

**BEFORE THE PUBLIC SERVICE COMMISSION
OF STATE OF MISSOURI**

In the Matter of a Proposed Experimental)	
Regulatory Plan of Kansas City Power)	Case No. EO-2005-0329
& Light Company)	

PREHEARING BRIEF OF KANSAS CITY POWER & LIGHT COMPANY

Kansas City Power & Light Company (“KCPL” or “Company”) submits this Prehearing Brief in accord with the Commission’s Order of June 6, 2005. Pursuant to that Order, KCPL provides a summary of the testimony that its seven witnesses will provide, as well as the factual and legal conclusions that the testimonial and documentary evidence will support.

I. KCPL Witnesses.

1. Chris B. Giles: Vice President, Regulatory

Mr. Giles will testify concerning the process that led to the filing of the Stipulation and Agreement (“Stipulation”) in this proceeding. He will review the procedural history of the extensive workshop events that occurred in Docket No. EW-2004-0596, which the Commission opened on June 9, 2004. He will note that on July 1, 2004 the Commission closed the Investigatory Docket that KCPL’s Application opened in Case No. EO-2004-0577.

He will explain that KCPL declined to pursue a traditional rate case model to avoid the often contentious issues that arise after a utility implements a construction and investment plan. Instead, KCPL chose the collaborative workshop process to hear the perspectives of all interested organizations and individuals, and to take advantage of this collective wisdom. Mr. Giles will explain how the workshop was organized to deal with resource planning, financial, and other

issues. He will describe the participants in the workshop, which included utilities, industrial consumers, citizen groups and local governments, as well as Staff and Public Counsel.

Mr. Giles will outline the key benefits of the Stipulation, including KCPL's ability to meet growing demand, avoid reliance on high cost fuels, implement environmental controls that will reduce total emissions from the KCPL fossil fleet (even with the addition of a new coal unit at Iatan 2), add renewable wind energy, and implement wide-ranging, customer-focused demand response, efficiency and affordability programs. In particular, he will:

- Explain how environmental investments in Iatan 1 and LaCygne 1 will provide significant reductions in site emissions of sulfur dioxide ("SO₂"), nitrous oxides, particulate matter and mercury, and that even with the construction of Iatan 2, total emissions from the Iatan site will be less than from the Iatan 1 plant today.
- Describe how 100 MW of new wind generation will be installed in 2006, with an additional 100 MW of wind generation to be installed in 2008 if supported by a detailed study.
- Review KCPL's plans to construct the 800-900 MW pulverized coal-fired Iatan 2 unit, of which KCPL will own approximately 500 MWs, with the balance being owned by other utility partners.
- Provide details on KCPL's \$52.8 million commitment to provide demand response, efficiency and affordability programs in both Missouri (\$29 million) and Kansas (\$23.8 million).
- Describe the \$42.4 million in transmission and distribution infrastructure investments that KCPL intends to make over the 5-year period of the Regulatory Plan.

Noting that the Stipulation contains a Rate Moratorium until the end of 2006, Mr. Giles will describe the process by which the Commission will oversee potentially four rate cases, a class cost of service study, and a cost-control system to deal with any cost overruns during the construction of the coal and wind projects, as well as the environmental upgrades. He will explain how KCPL may propose an Interim Energy Charge in a general rate case. He will also

explain how the Stipulation provides for current and additional amortizations to be managed during the Regulatory Plan, which will permit KCPL to maintain its financial integrity and its current investment grade rating.

Finally, Mr. Giles will confirm that KCPL has agreed to a 250 basis point reduction in the equity portion of the AFUDC (Allowance for Funds Used During Construction) applicable to Iatan 2.¹ He will also state that revenue from wholesale off-system sales, as well as revenue from transmission services will continue to be treated “above the line,” thus extending the current benefits that ratepayers receive.

2. Michael W. Cline: Treasurer, Great Plains Energy, Inc.

Mr. Cline, the Treasurer of KCPL’s parent company, will explain why investor confidence is critical to the Regulatory Plan’s expenditures of approximately \$1.3 billion over the 2005-2011 period. Approximately \$600-\$700 million will be raised through equity and debt offerings, almost \$500 million in senior notes will be refinanced, and \$342.9 million of tax-exempt debt will either be remarketed or refinanced. He will also explain why the equity investor view of the Regulatory Plan will have a major influence on Great Plains Energy’s publicly traded stock.

He will review the status of KCPL’s senior unsecured debt, currently rated A3/Stable Outlook by Moody’s and BBB/Stable Outlook by Standard & Poors (“S&P”). Mr. Cline will explain why S&P’s understanding of the Regulatory Plan was important because its rating was two credit levels below Moody’s and only one level above the minimum level to be considered investment grade. He will discuss how KCPL engaged S&P on these issues, including its Rating

¹ KCPL agreed to a 250 basis point reduction at Staff’s request, which is what KCPL agreed to in the Kansas proceeding. Therefore, Mr. Giles’ Direct Testimony on page 20, as well as the provisions currently in the Stipulation at § III. B.1.g at 17 will be amended to reflect this change from the 125 basis points reduction stated there.

Evaluation Service (“RES”), which S&P uses to render credit rating assessments based upon financial and operating assumptions.

Importantly, Mr. Cline will review KCPL’s discussions with S&P, and explain how the initial reaction of S&P to certain “base-case” projections prompted an RES assessment that would have resulted in a ratings downgrade for KCPL. After these discussions in late 2004, KCPL, Staff and Public Counsel spoke directly with S&P to explore various issues and concerns with the S&P analysts who had done the RES work. Following this exchange of views, S&P concluded that with a timing difference in the issuance of \$100 million of common stock (in 2006, not 2008), the investment grade rating of KCPL could be maintained.

Mr. Cline will also provide testimony regarding the financial modeling of the Regulatory Plan, including KCPL's intent to request Commission approval of the issuance of \$635 million of long-term debt over the period 2005-2009 for both new financing and refinancing purposes.

Finally, Mr. Cline will discuss other provisions in the Stipulation relating to how KCPL will issue debt securities, how the 10% interest cap on debt securities will operate, and the management of interest rate hedging instruments in conjunction with the debt securities to be issued as a result of the Regulatory Plan.

3. John R. Grimwade: Manager, Energy Resource Management

Mr. Grimwade, an engineer with experience in long-term Integrated Resource Planning (“IRP”) and the development of new generation resources, will review KCPL’s planning process, which forms the foundation of the recommendations in the Stipulation.

He will describe the most recent IRP process that began in 2003, and culminated in reports to Staff and Public Counsel in May 2004. The results of this IRP process indicated that

500 MWs in a new coal unit located at the Iatan site and up to 200 MWs in new wind resources were the best alternatives to meeting KCPL's long-term baseload needs. In this context, he will explain the Company's use of the MIDAS™ system dispatch and financial model that is designed for forecasting, budgeting and resource planning. Noting KCPL's expected capacity shortfall of 431 MWs in 2010, MIDAS™ was utilized to model regional energy market prices and to simulate the impact of the regional energy market on resource decisions made by KCPL.

Among the strategies assessed through MIDAS™ were (1) adding natural gas-fired combustion turbines, (2) adding a gas-fired combined cycle unit, and (3) the addition of a pulverized coal-fired unit. These were the three main resource strategies explored through MIDAS™ because other technologies, including Integrated Gasification Combined Cycle ("IGCC") technology, were not cost-competitive. The MIDAS™ assessment concluded that the addition of a 500 MW share of a pulverized coal-fired unit resulted in the lowest Present Value of Revenue Requirements ("PVR"). The modeling reached this conclusion having considered both "high" and "low" environmental regulation scenarios, the addition of more wind generation, various load growth scenarios, transmission constraints, and specific legislation requiring carbon dioxide reductions.

Additionally, Mr. Grimwade will discuss how the federal Production Tax Credit ("PTC") is a key for making wind generation competitive, as well as why IGCC is not currently a commercially available technology. There are few IGCC units operating in the world today, and none above 300 MWs. He furthermore will discuss the costs of an IGCC unit, projected to be 20% to 30% higher than the cost of a similar-sized pulverized coal unit, and equipment availability and technical concerns related to its operations. He will also review the other options that the Company considered in its resource planning process, including Nuclear, Circulating

Fluidized Bed, Distributed Generation, Solar, Fuel Cells, Biomass and Demand Side Management.

Finally, Mr. Grimwade will discuss KCPL's selection of environmental retrofits to Iatan 1 and LaCygne 1. He will explain why the Company chose the Selective Catalytic Reduction method ("SCR") for nitrous oxide control and baghouses for particulate control. He will review their proven effectiveness industry-wide, as well as KCPL's experience with these technologies at its Hawthorn 5 unit. For sulfur dioxide removal, he will review the Company's decision in favor of a wet scrubber installation. He will note how these environmental controls will assist the Kansas City Metropolitan Area in complying with the eight-hour ozone standard, as well as other environmental standards. He will also explain the In-Service Criteria included in Appendix H-1 of the Stipulation that will ensure any new generating resource or environmental retrofit is properly designed and meets certain operating criteria before being considered "used and useful."

4. Susan K. Nathan: Manager of Product Management

Ms. Nathan will explain the proposed Demand Response, Efficiency and Affordability Programs contained in the Stipulation, as well as the guidelines that were used to develop the portfolio of programs in the workshop process. She will describe the specific portfolio of programs contained in Appendix C to the Stipulation, which are:

- Demand Response - \$13.8 Million
 - Air conditioning cycling (Residential & Small Commercial Customers)
 - The Alliance and Energy Partnership (Commercial & Industrial Curtailment)

- Efficiency - \$12.7 Million
 - Residential:
 - Online Energy Information and Analysis
 - Home Performance with Energy Star (Training)
 - Change a Light, Change the World
 - Cool Homes Program (High Efficiency Cooling Rebates)
 - Energy Star Homes (New Construction)
 - Commercial & Industrial (“C&I”)
 - Online Energy Information and Analysis
 - C&I Energy Audits
 - C&I Custom Rebates - Retrofit
 - C&I Custom Rebates - New Construction
 - Building Operator Certification (Training)
- Affordability - \$2.5 Million
 - Affordable New Homes (New Construction)
 - Low Income Weatherization

KCPL will establish a Customer Programs Advisory Group to guide the Company in the development, implementation, monitoring and evaluation of the programs. Ms. Nathan will discuss the expected participation rates for each program, as well as the timing for their implementation.

She will also describe the major cost areas of the programs, as well as the benefits to be realized. KCPL will accumulate the program costs in regulatory asset accounts as they are incurred. Beginning with the 2006 Rate Filing, KCPL will begin amortizing the accumulated

costs over a ten-year period. The parties to the Stipulation reserved the right to establish a fixed amortization amount in a rate case prior to June 1, 2011.

5. Lori A. Wright: Controller

Ms. Wright will discuss (a) KCPL's accounting treatment of pension costs, (b) the modification of the useful life of the Wolf Creek Nuclear Generating Station from 40 to 60 years for depreciation purposes, and (c) the useful life of wind generation assets for depreciation purposes. Each of these topics is dealt with specifically by the Stipulation.

Regarding pension costs, she will describe the Stipulation's provision that KCPL recover the amount of the net prepaid pension asset that represents the recognition of a negative SFAS 87 result used in setting rates in prior years, pursuant to a specific methodology. The Stipulation will be consistent with the Settlement Agreement on Pension Expenses used in the Empire District Electric Co. rate proceeding, Case No. ER-2004-0570, with the proviso that a regulatory asset will be established in this case to account for a timing difference.

Regarding Wolf Creek depreciation, she will explain that the parties to the Stipulation have agreed that the Commission should authorize KCPL to use depreciation rates which reflect a 60-year useful life, and record an additional \$10.3 million (Missouri jurisdictional) of amortization expense to reflect such change. The basis for this modification is that the Wolf Creek Nuclear Operating Corp., of which KCPL is a major owner, anticipates obtaining a 20-year extension of its license from the Nuclear Regulatory Commission.

Finally, Ms. Wright will explain that KCPL will depreciate over a 20-year period the wind generation assets called for by the Stipulation.

6. William Edward Blunk: Supervisor of Fuel Planning

Mr. Blunk will explain the purpose of SO₂ emission allowance trading. He will discuss the goals and objectives of KCPL's SO₂ Emission Allowance Management Policy ("SEAMP"), as well as the highly confidential aspects of the initial SEAMP which is effective through March 31, 2007.

Noting that KCPL has an inventory of past, current and future vintage SO₂ allowances, SEAMP sets forth the procedures that KCPL will follow to manage its allowance inventory in order to benefit the Company and its customers, and to provide Staff and Public Counsel information relevant to the Commission's oversight of such activities. In this regard, he will explain how KCPL will use SEAMP to implement the provisions of the Clean Air Act Amendments of 1990, as well as the rules of the Acid Rain Program established by the U.S. Environmental Protection Agency that created this allowance trading system. He will also discuss, in confidential testimony, the revenue aspects of the Company's initial SO₂ Plan.

7. William P. Herdegen: Vice President, Distribution Operations

Mr. Herdegen will discuss the goals of the Asset Management Plan, including distribution and transmission investments, as well as distribution automation projects. The investment that KCPL contemplates for this Plan is \$42.3 million.

He will explain the goals of mitigating risks of major outages, minimizing the System Average Interruption Duration Index ("SAIDI"), and minimizing the number of customers with multiple interruptions. Mr. Herdegen will additionally describe the resource allocation plans to address anticipated risks to the distribution system, and how KCPL will manage asset replacement schedules and aging infrastructure. These efforts are designed to maintain KCPL's

Tier 1 reliability performance, which requires it to be in the top 25% of utilities participating in benchmark studies.

II. Factual and Legal Conclusions.

The evidence from these witnesses, as well as the exhibits that KCPL expects to be admitted, will compel the conclusion that after the Commission considers the issues embraced by the Stipulation, it should be approved. The Stipulation's Regulatory Plan is a comprehensive framework that appropriately addresses the need for a cost-sensitive but diverse resource adequacy program. Combining the best elements of proven coal-fired generation, environmental controls, renewable wind energy, and affordability and efficiency programs, the Regulatory Plan offers a sensible proposal for safe and adequate service well into the future.

From a financial perspective, the Stipulation adheres to traditional ratemaking principles. It calls for a maximum of four separate rate cases (§ III.B.3 at 29-44), a Class Cost of Service Study (§ III.B.3.a(vii) at 33), and continuous monitoring of the construction process (§ III.B.1.q at 28). The Stipulation reflects the heightened scrutiny that energy utilities are receiving in light of the 2000-2001 California energy market crisis, the Enron debacle, and the post-9/11 economy. The signatories have sensibly agreed that financial ratios play a role in a utility's ability to maintain its bonds at an investment grade rating during a significant period of construction. See Stipulation, § III.B.1.i at 18-22. The Stipulation provides that KCPL must take prudent and reasonable steps to maintain its investment rating and must continue to manage costs, improve productivity and preserve service quality during the Regulatory Plan. Id. at 19. Moreover, the signatories have agreed to support adding amortization amounts to KCPL's cost of service in rate cases when the projected cash flows resulting from the Company's Missouri jurisdictional

operations, as determined by the Commission, fail to meet or exceed that portion of the lower end of the top third of the BBB S&P range shown in Appendix E. Id. at 20.

The Commission's ability to issue orders consistent with this Stipulation have been long recognized in case law. See State ex rel. Utility Consumers Council of Missouri, Inc. v. PSC, 606 S.W.2d 222, 224-26 (Mo. App. W.D. 1980); State ex rel. Laclede Gas Co. v. PSC, 535 S.W.2d 561, 566-67 (Mo. App. K.C. 1976) (confirming Commission's power to grant interim rate increase). Furthermore, the authority of this Commission to approve an experimental rate plan is well within its powers. See Union Electric Co. v. PSC, 136 S.W.3d 146, 149, 152 (Mo. App. W.D. 2004). Indeed, the Court of Appeals has characterized the Union Electric experimental alternative regulation plan "not as an abdication of the Commission's responsibility to regulate, but as embodiment of it. It was an attempt to streamline the rate monitoring process and provided a means to resolve issues in lieu of the formal complaint process." Id. at 152. Like the experimental plans approved by the Commission for Union Electric in 1995 and 1997, this Stipulation contemplates "extensive and continuous monitoring and embrace[s] the recognition that not all items [can] be anticipated and addressed" Id. See also State ex rel. Laclede Gas Co. v. PSC, 535 S.W.2d at 567 n.1 (noting the Missouri Supreme Court "has long held" that the Commission has the power to grant interim test or experimental rates "as a matter of necessary implication from practical necessity").

Other jurisdictional and ratemaking principles remain completely intact in this Stipulation.

1. The Jurisdiction of the Commission has been Properly Invoked.

The Company's request, joined by the signatory parties, that the Stipulation and Agreement be approved has properly invoked the basic jurisdiction of the Commission which

pursuant to Section 386.250(1) extends to the manufacture, sale or distribution of electricity, and to “corporations owning, leasing, operating or controlling the same.” Section 386.250(7) provides for the broad exercise of this jurisdiction “to such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly.” The provisions of the Public Service Commission Law “shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities.” § 386.610.

The Regulatory Plan addresses a multitude of resource adequacy issues. Given KCPL’s obligation to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable” under Section 393.130.1, the Commission’s jurisdiction plainly exists. The exercise of jurisdiction by the Commission in this proceeding is also consistent with its general powers under Section 393.140. This provision contemplates the investigation “on its own motion” of “plants and methods employed in manufacturing, delivering and supplying electricity” in Section 393.140(3), as well as the ability to “prescribe the safe, efficient and adequate property, equipment and appliances thereof” in Section 393.140(5). Since the Commission has the power on its own motion to engage in such regulatory oversight, it follows that Commissioners may examine a Stipulation dealing with all these issues and approve it.

The regulations note that parties may file a stipulation and agreement as a proposed resolution of a contested case (4 CSR 240-2.115), but nothing prohibits parties from submitting a stipulation arising from other proceedings. To conclude that a contested case is a prerequisite to a resolution of serious and well-known issues would be contrary to the regulation’s purpose of promoting settlements, as well as contrary to Missouri law which permits settlements in other

contexts shortly after the filing of an action. See § 416.061.4 (consent judgments or decrees brought by Attorney General).

Numerous proceedings before the Commission have been initiated by the filing of a stipulation and agreement, or other motion to open an investigatory docket rather than a formal Application. *See e.g.* Re Stipulation and Agreement Reducing the Annual Missouri Retail Electric Revenues of Kansas City Power & Light Company, Order Denying Intervention And Approving Stipulation And Agreement, Case No. ER-99-313, 8 Mo.P.S.C.3d 113 (1999); Re Customer Class Cost of Service and Comprehensive Rate Design Investigation of Kansas City Power & Light Company, Order Approving Stipulation and Agreement, Case No. EO-94-199, 5 Mo.P.S.C.3d 76 (1996); Re Commission Inquiry Into Retail Electric Competition, Order Establishing Task Force, Case No. EW-97-245, 6 Mo.P.S.C.3d 302 (1997).²

The Commission has the power to waive any of its rules of practice and procedure for good cause under 4 CSR 240-2.015. Clearly, the unprecedented effort by the Company and other signatory parties to address the multitude of complex issues raised by the workshop process in Case No. EW-2004-0596, and agree upon the comprehensive framework embodied in the Stipulation constitutes good cause.

² See also Re Investigation of Energy Policy Act of 1992, Order Approving Stipulation And Agreement, Case No. GO-94-171, 3 Mo.P.S.C.3d 13 (1994). Case No. TW-2004-0324 (Concerning a study of Voice over Internet Protocol); Case No. TW-2004-0471 (PSC inquiry into the Metropolitan Calling Area (MCA) Plan); Case No. TW-2004-0149 (PSC inquiry into the possibility of impairment without unbundled local circuit switching when serving the mass market); Case No. TW-2003-0063 (Investigation into the effects of bankruptcy of telecommunications carriers in Missouri); Case No. TW-98-356 (Review of the technical and financial provisioning of calling scopes in a competitive environment); Case No. TW-98-155 (Investigation into the provision of Internet access in Missouri); Case No. TW-98-207 (Investigation of payphone issues); Case No. TW-98-333 (Investigation into provision of Community Optional Service).

2. The Stipulation Creates Obligations for the Signatories, not the Commission.

As it stands, the Stipulation is a contract among the parties who will be obligated to carry out its terms if approved by the Commission. See Stipulation, § III.B.10.f at 53. However, the Commission's approval will not make it a party to the contract. Id., § III.B.10.g at 53-54. The Stipulation expressly provides that it "does not constitute a contract with the Commission," whose regulatory powers remain fully intact. Id. It is, therefore, consistent with Missouri law. See State ex rel. Chicago, Rock Island & Pacific R.R. v. PSC, 312 S.W.2d 791, 796 (Mo. 1958); Union Elec. Co. v. PSC, 136 S.W.2d 146, 152 (Mo. App. W.D. 2004).

Approval of the Stipulation, however, does include Commission approval of the following items: (1) KCPL is authorized to manage its SO₂ emission allowance inventory, including the sales of such allowances, as detailed in Paragraph III.B.1.d (Stipulation, pp. 8-10); (2) KCPL is authorized to establish a regulatory asset or liability on KCPL's books related to FAS 87 pension expense, as detailed in Paragraph III.B.1.e (Stipulation, pp. 10-15); (3) KCPL is authorized to reduce its AFUDC rate in the equity portion of the AFUDC rate applicable to Iatan 2, as detailed in Paragraph III.B.1.g³; (4) KCPL is authorized to record additional amortization expense in the amount of \$10.3 million on an annual Missouri jurisdictional basis beginning with the effective date of the Agreement until the effective date of the tariffs resulting from Rate Filing #1, as detailed in Paragraph III.B.3.a of the Agreement (Stipulation, p. 18); (5) KCPL is authorized to begin recording depreciation expense for the Wolf Creek Nuclear Generating States based upon a 60-year life span, and KCPL is authorized to use depreciation rates for the various nuclear plant accounts, as detailed in Paragraph III.B.1.n (Stipulation, p. 24); (6) KCPL is authorized to depreciate wind assets over a 20 year life and use depreciation rates for wind

³ See also page 3 and footnote 1 herein for the details of the amended AFUDC rate reduction. KCPL will agree to utilize in both Missouri and Kansas a 2.50% or 250 basis point reduction in the AFUDC rate.

assets, as detailed in Paragraph III.B.3.k (Stipulation, p. 23); and (7) KCPL is authorized to accumulate the Demand Response, Efficiency and Affordability Program costs in regulatory asset accounts as the costs are incurred, and amortize those costs as detailed in Paragraph III.B.5 (Stipulation, pp. 46-49).

3. There is no Violation of Section 393.135 and its “Fully Operational and Used For Service” Standard.

The Stipulation does not violate the “fully operational and used for service” standard of Section 393.135 with regard to any of the infrastructure contemplated in the Regulatory Plan. A strict set of In-Service Criteria is contained in Appendix H, which applies to all of the Company’s units. KCPL, Staff and Public Counsel have further agreed to develop in-service criteria for emissions equipment on the Company’s coal units. See Stipulation, § III.B.1.1 at 23.

The provisions relating to current and special amortizations are based on the Company’s current operations, not future projected events. Id., § III.B.1.i at 19-21. Such amortizations will be managed to maintain KCPL’s financial integrity, in a manner similar to tax normalization and accelerated depreciation which have been found to be proper tools of ratemaking by the courts. State ex rel. Utility Consumers Council of Missouri, Inc. v. PSC, 606 S.W.2d 222, 224-26 (Mo. App. W.D. 1980) (approving Commission’s use of the normalization of taxes which provided utility with substantial tax benefits of accelerated depreciation). When the amortizations are considered in future rate cases, any party may request that an amortization be directed toward specific plant accounts or that changes be made in depreciation rates based upon future depreciation studies. See Stipulation, § III.B.3.a(iv) at 32.

A similar \$3.5 million amortization was initially approved by the Commission in Re Customer Class Cost of Service and Comprehensive Rate Design Investigation of Kansas City Power & Light Company, Order Approving Stipulation and Agreement, Case No. EO-94-199, 5

Mo.P.S.C.3d 76 (1996), and subsequently extended in Re Stipulation and Agreement Reducing the Annual Missouri Retail Electric Revenues of Kansas City Power & Light Company, Order Denying Intervention And Approving Stipulation And Agreement, Case No. ER-99-313, 8 Mo.P.S.C.3d 113 (1999).

4. There is no Preapproval of Rates by the Commission.

The Stipulation contains nothing which commits either the Commission or a signatory to a preapproval of rates. Indeed, the parties retain the right to monitor the prudence of KCPL's actions in carrying out the investments called for by the Regulatory Plan, and to challenge any conduct they believe is imprudent. The signatories do agree that the elements of the Stipulation that call for a coal-fired plant, wind generation, environmental controls, and the efficiency and affordability programs are "a reasonable and adequate resource plan." See Stipulation, § III.B.1.a at 6-7. However, the manner in which KCPL implements each of these investments is subject to scrutiny during the construction process by Staff, Public Counsel and others. Id., §§ III.B.1.o at 24-25; III.B.4-.5 at 44-49. The Stipulation does not limit any signatories' ability to challenge the Company when it proposes to recover its costs in future rate cases. Id., § III.B.3.a(iii) at 31. However, the Signatories have agreed not to argue that the proposed investments were not necessary or timely, or that alternative technologies or fuels should have been used, so long as KCPL implements the Resource Plan in accordance with the Stipulation's provisions. Id.

The Commission's approval of these elements of the Regulatory Plan would be consistent with its finding in other cases that a utility's proposed construction and finance program is reasonable and in the public interest. See In re Missouri-American Water Co., Case No. WA-97-46 (Mo. P.S.C. 1997).

5. The Commission is not Engaged in Utility Management under this Stipulation.

Approval of the Stipulation will not inject it into the management of KCPL's business. The standard frequently cited in Missouri case law is that the Commission "has no authority to take over the general management of any utility" or "to dictate the manner in which the company shall conduct its business." See State ex rel. Laclede Gas Co. v. PSC, 600 S.W.2d 222, 228 (Mo. 1980); State ex rel. PSC v. Bonacker, 906 S.W.2d 896, 899 (Mo. App. S.D. 1995). The Stipulation, in contrast, calls for the Commission to approve a Regulatory Plan proposed by KCPL and agreed to by the signatory parties. By approving the Stipulation, the commission is permitting the Company's management to carry out its resource and financial plans, and to use its best judgment in implementing them.

As such, it is similar to the Commission's action in finding that a water utility's plan to build a new treatment plant was "a reasonable alternative" when it granted that utility a certificate of convenience and necessity for that purpose, and when it approved the utility's financial plan to support that construction as "reasonable and not detrimental to the public interest." In re Missouri-American Water Co., Case No. WA-97-46 (Mo. P.S.C. 1997) (slip opin. at 10-11). Accord, Union Elec. Co. v. PSC, 136 S.W.2d 146, 149-52 (Mo. App. W.D. 2004) (approval of experimental regulatory plan).

6. The Standard of Review for the Stipulation.

While neither the Public Service Commission Law nor the Commission's regulations articulate a standard for the approval of a stipulation and agreement, the law is clear that an order approving this Stipulation would be lawful if it found that the Regulatory Plan promoted "safe and adequate" service and facilities in a "just and reasonable" manner. See § 393.130.1. Similarly, the Stipulation would be lawful if the Commission found that the Regulatory Plan did

not “make or grant any undue or unreasonable” preference, prejudice or disadvantage in its provision of service. See § 393.130.2.

Because the Stipulation meets these basic statutory tests, the Commission’s finding that it is “in the public interest” and “not detrimental to the public interest” would be firmly supported by the evidence. Such a determination would meet the requirements of any appellate review, which call for decisions to be lawful, to be supported by competent and substantial evidence upon the whole record, and not be arbitrary, capricious or unreasonable. See § 386.510 (“lawful” and “reasonable” requirements); § 536.140.2. Given the wide latitude that the Commission possesses in authorizing experimental regulatory plans, approving the Stipulation would not constitute an abuse of discretion. Id.

Because the Stipulation meets these all of these tests, it fulfills the public interest obligations that have been traditionally required of public utilities. See generally Charles F. Phillips, Jr., The Regulation of Public Utilities 118-19 (3d ed. 1993).

CONCLUSION

Based upon the factual record presented to the Commission, as well as the evidence that the Company expects to be admitted during the Evidentiary Hearing, the Commission will have a full opportunity to examine each of the issues contained in the Stipulation and Agreement. KCPL is confident that after a thorough review of those matters, the Commission will find that the Stipulation meets the public interest test and will approve it.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 15th day of June, 2005.

/s/ James M. Fischer