could reduce the company's wholesale sales. These events could adversely affect Great Plain Energy's and KCP&L's results of operations, financial position and cash flows.[45]

Given that this aspect of KCPL's risk profile is included in the selection of comparable companies and the determination of a return on equity, KCPL is already compensated for incurring this risk. In fact, if the Commission were to take steps that would reduce this risk or otherwise shift it to the customers (i.e., adopt 25th percentile), it would be necessary to lower KCPL's return on equity to address the elimination / reduction of this risk.

<u>Second</u>, KCPL claims that since it "cannot control wholesale electricity prices, natural gas prices that drive such electricity prices, transmission constraints or the weather,"[46] the Commission should not expect any significant degree of performance from KCPL in the wholesale market. Again, as mentioned above, KCPL fails to account for the fact that it is compensated, through the selection of comparable companies and the determination of a return on equity, for this risk and factors that it "cannot control." Furthermore, as detailed extensively in MEUA's Initial Brief, KCPL has proven that it is capable of achieving higher levels of performance when expectations are increased.[47] In fact, in the last KCPL rate case, rates were set using the 44.5 percentile of projected off-

[44] Tr. 3380.
[45] Tr. 3381.
[46] KCPL / GMO Brief at page 155 (paragraph 333).
[47] MEUA Initial Brief at pages 40-41.

system sales margins.[48] In 2010, despite these heightened expectations, KCPL **exceeded** this level of off-system sales margins.[49]

Third, KCPL attempts to find support for its position by clinging to non-issues. Specifically, KCPL notes that "no party has questioned the probabilistic analysis conducted by Mr. Schnitzer."[50] KCPL is correct in this regard. In fact, both the position advanced by the Industrials (40th percentile) and KCPL (25th percentile) rely upon the same model used by Mr. Schnitzer. As Mr. Schnitzer pointed out, there is nothing "statistically significant" in his analysis that would compel the use of the "25th percentile over any other point on [his] probability curve."[51] As such, the fact that no party has questioned the probabilistic analysis conducted by Schnitzer is not relevant to the Commission's determination of the appropriate point along that curve at which to set rates.

Fourth, KCPL asserts that off-system sales are "a significant contributor to [KCPL's] earnings."[52] As such, KCPL believes that the Commission should set margins using the 25th percentile. As demonstrated in MEUA's Initial Brief, off-system sales margins are no longer a significant contributor to KCPL's earnings. Where off-system sales margins once represented over 60% of KCPL's earnings, they now barely make up 20% of KCPL's earnings.

---

[48] Ex. 121, page 3.
[49] Ex. 1209.
[50] KCPL / GMO Brief at page 155 (paragraph 334).
[51] Tr. 3324.
[52] KCPL / GMO Brief at page 157 (paragraph 339).

OFF-SYSTEM SALES AS A PERCENTAGE OF KCPL EARNINGS			
	Earnings	Off-System Sales Margins	Percentage
2005	$144 million	**___________**	60.31%
2006	$149 million	**___________**	52.55%
2007	$157 million	**___________**	47.75%
2008	$125 million	**___________**	44.84%
2009	$129 million	**___________**	25.14%
2010	$163 million	**___________**	20.41%

Source: Earnings: Ex. 1212 (years 2005-2009) and Ex. 1213 (year 2010)
Off-System Margins: Ex. 1210 (years 2005-2009) and Ex. 1209 (year 2010)

Noticeably, the decrease in significance of off-system sales margins occurred at the same time that this Commission reduced its expectations to the 25th percentile and KCPL proposed the unused energy allocator in Kansas.

Fifth, KCPL claims, without providing the entire story, that "setting off-system sales margins at the 25th percentile permitted the (sic) KCP&L to ask for $32 million less in its rate increase than it otherwise would."[53] Through this statement, KCPL acts as if the inclusion of off-system sales margins, in any amount, is nothing more than a magnanimous gesture designed to reduce its revenue requirement request. In fact, KCPL's inclusion of off-system sales margins in its revenue requirement is driven by the fact that ratepayers compensate KCPL for every cost necessary to engage in off-system sales transactions[54] and because KCPL has committed to continue to recognize all off-system sales margins as a reduction to retail rates.[55] Therefore, its inclusion of off-

[53] KCPL / GMO Brief at page 156 (paragraph 337).
[54] Tr. 3373-3375.
[55] Tr. 3376.

system sales margins is required. Furthermore, such a reason does not provide a basis for use of the 25th percentile. In fact, while KCPL's revenue requirement would be higher if KCPL had not included off-system sales margins as an offset to retail rates, the evidence also shows that KCPL's requested revenue requirement is higher than it would be if KCPL used a normalized level of off-system sales. In this case, if KCPL were to accept the 40th percentile, KCPL's revenue requirement would be $16.5 million lower.[56]

Sixth, KCPL advocates for the decreased level of off-system sales contained in Schnitzer's true-up analysis.[57] As Schnitzer admits, however, his true-up analysis is directly dependent on the assumptions provided by KCPL.[58] In fact, Schnitzer acknowledges that he undertakes no effort to verify these KCPL assumptions.[59] In this case, however, it has been demonstrated that the KCPL assumptions are faulty.[60] Ultimately, each of these questionable assumptions is designed to decrease Schnitzer's projected off-system sales margins.

While KCPL questions quantification of the corrected assumptions subsequently provided by MEUA, it nevertheless admits that aspects of MEUA's claims regarding KCPL's faulty assumptions have merit.[61] Ultimately, MEUA asserts that, with the two corrected assumptions offered by Mr. Meyer, the results of Schnitzer's true-up analysis (40th percentile = **________________**)[62] would be consistent with the results of Schnitzer's analysis in his direct testimony (40th percentile = **__________**).[63]

---

[56] ($83.8 million (MEUA position) - $54.9 million (KCPL position) * jurisdictional energy allocator of 57% = $16.47 million.
[57] KCPL / GMO Brief at pages 155-156 (paragraphs 334-335).
[58] Tr. 3323.
[59] *Id.*
[60] Ex. 1216, Meyer True-Up Rebuttal, pages 5-8.
[61] Tr. 4828-4829.
[62] Tr. 4918.
[63] Ex. 1216, Meyer True-Up Rebuttal, page 5.

In fact, the flaws in the Schnitzer's true-up analysis as a result of the flawed KCPL assumptions are best seen by the following simplistic analysis. Since 2010, KCPL has added several additional sources of energy that should be available for off-system sales. Specifically, KCPL has added the energy from Iatan 2, Spearville 2, the expired MJMUEC contract, and the increased capacity of Wolf Creek. Each of these additional sources of energy represents incremental off-system sales above those actually achieved in 2010. Using these factors of increased energy and the dollar quantification provided by KCPL, one can easily see that Schnitzer's true-up analysis, as a result of KCPL's erroneous assumptions, is faulty.

Actual KCPL Off-System Sales Revenues in 2010	**__________**[64]
Addition of Iatan 2 Energy into Wholesale Market	**__________**[65]
Availability of Expired MJMEUC firm contract	**__________**[66]
Addition of Spearville 2 Wind Energy	**__________**[67]
TOTAL	**__________**

[64] Exhibit 1209. KCPL's off-system sales revenues in 2010 did not include the sale of any energy from Iatan 2. (Exhibit 1219). Therefore, the sale of energy from Iatan 2 would be incremental to KCPL's 2010 off-system sales achievement.

[65] Iatan 2 capacity is 472 MWs. Multiplying by 8760 hours in the year, this is equivalent to maximum energy output from Iatan 2 of 4,134,720 MWh's. Using an availability rate of 90%, this means that Iatan 2 should generate an additional 3,721,248 MWHs of available energy. KCPL assumes an "around-the-clock" price of energy of **_____** / MWh. (Exhibit 124). Therefore, off-system sales revenues associated with Iatan 2 would be **___________**. In 2009, KCPL achieved a margin (revenues less fuel costs) on off-system sales of **_______**. (Exhibit 220, page 5). As such, the additional of Iatan 2 alone, should provide for incremental off-system sales margins of **__________**.

[66] **_____________** times **_____** / MWh (Exhibit 124) times **______** (Exhibit 220, page 5) = **________**.

[67] Spearville 2 capacity is 48 MWs. (Exhibit 307, page 3). Multiplying by 8760 hours in the year, this is equivalent to maximum energy output from Spearville 2 of 420,480 MWh's. Using an availability rate of 30%, this means that Spearville 2 should generate an additional 126,144 MWHs of available energy. KCPL assumes an "around the clock" energy price of **______** / MWh. Therefore, off-system sales revenues associated with Spearville 2 would be **_________**. In 2009, KCPL achieved a margin (revenues less fuel costs) on off-system sales of **______**. (Exhibit 220, page 5). As such, the addition of Spearville 2 alone, should provide for incremental off-system sales margins of **_________**.

This simple analysis, accounting for the incremental sources of energy now available versus 2010, readily demonstrates the problems associated with Schnitzer's true-up analysis. As such, the Commission should continue to rely on the analysis contained in Schnitzer's Direct Testimony.

III. OFF-SYSTEM SALES ADUSTMENTS

- Industrial Intervenors Initial Brief at pages 51-55.
- KCPL / GMO Briefs at pages 157-159.

A. SPP LINE LOSS CHARGES

At pages 158-159, KCPL addresses the issue of SPP line losses in two simple paragraphs. In paragraph 1, KCPL describes the issue; while in paragraph 2, KCPL simply recites the positions of the parties. Nowhere, however, does KCPL provide <u>any</u> basis for its adjustment to reduce off-system sales margins.

In its testimony and its Initial Brief, MEUA states that KCPL's adjustment is designed to address the increased cost associated with off-system sales outside the SPP region, but "fails to account for the increased revenues that also must occur with any of these transactions."[68]

As Mr. Schnitzer admits, while KCPL makes off-system sales outside of the SPP region,[69] he only models the expected margins occurring as a result of off-system sales within the SPP footprint.[70] Despite the increased costs and revenues that occur with the sales outside the SPP region, Mr. Schnitzer's model does not attempt to capture those margins.[71]

Through its adjustment, KCPL proposes to only recognize the cost side of any transactions which occur outside of the SPP region. KCPL fails to account for the fact that, in addition to the cost, there are increased revenues associated with these transactions as well.[72] KCPL's adjustment therefore is one-sided. As MEUA notes, "it is

---

[68] MEUA Initial Brief at page 51.
[69] Tr. 3310.
[70] Tr. 3309.
[71] Tr. 3310.
[72] *Id.*

inappropriate to simply reflect the cost associated with these sales without also reflecting the increased price that KCPL will receive from these sales."[73] For this reason, the KCPL adjustment should be rejected.

B. PURCHASES FOR RESALE

At page 158, KCPL provides the entirety of its argument regarding its adjustment for purchases for resale in two paragraphs. The entirety of KCPL's argument appears to be centered on the fact that "Staff does not oppose this adjustment."[74] KCPL, however, again fails to account for MEUA's primary criticism, that this adjustment attempts to separate the gains associated with these transactions from the attendant losses. By its adjustment, KCPL attempts to assign all gains from these transactions to the shareholders, while leaving ratepayers saddled with any losses. As Mr Meyer explains,

> Historically, KCPL shareholders would receive the net benefit (i.e., the gain portion less the loss portion). By this adjustment, however, KCPL wants to separate the gain portion of the transaction from the loss portion of the transaction.[75]

The KCPL adjustment is decidedly one-sided. Specifically, the adjustment seeks to allocate the gain and assign it to the shareholders while subsequently saddling the ratepayers with the loss. For this reason, the adjustment should be rejected.

In its Initial Brief, MEUA pointed out to the Commission the importance of burden of proof in this case. Based upon Supreme Court decisions, MEUA noted that the burden of proof is a "substantial right" of the ratepayers and should be "rigidly enforced"

---

[73] *Id.*
[74] KCPL / GMO Brief at page 158.
[75] Ex. 1201, Meyer Direct, page 10.

by the Commission.[76] Application of burden of proof to this issue demands that KCPL offer more than simply "Staff does not oppose this adjustment." Instead, burden of proof requires KCPL to prove their need for the higher rates provided by this adjustment. In this case, KCPL has not met its burden of proof. MEUA initially raised its concern (i.e., the inappropriate separation of gains from losses) in the context of its Initial Brief. Despite multiple rounds of testimony, cross-examination and now Initial Brief, KCPL has still not addressed this concern. Absent competent and substantial evidence to prove that gains are not being inappropriately separated from losses, KCPL has not met its burden of proof and this adjustment should be rejected.

C. REVENUE NEUTRALITY UPLIFT CHARGES

Again, in its discussion of revenue neutrality uplift charges, KCPL argument amounts to "Staff does not oppose this adjustment."[77] KCPL, however, offers no evidence or argument to address the points raised by MEUA in its testimony and brief. Specifically, MEUA argues that KCPL's adjustment is an inappropriate attempt to expand the scope of the off-system sales tracker to include costs more properly related to fuel expense.

As Mr. Meyer explains, "the settlement of the Energy Imbalance Service market is more related to native load circumstances and not driven by OSS. Energy to serve native load is clearly greater than energy needed to make OSS, and it is that energy that creates the Energy Imbalance Service market."[78] Given this, these revenue neutrality

[76] See, MEUA Initial Brief at page 9.
[77] KCPL / GMO Brief at page 159.
[78] Exhibit 1202, Meyer Surrebuttal, page 8.

uplift charges should not be considered as an adjustment to off-system sales margins, but rather as a cost of KCPL's annualized fuel expense.[79]

Again, KCPL has not met its burden of proof related to this adjustment. That burden of proof requires KCPL to provide competent and substantial evidence to prove the reasonableness of this adjustment which leads to higher rates. Instead, KCPL simply offers that "Staff does not oppose this adjustment." KCPL has not met its burden of proof and this adjustment should be rejected.

[79] Ex. 1201, Meyer Direct, page 12. ("I am proposing that these net costs be included in annualized fuel expense and not reflected as a reduction to KCPL's OSS margins). See also, Exhibit 1202, Meyer Surrebuttal, page 7.

IV. MERGER TRANSITION COSTS

- Industrial Intervenors Initial Brief at pages 56-60.
- KCPL / GMO Briefs at pages 163-168.

In their Initial Brief, KCPL / GMO selectively quote from the Commission's Report and Order approving the Great Plains Energy acquisition of Aquila.[80] As KCPL / GMO note, the Commission held that it was "not a detriment to the public interest to allow recovery of transition costs of the merger."[81] With this in mind, the Commission permitted KCPL / GMO to defer and amortize those costs for future recovery.[82] KCPL / GMO fail to reference, however, other aspects of that decision. For instance, KCPL / GMO seek to ignore the following key findings:

> Nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the transactions herein involved.[83]
>
> The Commission reserves the right to consider any ratemaking treatment to be afforded the transactions herein involved in a later proceeding.[84]

Thus, in its merger decision, the Commission left open the possibility of future recovery of transition costs. The Commission, however, expressly noted that the issue of ratemaking would be left for "a later proceeding."

In its testimony, Staff provides unrefuted evidence that KCPL / GMO have already recovered these transition costs through their retention of synergy savings. In fact, relying upon Company documents, Staff shows that Great Plains' shareholders have

---

[80] *Report and Order*, Case No. EM-2007-0374 (issued July 1, 2008) ("*Merger Order*").
[81] *Id.* at page 241.
[82] *Id.*
[83] *Id.* at page 284.
[84] *Id.*

retained over $59.3 million in merger synergies through September 1, 2009.[85] Therefore, just 14 months after the closing the merger, Company shareholders had already ***fully recovered*** all of the merger transition costs ($51.8 million).[86] Moreover, the Company projects that its shareholders will retain over $194 million of synergy savings through 2013.[87] Despite the magnitude of these retained synergy savings, KCPL / GMO assert that they should be allowed to ***again*** recover transition costs from ratepayers.

In its Initial Brief, KCPL / GMO make several statements designed to mislead the Commission or misrepresent the scope and purpose of the Commission's Merger Order. ***First***, KCPL / GMO claim that Staff has "ignored the standard established by the Commission and instead imposed a different standard on the company."[88] In order to reach this conclusion, KCPL / GMO selectively emphasize certain aspects of the Commission's decision while ignoring other aspects. For instance, while paying scant attention to the Commission's expressed reservation of ratemaking treatment,[89] KCPL / GMO essentially claim that the Commission actually did issue ratemaking findings in that order.

It is well established, however, that multiple provisions "must be read together, and so harmonized as to give effect to [all] when this can be reasonably and consistently done."[90] In this case, KCPL / GMO's interpretation does not attempt to harmonize these provisions. Rather, KCPL / GMO attempts to exalt the section allowing for deferral of transition costs while completely ignoring the expressed reservation of ratemaking. The

---

[85] Ex. 230, Majors Rebuttal, page 12.
[86] *Id.*
[87] *Id.* at page 144.
[88] KCPL / GMO Initial Brief at page 165.
[89] *Id.* at page 167.
[90] *State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4, 8 (Mo. banc 1975) (citing to *Straughan v. Meyers*, 187 S.W. 1159 (Mo. 1916).

only interpretation which properly harmonizes all sections is that advanced by Staff. Specifically, while the Commission allowed for the deferral of transition costs for possible future recovery, the Commission expressly reserved any decision regarding that recovery until "a later proceeding." Recognizing that this is the "later proceeding," Staff and MEUA ask the Commission to recognize that the Company has already fully recovered its transition costs through the retention of synergy savings and any further recovery would be inequitable.

It is worth pointing out, as well, that despite KCPL / GMO's implications to the contrary that the 2008 Commission that issued the Merger Order could not bind this Commission to a particular ratemaking procedure. "The PSC is not bound by *stare decisis* based on prior administrative decisions, so long as its current decision is not otherwise unreasonable or unlawful.[91] Thus, even had the Merger Order not expressly reserved any questions regarding ratemaking treatment to a "later proceeding," this Commission would still have the ability to consider the issue without being bound by the previous Commission's decision.

<u>Second</u>, KCPL / GMO repeatedly emphasize that no party has questioned "the reasonableness or prudence of the merger transition costs."[92] It is equally important to note that KCPL / GMO have not questioned the quantification of synergy savings already recovered by shareholders as well as that projected to be recovered over the next several years. In fact, the quantification of retained synergy savings provided by Staff is taken verbatim from corporate documents.[93] Thus, the basic facts are ***<u>uncontested</u>***. While incurring $51.8 million in transition costs, shareholders retained over $59 million in

[91] *State ex rel. Ag Processing, Inc. v. Public Service Commission*, 120 S.W.3d 732, 736 (Mo. banc 2003).
[92] KCPL / GMO Brief at page 165. See also, page 168.
[93] Ex. 230, Majors Rebuttal, page 14.

synergy savings through September 1, 2009.[94] Further, through 2013, shareholders will have retained over $194 million in synergy savings.[95] Clearly then, shareholders have already recovered these costs.

Third, KCPL / GMO attempt to guilt the Commission into allowing recovery by noting that the implication of a Commission decision to the contrary would be the possible "write off of millions of dollars."[96] It should be pointed out that, given the clarity with which the Commission reserved any ratemaking treatment for "later proceedings," any potential write off is the direct result of the Company over-stepping. Specifically, to the extent that the Company gave assurances of recovery of transition costs, despite the Commission's express statement to the contrary, that is the Company's fault and the guilt for such an over-step should not be imposed on the Commission.

Write offs are always a possibility when one assumes ratemaking treatment before it is expressly granted. To now use this argument of write offs in an attempt to guilt this Commission into allowing double recovery of these costs is unfair to the ratepayers of KCPL / GMO.

---

[94] *Id.* at page 12.
[95] *Id.*
[96] KCPL / GMO Brief at page 168.

V. RATE CASE EXPENSE

- Industrial Intervenors Initial Brief at pages 61-67.
- KCPL / GMO Briefs at pages 168-175.

In its Initial Brief, MEUA pointed out that rate case expense has been skyrocketing in recent years.[97] Utilities have increasingly sought outside consultants and attorneys to do the work that should be done by available in-house personnel. Given the "if I spend it, ratepayers will pay for it" attitude, KCPL / GMO have projected that they will incur a total of ***$13.8 million***[98] in rate case expense for this case.[99] It is unquestioned that Company shareholders will benefit to some degree from this rate case expense. Nevertheless, the Company asks that it be allowed to recover the entirety of this rate case expense from ratepayers.

In their Initial Brief, KCPL / GMO devote several pages[100] to the argument that this issue "was tried in the true-up case."[101] KCPL / GMO gloss over the fact that this was precipitated by the Companies' failure to provide adequate documentation for the excessive rate case expense incurred. At pages 104-109 of its Initial Brief, Staff provides an excellent rendition of the problems it faced in receiving adequate documentation regarding KCPL / GMO's rate case expense. In fact, Staff notes that the Kansas Commission expressed concerns with KCPL's unresponsive nature towards rate case

[97] MEUA Initial Brief at page 61.
[98] In their Initial Brief, KCPL / GMO claim that they only seek recovery of $7.1 million of rate case expense. As the Companies note, this is only the amount incurred through the true-up of this case (December 31, 2010). Thus, all costs associated with litigating this matter and writing the brief will be over and above this amount. As Company witness Weisensee points out, KCPL / GMO project that the will incur an additional $6.1 million after this date. (Tr. 3634).
[99] Ex. 309, Majors True-Up Direct, page 3 and Tr. 3634.
[100] KCPL / GMO Brief at pages 169-171.
[101] *Id.* at page 169.

expense information requests. As Staff further points out, "[t]he KCC noted that '[t]he attempt to determine rate case expense is hampered by a lack of detailed information in the record…Because that detailed information is not contained in this record, *the Commission has considered denying recovery of all rate case expense in this proceeding*.'"[102] Therefore, KCPL / GMO's complaint that this matter was addressed during true-up should be summarily rejected given KCPL / GMO's pattern of unresponsiveness towards any questions regarding the magnitude and prudence of the incurred rate case expense.

Finally, it should be pointed out that KCPL / GMO's Brief provides very little support to rebut MEUA's assertion that the Companies failed to engage in any level of "cost containment."[103] As MEUA pointed out,

> In its last rate litigated rate case, KCPL in-house attorneys shared in a great deal of the work associated with litigating that case. Those attorneys, whose salary and benefits are already recovered through rates, litigated issues associated with policy, off-system sales margins, Hawthorn 5 settlement costs and uranium enrichment overcharges.[104]

As documented, while KCPL in-house attorneys were present in the hearing, they simply watched <u>eight</u> outside attorneys litigate the entirety of this case.[105] It is not surprising, given this complete abdication of responsibility to outside counsel, that KCPL had paid mammoth amounts in rate case expense to outside firms. Specifically, as of December 31, 2010, before a single word had been uttered in the hearing room or a single character typed into a brief, KCPL had paid the following amounts to the following firms:

---

[102] Staff Brief at page 109 (citing to Exhibit 231, Schedule 5-8).
[103] See, MEUA Brief at pages 63-67 (citing to *Report and Order*, Case No. WR-93-212 (issued November 18, 1993).
[104] MEUA Brief at page 63 (citing to Ex. 1217).
[105] *Id.* at pages 63-64.

Firm	KCPL Case[106]	MPS Case[107]	L&P Case[108]
Schiff Harden	$988,000	$275,000	$89,000
Stinson Morrison	$92,000	$18,000	$28,000
SNR Denton	$423,000	$131,000	$123,000
Fischer & Dority	$310,000	$170,000	$123,000

Moreover, despite the availability of in-house expertise, KCPL retained numerous outside consultants including Chris Giles;[109] Gary Goble;[110] Samuel Hadaway;[111] Steven Jones;[112] Larry Loos;[113] Daniel Meyer;[114] Kris Nielsen;[115] Paul Normand;[116] Kenneth Roberts;[117] Michael Schnitzer;[118] John Spanos;[119] and Ken Vogl.[120]

In their Brief, KCPL / GMO provide little to rebut the extravagance of rate case expense or the allegations that they failed to engage in any material level of cost containment. Instead, KCPL / GMO meekly claim, without any referenced support: (1) "It is clear that the company did not seek to recover duplicative services in rate case expense"[121] and (2) "The company should not be penalized for seeking out experience and qualified consultants."[122]

---

[106] Tr. 3636-3637. It is important to remember that these are the expenses from Schiff, Harden associated with presentation of this rate case and do not reflect the millions of dollars of other expenses that have been capitalized into the cost of Iatan 1 and Iatan 2.
[107] Tr. 3639
[108] Tr. 3639
[109] Ex. 24 and 25.
[110] Ex. 26.
[111] Ex. 27-29.
[112] Ex. 38.
[113] Ex. 39-41.
[114] Ex. 43-45.
[115] Ex. 46.
[116] Ex. 47-49.
[117] Ex. 50-53.
[118] Ex. 58.
[119] Ex. 59-61.
[120] Ex. 62.
[121] KCPL / GMO Brief at page 175
[122] *Id.*

Interestingly, when given an opportunity to discuss their cost containment efforts, KCPL / GMO failed. The following exchange with Commissioner Kenney reflects the apathetic approach KCPL takes towards cost containment of legal expenses and consultant bills.

> Q. Okay. Was there ever a time when you objected to Shiff Hardin's bills and asked them to make adjustments?
>
> A. No. There were times that I would talk to the people who were working closely with them and make sure the type of work they were describing, just to verify what was going on, so I questioned. But did I ever challenge in the sense of ask them for a deduction; no. I never asked for a deduction or recommended a deduction would have been my role.
>
> Q. Are you aware of anybody that did in the legal department?
>
> A. I don't know that.
>
> Q. You're not personally aware of any circumstances at which some bill was objected to and asked for an adjustment?
>
> A. No. I'm just not aware of any.
>
> Q. How about with respect to the outside consultants' bills?
>
> A. Similar. I remember there certainly were discussions around, you know, was so-and-so in town that week. What were they working on? What were they doing? But as far as if there was ever a formal challenge, I just don't know. I wasn't part of that process.[123]

Certainly, given that KCPL / GMO are requesting recovery of approximately $13.8 million of rate case expense, one would expect that KCPL's chief policy witness would be ready to discuss KCPL's cost containment efforts. Absent such evidence, and given that such expenses are beneficial to ratepayers, the Commission should disallow 33% of KCPL / GMO's requested rate case expense.

[123] Tr. 267-268.

VI. ADVANCED COAL CREDIT ARBITRATION COSTS

In its Initial Brief on the Advanced Coal Tax Credit Issue, KCPL spends one page regarding the appropriateness of recovering approximately $617,000 of legal fees associated with arbitrating the advanced coal credit issue. KCPL claims that it should be permitted to recover these expenses in that "***after the arbitration order was issued***," KCPL worked "to pursue modifying the [Memorandum of Understanding] with the IRS" as well as "to preserve the tax credits and to avoid a normalization violation."[124]

KCPL fails to recognize that it should have never been in a position to need to pursue modifying the Memorandum of Understanding or to preserve the tax credits and avoid a normalization violation. Such actions became necessary solely because of KCPL's **________________**.[125] It is inequitable to saddle ratepayers with the costs of cleaning up KCPL's **______________**.

[124] KCPL / GMO Brief at page 8.
[125] Ex. 231, Majors Surrebuttal, page 19.

VII. CONCLUSION

For all the reasons expressed in this brief, and based upon the substantial and competent evidence in the record, MEUA recommends that the Commission adopt the following positions:

1. Award KCPL / GMO a return on equity in the range of 9.4 – 9.9%, with a midpoint of 9.65%;
2. Set rates based upon a level of off-system sales margins of **___________**;
3. Reject all of KCPL's proposed off-system sales adjustments;
4. Deny any additional recovery of merger transition costs;
5. Disallow 33% ($4.6 million) of the $13.8 million of rate case expenses and annualize the remaining amount over four years for a normalized level of $2.3 million to be included in rates;
6. Disallow any recovery of expenses associated with arbitrating the advanced coal credit issue with Empire; and
7. Reject KCPL's unsupported request to increase its true-up case by $9.78 million.

Respectfully submitted,

____

David L. Woodsmall (MBE #40747)
Jeremiah D. Finnegan (MBE #18416)
Stuart W. Conrad (MBE #23966)
428 E. Capitol Ave., Suite 300
Jefferson City, MO 64111
(573) 635-2700 voice
(573) 635-6998 facsimile
E-mail: dwoodsmall@fcplaw.com

ATTORNEYS FOR THE INDUSTRIAL INTERVENORS

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: March 18, 2011