BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City	)	
Power & Light Company's Request	)	Case No. ER-2014-0370
for Authority to Implement a General	)	
Rate Increase for Electric Service	)	

APPLICATION FOR REHEARING / RECONSIDERATION

COMES NOW, the Midwest Energy Consumers' Group ("MECG"), pursuant to Section 386.500 RSMo and Commission Rule 4 CSR 240-2.160, and for its Application for Rehearing, respectfully state as follows:

1. It is well established that the primary purpose of utility regulation is consumer protection. Indeed, Missouri Courts have noted that protection of the utility "is merely incidental" to protection of the public.

> In its broadest aspects, the general purpose of such regulatory legislation is to substitute regulated monopoly for destructive competition. But the dominant thought and purpose of the policy is the protection of the public while the protection given the utility is merely incidental.[1]

2. Consistent with this directive, MECG urged the Commission, throughout this case, to consider the rapid increase in KCPL's rates experienced over the last 8 ½ years. Specifically, with the 11.3% increase authorized by the Commission's Report and Order, KCPL's rates have increased almost 76% since January 1, 2007.

ER-2006-0314:	$50.6 million	10.46% increase
ER-2007-0291:	$35.3 million	6.50% increase
ER-2009-0089:	$95.0 million	16.16% increase
ER-2010-0355:	$34.8 million	5.25% increase

[1] *State ex rel. Crown Coach Co. v. Public Service Commission*, 179 S.W.2d 123 (Mo.App. 1977) (citing to 204 S.W. 897 (1918).

ER-2012-0174:	$67.4 million	9.64% increase
ER-2014-0370:	$89.7 million	11.3% increase
	$372.8 million	75.5% increase

3. Surprisingly, given that the "dominant thought and purpose" of the Commission is to protect the public, the Commission never even acknowledged the rapid increase in KCPL rates in its decision. Such concerns were apparently lost in the course of the Commission's deliberations. Worst still, given that the Commission never even acknowledged this fact, there is a legitimate question whether this rapid increase in rates ever factored into the Commission's decision on any of the litigated issues. Adding insult to injury, while ignoring KCPL's skyrocketing rates, the Commission bought into and referenced KCPL's rhetoric about its alleged inability to earn its authorized return.

4. As the following pleading indicates, as regards its decision in the pending KCPL rate case, the Commission appears to have elevated the protection of the utility over that of the ratepayers.[2] Despite recognizing the statutory burden of proof,[3] the Commission refused to apply that burden. Repeatedly throughout its deliberations, the Commissioners referred to "close calls" on the various issues. Nevertheless, the decisions on those close calls always appeared to favor KCPL and higher rates.

5. As this pleading indicates, the Commission also erred in favor of the utility and higher rates by:

[2] KCPL will undoubtedly argue that the Commission has erred in favor of ratepayers as regards the issue of the transmission, property tax and cyber-security trackers. Unlike the issues referenced by MECG that turn primarily on Commission discretion, the Commission lacked discretion regarding these trackers. Instead, as detailed in the Initial Brief, the Commission lacks express statutory authority to implement such trackers. As such, the Commission is limited to the use of deferral accounting only in those situations where the cost is extraordinary. By the Commission's own findings, costs associated with transmission, property taxes and cyber-security costs are not extraordinary.

[3] *Report and Order*, pages 13-14.

(1) Failing to enforce a stipulation and agreement and, instead, applying vague notions of "public policy and public interest" in order to authorize KCPL to implement a fuel adjustment clause;

(2) Accepting KCPL's rhetoric regarding past under-earnings instead of properly applying the criteria for fuel adjustment clauses to individual cost elements to be included in that mechanism as dictated by 4 CSR 240-20.090(2)(C);

(3) Refusing to properly account for the reduced risk associated with implementing a fuel adjustment clause and quantifying that reduced risk in the form of a lower return on equity;[4]

(4) Relying on extra-record conversations with Staff, a party apathetic to the need for a management audit, in its decision to utilize Staff for a management audit, without any evidence of Staff's competency to perform such an audit.

(5) Refusing to require KCPL to clearly differentiate its customer bills from those of its sister company GMO in contravention of the requirements of Section 393.140(11);

(6) Abdicating its responsibility to protect ratepayers from imprudent costs by simply refusing to make a decision regarding imprudent rate case expense;

(7) Violating the matching concept inherent in the test year and true-up concepts by adopting KCPL's out of period adjustment while ignoring evidence of offsetting adjustments; and

(8) Changing the enunciated standard, applied less than 5 months ago, for consideration of the reasonableness of a Tax Allocation Agreement; and

MECG urges the Commission to reconsider its decisions contained in the Report and Order in light of the deficiencies referenced herein and issue new decisions consistent with its dominant purpose of protecting the public.

[4] See, Section 386.266.7

FUEL ADJUSTMENT CLAUSE

►The Commission's decision to allow KCPL to implement a fuel adjustment clause is unlawful and unreasonable in that it is contrary to the terms of the previously approved Stipulation and Agreement.

6. In the middle part of the last decade, several Missouri utilities were facing certain challenges. Specifically, given its heightened reliance on gas generation and the lack of a statutorily authorized fuel adjustment clause, Empire and Aquila faced difficulty in addressing increasing gas and fuel costs. On the other hand, given the prohibition against allowing ratemaking treatment for construction work in progress, KCPL faced the difficulty of financing a new baseload generating units.

7. In both instances, ratepayers did not rely on the statutory limitations that the utilities faced. Rather, ratepayers agreed to the implementation of certain mechanisms, of questionable legality, in order to allow the utility to meet its challenges. In each instance, ratepayers bargained for certain <u>long-term benefits</u> in exchange for <u>short-term solutions</u> to the utility challenges. In each instance, after applauding the innovative thinking and ratepayer willingness to address utility challenges, the Commission approved the settlements.

8. After receiving their short-term benefits under the settlement, the utilities quickly tired of complying with the remaining long-term commitments under the approved settlement. As such, the utility asked the Commission, prior to ratepayers receiving the totality of the bargained consideration in the settlement, to absolve them of the remainder of their obligations to the ratepayers. Now, with its most recent decision, the Commission has once again made it clear that ratepayers cannot depend on receiving long-term benefits contained in a stipulation.

9. In 2004, facing rapidly escalating gas prices and given the prohibition against a fuel adjustment clause, Empire was unable to recover its fuel prices. During the evidentiary

hearing in Case No. ER-2004-0570, Commissioners recognized their inability to implement a fuel adjustment clause to address Empire's financial challenge. Given this, the Commission urged the consumer advocates not to rely on this statutory prohibition and, instead, agree to the implementation of a fuel mechanism

> [COMMISSIONER DAVIS]: Do you think it is conceivable that there is any way that we could develop some sort of – I mean, this would probably require the unanimous consent of all parties concerned, but that some sort of sharing grid could be developed or something like that?
>
> I know we – I mean, it's never been used in this context before, but would something like that be feasible?[5]

Ultimately, consumer advocates agreed to the implementation of the questionably unlawful Interim Energy Charge. As contained in the approved stipulation, Empire agreed to an Interim Energy Charge that would last for three years.

10. Prior to the completion of the three year term, however, the General Assembly passed legislation allowing for a fuel adjustment clause. Immediately, Empire began to suffer from buyer's remorse from agreeing to the Interim Energy Charge and foregoing its opportunity to request a fuel adjustment clause for three years. Rather than wait for three years and allow ratepayers to reap the benefits of their bargain, Empire asked the Commission to negate the Stipulation and allow it to implement a fuel adjustment clause.

11. After being the impetus for the Interim Energy Charge, the Commission suddenly shifted direction and excused Empire from fulfilling the terms of the Stipulation and Agreement. Claiming that it is not a party to a stipulation, the Commission found that it was not bound to abide by the terms of that settlement.

> There are several questions set forth in the description of this issue that pertain to Empire's actions concerning the 2005 Stipulation: whether by its action or inaction it ratified the 2005 Stipulation, whether it may properly seek termination,

[5] Case No. ER-2004-0570, Tr. 482-484.

> or whether the 2005 Stipulation is unambiguous. The 2005 Stipulation appears to be a contract that binds the signatories unambiguously to its terms. However, the Commission is not a party to the 2005 Stipulation and the Commission's approval of it does not and cannot bind the Commission to its terms.[6]

Given this, the Commission decided that it could simply "ignore" the settlement between Empire and the ratepayers. "It is clear under Missouri law that the Commission may ignore a contract between Empire and other entities and proceed with its statutory obligation to set just and reasonable rates."[7] "The Commission's prior approval of the 2005 Stipulation in no way *estops* or hampers it in its determination of just and reasonable rates."[8]

12. The Commission's willingness to excuse Empire from fulfilling the terms of its settlement was reflected in the Commission's decision in this case. In 2005, KCPL also faced a challenge. Specifically, given growing demand, KCPL sought to construct a large coal-fired baseload unit. Given the prohibition against including construction work in progress in rates, however, KCPL was concerned about its ability to finance such construction and still maintain its investment grade credit rating. Again, responding to the utility's challenge, ratepayers agreed to a unique, arguably unlawful, mechanism by which it would provide revenues in excess of those otherwise justified through the ratemaking process.[9] In exchange for this commitment, KCPL agreed to not seek a fuel adjustment clause until June 1, 2015.[10] Ultimately, ratepayers provided KCPL over $185 million of additional revenues to support the construction of Iatan 2.[11]

13. Once it had completed the construction of Iatan 2 and stopped receiving these additional revenues, KCPL, like Empire before it, tired of the commitments contained in the Regulatory Plan stipulation. Specifically, after seeing fuel adjustment clause legislation passed

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[6] Case No. ER-2006-0315, *Report and Order*, issued December 21, 2006, at page 39.
[7] *Id.* at page 40.
[8] *Id.* at page 42.
[9] Case No. EO-2005-0329, *Stipulation and Agreement*, filed March 28, 2005, at pages 18-22.
[10] *Id.* at pages 7-8.
[11] Exhibit 200, Staff Cost of Service Report, at page 183.

by the General Assembly and mechanisms approved for all the other Missouri utilities, KCPL sought to avoid its promises and, instead, sought to prematurely terminate its commitment not to seek a fuel adjustment clause prior to June 1, 2015.

14. Much like the previous Commission, the Commission again turned its back on ratepayers. Specifically, the Commission reminded ratepayers that, since the Commission is not a party to such agreements, they should not rely on the Commission to enforce such agreements.

> Even assuming for the sake of argument that KCPL violated the 2005 Stipulation, the Commission is not a signatory to that agreement and is not bound by its terms. The Commission may determine for reasons of public policy and public interest that KCPL should be granted an FAC even if it did violate the 2005 Stipulation.[12]

15. Clearly then, ratepayers have twice been denied the full benefits of their settlements with utilities facing challenges. Unable to make the Commission a party to a settlement, and left with no other enforcement options, ratepayers will naturally question whether they should ever enter into a settlement that provides for the receipt of benefits over a long period of time. It is unquestioned that utilities, and the Commission, will once again face challenges. Indeed, the recently passed Clean Power Plan will likely result in challenges for certain Missouri utilities. Now, however, the solutions to these challenges will be severely limited because ratepayers will insist that they receive the entirety of their benefits upfront rather than relying on Commission enforcement of such agreements. Undoubtedly stakeholders, including the Commission, will look back and realize that the cost of the Commission's immediate decision greatly outweighs any benefits. Specifically, the short-term benefit of delivering KCPL's greatly desired fuel adjustment clause will be quickly forgotten when future Commissions are confronted by a broken settlement process that is unable to resolve challenging

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[12] Report and Order, page 27.

issues. In this regard, the Commission's decision, as with its prior Empire decision, is truly regrettable.

► The Commission's decision to allow KCPL to implement a fuel adjustment clause is unlawful and unreasonable in that it the Commission failed to apply its criteria to individual costs as set forth in 4 CSR 240-20.090.

16. 4 CSR 240-20.090(2)(C) provides that the Commission, in considering a fuel adjustment clause, shall apply its criteria to each individual cost component to be included in the mechanism.

> In determining which cost components to include in a RAM, the commission will consider, but is not limited to only considering, the magnitude of the costs, the ability of the utility to manage the costs, the volatility of the cost component and the incentive provided to the utility as a result of the inclusion or exclusion of the cost component.

In its haste to approve KCPL's fuel adjustment clause, and return it to the mainstream of electric utilities, the Commission not only looked past KCPL's prior settlements, the Commission also failed to comply with its own rule.[13]

17. Proper application of the rule would dictate a finding that KCPL does not need a fuel adjustment clause.[14] As the following analysis indicates, KCPL's coal costs, natural gas costs and nuclear costs all fail to meet the Commission's stated criteria.

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[13] At pages 28-29, the Commission did consider some evidence of the volatility in coal and gas prices. Strangely, the Commission only considered evidence regarding the spot market price of such commodities. The Commission failed to consider the evidence regarding the lack of volatility in KCPL's actual costs of coal and natural gas. As explained in MECG's Initial Brief, given the use of long-term coal and gas contracts, KCPL has very little exposure to volatility in the spot market. In fact, as this pleading demonstrates, KCPL's fuel costs have exhibited very little volatility.

[14] Such a finding would not be novel. Indeed, by properly applying the criteria contained in the rule, the Commission has previously found that Ameren did not need a fuel adjustment clause. See, Case No. ER-2007-0002, *Report and Order*, issued May 22, 2007, at page 26.

18. Coal Costs: While coal and freight costs are certainly significant, it is unquestioned that, over the last four years, such costs are not volatile.

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Source: Exhibit 504, Brosch Surrebuttal, page 52. **

Clearly, given the complete lack of volatility in such costs, it is difficult to understand how the Commission could find that KCPL's coal costs meet the criteria adopted by the Commission and memorialized in its rule.

19. Gas Costs: Similarly, the Commission failed to apply its criteria to KCPL's gas costs. Such an analysis would have shown that such costs are neither significant, nor are they volatile. Specifically, for the test year, KCPL's gas costs represent were only 0.7 percent of KCPL's overall expenses."[15] Not only are such costs not significant, they are also not volatile. In fact, the unrebutted analysis indicates that since 2010, KCPL's natural gas costs have declined dramatically.

[15] *Id.* at pages 32-33.

Year	Natural Gas Costs[16]
2010	**__________**
2011	**__________**
2012	**__________**
2013	**__________**
2014	**__________**

Source: Exhibit 503, Brosch Direct (Rate Design), page 32.

Again, given such unrebutted evidence, it is difficult to find how the Commission could find that KCPL's natural gas costs meet the Commission's criteria.

20. <u>Nuclear Costs</u>: As with natural gas costs, KCPL's nuclear costs also do not meet the Commission's stated criteria. First, such costs are not significant. Specifically, for the test year, KCPL's nuclear costs represent only about 2.0 percent of overall expenses."[17] Second, KCPL's nuclear fuel costs demonstrate very little volatility. Like its other fuel costs, KCPL's historical nuclear costs have been very stable.

Year	Amount
2011	$24,810,000
2012	$26,681,000
2013	$26,557,000
Test Year	$27,834,000

Source: Exhibit 503, Brosch Direct (Rate Design)

[16] Natural Gas Costs include commodity costs, variable transport costs and fixed transport costs.
[17] *Id.* at page 29.

Indeed, nuclear costs demonstrate "remarkably stable pricing expectations over the next 8 years."[18]

21. It is clear from the Report and Order that, rather than engage in the analysis mandated by its rule, the Commission predetermined that it would authorize a fuel adjustment clause based upon largely on KCPL's rhetoric regarding its past under-earnings. Specifically, without any citation to the record, the Commission made the following unsupported findings.

> The evidence shows that KCPL's costs related to fuel, purchased power and transmission have all increased substantially while actual revenues have decreased, resulting in KCPL's inability to earn its authorized return. KCPL's inability to recover its costs, over time, could undermine its financial health and compromise cash flows, which would jeopardize its ability to compete for capital, maintain service levels, and invest in its system. The resulting increased capital costs could potentially lead to increased costs to customers. Since an FAC is a mechanism that would help KCPL to timely recover its increased costs for fuel, purchased power and transmission and to avoid the negative consequences of regulatory lag, the Commission concludes that, for reasons of public policy, if KCPL meets the criteria for an FAC it should be granted such authority.[19]

This single quote is so riddled with errors that a brief could be written undermining the entire basis for the Commission using this as justification for a fuel adjustment clause.

<u>First</u>, as previously indicated, contrary to the Commission's finding, the evidence indicates that KCPL's fuel and purchased power costs have not "increased substantially." Rather, as demonstrated in paragraphs 18 and 20, coal, freight, and nuclear have all remainder incredibly stable and have not increased. Moreover, as demonstrated in paragraph 19, KCPL's natural gas prices have actually decreased significantly. Furthermore, contrary to the Commission's finding, actual revenues have not "decreased." Instead, as MECG repeatedly indicated to the Commission, KCPL's rates and revenues have increased significantly.[20]

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[18] *Id.* at page 30.
[19] *Report and Order*, pages 27-28.
[20] KCPL's electric usage has slowed, but remains slightly positive. That said, because of the tremendous increase in rates, KCPL's revenues have growth significantly.

Specifically, with this rate increase, KCPL's retail rates and revenues will have increased by more than 76%. In addition, recent evidence indicates that KCPL's wholesale revenues have also increased significantly in the last 3 years.

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Source: Exhibit 503, Brosch Direct (Rate Design), page 40. **

Clearly, the Commission's finding that fuel costs have "increased substantially" and revenues have "decreased" is flat wrong.

Second, there is no evidence to support the implied notion that fuel costs have resulted in "KCPL's inability to earn its authorized return." In fact, to the best of counsel's memory, KCPL never attempted to quantify the reasons for its return or attribute its failure to earn its authorized return to any specific cost components. In fact, the Commission apparently disregarded concerns raised by Staff that KCPL's claims were exaggerated and may have been manipulated.

Most disturbing regarding the Commission's reliance on past under-earnings to justify a fuel adjustment clause is that, when faced with the opposite situation, the Commission took no steps to protect ratepayers. Specifically, in its recent Ameren case, the Commission was

confronted with significant, unrebutted evidence that Ameren had over-earned in large part as a result of the fuel adjustment clause. Noticeably, the Commission did not rely upon such over-earnings to justify the elimination of the fuel adjustment clause[21] or as a basis for increased sharing in the fuel adjustment clause.[22] Instead, the Commission simply found that "the Commission finds that the unadjusted per-book surveillance reports are not sufficient to establish that Ameren Missouri over-earned during the period of deferral."[23] It appears that, under current Missouri regulation, surveillance reports can only be used to prove the existence of under-earnings, but when it comes to over-earnings, such surveillance reports are not reliable. Indeed, MECG wonders whether the Commission will take steps to protect ratepayers <u>if</u> evidence is presented in the upcoming GMO case that over-earnings occurred as a result of the fuel adjustment clause.

<u>Third</u>, contrary to the Commission's quoted justification, there is no evidence to support any notion that KCPL has difficulty either raising capital or that its capital costs have increased without a fuel adjustment clause. Indeed, prior to the Report and Order authorizing the fuel adjustment clause in this case, KCPL easily accessed the debt market. Specifically, on August 18, 2015, KCPL announced that it had issued $350,000,000 of debt at an interest rate of 3.65%. Recognizing that KCPL's cost of debt in this case was 5.557%,[24] KCPL's capital costs have actually decreased. . . contrary to the Commission's suggestion that such capital costs would increase without a fuel adjustment clause.

22. Clearly, the Commission's stated justification for authorizing a fuel adjustment clause is fundamentally incorrect. Much like it did with the evidence of Ameren's over-earnings,

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[21] Case No. ER-2014-0370, *Report and Order*, issued April 29, 2015, pages 101-103.
[22] *Id.* at pages 107-111.
[23] *Id.* at page 26.
[24] *Report and Order*, page 21.

the Commission should disregard KCPL's rhetoric regarding past under-earnings. Instead, the Commission should recognize that such under-earnings are not caused by the lack of a fuel adjustment clause, but instead are a result of its recent large capital investments. MECG encourages the Commission to objectively apply the criteria contained in its rule and, based upon such objective analysis, find that KCPL's costs do not demonstrate the volatility and magnitude necessary to justify the extraordinary fuel adjustment clause mechanism.

RETURN ON EQUITY

►The Commission's authorized 9.5% return on equity is unlawful and unreasonable in that the Commission failed to account for the decreased business risk associated with the implementation of a fuel adjustment clause.

23. Section 386.266.7 provides that "The commission may take into account any change in business risk to the corporation resulting from implementation of the adjustment mechanism in setting the corporation's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the corporation.

24. The fact that a fuel adjustment clause will result in reduced risk and a lower return on equity was acknowledged by KCPL's own witness.[25] Despite the acknowledged reduction in risk, it is apparent that the Commission failed to account for such reduced risk.[26]

25. ***First***, during its deliberations on August 12, 2015, the Commission started by discussing its positions on return on equity. Based upon those deliberations, it is apparent that the Commission was coalescing around a return on equity of 9.50%. Following its discussion on return on equity, the Commission deliberated the issue of a fuel adjustment clause. When the Commission returned in subsequent weeks to the return on equity issue, none of the

[25] Tr. 1365-1367.

[26] In its Report and Order, the Commission claims that it "has considered other factors" including "the reduction of investment risk to KCPL by approving a fuel adjustment clause." As the deliberations and evidence indicates, however, it is apparent that the Commission never reduced its return on equity to account for this reduction in risk.

Commissioners decreased their return on equity recommendations to account for the issuance of a fuel adjustment clause.

26. ***Second***, the Commission's failure to account for reduced risk associated with the implementation of a fuel adjustment clause is also apparent from its recent decisions. Specifically, in its recent Ameren decision, the Commission reduced Ameren's authorized return on equity by 27 basis points from 9.8% to 9.53%.

> In its decision regarding Ameren Missouri's last rate case, the Commission established an ROE of 9.8 percent. Since 2012, when that case was decided, interest rates have declined by approximately 37 basis points. Furthermore, utility stock prices have increased and their dividend yields have gone down. This indicates that utilities' cost of capital has decreased because they need to sell fewer shares to generate the capital they need to support their investments. As MIEC's witness, Michael Gorman, explained: "Because the price of stock has gone up and the other parameters of the stock have not significantly changed, that's a clear indication that investors have reduced their required cost of capital which has bid up the stock price." This suggests the ROE allowed to Ameren Missouri should also be decreased.[27]

Thus, just four months ago, the Commission found that interest rates had declined by 37 basis points and that Ameren's return on equity should be reduced by 27 basis points.

Nevertheless, despite implementing a fuel adjustment clause, the Commission only reduced KCPL's return on equity by 20 basis points from 9.7% to 9.5%. Clearly, despite its claim that it has considered "the reduction of investment risk to KCPL by approving a fuel adjustment clause," the evidence indicates otherwise.

27. ***Third***, evidence that the Commission failed to account for reduced risk in its authorized return on equity is also apparent by comparing this Commission's decision with the decisions of KCPL's Kansas jurisdiction. In 2012, this Commission authorized a return on equity of 9.7% while Kansas authorized a return on equity of 9.5%. This difference in return

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[27] Case No. ER-2014-0370, *Report and Order*, issued April 29, 2014, at pages 65-66.

was undoubtedly a result of the increased risk faced in Missouri as a result of the lack of a fuel adjustment clause.

While this Commission reduced the Missouri return on equity from 9.7% to 9.5%, the Kansas Commission reduced the Kansas return on equity from 9.5% to 9.3%.[28] Thus, despite the implementation of a fuel adjustment clause, and the apparent reduced investment risk, Missouri ratepayers continue to pay a return on equity that is 20 basis points higher than Kansas. Again, it is apparent that, despite its claims to the contrary, the Commission did not consider reduced risk when authorizing a 9.5% return on equity.

28. ***Fourth***, KCPL's own witness testified that KCPL's return on equity should be at least 10 basis points lower than Ameren. Specifically, while testifying on behalf of Ameren, Mr. Hevert indicated that Ameren should receive a return on equity of 10.4%.[29] On the other hand, based primarily on reduced capital costs, Mr. Hevert testified that KCPL should only receive a return on equity of 10.3%.[30] Nevertheless, despite implementing a fuel adjustment clause that reduces KCPL's risk, the Commission authorized a return on equity that virtually mirrors that provided to Ameren.[31]

Indeed, the Commission has historically found that, even when KCPL did not have a fuel adjustment clause, it was 10-20 basis points less risky than Ameren with a fuel adjustment clause. For instance, on April 12, 2011, the Commission issued its Report and Order authorizing KCPL to earn a 10.0% return on equity.[32] Just three months later, on July 13, 2011, the

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[28] See, Kansas Corporation Commission Case No. 15-KCPE-116-RTS, *Order on KCPL's Application for Rate Change*, issued September 10, 2015, at pages 16 and 35.
[29] Case No. ER-2014-0370, *Report and Order*, issued April 29, 2014, at page 66.
[30] *Report and Order*, page 19.
[31] The Commission's desire to treat all utilities identically, despite obvious differences, was also apparent in its deliberations and decision on the structure of a fuel adjustment clause. Such decision-making is contrary to the notion that the Commission base its decisions on the competent and substantial evidence in the record.
[32] See, Case No. ER-2011-0355, *Report and Order*, issued April 12, 2011, at page 124

Commission issued its Report and Order authorizing Ameren to earn a 10.2% return on equity.[33] Thus, at that point in time, KCPL was perceived to be less risky than Ameren and was authorized a return on equity that was 20 basis points lower than Ameren.

This trend continued in KCPL and Ameren's next cases. On December 12, 2012, the Commission issued its Report and Order in Ameren's next rate case. In that decision, the Commission authorized Ameren to earn a return on equity of 9.8%.[34] Less than one month later, on January 9, 2013, the Commission considered KCPL's rate case. In its Report and Order in that case, the Commission authorized KCPL to earn a return on equity of 9.7%.[35] Clearly then, the Commission still perceived KCPL as less risky and deserving of a lower return on equity than Ameren.[36]

29. Clearly the evidence indicates that, contrary to the claims in its Report and Order, the Commission failed to consider the reduced risk associated with implementing a fuel adjustment clause when authorizing KCPL a 9.5% return on equity. Given the 80% increase in rates experienced by KCPL ratepayers over the last 8 ½ years, MECG urges the Commission to find that, because of the newly authorized fuel adjustment clause, KCPL should be permitted a return on equity in Missouri that mirrors the 9.3% return on equity recently authorized in Kansas. Continuing to authorize a higher return on equity in Missouri, despite the fuel adjustment clause, merely signals that the Commission is not properly considering the interests of ratepayers.

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[33] See, Case No. ER-2011-0028, *Report and Order*, issued July 13, 2011, at page 74.
[34] See, Case No. ER-2012-0166, *Report and Order*, issued December 12, 2012, at page 73.
[35] See, Case No. ER-2012-0174, *Report and Order*, issued January 9, 2013, at page 15.
[36] It is important to remember that, from a regulatory mechanism standpoint, Ameren and KCPL were identical to their status today. Specifically, Ameren had a fuel adjustment clause and KCPL was operating without a fuel adjustment clause.

MANAGEMENT AUDIT

►The Commission's decision to rely upon Staff, rather than an acknowledged expert, to conduct a management audit of KCPL and its excessive A&G costs is unlawful and unreasonable in that the Commission relied upon extra-record conversations with Staff to justify its decision.

30. In its Report and Order, the Commission found that KCPL's A&G costs are clearly excessive. "KCPL's Administrative & General ("A&G") from 2011 through 2013 were higher than three other utilities operating in this region. While the reasons for this are unknown, it may be due to a structural problem."[37]

31. This finding was supported by other Commission findings.

> Staff's analysis of KCPL's A&G expenses, which examined the peer group utilities that KCPL used to determine executive compensation, credibly demonstrated that KCPL has some of the highest A&G expenses of its national peers and Missouri utilities. Of the group examined, KCPL has the highest A&G costs per customer, per dollar of revenue, and compared to its operations and maintenance expense, and the third highest A&G expense per megawatt hour of electricity sold.[38]

Given these findings of excessive A&G costs, the Commission found that "a management audit focused on identifying and achieving efficiencies and cost reductions should benefit both KCPL's customers and shareholders."[39]

32. Watering down the likelihood that the audit will reveal actual structural problems or reduce in cost reductions, the Commission ignored MECG's recommendation that the Commission order KCPL, in conjunction with Staff, to issue a Request for Proposals seeking bids from qualified vendors to conduct a thorough management audit of KCPL and its processes and procedures. Instead, the Commission decided to simply resort to having this management audit conducted by Staff. This decision is troubling that it was based primarily on conversations that occurred with Staff during the Commission's deliberations. Worst still, the Commission is

[37] *Report and Order*, page 73.
[38] *Report and Order*, page 73.
[39] *Id.*

relying upon Staff, which was apathetic on the need for the management audit,[40] to conduct the very audit designed to uncover structural problems and realize cost savings. Inevitably, Staff's review will uncover very few problems and KCPL will rely upon this unqualified audit to support its excessive A&G costs in the future.

33. It appears from the Commission's deliberations that its desire to rely on Staff to conduct a management audit was driven by concerns over the cost of retaining qualified firms to conduct such an audit. While MECG appreciates the Commission's concern for KCPL's on this limited issue,[41] MECG suggest that it should still proceed with the recommendations provided by MECG. Specifically, MECG suggests that the Commission order KCPL, in conjunction with Staff, to issue a Request for Proposals and receive bids from qualified firms. Once received and summarized, the Commission can then make an informed decision as to the reasonableness of such an audit. Importantly, there is no cost associated with preparing a Request for Proposal and receiving responsive bids.

RATE CASE EXPENSE

► The Commission's failure to address issues regarding imprudent rate case expense is unlawful and unreasonable.

34. Significant evidence was presented in this case as to the prudency and reasonableness of KCPL's rate case expense. Most disconcerting, while Ameren pays outside counsel $200 / hour, KCPL pays its outside counsel up to $475 / hour. Rather than addressing the legitimacy of these concerns, the Commission simply punted on this issue. Specifically, relying on a misplaced notion of sharing, the Commission implicitly found that all rate case expense was prudent. It is a complete abdication of its statutory authority and a failure of its

[40] Staff did not provide testimony or file a brief on the need for a management audit.
[41] Interestingly, the Commission showed little concern for the costs incurred by KCPL when it involved imprudent rate case expenses.

dominant purpose to protect the public to simply refuse to make the hard decisions regarding the prudency of KCPL's rate case expense. After spending significant money and resources to present this issue, ratepayers deserve a Commission decision on this issue. Certainly, such a decision may disappoint the utility, but decision-making is the Commission's role in this process. The Commission should not simply disregard this role simply because it finds it uncomfortable.

TRUE-UP ISSUES

35. In its decision, the Commission recognized the importance of the test-year concept. "The test year is a central component in the ratemaking process."[42] Similarly, the Commission recognized the importance and value of the true-up process.

> The Commission also established the true-up period to run through May 31, 2015, to reflect any significant and material impacts on KCPL's revenue requirement. The use of a true-up audit and hearing in ratemaking is a compromise between the use of a historical test year and the use of a projected or future test year. It involves adjustment of the historical test year figures for known and measurable subsequent or future changes. However, the true-up is generally limited to only those accounts necessarily affected by some significant known and measurable change, such as a new labor contract, a new tax rate, or the completion of a new capital asset. The true-up is a device employed to reduce regulatory lag, which is "the lapse of time between a change in revenue requirement and the reflection of that change in rates.[43]

The purpose of the test year and true-up time periods is obvious. By considering expenses, revenues and investment as of a single date, the Commission maintains a proper relationship and an accurate picture of KCPL's earnings. As the Court of Appeals has held,

> The accepted way in which to establish future rates is to select a test year upon the basis of which past costs and revenues can be ascertained as a starting point for future projection." ***A test year is a tool used to find the relationship between investment, revenues, and expenses***.[44]

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[42] *Report and Order*, page 5.
[43] *Id.* at page 6.
[44] *State ex rel. GTE North, Inc. v. Public Service Commission*, 835 S.W.2d 356 (Mo.App. 1992).

36. Despite recognizing the importance of the test year and true-up dates, the Commission suddenly rejected these concepts. In its desire to inflate the revenue requirement by an additional $1.453 million, the Commission turned a blind eye to the matching concept and rejected decades of previous decisions. Specifically, the Commission allowed KCPL to increase its revenue requirement to account for two capacity contracts that were ending four months after the true-up date.

37. In the past, the Commission has summarily rejected these out of period adjustments. In 2006, KCPL asked that it be allowed to include a payroll increase that was proposed to occur well after the true-up date. As here, KCPL failed to propose any offsetting adjustments to maintain the matching of investment, revenues and expenses. There, the Commission expressly rejected KCPL's one-sided adjustment.

> The Commission finds that the competent and substantial evidence supports Staff's position, and finds this issue in favor of Staff. The Commission agrees with Staff that it is important to match revenues and expenses as of a date certain. ***As Staff points out, should the Commission accept KCPL's 113 employees in cost of service, then the Commission would also need to insert additional revenue from customer growth occurring after the known and measurable date of June 30.***
>
> If the Commission does not take a snapshot of a company's revenues and expenses as of the known and measurable date, the true-up date, or any date, for that matter, then what? KCPL's employee count, as well as a host of other revenues and expenses, has no doubt changed since the true-up hearing; the Commission will get yet another snapshot of those changes when KCPL files its next rate case. To set just and reasonable rates, the Commission simply must match revenues and expenses as of a certain date.[45]

38. The problem with such out of period adjustments is that they do not consider offsetting changes that will reduce revenue requirement. As Staff indicated, while there are two capacity agreements that expire on September 30, there is another capacity agreement that

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[45] Case No. ER-2006-0314, *Report and Order*, issued December 21, 2006, at pages 71-72.

became effective in July.[46] In addition, there are further adjustments that would reduce revenue requirement, but given the sanctity of the true-up date, Staff did not consider such a review.[47] For instance, on August 18, KCPL issued $350 million of additional debt. The effect of such an issuance is obvious and two-fold. ***First***, it would reduce the equity component of the KCPL capital structure. ***Second***, since the new debt had a lower cost, it would reduce KCPL's overall cost of debt. In both situations, KCPL's revenue requirement would be reduced.

39. Given that there are offsetting changes that occurred after the true-up date, but before the operation of law date, MECG ponders why the Commission would selectively accept only those adjustments which serve to inflate KCPL's revenue requirement.[48] Again, it is clear that the Commission has lost sight of its "dominant purpose."

NET OPERATING TAX LOSSES

40. In a recent Ameren case, the Commission considered the appropriateness of Ameren's Tax Allocation Agreement and its effect on deferred taxes associated with Net Operating Tax Losses. In its decision issued four months ago, the Commission judged the reasonableness of a Tax Allocation Agreement by whether a Tax Allocation had historically or would in the future be beneficial to ratepayers.

> For tax years 2008 through 2012, the calculation of NOLC allocated to Ameren Missouri through the filing of a consolidated return had the effect of substantially increasing the NOLC allocated to Ameren Missouri, and thus decreasing the company's rate base. In 2013 and 2014, Ameren Missouri produced a large amount of taxable income but could not use that accumulated NOLC because the Ameren group as a whole had a tax loss. As a result, the NOLC is larger than it would otherwise be and rate base is approximately $51.1 million larger at the end of 2014 than it would be if Ameren Missouri had filed a separate tax return.

[46] Tr. 2057.
[47] Tr. 2057-2058.
[48] Moreover, given its duty of candidness to this tribunal, one necessarily wonders why KCPL did not fully inform the Commission of these offsetting adjustments.

> However, in future years, the balance could switch back, and Ameren Missouri's ratepayers would once again benefit from the use of the consolidated return.[49]

41. Relying on this decision, MECG presented significant evidence regarding the Great Plains Energy Tax Allocation Agreement. Relevant to the Commission's stated criteria from the Ameren decision, MECG provided evidence, in the form of KCPL Data Request Responses, that the GPE Tax Allocation Agreement has not and will not benefit KCPL ratepayers. As Mr. Brosch explains, the Great Plains Energy TAA, unlike the comparable Ameren agreement, is structured in a way that it is "inherently detrimental to KCPL and its ratepayers."

> The Great Plains TAA is structured to combine the tax attributes of Great Plain's **____**, with the utility businesses that have experienced tax losses only rarely historically and should remain profitable in future years if bonus depreciation is not extended past 2014, when it expired under current tax law. ***<u>This structure causes the Great Plains utility businesses to systematically subsidize the holding company and non-utility businesses, by providing taxable income to accelerate the tax benefit realization of non-utility losses while any non-utility losses may displace or delay the realization of utility tax credits and utility NOLs</u>***. In contrast, the Ameren TAA, that was addressed by the Commission in Case No. ER-2014-0258, was favorable to Ameren Missouri ratepayers in the years 2008 through 2012, when it served to accelerate the realization of utility NOL benefits by combining such utility losses with positive taxable income from Ameren Corporation's non-regulated generating and energy marketing businesses.[50]

Second, unlike the Ameren case, KCPL ratepayers have <u>never</u> benefitted from the Great Plains Energy TAA.[51] In fact, as KCPL readily admits, it does not project that ratepayers will ever benefit from the GPE TAA. Finally, GPE acquired certain confidential net operating loss carryforward amounts associated with its acquisition of Aquila that make the Great Plains TAA decidedly disadvantages KCPL ratepayers in future periods.

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[49] Case No. ER-2014-0370, *Report and Order*, issued April 29, 2015, at page 19.
[50] Exhibit 504, Brosch Surrebuttal, page 17.
[51] Id. page 15.

> This is a major distinction, in comparison to the Ameren Missouri situation, where the Ameren TAA over time has produced a mix of historical benefits in some years and detriments to Ameren Missouri in other years, with results that could switch back and forth in the future. In fact, in response to MECG Data Request 15-53(d), Ms. Hardesty stated, "[w]e only have financial projections for 2015-2019, and we do not expect KCPL to see a benefit by filing with the consolidated group during this period."[52]

42. In its decision, the Commission suddenly changed its standard for the benefit of KCPL and the detriment of ratepayers. Rather than considering whether the Tax Allocation has been or could be beneficial to ratepayers, the Commission now asks ratepayers to meet the virtually impossible standard of proving that "KCPL has attempted to manipulate its tax obligations to take advantage of ratepayers and the Commission will not question management decisions made by the company with regard to its tax filings under such a tax allocation agreement."[53]

43. It represents the epitome of arbitrary decision-making for the Commission to establish a criterion and then, once met by ratepayers, to change that criteria. As indicated, the Commission's dominant purpose is to protect the public. In this regard, the Commission has failed. As with this issue, the Commission has repeatedly refused to question KCPL's management and has, instead, simply deferred to the utility's management. Issues regarding Rate Case Expense, Excessive A&G Costs, and Net Operating Tax Losses have all largely concluded with the Commission's refusal to "question management decisions."

WHEREFORE, MECG respectfully requests that the Commission rehear / reconsider its prior decision. Consistent with its "dominant purpose" of protecting the public, MECG urges the Commission to issue a revised Report and Order on the issues of fuel adjustment clause, return on equity, management audit, rate case expense, true-up issues, and net operating tax losses.

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[52] *Id.* at page 16 and Schedule MLB-25 (citing to KCPL Response to MECG question 15-53(d).
[53] *Report and Order*, at page 86.

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CERTIFICATE OF SERVICE

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

David L. Woodsmall

Dated: September 14, 2015