

KCPL/GMO

2016 Expense Account Implementation Plan

Pursuant to paragraph G of the July 1, 2015 *Partial Non-Unanimous Stipulation and Agreement as to Certain Issues* in Case No. ER-2014-0370, Kansas City Power & Light Company (“KCP&L” or “Company”) hereby submits the actions it has implemented to address expense account issues.

- **Officer Expenses**

- The general ledger default account for all officers has been set to below-the-line non-utility accounts. In order for an officer expense to be recorded to an operating utility account, the officer or administrative assistant must positively enter an operating utility account code to override this default coding.

- **Additional Review of Transactions**

- The Wells Fargo company credit card program administrator is reviewing various samples of company credit card business transactions each month to ensure company credit card policy compliance as well as accurate accounting code block coding is followed.
- When company credit card accounting code block coding is questioned, follow up is done with the employee to get more information on the transaction and educate the employee on proper use of accounting code block values.
- Company credit card business transactions are looked at every month for proper information regarding meal attendees, business purpose and to/from information on mileage. Employees who might be missing this information are contacted directly.

- **Job Aids**

- Job aids used by all the executive administrative assistants were reviewed for completeness and accuracy regarding company accounting code block policies associated with the implementation of the new company credit card transaction process.
- Training sessions were held with the executive administrative assistants to educate them on the coding of expense reports.

- **Restriction of Chartfield Values**

- Wells Fargo, the company credit card provider, has been provided a shortened list of available accounting code block chartfield values. With this reduced list, employees can only choose from those values that should be used for company credit card purchases.
- All combinations of accounting code block chartfield values are sent thru all possible accounting code block edits to ensure no coding rules are broken in the combinations that are entered.

- **Default Accounting Code Block Chartfield Values Review**

- Default accounting code block chartfield values were reviewed in the third and fourth quarters of 2015. This review enabled the Company to continue to educate employees on the proper use of operating unit and accounting code block.
- All default accounting code block chartfield values are now re-reviewed on a quarterly basis.

**OFFICE OF THE PUBLIC COUNSEL
DATA REQUEST**

**KCP&L GREATER MISSOURI OPERATIONS COMPANY
CASE NO. ER-2016-0156**

Requested From: Lois J Liechti
Requested By: Chuck Hyneman
Date Requested: April 4, 2016

Information Requested:

Reference Expense Report 0000049698 dated 6/11/2015.

1. The 3/18/15 charge for goods and services from Gibson's Bar & Steakhouse in Chicago, IL was \$516.40 for apparently two individuals. Once receipt for \$33.07 at 8pm and a second receipt for \$483.33 at 9:34 pm. A) Please provide the names of the individuals who attended this event, B) Please provide a comprehensive and detailed description of the business purpose of this event, C) Please attest to the fact that KCPL believes these charges are prudent and explain why KCPL believes these charges are prudent. D) Was alcohol consumed at this event? If so, please provide the KCPL/GPE policy that allows the consumption of alcohol at a business event and describe how the consumption of alcohol at this event was consistent with the KCPL/GPE employee policy.

Reference Expense Report 0000050937 dated 6/11/2015.

2. The 3/31/15 charge for goods and services from Capital Grille was \$455.23 for apparently three individuals. A) Please provide the names of the individuals who attended this event, B) Please provide a comprehensive and detailed description of the business purpose of this event, C) Please attest to the fact that KCPL believes these charges are prudent and explain why KCPL believes these charges are prudent. D) Was alcohol consumed at this event? If so, please provide the KCPL/GPE policy that allows the consumption of alcohol at a business event and describe how the consumption of alcohol at this event was consistent with the KCPL/GPE employee policy.

Reference Expense Report 0000051748 dated 7/6/2015.

3. The 6/3/15 charge for goods and services from Kauffman Stadium was \$1,929.36 for apparently 20 individuals. A) Please provide the names of the individuals who attended this event, B) Please provide a comprehensive and detailed description of the business

purpose of this event, C) Please attest to the fact that KCPL believes these charges are prudent and explain why KCPL believes these charges are prudent. D) Was alcohol consumed at this event? If so, please provide the KCPL/GPE policy that allows the consumption of alcohol at a business event and describe how the consumption of alcohol at this event was consistent with the KCPL/GPE employee policy. E) Was the \$180 all day beverage refresh for alcoholic or non-alcoholic beverages?

Reference Expense Report 0000051748 dated 7/6/2015.

4. The May 21-June 20 charge from Verizon Wireless is for monthly wireless charges for an employee of KCPL. Is KCPL paying for this employee's personal home wireless charges or wireless phone charges? If yes, why? B) Please provide a comprehensive and detailed description of the business purpose of this charge, C) Please attest to the fact that KCPL believes these charges are prudent and explain why KCPL believes these charges are prudent.

Response Provided:

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

Date Received: _____ Received By: _____

Prepared By: _____

ER-2016-0156

Hyneman Surrebuttal

CRH-S-3

has been deemed

“Highly Confidential”

in its entirety

ER-2016-0156

Hyneman Surrebuttal

CRH-S-4

has been deemed

“Highly Confidential”

in its entirety

ER-2016-0156 GMO Adjustmnet CS-11 backup workpaper KCPL Officer Expense Reports		Total
Attended Burns & McDonnell Coal Symposium & Golf Tournament at Falcon Ridge Golf Club, Lenexa, KS		\$23.00
Acendas service charge for change to SWA itinerary for flight back from Oakland - Oct. 1, 2014 from Tesla/Sungevity meetings.		\$29.00
Agent fee for Travel from EEI in NOLA to KC for Zulema Bassham - June 7 - 10, 2015		\$15.00
Agent fee for Travel to EEI in NOLA for Zulema Bassham - June 7 - 10, 2015		\$29.00
Airline Travel to EEI in NOLA for Zulema Bassham - June 7 - 10, 2015		\$122.00
Early bird check-in for Travel to EEI in NOLA for Zulema Bassham - June 7 - 10, 2015		\$12.50
Hotel accommdations in Oakland for Tesla and Sungevity meetings		\$409.49
NCLR Convention July 18-21, 2014, Los Angeles, CA - Dinner for Zulema and Terry Bassham		\$269.41
Parking at MCI for GKC Leadership Exchange trip/Tesla/Sungevity Trip to CA 9-26/10-1, 2014		\$44.00
Travel From EEI in NOLA to KC for Zulema Bassham - June 7 - 10, 2015		\$563.60
Tesla/Sunagevity meeting - Oakland, CA 9-30 to10-1 2014		\$20.33
Acendas fee for airfare from MCI to SFO for Tesla Motors and Sungevity meetings CA 9/30-10/2 2014		\$31.00
Airfare from MCI to SFO for Tesla Motors and Sungevity meetings CA 9/30-10/2 2014		\$590.20
Airfare from Washington DC to KC - Funeral for Mike Poling		\$417.00
Airfare KC to Washington DC - Mike Poling funeral		\$566.00
Airport parking - trip to Washington DC for Mike Poling funeral		\$40.00
Car service from airport to Tesla Motors Plant in Fremont, CA for meetings 9/30-10/2 2014		\$105.00
Car service from hotel to SFO after meetings 9/30-10/2 2014		\$95.00
Charge for Wifi on flight from KC to Washington DC for Mike Poling funeral		\$9.95
Charge for wifi on flight from Washington DC for Mike Poling funeral		\$8.00
Chuck Caisley's meal - trip for Mike Poling funeral		\$20.05
Early check-in charge for flight from Washington DC to KC - Funeral for Mike Poling		\$12.50
Gas for car rental Sungevity trip.		\$6.52
Hotel accommodations for Tesla/Sungevity trip to Oakland, CA -30/10-2 2014		\$815.94
Lodging - trip to Washington DC for Mike Poling funeral		\$283.75
Meal - trip to Washington DC for Mike Poling funeral		\$26.00
Meal during Tesla/Sungevity trip to Oakland, CA 9-20/10-2 2014		\$11.97
Meal during Tesla/Sungevity trip to Oakland, CA 9-30/10-2 2014		\$19.91
Meal durnig Tesla/Sungevity trip to Oakland, CA 9-30/10-2 2014		\$8.65
Meal on Tesla/Sungevity meeting trip to Oakland, CA 9-30/10-2/2014		\$23.26
Meal on trip Oakland, CA for Tesla/Sungevity meetings		\$23.68
Meal on trip to Washington DC for Mike Poling funeral		\$20.05
Parking at MCI for trip to Oakland, CA for Tesla/Sungevity meetings 9-30/10-2 2014		\$66.00
Taxi fare - Trip to Washington DC for Mike Poling funeral		\$29.75
Taxi to airport from hotel - trip to Washington DC for Mike Poling funeral		\$24.66
Travel agent fee for booking flight from KC to Washington DC for Mike Poling funeral		\$31.00
Travel agent fee for booking flight from Washington DC to KC for Mike Poling funeral		\$15.00
WiFi during trip to Tesla/Sungevity meetings in Oakland, CA 9-30/10-2 2014		\$16.95
Travel food for Mike Poling's funeral (company employee).		\$2.00
airfare for visit to Columbus, OH on 10/8-9/2014 re: Transource		\$659.20
airfare on Southwest for travel to Columbus, OH for Transource meeting		\$462.20
airfare on Southwest to Columbus, OH for Transource meeting on November 12		\$208.00
airfare to Columbus, OH for AEP/Kiewitt Demo		\$659.20
airfare to Columbus, OH to attend the Transource meeting.		\$658.00
airport parking at KCI while traveling to Columbus, OH for Transource meeting		\$39.00
airport parking while in Columbus, OH attending the Transource meeting		\$28.49
airport parking while traveling to Columbus, OH for the AEP/Kiewitt demo		\$37.00
breakfast while in Columbus, OH attending the Transource meeting.		\$9.00
business breakfast with John Olander of Burns & McDonnell re: Transource		\$26.50
business dinner with Julie Shull, Todd Fridley, Forrest Archibald and Ted Pfisterer with ECI along with AEP folks: Mike Higgins & Bryan Hanft re: Transource		\$216.41
business lunch at Bristol with Todd Fridley regarding Transource		\$55.01

business lunch at O'Malley's in Weston, MO regarding Iatan/Nashua Line with Erin Pogue, M Higgins, M. Elliott, Julie Shull, Rick Albertson	\$176.00
business lunch at Shadow Glen Golf Club with Jim Shay and Dean Oskvig and Joe Plubell of Black & Veatch	\$64.01
cab fare in Columbus, OH from meeting place to airport while attending Transource meetings.	\$75.00
cab fare while in Columbus, OH for the AEP/Kiewitt Demo	\$56.76
golf cart at Shadow Glen with Jim Shay and Joe Plubell & Dean Oskvig of Black & Veatch	\$25.04
hotel and food expense while in Columbus, OH for the Transource meeting	\$306.96
hotel expense at the Hilton Hotel Columbus Downtown while traveling for AEP/Kiewitt Demo	\$304.33
hotel expense while in Columbus, OH attending the Transource Meeting	\$245.58
misc. cash used for travel while in Columbus, OH attending the Transource Meeting	\$15.00
personal expense	\$6.17
personal items purchased at Target. Mistakenly used T&E card instead of personal card.	\$169.96
r/t airport mileage for travel to Columbus, OH for a Transource meeting	\$22.40
r/t airport mileage for travel to Columbus, OH for Transource meeting	\$22.40
r/t business mileage to Liberty Memorial for KLT Business Plan Update Meeting	\$2.24
r/t mileage for the Iatan - Nashua Land Acquisition celebratory Dinner @ Trezo Mare; 4105 N. Mulberry Drive, KCMO 64116	\$6.16
r/t mileage for Transource team dinner at Jack Stack's BBQ/4747 Wyandotte, KCMO	\$5.04
r/t mileage for visit to the Nashua Substation for the Iatan/Nashua site visit	\$67.76
r/t mileage to attend LaCygne Environmental Project team building golf outing at Heritage Golf Course	\$31.36
r/t mileage to First Watch in Overland Park, KS with John Olander of Burns & McDonnell re: Transource	\$19.60
r/t mileage to the airport for travel to Columbus, OH for the AEP and Kiewitt Demo	\$22.40
room service while staying at the Hilton in Columbus while attending the AEP/Kiewitt demo	\$21.30
taxi fare while in Columbus, OH attending the Transource Meeting	\$30.03
tips in Columbus, OH while traveling for the AEP/Kiewitt demo	\$4.00
tips while in Columbus, OH attending the Transource meeting.	\$9.00
United Way Thank You Lunch for Greg Lee for his service to United Way	\$42.97
Personal	\$79.00
DINNER: Transource, flights severely delayed, Columbus, OH	\$21.97
Mistakenly used CC	\$9.48
Personal	\$136.33
Personal dinner expense	\$131.05
Taxi: Transource, Columbus, OH 6/24-25/2014	\$25.00
Business meal at EEI to discuss Solar	\$559.20
Business meal meal w/ Randy Wisthoff Kansas City Zoo	\$36.06
Business meal to discuss KC Chiefs solar announcement. Attendees listed on receipt.	\$90.00
Business meal w/ Brightergy.	\$20.82
Business meal w/ Sungevity. Attendee list attached.	\$1,645.86
Business Meal: Meeting w/ Jackie DeSouza regarding KC Zoo.	\$4.19
Food & Beverage for KCP&L Suite at Arrowhead for Customer Solutions and Tier 1 Customers. Attendee list attached.	\$1,350.00
Mileage to Kauffman Stadium to host KCP&L Suite.	\$8.96
Mileage to Zoo for Zoo Cabinet meeting.	\$10.08
Parking-business development trip with KC Royals personnel.	\$37.00
Purchase of additional tickets for company guests to attend football game at Arrowhead.	\$51.30
Purchased beverage for Jason Booker on KC Royals trip.	\$7.99
Roundtrip mileage less daily commute to attend house band reception/dinner in Jefferson City.	\$176.96
Roundtrip mileage less daily commute to attend Solar meeting at Arrowhead.	\$9.04
Roundtrip mileage less daily commute to attend Zoo Board Development Committee Meeting and Fundraising Meeting.	\$10.08
Roundtrip mileage less daily commute to attend Zoo Executive Committee Board Meeting.	\$10.17
Roundtrip mileage less daily commute to host KCP&L Suite at Kauffman Stadium	\$8.96
Roundtrip mileage less daily commute to host KCP&L Suite at Sprint Center, Community/Government Affairs.	\$20.16
Roundtrip mileage to host KCP&L Suite at Arrowhead for Community Relations.	\$9.04
Roundtrip mileage to Host KCPL Chiefs Suite	\$9.04
Roundtrip to attend 101 Awards meeting at Arrowhead and KC Zoo Budget Meeting at Zoo.	\$8.96
RT Meeting w/ KC Zoo	\$9.52
RT mileage less distance to home for solar meeting at Kauffman stadium	\$8.96
RT mileage to Zoo Board Meeting at Kansas City Zoo.	\$10.08
RT Mileage to Zoological District Meeting.	\$10.08
RT to Kauffman stadium to host KCP&L Suite.	\$33.60

RT to Topeka less miles from home to meet with KS State Senators	\$71.68
RT travel less difference to attend KCPL sponosred table at 101 awards	\$20.16
Shipped suite tickets to guest.	\$45.02
Souvenirs for guests of KCP&L suite at Kauffman. Attendee list attached.	\$189.61
Transportation-business development trip with KC Royals personnel.	\$51.15
Travel back (to meetng at KC Zoo) from Tantara, Osage Beach, MO for Missouri Chamber of Commcerce Environmental Conference.	\$87.92
Travel DC for Mike Poling's funeral (company employee).	\$420.00
Travel food for Mike Poling's funeral (company employee).	\$2.53
Travel meal - business development trip with KC Royals personnel.	\$6.68
Travel meal-business development trip with KC Royals personnel.	\$3.75
Travel to Arrowhead, KC Zoo for business meetings	\$5.60
Travel to Tantara, Osage Beach, MO for Missouri Chamber of Commcerce Environmental Conference.	\$85.68
Travel to Zoo mileage less daily commute to attend Zoo Borad Meeting.	\$10.17
Zoolgoical District Meeting-KC Zoo	\$10.35
Airfare for Scott's flight from KC to Seattle to attend the BNSF's Great Pacific Train Ride, July 17 - 20.	\$505.13
Attended the Working Families' Friend Annual Golf Tournament at The National Golf Course	\$19.60
Attending the AABE 14th Annual Golf Tournament, Shoal Creek Golf Course	\$15.68
Baggage fee from Alaska Air on returning flight from Whitefish, MT to KC after attending the BNSF Train Trip, July 17-20	\$25.00
Hotel on 7/17 - 19 while attending the BNSF Train Trip, July 17-20, Seattle WA to Whitefish, MT	\$695.28
KCI Airport parking while attending the BNSF Train Trip, July 17-20, Seattle, WA to Whitefish, MT	\$75.00
Travel agent fee for Airfare for Scott's flight from KC to Seattle to attend the BNSF's Great Pacific Train Ride, July 17 - 20.	\$33.50
Travel Agent Fee for Scott Heidtbrink's round-trip ticket from KC to Seattle to Montana, back to KC (July 17 - 20) - Will be credited after plans are changed.	\$33.50
LaCygne/Transource Personnel Meeting	\$105.88
Royals Suite - Regulatory Team Building event - LA Dodgers	\$406.46
Team Building Outing - KC Royals Game - Royals v. White Sox	\$441.20
r/t mileage to Plaza for AllConnect meeting	\$5.60
r/t mileage to the Boy Scouts of America offices for Exploring Division meeting	\$16.68
r/t mileage to the Boy Scouts office to attend the Exploring Div. Dinner & Awards	\$16.24
Food for Royals Suite. Business development. Transource Attendee List attached.	\$21.75
	\$17,652.34

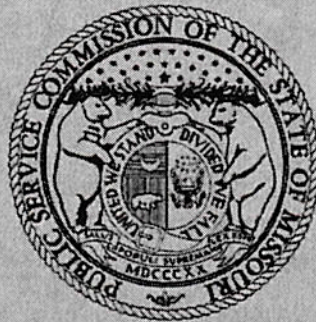
Staff Exhibit No. 200-NP
Date 6/15/15 Reporter AT
File No. ER-2014-0370

MISSOURI PUBLIC SERVICE COMMISSION

Filed
June 29, 2015
Data Center
Missouri Public
Service Commission

STAFF REPORT

**REVENUE REQUIREMENT
COST OF SERVICE**



KANSAS CITY POWER & LIGHT COMPANY

CASE NO. ER-2014-0370

*Jefferson City, Missouri
April 2, 2015*

**** Denotes Highly Confidential Information ****

NP

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- 1 i. A \$530 unexplained restaurant charge for a business development meeting at
2 Piropos Briarcliff in Kansas City.

3 On March 24, 2015, KCPL notified Staff that it will be making in its cost of service true-up
4 filing an update to its adjustment CS-11 in the amount of \$117,422. This update is to remove all
5 eight Great Plains officer (not KCPL officers) expense report charges from KCPL's test year
6 expenses. KCPL advised Staff that the expense report charges of the eight KCPL officers will
7 not be adjusted. KCPL also indicated that the adjustment will correct a KCPL officer expense
8 report charge that was made to KCPL's books and records that should have been made to
9 Transource Missouri's books and records. Transource Missouri is an affiliate of KCPL.

10 The fact that these costs were incurred, approved, paid, and charged to accounts that
11 would qualify for recovery from KCPL customers raises a concern regarding KCPL's other cost
12 of service expenses that have not received the same level of scrutiny as the officer expense report
13 charges. The officer expense report transactions occur at the highest level of authority and
14 control of KCPL's costs. These costs would not be removed without Staff's audit. These costs
15 were not removed from cost of service through, KCPL's own internal controls, seeking to find
16 and remove inappropriate, excessive and imprudent officer expenses. These costs are only being
17 removed as a result of Staff's audit of the costs that KCPL asserts are reasonable and prudent and
18 appropriately charged to ratepayers.

19 This is not a new discovery by Staff, as Staff identified this practice and was assured
20 previously by KCPL that the practice was being corrected. Information in this case provides a
21 strong indication that KCPL did not adequately review officer expenses prior to filing this rate
22 case, let alone address this matter before the expenses were incurred, paid, and charged to
23 regulated expense accounts.

24 Because KCPL's internal controls are ineffective and KCPL has been aware of the
25 deficiency from prior cases, Staff has decided to remove 50 percent of all KCPL and 100 percent
26 of Great Plains officer expenses charged to test year regulated accounts in this case. This
27 adjustment will provide a high level of the assurance that no unreasonable costs have been
28 included in customer rates and should provide KCPL with an incentive to improve its controls
29 to provide reasonable assurance that officer expense report charges made to KCPL's
30 regulated accounts are reasonable, prudent, not excessive and correctly allocated without a
31 Staff inspection.

Staff Exhibit No. 216-NP

Date 6-15-15 Reporter AT

File No. ER-2014-0370

Exhibit No.:

Issues: *Corporate Allocations/*

Affiliate Transactions

Witness: *Charles R. Hyneman*

Sponsoring Party: *MoPSC Staff*

Type of Exhibit: *Surrebuttal Testimony*

Case No.: *ER-2014-0370*

Date Testimony Prepared: *June 5, 2015*

Filed

June 29, 2015

Data Center

Missouri Public

Service Commission

MISSOURI PUBLIC SERVICE COMMISSION

REGULATORY REVIEW DIVISION

UTILITY SERVICES - AUDITING

SURREBUTTAL TESTIMONY

OF

CHARLES R. HYNEMAN

KANSAS CITY POWER & LIGHT COMPANY

CASE NO. ER-2014-0370

Jefferson City, Missouri

June 2015

**** Denotes Highly Confidential Information ****

NP

CRH-S-6

5/35

Surrebuttal Testimony of
Charles R. Hyneman

1 Q. Has the Staff filed a complaint case with the Commission related to KCPL's
2 relationship with Allconnect?

3 A. Yes. The Staff filed a complaint case against KCPL on May 20, 2015 seeking
4 that the Commission order KCPL to cease its relationship with Allconnect. The Staff finds
5 significant detriment to KCPL's regulated customers as a direct result of KCPL's dealings
6 with Allconnect. The Staff is seeking to protect KCPL's Missouri regulated customers from
7 KCPL's imprudent management actions causing a detriment to its regulated customers.

8 Q. In addition to the ratepayer detriment suffered as a result of KCPL's customers
9 being transferred to Allconnect, does the Staff have additional concerns with Allconnect?

10 A. Yes. KPCL's association with the servicing of the GPES contract with
11 Allconnect has resulted in an additional violation of the Commission's Affiliate Transaction
12 Rule related to the protection of customer information.

13 Q. Please explain.

14 A. When KCPL customer service employees transfer customer calls from the
15 KCPL Call Center to Allconnect's facilities and employees, it is also transferring customer
16 information without the customer's permission. 4 CSR 240-40.015 Affiliate Transactions
17 paragraph (2)(C) states that "Specific customer information shall be made available to affiliate
18 and unaffiliated entities only upon consent of the customer or as otherwise provided by law or
19 commission rules or orders." KCPL provides Allconnect with specific customer information
20 without the consent of the customer.

21 **Staff's Consolidated Corporate Allocations/Affiliated Transactions Adjustment**

22 Q. What is KCPL witness Klote's response to the Staff Adjustment 5, which is
23 Staff's \$750,000 Consolidated Corporate Allocations and Affiliate Transactions adjustment?

Surrebuttal Testimony of
Charles R. Hyneman

1 A. Mr. Klote addresses this adjustment at pages 32 through 40 of his rebuttal
2 testimony in which he characterizes the adjustment as "unreasonable."

3 Q. Why does Mr. Klote find Staff Adjustment 5 to be unreasonable?

4 A. Mr. Klote believes the adjustment is arbitrary. He also believes that Staff has
5 overstated the level of KCPL's noncompliance with the Commission's Affiliate Transaction
6 rule, and that Staff has overstated the degree to which KCPL is currently, or will in the future,
7 be engaging in non-regulated operations.

8 Q. Does Staff Adjustment 5 include the approximate \$140,000 in GPE officer
9 expenses that, in response to a Staff Data Request, KCPL proposed to remove from its cost of
10 service in this rate case?

11 A. No. KCPL made the decision that it would not provide justification for certain
12 officer expense report costs addressed in Staff Data Request No. 502 ("DR 502"). KCPL
13 decided just to remove these costs from this rate case and stopped any further explanation into
14 these and other potentially related costs by its decision not to address this issue by providing
15 any further response to DR 502. KCPL notified the Staff of its decision not to address the
16 issues listed in DR 502 on or about April 6, 2015.

17 Based on certain expenses charged by just one KCPL management employee, Staff
18 asked a series of questions in an attempt to understand the business purpose of the expenses or
19 how these expenses received approval to be paid under KCPL's internal control procedures.
20 It is interesting to note that KCPL chose not to justify any of these charges as having a
21 legitimate business purpose, but nonetheless approved these expenses, paid these expenses
22 and charged them to regulated utility accounts where, unless challenged, the costs would have
23 been included in customer rates.

Surrebuttal Testimony of
Charles R. Hyneman

1

Item	Tran Amt	Merchant	Long Descr
1	\$5,447	APPLESTORE #R283	Ipads for KCP&L Corp Communications team.
2	\$2,200	GREATER KANSAS CITY CH	Registration fee for the Greater KC Chamber of Comm Leadership Exch
3	\$1,119	CAPITAL GRILLE00080150	Marketing & Public Affairs Leadership Retreat. List attached.
4	\$918	APPLESTORE #R283	IPad for Communications team.
5	\$916	MGM GRAND/CRAFTSTEAK	Trave meal at EEI Conference. Attendee list attached to receipt.
6	\$815	HYATT HOTELS BOSTON	Hotel for CCIF Conference in Boston.
7	\$797	CHESAPEAKE ENERGY AREN	MPA Customer Research Trip to Oklahoma City. Attendee list attached.
8	\$738	12 BALTIMORE	Business Meal: Baby shower for (REDACTED). Attendee list attached.
9	\$659	CAPITAL GRILLE00080150	Business Meal RE: Customer Meeting RE: Guest list attached.
10	\$611	PIROPOS BRIARCLIFF	Business meeting to discuss KC city projects. Attendee list on receipt page.
11	\$559	DEL FRISCOS #8635	Business meal at EEI to discuss Solar
12	\$540	PIROPOS BRIARCLIFF	Business development meeting.
13	\$504	SOUTHWEST	Travel to Chicago/Hearland Dialogs
14	\$482	SOUTHWEST	Airfare to Chicago for meeting with Bridge Strategy.
15	\$454	SOUTHWEST	R/T business travel to Oklahoma City for Customer Experience trip.
17	\$411	AT&T*TEXT2PAY	Company cell phone data usage.
18	\$405	WARWICK ALLERTON HOTEL	Lodging/Chicgo/Hearland Dialogues
19	\$355	FINANCIAL RESEARCH INST	Purchase Big Book of Lists
20	\$344	SOUTHWEST	Airfare for Media Conference in St. Louis.
21	\$337	CAPITAL GRILLE00080150	Business development meeting. Attendee list attached.
22	\$327	SULLIVANS STEA00085365	Dinner w/ (REDACTED), KC Royals
23	\$323	BRISTOL 162	Business Meal: Ameren
24	\$316	CAPITAL GRILLE00080150	Business Meal w/ (REDACTED) of WPA Research to discuss customer research.
25	\$301	THE MAJESTIC RESTAURANT	Business meal to discuss iFactor additional attendees on receipt.
26	\$293	CAPITAL GRILLE00080150	Business meal with (REDACTED) to discuss government affairs.
27	\$293	AT&T*TEXT2PAY	Payment for company supported electronic device.
28	\$292	AT&T*TEXT2PAY	Payment for company provided electronic device.
29	\$287	APPLESTORE #R097	Ipad equipment for Corporate Communications Team
30	\$269	SULLIVANS STEA00085365	Dinner w/ (REDACTED), Kansas City Water
31	\$263	APPLESTORE #R283	Ipad expense for Corporate Communicalton Team.
32	\$251	SULLIVANS STEA00085365	Business Meal RE: AllConnect Attendee list attached
35	\$220	LEGAL HARBORSIDE	Travel meal at CCIF in Boston w/ (REDACTED)
36	\$210	SOUTHWEST	KC Chamber of Comm Leadership Exch Conf in San Fransico, CA.
37	\$206	ATT*PAYMENT	Paymet for company provided electronic device.
38	\$206	ATT*PAYMENT	Payment for company cell phone replacement.
39	\$206	ATT*PAYMENT	Replacement of Company cell phone.
40	\$206	ATT*PAYMENT	Payment for company cell phone

2

3

4

Reference the attached Excel spreadsheet which lists certain expense report charges and questions listed below related to those charges:

5

A Nos. 37-40, please explain the reason for over \$800 in cell phone charges

6

B For all meal charges, please provide the cost per person, the name of the person who approved the charge and a description stating why the cost was necessary to provide regulated utility service

7

8

9

C. Item number 8, was the cost of the baby shower charged to regulated customers? If so, why?

10

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- 1 D. For the Ipad related charges. Why were these Ipads purchased? Have they been
2 and are they currently being used for regulated utility operations?
- 3 E. For the Ipad related charges. Why were these Ipads not capitalized to plant in
4 service accounts?
- 5 F. No. 2, why is this cost to KCPL regulated accounts?
- 6 G. No. 18, what is the business purpose of this trip?
- 7 H. No. 19 how is this book related to KCPL's regulated operations?
- 8 I. No. 20, what is the business purpose of this trip?
- 9 J. No. 6, what is the business purpose of this trip?
- 10 K. No. 14, what is the business purpose of this trip?
- 11 L. No. 15, what is the business purpose of this trip?
- 12 M. Nos. 17, 27, 28, Does KCPL pay approximately \$300 to \$400 per month for one
13 employee's cell phone service? If so, is this the fair market price for one cell phone?
- 14 KCPL's response to DR 502, in part, was that "[s]ubsequent to its direct filing in this case,
15 the Company informed MPSC Staff that it was removing all GPE Officers expense report costs."
16 KCPL failed to attempt to explain or even address any of the individual Staff questions listed above in
17 DR 502.
- 18 Q. How do you as an auditor respond to KCPL's response to DR 502?
- 19 A. When a regulated utility company such as KCPL refuses to provide a
20 responsive answer to a Staff Data Request and also does not object to the data request that is
21 always a concern. In this particular instance KCPL is attempting to just substitute providing
22 money rather than a substantive response to the Staff Data Request. This is even a bigger
23 problem for a Staff auditor.
- 24 If KCPL is unable to justify one dollar of expense for a list of expenses paid to one
25 employee, it is the regulatory auditor's responsibility to determine the risk of inappropriate
26 and excessive costs for all of KCPL management employees being passed on to Missouri
27 ratepayers. While I increasingly view Staff Adjustment 5 to be more and more conservative,
28 it is made with the intent, not just to quantify Great Plains' Officer excessive and imprudent
29 charges, but all of KCPL's approximately 1,000 managers' excessive charges. Great Plains'

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1 Officers set the "tone at the top" as they are in charge of creating and enforcing corporate
2 policies and procedures. The risk that all KCPL managers behave in a similar manner as
3 GPE officers is extremely high. If KCPL is not enforcing its expense report policies on
4 Great Plains officers, there is absolutely no reason to believe it is enforcing these policies on
5 other KCPL managers.

6 Q. Why do you consider the \$750,000 total company amount of Staff
7 Adjustment 5 to be conservative?

8 A. The fact is that KCPL could justify none of the \$23,000 in officer expenses it
9 was asked to justify in DR 502. In DR 502, Staff inquired about a small number of
10 transactions for only one KCPL management employee. Given this fact, it appears the Staff
11 may have underestimated the overall level of inappropriate, imprudent, excessive or
12 inappropriately-allocated costs in KCPL's test year regulated books of account. There is also
13 a strong indication that further and more extensive work in this area needs to be conducted in
14 this area in the future.

15 The Staff's consolidated corporate allocations and affiliate transactions adjustment is
16 designed to protect against the risk of inappropriate charges in all phases of KCPL's corporate
17 operations, not just management expense account expenses. However, when you add the
18 Staff's \$750,000 adjustment to the \$140,000 removal of GPE expenses, the total is \$890,000.
19 The amount \$890,000 divided by KCPL's 1,000 management employees only protects the
20 ratepayers from a maximum of \$890 per management employee of imprudent, excessive and
21 inappropriately allocated corporate charges in the test year. Given that Staff Adjustment 5
22 was not designed to cover only excessive and imprudent KCPL management expense report
23 charges but also under-allocation of residual corporate overhead charges, there is little doubt
24 that the Staff's adjustment could be much larger.

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1 Q. Did you consider a much larger dollar amount for Staff Adjustment 5?

2 A. Yes. However, at that time I did not realize the severity of KCPL's corporate
3 allocations issues. Also, I gave consideration that KCPL and Staff had made progress in the
4 development of an agreed-upon CAM and that KCPL did put a General Allocator into effect
5 in 2015. These are some of the considerations that were considered at the time Staff
6 Adjustment 5 was made in the Staff's Cost of Service Report.

7 Q. Are there other considerations that should be considered other than the dollar
8 amount of the management expense account charges?

9 A. Yes. When employee expense report expenses are inappropriately charged or
10 allocated, that is an indication that the salaries and benefits of the member of management are
11 also inappropriately charged. As an example, when KCPL management travel to Little Rock
12 Arkansas to meet with members of the Southwest Power Pool (SPP), KCPL routinely charted
13 this travel costs to Operating Unit 10106, which is then allocated to KCPL and GMO
14 regulated operations. Logically, the KCPL employees who made this trip would also charge
15 their payroll and benefit costs to only KCPL and GMO. However, Transource is also a
16 regulated by the Federal Energy Regulatory Commission and is a member of SPP.
17 As explained above, Transource would also benefit from KCPL management's meetings with
18 the SPP representatives just as KCPL and GMO would benefit.

19 Q. How do you respond to Mr. Klote's assertion that your adjustment was
20 arbitrary?

21 A. Merriam Webster's online dictionary defines "arbitrary" in part as "*not planned*
22 *or chosen for a particular reason: not based on reason or evidence: done without concern for*
23 *what is fair or right.*" If that is what Mr. Klote had in mind when he characterized this
24 adjustment as arbitrary, then I disagree.

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1 This adjustment was planned with a reason to protect KCPL's ratepayers from
2 excessive, imprudent or inappropriately allocated charges. The adjustment was based on my
3 review of hundreds of documents related to KCPL's corporate cost allocations and affiliate
4 transactions. The adjustment was based on my reliance on extensive work over several years
5 on KCPL's corporate allocations and affiliate transactions, including KCPL's current CAM
6 case. This adjustment is also based on the length of time that KCPL has had problems with
7 non-compliance with the Commission's affiliated transaction costs as discussed in prior
8 testimony regarding the improper handling of the Crossroads and GPP transactions. Finally,
9 this adjustment was certainly done with concern for what is "fair" and "right".

10 Q. Has Mr. Klote in previous KCPL rate cases reviewed and removed certain
11 KCPL management expenses from KCPL's requested cost of service in those rate cases?

12 A. Yes. This is not a new problem with KCPL. KCPL's lack of internal controls
13 over its management expense accounts has been a problem for years going back to at least
14 2006. Based on the problems found by Staff in Case No. ER-2007-0291 and problem areas
15 found by KCPL's own internal auditors, Mr. Klote and another KCPL employee were
16 assigned to review all, or a very significant number of officer expense reports and remove
17 inappropriate charges through a cost of service adjustment in its rate case.

18 Q. Did Mr. Klote perform a similar review in this rate case?

19 A. Staff has seen no evidence of such a review. If Mr. Klote performed such a
20 review, then he certainly would have found many of the same imprudent, excessive and
21 inappropriately allocated costs that I found during my review.

22 Q. How do you respond to Mr. Klote's characterization of that Staff has overstated
23 the level of KCPL's noncompliance with the Commission's Affiliate Transactions Rule?

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1 A. I have addressed KCPL's significant lack of compliance with the Commission's
2 Affiliate Transactions Rule. I have summarized some very significant violations (Crossroads
3 and GPP) that should convince anyone with an understanding of the Affiliate Transactions
4 Rule and utility operations that KCPL has in the past and continues to exercise little or no
5 internal control supported by effective policies and procedures designed to ensure compliance
6 with the Affiliate Transactions Rule.

7 Effective internal control would detect and prevent inappropriate expenditures and
8 related booking of such costs, as well as identify the individual(s) or culture (e.g., lack of
9 instruction or the following of directives) responsible for the problem. I have also listed
10 specific current Affiliate Transactions Rule violations between KCPL and Great Plains related
11 to what I consider KCPL's forced business relationship with Allconnect, Inc.

12 Even in response to several Staff data requests in this case KCPL admitted
13 noncompliance with the Affiliate Transactions Rule by stating, in effect, that KCPL needs
14 Staff's help to record corporate allocations and affiliate transactions correctly. KCPL's exact
15 response was "The Company and Staff personnel have made significant progress in
16 establishing an agreed upon CAM which the Company expects will improve consistency of
17 coding going forward." (KCPL-GMO responses to Staff Data Request Nos. 559, 564, 565,
18 566 and 567).

19 It is difficult to understand how Mr. Klote can state that the Staff has overstated the
20 level of KCPL's noncompliance with the Commission's Affiliate Transactions Rule given the
21 fact that KCPL admits it cannot even record corporate allocations and affiliate transactions
22 correctly without the Staff's assistance in creating a revised cost allocation manual and
23 effective internal controls. As with the level of Staff's \$750,000 adjustment, the Staff's

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1 | characterization of KCPL's noncompliance with the Affiliate Transactions Rule is not
2 | overstated, but likely significantly understated.

3 | Q. Was KCPL's response to Staff Data Request No. 502, or the other Staff Data
4 | Requests noted above, the only Staff data requests where KCPL failed to explain or justify its
5 | management's corporate expense account charges?

6 | A. No. Staff Data Request No. 560 ("DR 560") is another example. The Staff's
7 | questions submitted in DR 560 and KCPL's "non-responses" are provided below. In DR 560
8 | the Staff attempted to obtain information whether certain expenses incurred by its employees
9 | were in compliance with Great Plains-KCPL Procurement policies. KCPL refused to address
10 | this Staff question related to internal controls and policies.

11 | **Staff Data Request No. 560**

12 | 1. Reference Expense Report 0000038916. Was the purchase of
13 | iPads for KCPL's Corporate Communications Team on
14 | December 16, 2013 in compliance with KCPL's Procurement
15 | policies in general and its procurement policies for computers in
16 | particular? 2. Since this charge was booked to Operating Unit
17 | 101106, how does the use of these iPads for the Corporate
18 | Communications Team only benefit KCPL and GMO's
19 | regulated utility operations? 3. If this purchase does not only
20 | benefit KCPL and GMO's regulated operations, why was it
21 | booked to Operating Unit 101016 and account 921? 4. Please
22 | provide the name of the KCPL employee who approved this
23 | purchase. 5. Was the approval made prior to or subsequent to
24 | the purchase? 6. Please provide a copy of the KCPL policy
25 | which allows KCPL Officers to purchase computer equipment
26 | on their expense reports. 7. Please provide a copy of all KCPL's
27 | internal controls which reduces the potential for employees to
28 | charge to Operating Unit 101106 Utility Mass Formula, when
29 | the charge should be to 101105 Corporate Mass Formula. 2.
30 | Reference expense report 0000038628 and the November 11,
31 | 2013 "business meeting" with . . . and a KCPL employee at the
32 | Sullivan's Steak House in Leawood Kansas charged to account
33 | 921 101106 Utility MASS Formula 1. Who is . . . and what
34 | services did he provide to KCPL? 2. Please describe these
35 | services in detail. 3. Since the charge was made to Operating
36 | unit 101106, please explain in detail how these charges benefit
37 | only KCPL and GMO regulated operations and not GPE

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1 businesses in general. 4. Has KCPL ever entered into a contract
2 or agreement with . . .? If yes, please provide a copy. If not,
3 why did KCPL believe it was necessary to charge KCPL and
4 GMO ratepayers to meet with . . . DR requested by Chuck
5 Hyneman (Chuck.Hyneman@psc.mo.gov).

6 **KCPL Response to Staff Data Request No. 560**

7 The Company made an adjustment to reduce rate recovery of
8 GPE Officer expenses by approximately \$67k (Missouri
9 jurisdictional) in recognition of inconsistent coding of expenses
10 during the test year. The Company and Staff personnel have
11 made significant progress in establishing an agreed upon CAM
12 which the Company expects will improve consistency of coding
13 going forward. The charge questioned above should have been
14 coded to Operating Unit 10105 which would have spread the
15 cost across all Business Units (including non-regulated units).

16 Q. Do you have a response to KCPL's answer to Staff DR 560?

17 A. Yes. In instances where KCPL refused to respond to basic requests for
18 information, any auditor, especially a Certified Public Accountant, is expected to approach the
19 audit area with an even higher-than-normal level of professional skepticism. That is how
20 I reacted to KCPL's response to DR 560 as well as the other responses described above.

21 Q. Are Certified Public Accountants ("CPAs") required to adopt and maintain an
22 attitude of professionalism in the conduct of audits of financial statements?

23 A. Yes.

24 Q. Are you a CPA?

25 A. Yes. Mr. Klote is a CPA as well.

26 Q. What regulatory standards require the application of auditor professional
27 skepticism?

28 A. It is required by the Public Company Accounting Oversight Board (PCAOB)
29 audit standards. The PCAOB was established by Congress to oversee the audits of public
30 companies in order to protect the interests of investors and further the public interest in the

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1 preparation of informative, accurate and independent audit reports. As noted in the attached
2 Schedule CRH-s6, Staff Audit Practice Alert No. 10, *Maintaining and Applying Professional*
3 *Skepticism in Audits*, December 4, 2012, professional skepticism is essential to the
4 performance of effective audits under PCAOB standards. PCAOB standards require that
5 professional skepticism be applied throughout the audit by each individual auditor on the
6 engagement team.

7 Q. Does it appear to you that KCPL and GPE officers set the appropriate "tone at
8 the top" when it comes to the incurrence of expense account charges?

9 A. In my opinion, no. KCPL and Great Plains officers are supposed to set the
10 example of prudent behavior in the incurrence and approval of expenses charged when
11 travelling and when incurring or approving costs for purchases, travel, and for meals and
12 entertainment in the local area. As discussed above, KCPL and Great Plains officers set what
13 is referred to as the "tone at the top" as it relates to incurred expenses. This means that as
14 KCPL non-officer employees are aware of the standards actually used by KCPL and
15 Great Plains officers to incur and record expenses, they too will adopt and adhere to those
16 same standards.

17 For example, if one officer incurs expenses in one month but does not submit an
18 expense report until seven months later, this officer encourages his/her subordinates to do or
19 even accept this same poor internal control practice. KCPL has a policy for timely submittal
20 of expense reports with the indication that reimbursement will be denied if proper
21 documentation is not submitted on a timely basis. Likewise, if one officer purchases items
22 such as computers without going through the proper procurement channels, that officer
23 encourages other employees to follow his/her example. A final example is when an officer
24 incurs excessive meal costs and charges, including alcohol and charges not allowed by

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1 Company's policies, and allows these costs as expenses to be recovered by ratepayers.
2 This officer only encourages employees to follow his/her example instead of following
3 Company policies.

4 Q. What is the concept underlying the "tone at the top"?

5 A. I should point out that I am only referring to the principle of the "tone at the
6 top" in this testimony as it relates to the reasonableness and prudence of KCPL and
7 Great Plains management's internal controls over its employee expense reimbursement
8 process. I have not found nor am I implying KCPL has engaged in any unethical behavior.

9 Tone at the top is the climate generated by an organization's leadership. It is
10 well understood that the tone set by management has a significant influence on the employees
11 of the organization. The behavior and actions of the employees will naturally gravitate
12 toward what they witness in their supervisors, line managers, and upper management.
13 "Tone at the top" is also an important component of a company's internal control
14 environment. The tone at the top is set by all levels of management and has a trickle-down
15 effect on all employees of the company. Setting the proper tone starts with managers at all
16 levels leading by example. As it relates to this issue, KCPL leaders should demonstrate
17 through their own actions their commitment to ensuring only reasonable and prudent
18 employee expense account expenses are approved and reimbursed. Management cannot act
19 contrary to this commitment and expect others in the company to behave differently.

20 Q. Is there an example where a Great Plains officer incurred expenses in one
21 month but did not file an expense until seven months later?

22 A. Yes. The Staff found the following examples of extremely late submission of
23 expense reports that are repeat violations of KCPL's policies.

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- 1 1. Officer incurred expenses in May 2013 (0000036408) the date of
2 the expense report was October 16, 2013 and the officer signed
3 attesting to the accuracy of the expenses on December 30, 2013.
- 4 2. Officer incurred expenses in June 2013 (0000036729) the date of
5 the expense report was October 20, 2013 and the officer signed
6 attesting to the accuracy of the expenses on December 26, 2013.
- 7 3. Officer incurred expenses in July 2013 (0000036734) the date of
8 the expense report was October 29, 2013 and the officer signed
9 attesting to the accuracy of the expenses on December 26, 2013.
- 10 4. Officer incurred expenses in September 2013 (0000036742) the
11 date of the expense report was October 29, 2013 and the officer
12 signed attesting to the accuracy of the expenses on December 26,
13 2013.

14 Q. Has KCPL management been aware of significant problems with its
15 management's treatment of expenses for several years?

16 A. Yes. In response to Staff Data Request No. 162 in KCPL rate case No.
17 ER-2007-0291 Staff received a copy of Great Plains Energy Services Kansas City Power &
18 Light Officers and Directors Expense Report Review dated January 17, 2007. One of the
19 Audit steps in this KCPL Internal Audit Department review was to verify that "All expenses
20 should be coded to the correct account and given a sufficient description stating the business
21 purpose. KCPL internal auditors found that "12 out of 33 (36%) Officer expense reports did
22 not have the correct account coding on them. It is the employee's responsibility for coding
23 expense reports correctly and Corporate Accounting's responsibility for providing support and
24 training to employees to ensure that expenses are coded correctly."

25 Another significant finding by KCPL's internal auditors in 2007 that continues to exist
26 today is that "it was difficult to determine the business purpose by the description provided on
27 some expense reports." In my review of KCPL and GPE management expense reports in this
28 rate case audit I have found many charges which would seem to have a questionable business
29 purpose. When I inquired to KCPL for the provision of the business purpose of some of the

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1 questionable charges, KCPL could not or it decided not to provide the business purpose for
2 even one of the charges.

3 Q. What was the overall assessment of KCPL's internal auditors in its 2007
4 review?

5 A. The Overall Assessment of KCPL's internal auditors was that:

6 Based on testing performed, at the time of our fieldwork,
7 it appears that controls over Officers' expense reporting
8 needs improvement. For the Officers' expense
9 reimbursement process, the review noted several
10 expense reports that were not in compliance with the
11 Policy. Specific areas not in compliance included lack of
12 required receipts, incorrect coding of expenses, and
13 spousal travel without evidence of adequate approval
14 and review.

15 Q. Given KCPL's past problems with its officer expense reports does it appear to
16 you that KCPL's internal audit function is performing effectively?

17 A. No. I would assume that given KCPL's past officer expense report problems
18 that KCPL's Internal Audit Department would make it a priority to audit KCPL's officer
19 expenses regularly and ensure past non-compliance issues were addressed and corrected.
20 My review of KCPL's officer expense reports in this rate case shows that these actions are not
21 taking place.

22 Q. Did you question the business purpose of a particularly questionable charge by
23 a member of KCPL management?

24 A. Yes. KCPL apparently approved the payment, reimbursed one of its
25 employees, and charged to KCPL and GMO ratepayers for travel to a Board Retreat for an
26 organization not related to KCPL or regulated operations or the utility industry in general.
27 I inquired about this charge in Staff Data Request No. 576 and KCPL decided that it could not

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1 provide a business purpose for this charge. KCPL defended the appropriateness of this charge
2 and said it should have been allocated to all Great Plains entities, including KCPL and GMO
3 regulated operations in Operating Unit 10105. KCPL provided the same worded response
4 for Staff Data Request No. 576 as it did for Staff Data Request Nos. 559, 564, 565, 566, 567,
5 and 560.

6 It is extremely difficult for me to understand as it should be for anyone to understand
7 why KCPL ratepayers should pay, in part, as maintained by KCPL, the cost of a KCPL/Great
8 Plains Officer to travel to attend a "Board Retreat" for a company unrelated to regulated
9 utility business. Yet, this is KCPL's official position as attested to by Mr. Tim Rush, a KCPL
10 witness in this rate case.

11 **Staff Data Request No. 576**

12 Reference Expense Report 0000036742, airfare for the "MEM
13 Board Retreat" charged to Operating Unit 10106, account 921.
14 1) Is "MEM" referenced in this expense report the "Missouri
15 Employers Mutual," a provider of workers compensation
16 insurance? 2) What does the Missouri Employers Mutual Board
17 Retreat have to do with KCPL or GMO? 3) Who approved this
18 payment to the requesting KCPL employee? 3) Why was this
19 payment approved? 4) Why was the Operating Unit -- Utility
20 Mass Formula allocated only to KCPL and GMO regulated
21 operations selected as the appropriate allocation factor?

22 **KCPL Response to Staff Data Request No. 576**

23 The Company made an adjustment to reduce rate recovery of
24 GPE Officer expenses by approximately \$67k (Missouri
25 jurisdictional) in recognition of inconsistent coding of expenses
26 during the test year. The Company and Staff personnel have
27 made significant progress in establishing an agreed upon CAM
28 which the Company expects will improve consistency of coding
29 going forward. The charge questioned above should have been
30 coded to Operating Unit 10105 which would have spread the
31 cost across all Business Units (including non-regulated units).

STAFF AUDIT PRACTICE ALERT NO. 10

**MAINTAINING AND APPLYING
PROFESSIONAL SKEPTICISM IN AUDITS**

December 4, 2012

Staff Audit Practice Alerts highlight new, emerging, or otherwise noteworthy circumstances that may affect how auditors conduct audits under the existing requirements of the standards and rules of the PCAOB and relevant laws. Auditors should determine whether and how to respond to these circumstances based on the specific facts presented. The statements contained in Staff Audit Practice Alerts do not establish rules of the Board and do not reflect any Board determination or judgment about the conduct of any particular firm, auditor, or any other person.

Executive Summary

Professional skepticism is essential to the performance of effective audits under Public Company Accounting Oversight Board ("PCAOB" or "Board") standards. Those standards require that professional skepticism be applied throughout the audit by each individual auditor on the engagement team.

PCAOB standards define professional skepticism as an attitude that includes a questioning mind and a critical assessment of audit evidence. The standards also state that professional skepticism should be exercised throughout the audit process. While professional skepticism is important in all aspects of the audit, it is particularly important in those areas of the audit that involve significant management judgments or transactions outside the normal course of business. Professional skepticism also is important as it relates to the auditor's consideration of fraud in an audit. When auditors do not appropriately apply professional skepticism, they may not obtain sufficient appropriate evidence to support their opinions or may not identify or address situations in which the financial statements are materially misstated.

Observations from the PCAOB's oversight activities continue to raise concerns about whether auditors consistently and diligently apply professional skepticism. Certain circumstances can impede the appropriate application of professional skepticism and allow unconscious biases to prevail, including

incentives and pressures resulting from certain conditions inherent in the audit environment, scheduling and workload demands, or an inappropriate level of confidence or trust in management. Audit firms and individual auditors should be alert for these impediments and take appropriate measures to assure that professional skepticism is applied appropriately throughout all audits performed under PCAOB standards.

Firms' quality control systems can help engagement teams improve the application of professional skepticism in a number of ways, including setting a proper tone at the top that emphasizes the need for professional skepticism; implementing and maintaining appraisal, promotion, and compensation processes that enhance rather than discourage the application of professional skepticism; assigning personnel with the necessary competencies to engagement teams; establishing policies and procedures to assure appropriate audit documentation, especially in areas involving significant judgments; and appropriately monitoring the quality control system and taking necessary corrective actions to address deficiencies, such as, instances in which engagement teams do not apply professional skepticism.

The engagement partner is responsible for, among other things, setting an appropriate tone that emphasizes the need to maintain a questioning mind throughout the audit and to exercise professional skepticism in gathering and evaluating evidence, so that, for example, engagement team members have the confidence to challenge management representations. It is also important for the engagement partner and other senior engagement team members to be actively involved in planning, directing, and reviewing the work of other engagement team members so that matters requiring audit attention, such as unusual matters or inconsistencies in audit evidence, are identified and addressed appropriately.

It is the responsibility of each individual auditor to appropriately apply professional skepticism throughout the audit, including in identifying and assessing the risks of material misstatement, performing tests of controls and substantive procedures to respond to the risks, and evaluating the results of the audit. This involves, among other things, considering what can go wrong with the financial statements, performing audit procedures to obtain sufficient appropriate audit evidence rather than merely obtaining the most readily available evidence to corroborate management's assertions, and critically evaluating all audit evidence regardless of whether it corroborates or contradicts management's assertions.

The Office of the Chief Auditor is issuing this practice alert to remind auditors of the requirement to appropriately apply professional skepticism throughout their audits. The timing of this release is intended to facilitate firms' emphasis in upcoming calendar year-end audits, as well as in future audits, on

the importance of the appropriate use of professional skepticism. Due to the fundamental importance of the appropriate application of professional skepticism in performing an audit in accordance with PCAOB standards, the PCAOB also is continuing to explore whether additional actions might meaningfully enhance auditors' professional skepticism.

Professional Skepticism and Due Professional Care

Professional skepticism, an attitude that includes a questioning mind and a critical assessment of audit evidence, is essential to the performance of effective audits under PCAOB standards. The audit is intended to provide investors with an opinion on whether the financial statements prepared by company management are presented fairly, in all material respects, in conformity with the applicable financial reporting framework. If the audit is conducted without professional skepticism, the value of the audit is impaired.

The auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud.^{1/} This responsibility includes obtaining sufficient appropriate evidence to determine whether the financial statements are materially misstated rather than merely looking for evidence that supports management's assertions.^{2/}

PCAOB standards require the auditor to exercise due professional care in planning and performing the audit and in preparing the audit report. Due professional care requires the auditor to exercise professional skepticism. PCAOB standards define professional skepticism as an attitude that includes a questioning mind and a critical assessment of audit evidence. PCAOB standards require the auditor to exercise professional skepticism throughout the audit.^{3/}

While professional skepticism is important in all aspects of the audit, it is particularly important in those areas of the audit that involve significant

^{1/} Paragraph .02 of AU sec. 110, *Responsibilities and Functions of the Independent Auditor*.

^{2/} See, e.g., paragraph 3 of Auditing Standard No. 8, *Audit Risk* and paragraph 3 of Auditing Standard No. 14, *Evaluating Audit Results*.

^{3/} See paragraphs .01 and .07-.08 of AU sec. 230, *Due Professional Care in the Performance of Work*.

management judgments or transactions outside the normal course of business, such as nonrecurring reserves, financing transactions, and related party transactions that might be motivated solely, or in large measure, by an expected or desired accounting outcome. Effective auditing involves diligent pursuit of sufficient appropriate audit evidence, particularly if contrary evidence exists, and critical assessment of all the evidence obtained.

Professional skepticism is also important as it relates to the auditor's consideration of fraud in the audit.^{4/} Company management has a unique ability to perpetrate fraud because it frequently is in a position to directly or indirectly manipulate accounting records and present fraudulent financial information.^{5/} Company personnel who intentionally misstate the financial statements often seek to conceal the misstatement by attempting to deceive the auditor. Because of this incentive, applying professional skepticism is integral to planning and performing audit procedures to address fraud risks. In exercising professional skepticism, the auditor should not be satisfied with less than persuasive evidence because of a belief that management is honest.^{6/}

Examples of the application of professional skepticism in response to the assessed fraud risks are (a) modifying the planned audit procedures to obtain more reliable evidence regarding relevant assertions and (b) obtaining sufficient appropriate evidence to corroborate management's explanations or representations concerning important matters, such as through third-party confirmation, use of a specialist engaged or employed by the auditor, or examination of documentation from independent sources.^{7/}

PCAOB inspectors continue to observe instances in which the circumstances suggest that auditors did not appropriately apply professional skepticism in their audits.^{8/} As examples, audit deficiencies like the following

^{4/} See paragraph .13 of AU sec. 316, *Consideration of Fraud in a Financial Statement Audit*.

^{5/} AU sec. 316.08.

^{6/} See AU secs. 230.07-.09.

^{7/} Paragraph 7 of Auditing Standard No. 13, *The Auditor's Responses to the Risks of Material Misstatement*.

^{8/} The PCAOB is not alone in identifying concerns regarding professional skepticism in audits. Regulators in countries such as Australia, Canada, Germany, the Netherlands, Singapore, Switzerland, and the United

raise concerns that a lack of professional skepticism was at least a contributing factor:

- For certain hard-to-value Level 2 financial instruments, the engagement team did not obtain an understanding of the specific methods and/or assumptions underlying the fair value estimates that were obtained from pricing services or other third parties and used in the engagement team's testing related to these financial instruments. Further, the firm used the price closest to the issuer's recorded price in testing the fair value measurements, without evaluating the significance of differences between the other prices obtained and the issuer's prices.
- The issuer discontinued production of a significant product line during the prior year and introduced a new product line to replace it. There were no sales of the discontinued product line during the last nine months of the year under audit. The engagement team did not test, beyond inquiry, the significant assumptions management used to calculate its separate inventory reserve for this product line.
- The engagement team did not evaluate the effects on the financial statements of management's determination not to test a significant portion of its property and equipment for impairment, despite indicators that the carrying amount may not have been recoverable. These indicators in this situation included operating losses for the relevant segment for the last three years, substantial charges for

Kingdom have cited concerns about professional skepticism in public reports on their inspections. See, e.g., the Financial Reporting Council's *Audit Quality Inspections Annual Report 2011/12*, available at <http://www.frc.org.uk/Our-Work/Publications/AIU/Audit-Quality-Inspections-Annual-Report-2011-12.aspx>, the Canadian Public Accountability Board's, *Meeting the Challenge "A Call to Action" 2011 Public Report*, available at [http://www.cpab-ccrc.ca/en/content/2011Public Report EN.pdf](http://www.cpab-ccrc.ca/en/content/2011Public%20Report%20EN.pdf), the Australian Securities & Investments Commission's Report 242, *Audit inspection program public report for 2009 – 2010*, available at [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep242-published-29-June-2011.pdf/\\$file/rep242-published-29-June-2011.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep242-published-29-June-2011.pdf/$file/rep242-published-29-June-2011.pdf), and the Accounting and Corporate Regulatory Authority *Practice Monitoring Programme Sixth Public Report*, August 2012, available at <http://www.acra.gov.sg/NR/rdonlyres/E7E2A4BF-EC46-4AB2-877D-297D4E618042/0/PMPReport2012170712finalclean.pdf>.

the impairment of goodwill and other intangible assets during the year, a projected loss for the segment for the upcoming year, and reduced and delayed customer orders.

- After the date of the issuer's balance sheet, but before the release of the firm's opinion, the issuer reported that it anticipated that comparable store sales for the first quarter of the year would be significantly lower than those for the first quarter of the year under audit. The engagement team had performed sensitivity analyses as part of its assessment on the issuer's evaluation of its compliance with its debt covenants, the issuer's ability to continue as a going concern, and the possibility of the impairment of the issuer's long-lived assets. The engagement team did not consider the implications of the anticipated decline in sales on its sensitivity analyses and its conclusions with respect to compliance with debt covenants, the issuer's ability to continue as a going concern, and impairment of long-lived assets.

The PCAOB's enforcement activities also have identified instances in which auditors did not appropriately apply professional skepticism. For example, in one recent disciplinary order, the Board found, among other things, that certain of a firm's audit partners accepted a company's reliance on an exception to generally accepted accounting principles ("GAAP") requirements for reserving for expected future product returns even though doing so conflicted with the plain language of the exception and the firm's internal accounting literature. The partners were aware of, but did not appropriately consider, contradictory audit evidence indicating that the returns were not eligible for the exception. This illustration of a lack of professional skepticism reappeared in the firm's response when the issue was questioned by the firm's internal audit quality reviewers. Although certain of the partners involved determined that the company's reliance on the exception to GAAP did not support the company's accounting, they, along with other firm personnel, formulated another equally deficient rationale that supported the company's existing accounting result.^{9/}

Impediments to the Application of Professional Skepticism

Although PCAOB standards require auditors to appropriately apply professional skepticism throughout the audit, observations from the PCAOB's

^{9/} See *In the Matter of Ernst & Young LLP, Jeffrey S. Anderson, CPA, Ronald Butler, Jr., CPA, Thomas A. Christie, CPA, and Robert H. Thibault, CPA, Respondents*, PCAOB Release No. 105-2012-001, (Feb. 8, 2012).

oversight activities indicate that, as a practical matter, auditors are often challenged in meeting this fundamental audit requirement. In maintaining an attitude that includes a questioning mind and a critical assessment of audit evidence, it is important for auditors to be alert to unconscious human biases and other circumstances that can cause auditors to gather, evaluate, rationalize, and recall information in a way that is consistent with client preferences rather than the interests of external users.

Certain conditions inherent in the audit environment can create incentives and pressures that can serve to impede the appropriate application of professional skepticism and allow unconscious bias to prevail. For example, incentives and pressures to build or maintain a long-term audit engagement, avoid significant conflicts with management, provide an unqualified audit opinion prior to the issuer's filing deadline, achieve high client satisfaction ratings, keep audit costs low, or cross-sell other services can all serve to inhibit professional skepticism.

In addition, over time, auditors may sometimes develop an inappropriate level of trust or confidence in management, which may lead auditors to accede to inappropriate accounting. In some situations, auditors may feel pressure to avoid potential negative interactions with, or consequences to, individuals they know (that is, management) instead of representing the interests of the investors they are charged to protect.

Other circumstances also can impede the appropriate application of professional skepticism. For example, scheduling and workload demands can put pressure on partners and other engagement team members to complete their assignments too quickly, which might lead auditors to seek audit evidence that is easier to obtain rather than evidence that is more relevant and reliable, to obtain less evidence than is necessary, or to give undue weight to confirming evidence without adequately considering contrary evidence.

Although powerful incentives and pressures exist that can impede professional skepticism, the importance of professional skepticism to an effective audit cannot be overstated, particularly given the increasing judgment and complexity in financial reporting and issues posed by the current economic environment.^{10/} Auditors and audit firms must remember that their overriding duty is to put the interests of investors first. Appropriate application of professional skepticism is key to fulfilling the auditor's duty to investors. In the words of the U.S. Supreme Court:

^{10/} See Staff Practice Alert No. 9, *Assessing and Responding to Risk in the Current Economic Environment* (Dec. 6, 2011).

By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility transcending any employment relationship with the client. The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.^{11/}

However, inadequate performance of audit procedures may be caused by factors other than the lack of skepticism, or in combination with a lack of skepticism. As discussed further below, firms should take appropriate steps to understand the various factors that influence audit quality, including those circumstances and pressures that can impede the application of professional skepticism.

Promoting Professional Skepticism via an Appropriate System of Quality Control

PCAOB standards require firms to establish a system of quality control to provide the firm with reasonable assurance that its personnel comply with applicable professional standards and the firm's standards of quality.^{12/} This includes designing and implementing policies and procedures that lead engagement teams to appropriately apply professional skepticism in their audits.

Firms' quality control systems can help engagement teams improve the application of professional skepticism in a number of ways, including the following:

- *"Tone-at-the-Top" Messaging.* The PCAOB's inspection findings have identified instances in which the firm's culture allows or tolerates audit approaches that do not consistently emphasize the need for professional skepticism. Consistent communication from firm leadership that professional skepticism is integral to performing a high quality audit, backed up by a culture that supports it, could improve the quality of work performed by audit partners and staff. On the other hand, messages from firm leadership that are

^{11/} *U. S. v. Arthur Young & Co.*, 465 U.S. 805, 817-18 (1984).

^{12/} See paragraph .03 of Quality Control ("QC") sec. 20, *System of Quality Control for a CPA Firm's Accounting and Auditing Practice*.

excessively focused on revenue or profit growth over achieving audit quality, can undermine the application of professional skepticism.

- *Performance Appraisal, Promotion, and Compensation Processes.* An audit firm's performance appraisal, promotion, and compensation processes can enhance or detract from the application of professional skepticism in its audit practice, depending on how they are designed and executed. For example, if a firm's promotion process emphasizes selling non-audit services or places an undue focus on reducing audit costs, or retaining and acquiring audit clients over achieving high audit quality, the firm's personnel may perceive those goals as being more important to their own compensation, job security, and advancement within the firm than the appropriate application of professional skepticism.
- *Professional Competence and Assigning Personnel to Engagement Teams.* A firm's quality control system depends heavily on the proficiency of its personnel,^{13/} which includes their ability to exercise professional skepticism. To perform the audit with professional skepticism, it is important that personnel assigned to engagement teams have the necessary knowledge, skill, and ability required in the circumstances,^{14/} which includes appropriate technical training and experience. Professional skepticism is interrelated with an auditor's training and experience, as auditors need an appropriate level of competence in order to appropriately apply professional skepticism throughout the audit. In addition, it is important for the firm's culture to continually reinforce the appropriate application of professional skepticism throughout the audit.
- *Documentation.* It is important for a firm's quality control system to establish policies and procedures that cover documenting the results of each engagement.^{15/} Although documentation should support the basis for the auditor's conclusions concerning every

^{13/} QC sec. 20.11.

^{14/} See QC sec. 20.12.

^{15/} See QC secs. 20.17-.18. Also, see generally Auditing Standard No. 3, *Audit Documentation*.

relevant financial statement assertion, areas that require greater judgment generally need more extensive documentation of the procedures performed, evidence obtained, and rationale for the conclusions reached. In addition to the documentation necessary to support the auditor's final conclusions, audit documentation must include information the auditor has identified relating to significant findings or issues that is inconsistent with or contradicts the auditor's final conclusions.^{16/}

- **Monitoring.** Under PCAOB standards, a firm's quality control policies and procedures should include an element of monitoring to ensure that quality control policies and procedures are suitably designed and being effectively applied.^{17/} If the firm identifies deficiencies, the firm should evaluate the reasons for the deficiencies and determine the necessary corrective actions or improvements to the quality control system.^{18/} Accordingly, if a firm identifies deficiencies that include failures to appropriately apply professional skepticism as a contributing factor, the firm should take appropriate corrective actions.

Importance of Supervision to the Application of Professional Skepticism

The supervisory activities performed by the engagement partner and other senior engagement team members are important to the application of professional skepticism.^{19/} The engagement partner is responsible for the proper supervision of the work of engagement team members.^{20/} Accordingly, the

^{16/} See, e.g., paragraphs 7-8 of Auditing Standard No. 3.

^{17/} See QC sec. 20.07 and paragraph .02 of QC sec. 30, *Monitoring a CPA Firm's Accounting and Auditing Practice*.

^{18/} See QC sec. 30.03.

^{19/} Besides supervision by the engagement partner and other engagement team members, the engagement quality reviewer also plays an important role in assessing the application of professional skepticism by the engagement team. In particular, the engagement quality reviewer is required to perform specific procedures to evaluate the significant judgments made by the engagement team.

^{20/} Paragraph 3 of Auditing Standard No. 10, *Supervision of the Audit Engagement*.

engagement partner is responsible for setting an appropriate tone that emphasizes the need to maintain a questioning mind throughout the audit and to exercise professional skepticism in gathering and evaluating evidence, so that, for example, engagement team members have the confidence to challenge management representations.^{21/}

It is also important for the engagement partner and other senior engagement team members to be actively involved in planning, directing, and reviewing the work of other engagement team members so that matters requiring audit attention are identified and addressed appropriately. In directing the work of others, senior engagement team members, including the engagement partner, may have knowledge and experience that may assist less experienced engagement team members in applying professional skepticism. For example, senior engagement team members might help more junior auditors identify matters that are unusual or inconsistent with other evidence. In addition, senior members of the engagement team might be better able to challenge the assertions of senior levels of management, when necessary.

Appropriate Application of Professional Skepticism

Although a firm's quality control systems and the actions of the engagement partner and other senior engagement team members can contribute to an environment that supports professional skepticism, it is ultimately the responsibility of each individual auditor to appropriately apply professional skepticism throughout the audit, including the following areas among others:

- Identifying and assessing risks of material misstatement;
- Performing tests of controls and substantive procedures; and
- Evaluating audit results to form the opinion to be expressed in the auditor's report.

Identifying and Assessing Risks of Material Misstatement

By its nature, risk assessment involves looking at internal and external factors to determine what can go wrong with the financial statements, whether due to error or fraud. When properly applied, the risk assessment approach set forth in PCAOB standards should focus auditors' attention on those areas of the

^{21/} See paragraph 53 of Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatement*.

financial statements that are higher risk and thus most susceptible to misstatement. This includes considering events and conditions that create incentives or pressures on management or create opportunities for management to manipulate the financial statements. The evidence obtained from the required risk assessment procedures should provide a reasonable basis for the auditor's risk assessments, which, in turn, should drive the auditor's tests of accounts and disclosures in the financial statements.

The risk assessment procedures required by PCAOB standards also should provide the auditor with a thorough understanding of the company and its environment as a basis for identifying unusual transactions or matters that warrant further investigation. They also provide a basis for the auditor to evaluate and challenge management's assertions.^{22/} It is important to note that the auditor's understanding should be based on actual information obtained from the risk assessment procedures. It is not sufficient for auditors merely to rely on their perceived knowledge of the industry or information obtained from prior audits or other engagements for the company.

Performing Tests of Controls and Substantive Procedures

Appropriately applying professional skepticism is critical to obtaining sufficient appropriate audit evidence to determine whether the financial statements are free of material misstatement and, in an integrated audit, whether internal controls over financial reporting are operating effectively. Application of professional skepticism is not merely obtaining the most readily available evidence to corroborate management's assertion.

The need for auditors to appropriately apply professional skepticism is echoed throughout PCAOB standards. For example, PCAOB standards caution that representations from management are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit.^{23/} Also, the standards warn that inquiry alone does not provide sufficient appropriate evidence to support a conclusion about a relevant assertion.^{24/}

^{22/} For example, risk assessment procedures may provide the auditor a basis for challenging management's responses to the required inquiries of management in Auditing Standard No. 12.

^{23/} See paragraph .02 of AU sec. 333, *Management Representations*.

^{24/} Paragraph 39 of Auditing Standard No. 13.

In addition, PCAOB standards require auditors to design and perform audit procedures in a manner that addresses the assessed risks of material misstatement and to obtain more persuasive evidence the higher the assessment of risk.^{25/} The auditor is required to apply professional skepticism, which includes a critical assessment of the audit evidence.^{26/} Substantive procedures generally provide persuasive evidence when they are designed and performed to obtain evidence that is relevant and reliable.^{27/} When discussing the characteristics of reliable audit evidence, PCAOB standards observe that generally, among other things, evidence obtained from a knowledgeable source independent of the company is more reliable than evidence obtained only from internal company sources and evidence obtained directly by the auditor is more reliable than evidence obtained indirectly.^{28/}

Taken together, this means that in higher risk areas, the auditor's appropriate application of professional skepticism should result in procedures that are focused on obtaining evidence that is more relevant and reliable, such as evidence obtained directly and evidence obtained from independent, knowledgeable sources.^{29/} Further, if audit evidence obtained from one source is inconsistent with that obtained from another, the auditor should perform the audit procedures necessary to resolve the matter and should determine the effect, if any, on other aspects of the audit.^{30/}

The following are examples of audit procedures in PCAOB standards that reflect the need for professional skepticism:

^{25/} See paragraphs 8-9 of Auditing Standard No. 13. For fraud risks and significant risks, the auditor also is required to perform procedures, including tests of details, that are specifically responsive to the assessed risks.

^{26/} See AU sec. 230.07.

^{27/} Paragraph 39 of Auditing Standard No. 13.

^{28/} See paragraph 8 of Auditing Standard No. 15, *Audit Evidence*.

^{29/} See paragraph 9.a. of Auditing Standard No. 13.

^{30/} Paragraph 29 of Auditing Standard No. 15.

- Resolving inconsistencies in or doubts about the reliability of confirmations;^{31/}
- Examining journal entries and other adjustments for evidence of possible material misstatement due to fraud;^{32/}
- Reviewing accounting estimates for biases that could result in material misstatement due to fraud;^{33/}
- Evaluating the business rationale for significant unusual transactions;^{34/} and
- Evaluating whether there is substantial doubt about an entity's ability to continue as a going concern.^{35/}

Evaluating Audit Results to Form the Opinion to be Expressed in the Audit Report

When professional skepticism is applied appropriately, the auditor does not presume that the financial statements are presented fairly in conformity with the applicable financial reporting framework. Instead, the auditor employs an attitude that includes a questioning mind in making critical assessments of the evidence obtained to determine whether the financial statements are materially misstated. PCAOB standards indicate that the auditor should take into account all relevant audit evidence, regardless of whether the evidence corroborates or contradicts the assertions in the financial statements.^{36/} Examples of areas in the evaluation that reflect the need for the auditor to apply professional skepticism, include, but are not limited to, the following:

^{31/} See, e.g., paragraphs .27 and .33 of AU sec. 330, *The Confirmation Process*.

^{32/} See AU secs. 316.58-.62.

^{33/} See AU secs. 316.63-.65.

^{34/} See AU secs. 316.66-.67.

^{35/} See AU sec. 341, *The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern*.

^{36/} See paragraph 3 of Auditing Standard No. 14.

- *Evaluating uncorrected misstatements.* This includes evaluating whether the uncorrected misstatements identified during the audit result in material misstatement of the financial statements, individually or in combination, considering both qualitative and quantitative factors.^{37/}
- *Evaluating management bias.* This includes evaluating potential bias in accounting estimates, bias in the selection and application of accounting principles, the selective correction of misstatements identified during the audit, and identification by management of additional adjusting entries that offset misstatements accumulated by the auditor.^{38/} When evaluating bias, it is important for auditors to consider the incentives and pressures on management to manipulate the financial statements.
- *Evaluating the presentation of the financial statements.* This includes evaluating whether the financial statements contain the information essential for a fair presentation of the financial statements in conformity with the applicable financial reporting framework.^{39/}

When evaluating misstatements, bias, or presentation and disclosures, it is important for auditors to appropriately apply professional skepticism and avoid dismissing matters as immaterial without adequate consideration.

Conclusion

The Office of the Chief Auditor is issuing this practice alert to remind auditors of the requirement to appropriately apply professional skepticism throughout their audits, which includes an attitude of a questioning mind and a critical assessment of audit evidence. The timing of this release is intended to facilitate firms' emphasis in upcoming calendar year-end audits, as well as in future audits, on the importance of the appropriate use of professional skepticism. Due to the fundamental importance of the appropriate application of professional skepticism in performing an audit in accordance with PCAOB standards, the PCAOB also is continuing to explore whether additional actions might meaningfully enhance auditors' professional skepticism.

^{37/} See paragraph 17 of Auditing Standard No. 14.

^{38/} See paragraph 25 of Auditing Standard No. 14.

^{39/} See paragraphs 30-31 of Auditing Standard No. 14.

Exhibit No.:
Issues: *Iatan Construction Project*
Witness: *Charles R. Hyneman*
Sponsoring Party: *MoPSC Staff*
Type of Exhibit: *Surrebuttal Testimony*
File No.: *ER-2010-0355*
Date Testimony Prepared: *January 5, 2011*

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

SURREBUTTAL TESTIMONY

OF

CHARLES R. HYNEMAN

KANSAS CITY POWER & LIGHT COMPANY

FILE NO. ER-2010-0355

Jefferson City, Missouri
January 2011

** Denotes Highly Confidential Information **

Staff Exhibit No. KCP&L-226
Date 1/18/11 Reporter LMB
File No. ER-2010-0355

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Charles R. Hyneman

1 B. No. The Staff's position is that KCPL has not identified or explained each cost
2 overrun on the Iatan Project as it is required to do under the terms of the Regulatory Plan.
3 Mr. Giles may state that KCPL has clearly identified and explained the cost overruns, by
4 stating that the identification and explanation can be found somewhere in the Cost Control
5 System that KCPL developed for the Iatan Construction Project, in addition KCPL developed
6 for the Staff nineteen Quarterly Reports, and in the KCPL responses to the 2150 Staff data
7 requests does not meet the terms of the Stipulation and Agreement of the Regulatory Plan.

8 Q. Mr. Giles states at pages 9 through 11 that the Staff has chosen to focus its
9 auditing activities on marginal costs like executive expenses, mileage charges, fees for its
10 oversight team and travel expenses while essentially throwing its hands in the air and
11 claiming that KCP&L has not explained approximately \$200 million in actual costs to date.
12 Please comment.

13 A. This statement demonstrates a clear lack of knowledge about how the Staff
14 focused its auditing activities. Mr. Giles characterizes an expenditure of \$20 million (fees for
15 its oversight team) as marginal. The Staff disagrees that \$20 million is marginal. With
16 respect to the Staff's auditing activities related to KCPL's internal expenditures of excessive
17 expenses and excessive mileage charges, the Staff has a responsibility to identify
18 inappropriate officer expenses charged to the project. Early on in its audit the Staff focused
19 on KCPL's internal control over costs in an effort to determine if KCPL was following its
20 own internal procedures. To accomplish this audit objective and for other auditing-related
21 reasons the Staff reviewed the expense reports of selected Iatan Project personnel. The Staff
22 found numerous examples of charges inappropriately charged, excessive costs and a general

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1 disregard for the level of expenses charged by KCPL officers to the Iatan Project. This Staff
2 finding forced the Staff to expand its review in this area.

3 The Staff did spend significant amount of time in this area, but the amount of time was
4 strictly a function of the Staff's findings based on its review and KCPL's lack of concern
5 about the amount and appropriateness of charges to the project. The amount of time the Staff
6 was required to focus on this area was also increased by KCPL's lack of transparency in the
7 provision of data on officer expenses. For example, Staff Data Request No. 556 in
8 Case No. ER-2009-0089 shown below is one example where KCPL refused to provide
9 requested data to the Staff. This is just one example where the Staff found inappropriate and
10 excessive costs being charged to KCPL's ratepayers and KCPL's response when these
11 charges are discovered it to not provide the data and claim that the charges were inadvertently
12 included in cost of service:

13 Data Request No. 0556
14 Company Name Kansas City Power & Light Company
15 Case/Tracking No. ER-2009-0089
16 Date Requested 2/26/2009
17 Brief Description WHD Expense Report 9/28/07

18 Description: Reference WHD expense report approved on 9/28/07.
19 1. Please provide the business purpose of WMD traveling from
20 Chicago to Denver instead of KC to Denver (What was his business
21 purpose of being in Chicago) 2. Please provide a copy of the receipts
22 for the \$1,606.38 Dinner charged on 6/18/07 at Kevin Taylor
23 Restaurant in Denver and provide the business purpose of charging this
24 expense to KCPL's regulated customers. 3. Please provide a copy of the
25 receipts for business meal with L. Cheatum re: personnel on 6/21/07.

26 Objection: KCPL objects to this data request as it calls for information
27 which is irrelevant, immaterial, inadmissible and not reasonably
28 calculated to lead to the discovery of admissible evidence. The costs
29 mentioned in this data request were inadvertently included in KCPL's
30 cost of service. KCPL is no longer seeking recovery in rates of any of
31 the costs mentioned in the data request.

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1 The Staff would also note that based on KCPL's response to Staff Data Request
2 Nos. 580 and 583, Mr. Giles has never attended any auditing classes, never attended any
3 training classes on the auditing process in general. Never attended any training classes on
4 auditing utility costs, and never participated in any actual audit. In addition, Mr. Giles holds
5 no auditing or any other professional certification.

6 Q. At page 2 of his rebuttal testimony Mr. Giles states that KCPL's actions on the
7 Iatan Project has set new standards for transparency by a utility in a rate proceeding. Do you
8 agree with this assessment?

9 A. No, quite the contrary. In my seventeen years experience auditing Missouri
10 utilities companies (including KCPL's three recent rate cases), I have never seen a lack of
11 transparency in the provision of data to the Staff as I have experienced in audit of the Iatan
12 Project. In my opinion, KCPL has not made a serious attempt at providing reasonable
13 responses to many Staff data requests; it has failed to answer specific questions and has been
14 evasive in its response in many instances. I must note that I have been deeply involved in
15 KCPL's three previous rate cases and did not experience the lack of cooperation in the
16 provision of data as I have in this construction audit.

17 Q. To what does the Staff attribute this recent lack of cooperation in the provision
18 of data to the Staff?

19 A. I believe KCPL's new approach to answering Staff data requests is
20 significantly influenced by its association with Schiff Hardin. Since KCPL hired Schiff, it has
21 significantly increased the frequency in which it has asserted privileges and has asserted many
22 privileges with a frequency never before seen by the Staff in recent memory. For example,
23 KCPL initially redacted all information on Schiff Hardin invoices, including information that

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1 describes clearly project management duties and administrative tasks. KCPL has since ceased
2 this practice of wholesale redactions, but only after being prompted to do so by the Staff.
3 To this date the Staff has been unable to review thousands of documents that it believes is
4 relevant to its audit. The Staff would not classify KCPL's behavior on this audit as
5 transparent under any circumstances.

6 Q. Do you have an example of how KCPL could have been more cooperative in
7 the provision of data to the Staff?

8 A. Yes. KCPL maintains a central depository Iatan Project documents in
9 SharePoint. When the Staff asked for access to this central depository in Staff data request
10 No 650 in Case No. EO-2010-0259, KCPL objected on the basis that this repository may
11 contain documents that it considers to be protected by the attorney-client privilege and/or
12 attorney work product doctrine. KCPL also characterized the Staff's request for access to this
13 data base as overly broad and vague. KCPL also objected on the basis that SharePoint may
14 contain documents that it does not believe is relevant to the Staff's audit. KCPL's proposal
15 was to provide a list of documents in SharePoint and Staff can ask for the documents on that
16 list. Access to this data base would have been a tremendous resource for the Staff's audit.
17 While the Staff understands the need for the assertion of legitimate privileges in the provision
18 of data, the Staff does not understand why KCPL could not have segregated documents it
19 considered privilege in a locked section of the data base to prevent Staff access and provide
20 access to the remainder of the data base.

21 Q. At page 11 of his rebuttal testimony Mr. Giles states that "In auditing the Iatan
22 Unit 2 Project's costs over four years on the project, the charge repeatedly cited by Staff as
23 the proof of this accusation is a single \$400 meal charge that it found over two years ago

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1 not provide this documentation to the Staff but requires the Staff to travel to its Kansas City,
2 Missouri Headquarters building to review this basic budget information.

3 Case: ER-2009-0089
4 Date of Response: 02/03/2009
5 Information Provided By: Gerry Reynolds
6 Requested by: Schallenberg Bob

7 Question No. : 0490 Please provide copies of all the documentation
8 supporting the development, review, analysis and approval of the
9 contingency and executive contingency included in the control budget
10 estimate for environmental upgrades at Iatan I.

11 Response: The current Control Budget Estimate for Iatan 1 is \$484
12 million. Due to their confidential nature, all of the documentation
13 supporting the development, review, analysis and approval of the
14 contingency and executive contingency included in the current control
15 budget estimate for environmental upgrades at Iatan 1 are available by
16 contacting Tim Rush 816-556 2344 or Lois Liechti 816-556-2612 to
17 make arrangements to view these documents. Response provided by
18 Iatan Construction Project, Project Controls. This information was
19 provided for onsite viewing to the Commission Staff in early 2008 as
20 part of its investigation in Case No. EM-2007-0374.

21 Seeking further clarification about what data would be provided in response to this
22 Staff Data Request, KCPL indicated only three documents were available. However, KCPL
23 claimed privilege on two of the documents in total and completely redacted all meaningful
24 data from a third document (Memo from Ken Roberts and Eric Gould to Steve Easley
25 October 18, 2006). It is completely unreasonable for KCPL to prevent the Staff from
26 reviewing basic information in the development of the Control Budget Estimate. This is
27 another example of a complete lack of transparency on the part of KCPL.

28 Q. At the top of page 11 of his rebuttal testimony Mr. Giles implies that the Staff
29 auditors spent too much time reviewing expense reports and not enough time reviewing
30 change orders. Please comment.

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1 A. It is clear that this statement is speculation as there is no way Mr. Giles could
2 know how much time the Staff devoted to its review of expense reports and how much time it
3 devoted to review of change orders. More importantly, Mr. Giles never discussed the matter
4 with Staff to attempt to determine these facts.

5 It is also unlikely Mr. Giles knows which Staff auditors did the review of the expense
6 reports, and exactly how many were reviewed, what dates they were reviewed, and how much
7 time it took to review each expense report. Despite being advised by the Staff the purpose of
8 its expense report review, Mr. Giles continues to demonstrate a lack understanding in how to
9 conduct an audit, including audit risk, development of audit scope and procedures. He is not
10 an auditor, but professes to be an expert on auditing by his testimony.

11 The Staff has noted in previous rate cases and this construction audit that KCPL has
12 had problems excessive and inappropriate costs of KCPL executives charged to ratepayers
13 and a lack of internal controls over KCPL's executive expenses. The Staff has noted these
14 problems but if KCPL believes the Staff has not done enough to support its finding of
15 inappropriate costs charged to the Iatan Construction Projects, the Staff is willing to
16 strengthen its efforts in this area for future audit reports.

17 Mr. Giles' comments criticizing Staff auditors in his rebuttal testimony are just
18 another attempt by KCPL to obscure its failure to identify Iatan cost overruns above the
19 definitive estimate. The Regulatory Plan is clear that KCPL is required to identify and
20 explain any cost overrun over the definitive estimate.

21 As will be discussed in the surrebuttal testimony of Staff witness Keith Majors, once
22 KCPL fails to provide documentation supporting the development of its Control Budget
23 Estimate contingency amounts, it is impossible to determine from the budget variances, the

**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.)

File No. ER-2010-0355
Tariff No. JE-2010-0692

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.)

File No. ER-2010-0356
Tariff No. JE-2010-0693

**STAFF'S CONSTRUCTION AUDIT AND PRUDENCE REVIEW OF IATAN 1
ENVIRONMENTAL UPGRADES (AIR QUALITY CONTROL SYSTEM - AQCS)
FOR COSTS REPORTED AS OF APRIL 30, 2010**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through Staff Counsel Office, and files *Staff's Construction Audit and Prudence Review Of Iatan 1 Environmental Upgrades (Air Quality Control System - AQCS) For Costs Reported As Of April 30, 2010* as directed by the Missouri Public Service Commission (Commission) in its July 7, 2010 *Order Regarding Construction and Prudence Audits*. In support thereof, the Staff states as follows:

1. The members of the Staff responsible for the *Staff Report* filed this date are Robert E. Schallenberg, Charles R. Hyneman, Keith A. Majors, David W. Elliott and undersigned counsel as indicated in said *Staff Report*.

2. The Staff has designated the entirety of this document to be Highly Confidential since much of the information included in this *Staff Report* is based on or is information Kansas City Power & Light Company, Inc. (KCPL) has designated to be Highly Confidential when KCPL provided the information to the Staff.

Staff Exhibit No. 204-HC
Date 6-26-11 Reporter TU
File No. ER-2010-0355

1 . In its response to this Staff Data Request, KCPL stated that an authorizing employee checks
2 to make sure a KCPL employee had business at the site and that the mileage appears reasonable
3 given KCPL policy, and that no other documentation exists. In response to Staff's request for
4 home and business addresses of employees who charged mileage, KCPL said that "[i]t is unduly
5 burdensome and will not result in material information to provide home and business address for
6 each KCP&L employee at the time they requested mileage for travel to Iatan." Staff requested
7 this data to test KCPL's cost controls over employee mileage charges to the Iatan work orders.

8 KCPL eventually provided the data requested by Staff. In a supplemental response to Staff
9 Data Request No. 787, KCPL provided the report "MPSC0787S - HC_Mileage_Empl_Info.xls"
10 that included a list of all employees who charged mileage to the Iatan Project
11 (Iatan 1 environmental upgrades and/or Iatan 2), the employee's primary work location, and
12 his/her home address.

13 Staff compared this data with the data provided by KCPL in response to Staff
14 Data Request No. 643 in report "Q0643_Mileage Reimbursement Charged to Iatan Projects.xls"
15 showing a complete list of employees who received mileage reimbursements that were charged
16 to Iatan construction projects. A comparison of these two reports showed that KCPL reimbursed
17 \$51,113 of mileage charges to employees whose primary work location is listed as Iatan. KCPL
18 employees should not be reimbursed for regular commuting miles to and from their primary
19 work location. Staff is proposing an adjustment to the Iatan 1 work order to remove this amount
20 and the associated AFUDC.

21 In addition to these inappropriate employee mileage charges to the Iatan 1 AQCS work order,
22 a review of a sample of employee expense reports showed that KCPL reimbursed its employees
23 for excess mileage charges. Staff found that KCPL, beginning in January 2008, did make an
24 attempt to calculate the correct reimbursable miles for these employees, but there was no
25 indication that the mileage overcharges made prior to January 2008 were ever reimbursed by the
26 appropriate employees and credited back to the construction work order.

27 After removing the mileage charges inappropriately provided to employees who were not
28 eligible for reimbursement because their primary work location was Iatan, the pool of mileage
29 charges remaining in the Iatan 1 work order as of May 31, 2009 was \$80,234. Staff made an
30 additional adjustment of ten percent of this amount, or \$8,023, to reflect a reasonable
31 approximation of actual overcharges that were made to the Iatan work order prior to



Exhibit No.: 118
 Issues: Fuel Prices
 Miscellaneous Adjustments
 Witness: Charles R. Hyneman
 Sponsoring Party: MoPSC Staff
 Type of Exhibit: Direct Testimony
 Case No: ER-2006-0314
 Date Testimony Prepared: August 8, 2006

MISSOURI PUBLIC SERVICE COMMISSION
UTILITY SERVICES DIVISION

DIRECT TESTIMONY

FILED

OF

NOV 13 2006

CHARLES R. HYNEMAN Missouri Public Service Commission

KANSAS CITY POWER AND LIGHT COMPANY

CASE NO. ER-2006-0314

Jefferson City, Missouri
August 2006

NP

****Denotes Highly Confidential Information****

Staff Exhibit No. 118
 Case No(s) ER-2006-0314
 Date 10-16-06 Rptr KR

1 severance cost did not result in any payroll savings; but that it actually led to an increase in
2 GPE's payroll costs that are charged to KCPL.

3 Q. In the Staff's opinion, was the replacement of the two corporate executives a
4 result of poor employee performance?

5 A. No. Both employees started working at KCPL in low level management
6 positions and were consistently promoted to higher levels of authority and responsibility. The
7 Staff reviewed the personnel files of both former employees and noted that all performance
8 reviews that were made available to the Staff were rated satisfactory or above. No evidence
9 was provided by the Company to indicate that the employees were replaced due to
10 performance problems. In addition, the Staff had a meeting with GPE's President and Chief
11 Operating Officer, Mr. William Downey, to discuss this severance cost. Mr. Downey did not
12 indicate that the individuals were replaced due to poor performance in their positions as
13 executive officers of GPE.

14 **EXECUTIVE /DIRECTOR RETREAT COSTS**

15 Q. Please explain the Staff's Executive Retreat adjustment?

16 A. Great Plains Energy's officers and Board of Directors and their spouses
17 attended a retreat in Sea Island Georgia in April 2005. In response to Data Request 322,
18 KCPL described the retreat:

19 The Boards typically have five business meetings and one strategic
20 planning meeting per year. In 2005 and 2006, the strategic planning
21 meetings have been conducted off-site at so-called "retreats". The
22 purposes of the retreats are: (a) to review various elements of the
23 internal and external business environment with management and third-
24 party experts; (b) to discuss, evaluate and provide direction to
25 management on current and proposed strategic plans and other
26 initiatives; (c) to provide opportunities for extended and informal
27 discussions of matters outside of the time-constrained formal

1 presentations; and (d) to provide opportunities for extended discussions
2 among directors and management. These retreats were conducted off-
3 site to minimize the interruptions by other business matters and to
4 focus attention on the purposes of the meetings.

5 Q. Does the Staff believe that it is reasonable for KCPL to charge its utility
6 customers for travel, lodging, meals and other costs for Board of Director meetings that could
7 be held in GPE's corporate headquarters building?

8 A. No. The Staff believes that these costs should not be charged to utility
9 operations. The fact that the officer and director spouses also participated in the retreat
10 indicates that the retreat was more than just a series of business meetings.

11 Q. Did KCPL state that it would not seek recovery of these costs in this case?

12 A. Yes. In response to Data Request 322, KCPL stated "these costs will not be
13 included in the case when the numbers are updated to reflect actual for the test period."

14 **MISCELLANEOUS ADJUSTMENTS**

15 Q. Please explain the Staff's Local Meals Adjustment.

16 A. This adjustment removes 50% of the local business meals charged to KCPL's
17 test year above-the line expense accounts by GPE and KCPL employees. The Staff's review
18 of GPE expense accounts indicate that several business meals were charged to utility
19 operations inappropriately.

20 Q. How did the Staff calculate a 50% disallowance factor?

21 A. Over the past several years the Internal Revenue Service has disallowed 50%
22 of business meals from being tax deductible. This disallowance is based on the assumption
23 that a substantial amount of claimed business meals are not strictly related to the conduct of
24 business. Based on its review of executive and officer expense account, the Staff believes that

Direct Testimony of
Charles R. Hyneman

1 a disallowance of 50% of the costs KCPL and GPE employees charged KCPL for local
2 business meals is a conservative adjustment.

3 Q. Did the Staff make any adjustment to the cost of out-of-town meals, or meal
4 costs incurred while traveling out of the Kansas City area?

5 A. No, with the exception of a small amount related to the executive/director
6 meetings in Sea Island, Georgia, described above.

7 Q. Please explain adjustment S-81.8.

8 A. This adjustment includes an allowance for costs which the Staff has identified
9 as inappropriate to include in KCPL's cost of service, but has not yet quantified the exact
10 amount of such costs. These costs relate to charges which have been charged to KCPL
11 through employee expense accounts and which are either excessive, or should not have been
12 charged to KCPL. These costs also include costs related to lobbying activities and costs that
13 were incorrectly charged to regulated operations.

14 Q. Please provide an example.

15 A. On August 3, 2006, KCPL responded to Data Request 454. In this data request
16 the Staff asked about several questionable charges on a GPE executive's corporate expense
17 reports. KCPL responded that several of the charges on the expense accounts were booked
18 incorrectly to above-the-line accounts and should have been charged below the line. The data
19 response also confirmed that KCPL is charging what the Staff considers a lobbying-related
20 activity to cost of service, including costs related to attendance at National Association of
21 Manufacturer's (NAM) meetings and Missouri Energy Development Association (MEDA)
22 events. Based on this data request, the Staff needs to complete a more detailed review of GPE

Direct Testimony of
Charles R. Hyneman

1 executive expense accounts. When this review is complete, the Staff will be able to true-up
2 this adjustment during the true-up phase of the Staff's audit.

3 Q. Does this conclude your testimony?

4 A. Yes, it does.

DATA REQUEST- Set MPSC_20060714
Case: ER-2006-0314
Date of Response: 08/03/2006
Information Provided By: Lori Wright
Requested by: Hyneman Chuck0

Question No. : 0454

1. Reference the NAM board meeting on September 29-30, 2004, please provide the documentation for the costs and reason why costs were charged to KCPL. 2. Please provide a copy of lodging receipts to support the \$837.17 charge for the EEI conference on 10/24/04. 3. Why was the Jan 3, 2005 airfaire for MEDA meeting charged to CORPDP-GPES? Was this cost allocated to KCPL? 4. Please provide the receipts for the costs of the Millennium Broadway Hotel 3/29/05 meeting with analyst - lodging. 5. MEDA Board of Directors meeting Jefferson city 4/13/05 - mileage. Why was this cost charged to KCPL? 6. Why was the cost of Airfare to Pittsburg PA on 5/8/05 charged to GPES instead of KLT (SEL)? 7. Why was the Airfare to Pittsburg for the SE Mgt Committee travel on 8/16/05 charged to CORPDP-KCPL? 8. Why was the 7/13/05 - mileage to Big Cedar MEDA Board Meeting charged to KCPL?

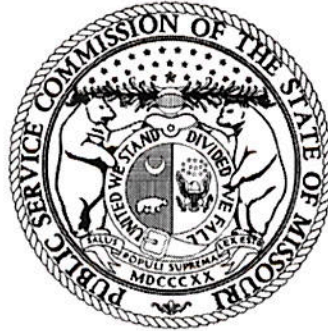
Response: ~~HIGHLY CONFIDENTIAL~~

1. See attached file of supporting receipts. Costs were charged to CORPDP-KCPL and assigned 100% to KCPL because ~~Bill Downey's~~ representation on the NAM Board of Directors as a representative of KCPL.
2. See attached file of supporting receipts.
3. The cost for MEDA airfare was incorrectly charged to Account 920000, Project CORPDP-GPES. As such, a portion of the costs was allocated to KCPL. The costs should have been charged to Account 826400 (FERC 426), using Project CORPDP-KCPL. This later accounting distribution would have caused 100% of the cost to be charged to KCPL below the line.
4. See attached file of supporting receipts.
5. The cost for MEDA mileage was incorrectly charged to Account 921000, Project CORPDP-KCPL. The costs should have been charged to Account 826400 (FERC 426), using Project CORPDP-KCPL. This later accounting distribution would have caused 100% of the cost to be charged to KCPL below the line.
6. The cost for airfare to Pittsburg, PA was incorrectly charged to Account 921000, Project CORPDP-GPES. As such, a portion of the costs was allocated to KCPL. The costs should have been charged to Account 921000, Project CORPDP-KLT, This later accounting distribution would have caused 100% of the cost to be charged to SEL (KLT).
7. The cost for airfare to Pittsburg, PA was incorrectly charged to Account 921000, Project CORPDP-KCPL. As such, the costs were assigned to KCPL. The costs should have been charged to Account 921000, Project CORPDP-KLT, This later accounting distribution would have caused 100% of the cost to be charged to SEL (KLT).
8. The cost for MEDA mileage to Big Cedar was incorrectly charged to Account 921000, Project CORPDP-KCPL. The costs should have been charged to Account 826400 (FERC 426), using Project CORPDP-KCPL. This later accounting distribution would have caused 100% of the cost to be charged to KCPL below the line. Attachments: MPSC Q454.pdf

MISSOURI PUBLIC SERVICE COMMISSION

STAFF REPORT

COST OF SERVICE



**Great Plains Energy, Incorporated
KANSAS CITY POWER & LIGHT COMPANY**

CASE NO. ER-2009-0089

**Test Year 2007
Updated through September 30, 2008
With True-up as of March 31, 2009**

*Jefferson City, Missouri
February 11, 2009*

**** Denotes Highly Confidential Information ****

Staff Data Request No. 13, KCPL's 2007 general ledger's USOA Account Number 931 lease expenses. The Company's response to Staff Data Request No. 13 indicates that KCPL's 2007 cost of service included a monthly leasehold expense of \$407,435 for the 1201 Walnut building and parking area for the first six months of 2007 and then the monthly leasehold expense decreased to \$321,175 on July 1, 2007. Staff annualized KCPL's leasehold expense by multiplying the monthly leasehold expense of \$321,175 over a 12-month period. This annualization resulted in a decrease in the level of this expense of \$514,103. (Staff adjustment E-180.1 adjusts KCPL's test year 2007 for leasehold expenses.)

Staff Expert: Paul R. Harrison

4. Meals and Entertainment Expense

In Case No. ER-2007-0291, Staff removed KCPL's test year charges to resource code 378, Meals and Entertainment expense. These charges consist of the cost of local meals (meals consumed in the Kansas City, Missouri area) that KCPL's employees determine to be "business meals" that should be charged to KCPL and thus to KCPL's regulated utility customers.

Staff made this adjustment for two primary reasons. The first is that there is a general presumption that KCPL's employees should pay for the meals they consume in the local area, as opposed to meals incurred during travel on official business. While there may be times when a KCPL employee may be required to attend a function and incur meal expense he/she would not normally incur, those occasions should be rare.

The second reason for Staff removing the cost of local business meals is that in the last two KCPL rate cases, Nos. ER-2006-0314 and ER-2007-0291, Staff noted several discrepancies and improper charges by KCPL's officers in costs charged to KCPL through its expense report process. These problems were also noted by KCPL's internal audit employees in the Great Plains Energy Officers and Directors Expense Review Audit Report. Staff had concerns about the local

business meal expenses in both of KCPL's previous rate cases and disallowed these expenses in KCPL's last case. This disallowance was necessary because of the discrepancies noted during its review of the expense reports and the problems identified by KCPL's internal audit employees.

During our review of officer expense reports for this case, Staff noted that KCPL continues to have problems with excessive charges for meals being made by its employees on their expense reports. Staff's general position is that meals consumed by KCPL in the Kansas City area should be a personal expense. KCPL is excessive charging local meals to cost of service and not even complying with its own expense report policies.

The KCPL internal audit employees conducted another review of GPE officer and director's expense reports in April 2008. During that review they noted that:

...the documentation of business expenses is generally not in compliance with nor as robust as the documentation requirements prescribed by the Policy and the IRS. The lack of clear and concise documentation created some difficulty in identifying the business purpose of the expense. We recommend that the individuals preparing the expense reports and those approving the expense reports ensure compliance with the documentation requirements of the Policy.

In conclusion, Staff has identified problems with the charges being made by KCPL officers and being included in KCPL's cost of service in their last two rate cases and these problems continue in this case. The Company's own internal auditors have identified that the documentation of business expenses is not in compliance with KCPL's own policies. (Staff adjustment E-124.1 and E-154.5 adjusts KCPL's test year 2007 Meals and Entertainment costs)

Staff Expert: Paul R. Harrison

5. Nuclear Decommissioning

In its Report and Order in Case No. ER-2006-0314, the Commission ordered the following:

- 1) KCPL's annual Missouri retail jurisdictional decommissioning cost accrual shall be \$1,281,264, commencing January 2007

Also, since it does not appear that KCPL's wholesale customers contributed to the STB rate case recovery, Staff reallocated their credited amount to Missouri and Kansas regulated customers by using the appropriate Missouri-Kansas allocation percentage.

Similar to how the Staff is treating the excess amount of Off System Sales over the amount in rates, the Staff is also proposing to treat the STB reparation costs as a reduction to rate base. While it is more theoretically correct to reduce fuel related rate base components, for convenience and for accuracy in the tracking of these reparation recoveries, the Staff is reducing KCPL's Demand Side Management (DSM) regulatory asset deferral by Missouri's appropriate share of the STB reparation costs as of September 30, 2009.

Staff Expert: Charles R. Hyneman

23. Officer Expense Account Adjustment

This adjustment reflects Staff's current estimate of potential costs charged to KCPL's 2007 books and records as a result of excessive and or inappropriate charges made by KCPL and GPE officers through their employee expense reports. Staff is concerned not only with the potential for excessive and inappropriate charges being included in KCPL's cost of service in this case, but with also the continued lack of internal controls on the officer expense report process and the general lack of concern on the part of Company management about costs charged to regulated operations through officer expense reports.

In a press release issued on September 5, 2008 announcing the filing of the Missouri rate case, Michael Chesser, GPE's CEO stated that:

We do not relish requesting a rate increase during these difficult economic times," said Chesser. "However, these requests are approximately \$23 million less than they would have been, as a direct result of operational savings realized from our acquisition of Aquila. We will continue to focus on keeping our costs as low as possible and providing ways for customers to have greater control over their electricity use and bills.

Based on its review of the Company's expense report process, Staff cannot agree that KCPL is continuing to focus on keeping costs as low as possible. Staff cannot see any concern about excessive or inappropriate charges in this area. Staff believes that the concern about costs in the expense report process has to be a priority of top management.

Tone at the top is a general term that refers to leadership behavior setting an example to the rest of the company employees. In the area of cost control, "tone at the top" is very important. Whatever tone management sets will have a trickle-down effect on employees of the company. If the tone set by officers of the company reflects strict adherence to established expense report policies and procedures, lower ranking employees will be more inclined to strictly adhere to those same policies. Employees pay close attention to the behavior and actions of their bosses, and they follow their lead. The only way for GPE and KCPL to correct the continued problems KCPL has with its expense report process is for the leadership of the Company to change the current tone at the top and focus on cost control and adherence to the Companies own policies and procedures.

On January 17, 2007 GPE's Audit Services Department (Audit Services) released a report entitled *Great Plains Energy Services Kansas City Power & Light Officers and Directors Expense Report Review*. In that report, Audit Services found that it was "difficult to determine the business purpose" of expenses included in some of expense reports reviewed. Audit Services concluded that "based on our testing, it appears that the controls in place are not working properly."

In April 2008 Audit Services released another report entitled *Great Plains Energy Officers and Directors Expense Report Review*. This report includes a *Summary Schedule of Prior Year Findings and Current Status of Prior Year Findings*. Audit Services noted that while

it appeared corrective actions was being taken, there were still large incidences of non-compliance. Audit Services found that the documentation of business expenses is generally not in compliance with nor as robust as the documentation requirements prescribed by GPE's own expense report policies and the requirements of the Internal Revenue Service. Audit Services concluded that the "lack of clear and concise documentation created some difficulty in identifying the business purpose of the expense."

Staff's review of KCPL employee expense reports confirms the findings of GPE's Audit Services Department, and finds additional discrepancies. For example, one KCPL officer is a board member of the National Association of Manufacturers (NAM). For the past several years this individual has been charging his trip expenses for NAM board meetings to KCPL customers. In one expense report, Staff noted lodging expenses of \$774 for the Ritz Carlton Hotel in Orlando, Florida and airfare of \$632 to Orlando for attendance at the NAM board meeting. These expenses were charged to project CORPDP-KCPL which is described in KCPL's accounting records as:

This project is used to capture costs to provide resource planning and business analysis services, strategic planning, assist in the development of fundamental short- and long-term business plans and actions which are consistent or complementary throughout the system; assess and adjust the decisions and direction of system companies in response to changes in the marketplace; provide consulting services related to cost reduction opportunities, strategic acquisitions and investments, and process enhancements to KCPL, but not specifically related to any operating unit or service location. Thus, all costs collected in this project will be billed to the various KCPL Business Units based on the basis of KCPL Headcount.

This same expense report also includes airfare to New York for a GPE Board of Director retreat. All of the expenses in the report were incurred in February and March 2007, but the expense report was not approved until three months later in June 2007.

An additional concern of Audit Services was that the expense reports of the Chairman and Chief Executive Officer (CEO) of GPE are approved by the President and Chief Operating Officer (COO) of GPE. This is a case of a subordinate approving the expense reports of his/her superior and is a bad internal control policy. In addition to being a bad internal control policy, the process violates GPE's own expense account policies that require that expense reports must be approved by an employee of equivalent or higher rank. To correct this issue, Staff recommends that the expense reports of both the CEO and COO of GPE be approved by the Audit Committee of GPE's Board of Directors.

Finally, Staff has a major concern with the charges for meals and lodging to KCPL by the officers of KCPL. During its audit, Staff noted on a particular officer's expense reports a meal charge for two individuals in the amount of \$400 and on another expense report a meal for two individuals in the amount of \$300. Staff views these amounts to be clearly excessive. In addition, Staff noted that another executive included a \$144 charge for wine on a KCPL expense report. Staff also views that charge inappropriate.

Because of the longstanding problems with KCPL's and GPE's officer expense reports and the serious concerns Staff has developed as a result of the small sample of officer expense reports Staff reviewed in this case, Staff has decided to make an adjustment in this filing of the estimated amount of improper expense account charges booked to KCPL's 2007 books and records and to expand its review of the KCPL and GPE officer expense reports. Staff expects to update this adjustment in its true-up revenue requirement filing in this case.

24. Wolf Creek Nuclear Refueling Outage

KCPL defers and amortizes over 18 months (the time period between refueling outages) the actual cost incurred during the refueling outage. Over the last three refuelings (2003, 2005

Exhibit No.:

*Issue: Transition Costs, Talent
Assessment Program, SERP,
STB Recoveries, Settlements,
Refueling Outage, Expense
Disallowance*

Witness: Charles R. Hyneman

Sponsoring Party: MoPSC Staff

Type of Exhibit: Surrebuttal Testimony

Case No.: ER-2009-0089

Date Testimony Prepared: April 7, 2009

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

SUREBUTTAL TESTIMONY

OF

CHARLES R. HYNEMAN

**Great Plains Energy, Inc.
KANSAS CITY POWER & LIGHT COMPANY**

CASE NO. ER-2009-0089

Jefferson City, Missouri

April 7, 2009

****Denotes Highly Confidential Information****

NP

CRH-S-9

8/14

1 A. In essence, on this issue Mr. Weisensee has created a new standard. This new
2 KCPL standard is that it is appropriate to normalize costs if the normalization results in a
3 higher cost of service. However, when it comes to this issue and as is the case in this
4 adjustment, his standard is that it is not appropriate to normalize this cost because it will
5 reduce cost of service.

6 At page 20, line 6 of his rebuttal testimony, Mr. Weisensee readily admits that this is
7 KCPL's standard for normalizing costs. He states that no matter how large or unusual the
8 costs in the test year are (in this case he admits the costs for the Wolf Creek refueling outage
9 were above normal by \$2.9 million), they should be included in cost of service as a
10 normalized level of recurring cost if the costs are, as Mr. Weisensee states "appropriate".

11 **"BUSINESS EXPENSE" DISALLOWANCES**

12 Q. At page 21 of his rebuttal testimony Mr. Weisensee states that the Staff has
13 brought to KCPL's attention costs that should not be included in cost of service. KCPL has
14 also, subsequent to its rate filing determined that certain other costs should be disallowed.
15 Despite the fact that KCPL states that these costs are not necessary for a utility in its provision
16 of utility service, Mr. Weisensee states that all of the costs are appropriate business expenses.
17 Please comment.

18 A. As noted in the Staff's Cost of Service Report, the Staff made an adjustment
19 that reflects its estimate of potential costs charged to KCPL's 2007 books and records as a
20 result of excessive and or inappropriate charges made by KCPL and GPE officers through
21 their officer expense reports. These costs were not only excessive and inappropriate from a
22 regulated utility standpoint, but from a normal business expense standpoint as well.

1 In addition, these excessive and inappropriate charges have been occurring at KCPL at least
2 since 2005, when the Staff first started reviewing officer expense reports.

3 Q. Is the Staff's concern with KCPL and GPE's officer expense report charges
4 alleviated as a result of the proposed adjustment noted at page 21 of Mr. Weisensee's rebuttal
5 testimony?

6 A. No. Staff is concerned not only with the potential for excessive and
7 inappropriate charges being included in KCPL's cost of service in this case, but with also the
8 continued lack of internal controls on the officer expense report process and the general lack
9 of concern on the part of Company management about costs charged to regulated operations
10 through officer expense reports.

11 In a press release issued on September 5, 2008 announcing the filing of the Missouri
12 rate case, Michael Chesser, GPE's CEO stated GPE and KCPL will continue to focus on
13 keeping costs as low as possible. In my experience auditing KCPL over these past three
14 years, especially in the area of officer expense report expenses, I have not seen any focus on
15 the part of KCPL's officers on keeping costs as low as possible. In fact, my experience in
16 auditing KCPL in three successive rate cases leads me to conclude that there is no concern
17 about the level of costs that KCPL will attempt to pass on to its Missouri ratepayers.

18 Q. Has the Staff accepted KCPL's \$3.6 million total company offer
19 of disallowances?

20 A. No, not at this time. The Staff has had preliminary discussions with
21 KCPL about changes in its officer expense report process in which significant deficiencies
22 have been noted regarding certain costs being charged to regulated operations. As yet,

1 KCPL has been unwilling to commit to the Staff that it will make any specific changes to fix
2 this problem.

3 In its direct filing the Staff indicated it will continue its audit of officer expense
4 reports. However, KCPL has refused to provide any information to the Staff in this area as it
5 has refused to respond to Staff data requests seeking this information.

6 KCPL is being very uncooperative with the Staff on this issue, and this lack of
7 cooperation does not permit the Staff to verify whether or not KCPL is seeking recovery of a
8 proper level of costs. Whenever the Staff asks a specific question about a particular officer's
9 expense report, KCPL's simply refuses to provide the information and states the cost was
10 incorrectly included in cost of service and will be removed. This is not an appropriate level of
11 transparency.

12 Q. When KCPL objects to all of the data requests on the officer expense reports and
13 simply responds that it is not seeking this cost in rates, is this answer sufficient?

14 A. No. A cost can be reflected in utility rates currently or in the future other than
15 by direct recognition in the expense accounts and rate base. To ensure that the inappropriate
16 and excessive officer expense report costs will not be passed on to its ratepayers, KCPL must
17 provide answers to each of the following question for each of the data requests submitted by
18 the Staff on this issue:

- 19 1. Did KCPL remove the capitalized portion of these costs from its plant in
20 service and CWIP accounts?
- 21 2. Has KCPL taken any steps to prevent the activities underlying these costs
22 from being a cash drain on its operations in the future? If "yes," what
23 steps?
- 24 3. Are any of these costs included in the calculation of its "additional
25 amortization" in this case? If "yes," will these costs be removed?

1 4. Has KCPL charged the partners to its Iatan 1 and 2 projects, other Missouri
2 regulated utilities, a portion of these costs? If so, will its partners, other
3 Missouri regulated utilities) be reimbursed?

4 5. Are any of these costs included in the common costs KCPL is proposing to
5 transfer from Iatan 2 to Iatan 1? If "yes," will these costs be removed?

6 Unless KCPL provides answers to the above questions in all of the Staff's current and
7 future data requests on this issue and KCPL commits in writing that it will make significant
8 changes to its officer expense report process and commits to specific changes, the Staff is
9 unable to accept KCPL's proposed \$3.6 million adjustment.

10 The Staff is in the process of pursuing the data request issues. If KCPL continues to
11 refuse to cooperate with the Staff on this issue, the Staff will be forced to impute an
12 adjustment based on estimations and projections and present this as a major issue in its true up
13 hearings in this case. This is not how this adjustment should be addressed, however, due to
14 KCPL's refusal to provide answers to Staff data requests or identify how it will fix significant
15 and recurring officer expense report problems, the Staff is forced to address this issue in this
16 manner. Because of the nature of the material that will have to be addressed in litigation, the
17 Staff is not looking forward to this process and hopes that this issue can be resolved soon.

18 Q. Is the Staff attempting to dictate to KCPL what specific internal control
19 procedures it should put in place to fix the problems with officer expense reports that both the
20 Staff and KCPL have noted exist?

21 A. No. The Staff is not willing to set internal control policies for
22 KCPL, but is willing to assist KCPL in the development of new internal control procedures.
23 It is also willing to provide an opinion as to the potential effectiveness and necessity of any
24 proposed internal control designed to address the officer expense report problem. The officer
25 expense report problem has been in existence for several years and GPE and KCPL have

Surrebuttal Testimony of
Charles R. Hyneman

1 failed to correct it. The Staff has been very patient with KCPL but its patience is wearing
2 thin. The Staff believes the time to fix the problem is now and it will do everything it can to
3 encourage KCPL in this direction.

4 Q. Does this conclude your surrebuttal testimony?

5 A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION

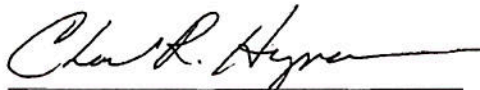
OF THE STATE OF MISSOURI

In the Matter of the Application of Kansas City)
Power and Light Company for Approval to) Case No. ER-2009-0089
Make Certain Changes in its Charges for)
Electric Service To Continue the)
Implementation of Its Regulatory Plan.)

AFFIDAVIT OF CHARLES R. HYNEMAN

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)


Charles R. Hyneman, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 95 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.



Charles R. Hyneman

Subscribed and sworn to before me this 7th day of April, 2009.

NIKKI SENN
Notary Public - Notary Seal
State of Missouri
Commissioned for Osage County
My Commission Expires: October 01, 2011
Commission Number: 07287016



Notary Public

ER-2016-0156

Hyneman Surrebuttal

CRH-S-10

has been deemed

“Highly Confidential”

in its entirety

Report Date	Meal	Restaurant & Location	Amount	Account	Meal	Restaurant & Location	Amount	Account	Meal	Restaurant & Location	Amount	Account
On Report, No Receipt												
July 14, 2014	Lunch	Bar Louie - KC, MO	\$34.64	921000	Lunch	Propos Biarcliff - KC, MO	\$258.53	426403	Lunch	Webster House Restaurant - KC, MO	\$161.01	921000
July 14, 2014	Lunch	Capital Grille - KC, MO	\$658.71	921000	Lunch	Denver, CO	\$57.32	921000	Lunch	BRGR Kitchen & Bar - KC, MO	\$53.59	921000
September 12, 2014	Lunch	Collection	\$185.89	921000	Lunch	BRGR Kitchen & Bar - KC, MO	\$55.84	921000	Dinner	Capital Grille - KC, MO	\$238.42	426402
September 12, 2014	Dinner	Capital Grille - KC, MO	\$317.82	426500	Lunch	Bristol #162 - KC, MO	\$38.30	921000				
November 5, 2014	Dinner	Hereford House, Zona Rosa - KC, MO	\$1,333.86	426402	Dinner	CHSPEAKE NRGY - Oklahoma City, OK	\$85.00	921000	Breakfast	Picnic Bar - KC, MO	\$4.77	921000
November 5, 2014	Snack	CPK Kosk - Chicago, IL	\$5.77	921000	Dinner	McDonald's - Leawood, KS	\$7.36	426402	Lunch	McDonald's - KC, MO	\$7.49	921000
November 5, 2014	Lunch	McDonald's - KC, MO	\$7.49	921000	Lunch	McDonald's - KC, MO	\$7.49	921000	Lunch	Whataburger - Oklahoma City, OK	\$6.32	921000
November 5, 2014	Lunch	Boatstagen - Chicago, IL	\$91.66	412100	Lunch	McDonald's - KC, MO	\$27.28	921000	Lunch	12th & Baltimore - KC, MO	\$6.45	921000
November 5, 2014	Dinner	Wendy's - KC, MO	\$7.39	921000	Dinner	Majestic Restaurant - KC, MO	\$41.18	921000	Breakfast	President Hilton Hotel - KC, MO	\$20.65	426402
November 5, 2014	Alcoholic Drinks	The Original Mothers - Chicago, IL	\$60.72	232105	Alcoholic Drinks	Shenannigan's House of Beer - Chicago, IL	\$19.33	232105				
Receipt not on Report												
November 5, 2014	Alcoholic Drinks	Toby Keith's	\$48.05	Dinner	Dinner	Westside Local - KC, MO	\$104.28	Dinner	Dinner	Urban Table	\$144.22	
October 15, 2014	Dinner	Propos Biarcliff - KC, MO	\$610.97	921000	Dinner	Next Door Pizza & Pub - Lees Summit	\$53.59	426500	Breakfast	Casac Cup - KC, MO	\$30.38	921000
October 15, 2014	Lunch	Gather Dining Room - Boston, MA	\$32.82	921000	Dinner	Del Frisco's - Boston, MA	\$59.20	921000	Dinner	Sullivan's - Leawood, KS	\$395.93	426500
October 15, 2014	Snack	Dunkin' Donuts - Boston, MA	\$4.46	921000	Dinner	1111 & The Roof - J.C. MO	\$28.25	426500	Dinner	1111 & The Roof - J.C. MO	\$7.50	426500
October 15, 2014	Dinner	Majestic Restaurant - KC, MO	\$301.09	921000	Lunch	Legal Harborside - Boston, MA	\$220.03	921000	Room Service	Hyatt Boston Harbor - Boston, MA	\$15.84	921000
October 15, 2014	Room Service	Hyatt Boston Harbor - Boston, MA	\$14.85	921000								
On Report, No Receipt												
October 15, 2014	Lunch	TKR, LLC	\$57.05	921000	Dinner	801 Chop House - KC, MO	\$487.83	426500	Drinks	Aramark/Kaufman Stadium - KC, MO	\$24.00	426500
October 15, 2014	Breakfast	Market Place - Las Vegas, NV	\$14.25	921000	Breakfast	Starbucks - Tampa, FL	\$5.62	921000	Drinks	QuickTrip - Oak Grove, MO	\$4.37	921000
October 15, 2014	Breakfast	McDonald's - Oak Grove, MO	\$4.85	921000	Lunch	McDonald's - Boonville, MO	\$7.13	921000	Lunch	McDonald's - Boonville, MO	\$7.13	921000
October 15, 2014	Dinner	MGM Grand/CraftSteak - Las Vegas, NV	\$915.62	921000	Lunch	Aria/Jean Philippe Palissarie - Las Vegas, NV	\$19.19	921000	Breakfast	Starbucks - Sedalia, MO	\$5.68	426402
October 15, 2014	Dinner	Mallio's Prime Steakhouse - Tampa, FL	\$591.67	426500	Alcoholic Drinks	Aria Refreshment Center	\$7.57	426500				
October 15, 2014	Dinner	Propos Biarcliff - KC, MO	\$540.19	921000	Dinner	Hereford House, Zona Rosa - KC, MO	\$156.31	921000	Breakfast	Blue Bird Bistro - KC, MO	\$36.47	921000
October 15, 2014	Dinner	Nick & Jake's on Main - KC, MO	\$44.52	426403	Breakfast	Meatfin - Washington, DC - Funeral	\$8.80	426500	Drinks	Cibo Express Gromet Market - Washington, DC - F	\$3.07	426500
October 15, 2014	Snack	Picnic Marche - KC, MO - for Funeral	\$6.11	426500	Lunch	BRGR Kitchen & Bar - KC, MO	\$59.76	426500	Dinner	Founding Farmers - Washington, DC - Funeral	\$62.20	426500
October 15, 2014	Dinner	Founding Farmers - Washington, DC - Funeral	\$64.90	426500	Room Service	Westin - Arlington, VA - Funeral	\$2.00	921000	Drinks	Starbucks - Arlington, VA - Funeral	\$7.53	921000
On Report, No Receipt												
October 15, 2014	Dinner	The Mix - KC, MO	\$63.44	921000								
December 23, 2014	Dinner	Propos Biarcliff - KC, MO	\$1,185.45	426500	Dinner	The Capital Grille - KC, MO	\$336.85	921000	Drinks	QuickTrip - Grandview, MO	\$1.72	426500
December 23, 2014	Drinks	Parera Bread - Blue Springs, MO	\$2.39	426500	Dinner	Sullivan's - Leawood, KS	\$610.85	426402	Drinks	Mr. D's Lounge - Osage Beach, MO	\$3.64	921000
December 23, 2014	Lunch	The Jacobson - KC, MO	\$90.00	921000								
On Report, No Receipt												
December 23, 2014	Lunch	McDonald's - Osage Beach, MO	\$7.30	921000								
Receipt not on Report												
December 23, 2014	Breakfast	12th & Baltimore - KC, MO	\$17.82	921000	Drinks	Krispy Kreme - OP, KS	\$2.05	921000	Dinner	H. Toad's - Camden on the Lake, MO	\$35.00	426102
January 15, 2015	Breakfast	Krispy Kreme - OP, KS	\$74.76	921000								
January 15, 2015	Dinner	Farallon - San Francisco, CA	\$1,441.48	426500								
On Report, No Receipt												
January 15, 2015	Lunch	12th & Baltimore - KC, MO	\$20.82	921000	Lunch	Starbucks - KC, MO	\$12.53	921000				
January 8, 2015	Dinner	Jack In The Box - San Francisco, CA	\$19.03	921000	Lunch	In-N-Out Burger - San Francisco, CA	\$7.40	921000	Dinner	In-N-Out Burger - San Francisco, CA	\$14.14	921000
January 8, 2015	Room Service	Cypress - Cupertino, CA	\$7.61	921000	Breakfast	12th & Baltimore - KC, MO	\$36.06	921000	Dinner	Heinold's First & Last - Oakland, CA	\$341.00	921000
January 8, 2015	Snack	Oakland Tribune News - Oakland, CA	\$12.09	921000								
On Report, No Receipt												
January 8, 2015	Lunch	Starbucks - KC, MO	\$6.68	921000	Snack	Brioche Doree - KC, MO	\$3.75	921000	Lunch	KC, MO	\$15.00	921000
January 28, 2015	Dinner	Calif Napoli - KC, MO	\$2,347.59	426500	Dinner	The Ritz-Carlton Cigar Club Dinner - STL, MO	\$211.61	426500				
On Report, No Receipt												
January 28, 2015	Lunch	Jason's Deli - KC, MO	\$24.01	921000	Drinks	United Airlines	\$7.99	921000				
February 6, 2015	Lunch	BRGR Kitchen & Bar - KC, MO	\$61.45	921000	Dinner	Webster House Restaurant - KC, MO	\$81.87	921000	Dinner	The Capital Grille - KC, MO	\$258.40	426402
February 6, 2015	Lunch	Alois Brasserie - KC, MO	\$57.99	921000	Dinner	Sullivan's - Leawood, KS	\$55.16	426402				
March 13, 2015	Dinner	Occidental Grill & Seafood - Washington, DC	\$421.73	921000	Dinner	Mitch's Seafood - San Diego, CA	\$30.68	921000				
On Report, No Receipt												
March 13, 2015	Dinner	Tom Ham's Lighthouse - San Diego, CA	\$165.32	921000	Drinks	Cups & Company - Washington, DC	\$3.65	921000	Snack	Starbucks - San Diego, CA	\$5.80	921000
March 13, 2015	Lunch	Starbucks - San Diego, CA	\$5.80	921000	Lunch	Travel meal w/Cara Hoover	\$7.86	921000				
May 29, 2015	Dinner	Johnny's Tavern - KC, MO	\$117.50	921000	Breakfast	Alois - KC, MO	\$7.35	921000	Lunch	BRGR Kitchen & Bar - KC, MO	\$40.27	921000
May 29, 2015	Lunch	BRGR Kitchen & Bar - KC, MO	\$50.69	921000	Breakfast	Roasterie Brookside - KC, MO	\$4.19	921000	Dinner	Sullivan's - Leawood, KS	\$771.16	426500
May 29, 2015	Lunch	Cozy's La Jolla - La Jolla, CA	\$27.13	921000	Lunch	12th & Baltimore - KC, MO	\$27.38	921000	Breakfast	Starbucks - San Diego, CA	\$15.80	921000
May 29, 2015	Breakfast	Starbucks - San Diego, CA	\$12.70	921000	Drinks	Kaldi's Coffee - KC, MO	\$3.92	921000	Dinner	801 Chophouse - KC, MO	\$1,645.86	921000
May 29, 2015	Dinner	The Marine Room - San Diego, CA	\$609.76	921000	Lunch	Mitch's Seafood - San Diego, CA	\$52.98	921000				
On Report, No Receipt												
May 29, 2015	Dinner	BRGR Kitchen & Bar - KC, MO	\$50.13	921000	Dinner	The Capital Grille - KC, MO	\$289.99	921000	Lunch	Mitch's Seafood - San Diego, CA	\$52.98	921000

CASE NO. 12-107897-A

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CITIZENS' UTILITY RATEPAYER BOARD
Appellant,

v.

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS,
Appellee.

BRIEF OF APPELLANT
CITIZENS' UTILITY RATEPAYER BOARD

Appeal from the Kansas Corporation Commission
Honorable Mark Sievers, Chairman;
Ward Lloyd, Com., Thomas E. Wright, Com.
Docket No. 10-KCPE-415-RTS

C. Steven Rarrick #13127
Citizens' Utility Ratepayer Board (CURB)
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Topeka, Kansas 66604-4027
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Attorney for Appellant
Citizens' Utility Ratepayer Board

Dated: April 24, 2012

Oral Argument: 15 Minutes

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IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CITIZENS' UTILITY RATEPAYER
BOARD

Appellant

vs.

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Appellee.

Case No. 12-107897-A

NATURE OF THE CASE

On December 17, 2009, Kansas City Power & Light Company ("KCPL") filed an Application for a rate increase with the Kansas Corporation Commission ("KCC" or "Commission"). In its Application, KCPL claimed a revenue deficiency of \$55,225,000, which included a \$2.1 million claim for rate case expense. Numerous parties, including the Appellant, the Citizens' Utility Ratepayer Board ("CURB"), intervened in the docket. CURB, which represents the interests of residential and small commercial ratepayers, made it clear during discovery and the 2010 hearing that while it did not oppose the \$2.1 million rate case expense claim, it opposed recovery of any amount above the \$2.1 million claim contained in the record. Subsequent to the 2010 hearing after the record closed but prior to the Commission's November 22, 2010, decision - KCPL submitted discovery responses to Commission Staff indicating it estimated its rate case expense to be \$8.3 million. KCPL offered no supporting evidence into the record and did not seek to reopen the record to introduce additional rate case expense evidence.

On November 22, 2010, the KCC granted KCPL a revenue requirement increase of \$21,846,202, including \$5,669,712 in rate case expense. The \$5,669,712 award included \$4.5 million spent by KCPL for its own attorneys and consultants (“KCPL-only rate case expense”) and \$1.1 million in assessments from the Commission and CURB. The Commission relied upon the estimated costs and information contained in KCPL’s discovery responses received after the record closed in determining the rate case expense award, even though the discovery responses were never offered or admitted into the record. On December 7, 2010, CURB and other parties filed petitions for reconsideration of the rate case expense award and other issues not addressed in this appeal.

On January 6, 2011, the Commission granted and denied aspects of the petitions for reconsideration filed by CURB and other parties. On January 21, 2011, CURB and KCPL filed petitions for reconsideration of the January 6, 2011, Order.

On February 21, 2011, the Commission granted reconsideration of its November 22, 2010, rate case expense award, opened the record to receive new evidence on rate case expense, directed KCPL and CURB to file evidence regarding rate case expense, allowed the parties to conduct discovery on rate case expense, and scheduled an evidentiary hearing for September 6-8, 2011. The Commission stated that it would “base its decision on rate case expense for this docket upon the evidence presented in this additional proceeding that is limited to this issue.”

Prior to the September 6-8, 2011, hearing, KCPL increased its rate case expense claim yet again, to \$9,033,136. On January 18, 2012, after months of discovery, pre-filed testimony, and a three-day hearing in September 2011, the Commission again awarded

\$4.5 million in KCPL-only rate case expense – the same amount it had awarded in its November 22, 2010, Order.

On February 2, 2012, CURB filed its petition for reconsideration of the January 18, 2012 Order on rate case expense, urging the Commission to reconsider (1) its decision to grant KCPL rate case expense in excess of the uncontested \$2.1 million claimed in the Application and (2) its decision to award \$4.5 million for KCPL-only rate case expense, which was identical to the amount awarded in the Commission's November 22, 2010 Order. On March 5, 2012, the Commission denied CURB's request for reconsideration in a final order. CURB timely filed a petition for judicial review of the Commission's orders with this Court, which has exclusive jurisdiction under K.S.A. 66-118a(b) to hear appeals of decisions of the KCC arising from a rate hearing.

STATEMENT OF THE ISSUES

- I. The Commission's decision to award \$4.5 million in KCPL-only rate case expense is not supported by substantial competent evidence when viewed in light of the record as a whole, which included evidence the Commission specifically determined lacked the detail desired to calculate rate case expense, included block descriptions of work, and rendered impossible the comparisons, analysis, and determinations necessary to determine just and reasonable rate case expense.
- II. The Commission's decision is otherwise unreasonable, arbitrary and capricious because it is contrary to specific findings made by the Commission and failed to adequately specify how the Commission arrived at the \$4.5 million amount.
- III. The Commission's decision results in an erroneous interpretation or application of law because the award is not supported by meticulous, contemporaneous time

records that reveal all hours for which compensation is requested and how those hours were allotted to specific tasks.

- IV. The Commission's decision results in an erroneous interpretation or application of the law by failing to adequately specify how the Commission arrived at the \$4.5 million amount.

STATEMENT OF FACTS

I. Original Rate Case

On December 17, 2009, KCPL filed an application with the Commission to increase customer rates in KCC Docket No. 10-KCPE-415-RTS, the fourth rate case filed in a regulatory plan approved by the Commission in Docket No. 04-KCPE-1025-GIE ("1025 Docket"). (R. 1 at 1-145; R. 2 at 1-347; R. 3 at 4). In its Application, KCPL claimed a revenue deficiency of \$55,225,000, which included an adjustment for rate case expense of \$2.1 million. (R. 3 at 3; R. 22 at 5, 85; R. 95 at 149).

CURB, the statutory representative of residential and small commercial customers of KCPL, intervened in the case. CURB did not oppose the \$2.1 million rate case expense claim but explicitly opposed recovery of any amount above \$2.1 million. (R. 87 at 159, 168; R. 90 at 37, 39-41; R. 62 at 117).

Over a month after the hearing concluded and the record was closed, KCPL submitted updated discovery responses to Commission Staff data requests 554 and 555, indicating that its rate case expense *estimate* had risen from \$2.1 million to \$8.3 million. (R. 87 at 162-163; R. 90 at 39-41; R. 95 at 140-141). KCPL did not amend its \$2.1 million claim for rate case expense or offer any further evidence, nor did it seek to reopen the record to introduce additional rate case expense evidence prior to the discovery

deadline at the conclusion of the evidentiary hearing on September 2, 2010, when the record was closed. (R. 87 at 159-168; R. 95 at 149-151; R. 77 at 79-82; R. 76 at 235-236).

On November 22, 2010, the KCC granted KCPL a revenue requirement increase of \$21,846,202, including \$5,669,712 in rate case expense. The \$5,669,712 award included \$4.5 million spent by KCPL for its own attorneys and consultants ("KCPL-only rate case expense") and \$1.1 million in assessments from the Commission and CURB. (R. 87 at 164, 168, 213).

In its November 22, 2010, Order, the Commission made the following findings:

The attempt to determine rate case expense is *hampered by a lack of detailed information in the record*. Frequently, when a tribunal is called upon to review whether expenses incurred in a proceeding are reasonable, information is provided about the time and amount of services rendered, the general nature and character of the services revealed by the invoices, whether attorneys or consultants presented testimony or other tangible work product that was made a part of the record, the nature and importance of this litigation, and the degree of professional ability, skill, and experience called for and used during the course of the proceeding. KCPL and its experienced team of attorneys know these requirements and should have provided this information for the Commission's review. *Because that detailed information is not contained in this record, the Commission has considered denying recovery of all rate case expense in this proceeding.* Upon reflection, however, the Commission has concluded such a ruling would be improper. *Instead, the Commission will exercise its judgment to determine an amount of rate case expense that is prudent, just, and reasonable that KCPL will be allowed to recover from ratepayers as part of this proceeding.*

To address this issue, the Commission reviewed KCPL's responses to Data Requests 554 and 555 inquiring about rate case expenses; these responses are made a part of the administrative record of this proceeding. KCPL submitted *summarized* total expenses to September 30, 2010, and *estimated* expenses until the end of this proceeding. The documentation to support these estimates *contains very little detailed information* that would enable the Commission to make an individualized review of charges by specific consultants and attorneys. In fact, documentation presented for some vendors, including law firms, provides nothing by which to determine total hours, hourly rates, subject matter addressed, etc.

Therefore, the Commission must rely upon its expertise in reviewing rate case expense costs to determine what expenses were prudent and are just and reasonable to recover from ratepayers.

In deciding to take this course, the Commission has concluded that the amount of rate case expense established in this Order for KCPL to recover from its ratepayers will be Interim Rate Relief. By allowing recovery of an amount through Interim Rate Relief, KCPL will recover rate case expense costs the Commission has determined are prudent as well as just and reasonable. But if parties contest this amount, further proceedings to evaluate rate case expense will occur in a separate docket. Several reasons support using Interim Rate Relief to recover rate case expense costs here. First, *because a detailed record is not available, the Commission is not able to evaluate specific amounts that should be allowed for each consultant or attorney.* Second, prior rate cases under the Regulatory Plan, such as Docket 09-246, have illustrated the difficulty in accurately predicting rate case expense while the proceeding is ongoing. Third, an Order must issue by November 22, 2010; time does not allow scheduling of discovery, briefing, and argument about rate case expense between filing of post-hearing briefs and the Order date. Fourth, by using Interim Rate Relief, the Commission will set rates that include rate case expense found to be prudent, just, and reasonable, but this decision is subject to challenge. Finally, this Order will set a specific amount of rate case expense for this docket, cutting off conjecture about future costs that are not known or measurable at this time.

In response to DRs 554 and 555, KCPL *estimated* total rate case expense will be \$8,319,363. This includes *estimated* costs for the KCC and CURB totaling \$1,169,712. KCPL has no control over costs incurred by the KCC and CURB and these charges will be removed in considering KCPL's rate case expense. Thus, the *estimated* rate case expense for KCPL costs only is \$7,149,711. (R. 87 at 161-163 [citations omitted, emphasis added]).

...

The Commission has reviewed *estimates* from the numerous expert consultants KCPL used in this case. (R. 87 at 164 [emphasis added]).

...

The *estimated* expenses for housing attorneys, consultants, and KCPL employees during the Evidentiary Hearing were high considering the Company's proximity to the Commission's Offices. (R. 87 at 164 [emphasis added]).

...

KCPL *estimated* rate case expense attributable to legal services only exceeds \$5 million in this case. Based upon its experience in rate case proceedings, the Commission finds this amount excessive, even accounting for the complex issues considered in this proceeding. In considering attorney fees, the Commission was

particularly struck by the *lack of detail* defining services performed by the numerous attorneys that made no appearance in this proceeding. Information was not provided that would have allowed the Commission to determine an appropriate hourly rate or number of hours expended by attorneys involved in this case. Invoices from some firms reflected charges for multiple attorneys working on multiple projects for KCPL with a portion attributed to this proceeding but no explanation about how that amount was determined. (R. 87 at 165 [emphasis added]).

...

The Commission found *estimated* charges for some legal services particularly disconcerting. (R. 87 at 166 [emphasis added]).

...

The Commission is also concerned that, based upon review of a small number of invoices, that errors exist in KCPL's estimate of costs. ... Although this is not a significant amount, the Commission is concerned other errors are contained in KCPL's statement of rate case expense." (R. 87 at 166).

...

Even though the issues were complex, the Commission finds it unreasonable to require ratepayers to be responsible for the entire rate case expense costs being sought by KCPL. The Commission is *particularly concerned* about requiring ratepayers to pay such high legal costs *when no opportunity is available to review the services rendered to evaluate whether law firms adjusted charges for duplication of services of multiple attorneys when setting their fees.* (R. 87 at 167-168 [emphasis added]).

Notwithstanding the above findings, the Commission concluded in its November 22, 2010, Order:

The Commission, in reviewing rate case expense costs, *can use its knowledge and experience from other rate cases to set an appropriate amount to be recovered from ratepayers.* Taking all factors into account, the Commission concludes that \$4,500,000 is an appropriate amount for KCPL costs only to include as rate case expense costs that will be recovered from ratepayers. The rate case expense costs for the KCC and CURB will be added to this amount, resulting in a total rate case expense of \$5,669,712. (R. 87 at 168 [emphasis added]).

On December 7, 2010, CURB and other parties filed petitions for reconsideration of the November 22, 2010, Order on many issues. (R. 88 at 51-73, 167; R. 89 at 1-21).

With respect to the rate case expense issue, CURB sought reconsideration of the

Commission's decision to award rate case expense exceeding the \$2.1 million claimed in the application and the record. Specifically, CURB argued that the award, based on summarized, estimated, and unsupported evidence that was never offered or admitted into the record, (1) was not based upon substantial competent evidence when viewed in light of the record as a whole, (2) erroneously interpreted or applied the law, (3) was otherwise unreasonable, arbitrary and capricious, and (4) denied CURB and other parties due process with respect to the rate case expense evidence submitted after the discovery deadline, after the evidentiary hearing had concluded, and after the record was closed. (R. 88 at 51-60).

On January 6, 2011, the Commission issued its Order on Petitions for Reconsideration and Clarification and Order *Nunc Pro Tunc*. (R. 90 at 1-76). The Commission's January 6, 2011, Order gave little credence to CURB's arguments that the Commission erred in relying upon the summarized, estimated, and unsupported rate case expense claims contained in KCPL's discovery responses that were never offered or admitted into the record:

In the [November 22, 2010] Order, the Commission discussed its concerns about *lack of detail in the record*. The Commission faced a dilemma in trying to bring closure to this docket by the deadline for filing the Order while adhering to the long-standing policy that allowed recovery of rate case expense that was prudently incurred and just and reasonable. Rather than denying all rate case expense, the Commission chose to allow recovery of rate case expense it determined was prudently incurred by KCPL but to limit recovery to costs that were just and reasonable. In making its decision, the Commission *reviewed Data Requests about rate case expense*, work performed by KCPL's expert consultants as reflected in the evidence, and the skill and knowledge demonstrated by KCPL counsel. *The Commission directs Staff to file a copy of Data Requests 554 and 555 and Responses in this administrative record*. The Commission also took into account the length of the hearing, complexity of the issues, and other factors discussed in the Order. In determining an amount of just and reasonable rate case expense, the Commission exercised its discretion

and relied upon its experience in setting rate case expense. The decision was based upon available information, was made after considering interests of all impacted by the issue and was made in good faith. The decision reached was reasonable, was based on evidence in the record, and was not arbitrary and capricious. (R. 90 at 40-41).

Inexplicably, the Commission modified its November 22, 2010, decision to treat the rate case expense award as interim rate relief subject to challenge, true-up and refund and determined the rate case expense award would be a final decision that would not be subject to true-up or refund. (R. 90 at 41-45, 69-70). The Commission's January 6, 2011, Order granted and denied other aspects of the petitions for reconsideration filed by numerous parties, none of which are germane to this appeal. (R. 90 at 1-75).

The Commission also ordered, *sua sponte*, that Commission Staff file KCPL's discovery responses to Staff data requests 554 and 555 in the record. (R. 90 at 40, 77, 82-89). The first time these discovery responses appear in the record is January 13, 2011, when they were filed by Staff after the Commission's *sua sponte* directive in the January 6, 2011, Order. (R. 90 at 76-77, 82-89; *See also*, R. 95 at 140-141).

On January 21, 2011, CURB filed its second petition for reconsideration regarding the portions of the Commission's January 6, 2011, Order (a) designating the \$5,669,712 in rate case expense awarded in November 2010 as final agency action, and (b) the Commission's *sua sponte* directive for Commission Staff to file KCPL's responses to data requests 554 and 555 in the administrative record after the November 2010 Order was issued. (R. 90 at 113-126). CURB argued that the Commission's decision to designate the rate case award as final agency action permanently denied CURB and other parties their due process right to review, conduct discovery, present responding evidence, and cross-examine KCPL witnesses on the discovery responses relied upon by the

Commission even though they had never been offered or admitted into evidence. CURB urged the Commission to deny KCPL's request for rate case expense in excess of the \$2.1 million claimed in the application on the grounds specified in CURB's first petition for reconsideration, including the fact that the new evidence was not in the record when the Commission awarded rate case expense. In the alternative, CURB requested that the Commission designate the entire revenue requirement, including rate case expense, as interim, non-final agency action subject to refund pending a full review and proceeding to determine the reasonableness and prudence of KCPL's revised rate case expense claim. (R. 90 at 115-118). CURB also argued that the Commission's *sua sponte* directive that Commission Staff file a copy of KCPL's discovery responses to Staff data requests 554 and 555 in the administrative record denied CURB and other parties their due process rights to review, conduct discovery, object to admission, present responding evidence, and cross-examine KCPL witnesses regarding the new evidence. (R. 90 at 119-122). KCPL also filed a petition for reconsideration of the January 21, 2011, Order. (R. 90 at 127-152).

On February 21, 2011, the Commission granted reconsideration of its November 22, 2010, rate case expense award, opened the record to receive new evidence on rate case expense, directed KCPL and CURB to file evidence regarding rate case expense, allowed the parties to conduct discovery on rate case expense, and scheduled an evidentiary hearing. (R. 91 at 21, 24, 28-31, 34). With respect to the rate case proceeding granted, the Commission stated:

The Commission will base its decision on rate case expense for this docket upon the evidence presented in this additional proceeding that is limited to this issue. Thus, the purpose of granting reconsideration and setting a hearing as announced in this Order is to allow development of a record

that will provide the Commission with evidence needed to determine an appropriate adjustment for rate case expense that was prudently incurred by KCP&L and that is a just and reasonable amount to recover from KCP&L's ratepayers. Based upon this review, the Commission may decide to grant a smaller or larger amount for rate case expense for this proceeding than decided in its November 22, 2010 Order.

(R. 91 at 31[emphasis added]).

II. 2011 Rate Case Expense Proceeding

A. Evidence at Hearing

After granting reconsideration of its rate case expense award, the Commission specified the level of information it would require to award rate case expense in the subsequent proceeding. On March 9, 2011, the Prehearing Officer directed KCPL to provide three levels of information for any rate case expense sought in this proceeding, including detailed information for each timekeeper. (R. 92 at 89-91; R. 104 at 79-80). The detailed information required by the Prehearing Officer, acknowledged and adopted by the Commission on June 24, 2011, included:

Third, detailed information is required for each timekeeper, including (i) the hourly rate charged for that timekeeper, (ii) the number of hours worked by that timekeeper, (iii) dates these hours were worked, and (iv) a description of the work performed on those dates by the timekeeper. The Prehearing Officer specifically noted that billing statements submitted for attorneys providing legal service for this proceeding must comply with Rule 1.5 of the Kansas Rules of Professional Conduct. If billing statements include work done in dockets other than 10-415, an explanation should be given regarding what amount is requested as an expense in 10-415 and how that amount was determined, including a distinction of billing expenses for this docket and for an ongoing rate case proceeding with overlapping issues before the Missouri Public Service Commission. For expenses billed to 10-415 in billing statements, KCP&L must explain what expenses were included in capital costs or capitalized in different project costs and what expenses are requested as rate case expense. Information provided at the detailed level should add up to the amount requested in the vendor summary which in turn should equate to the

overall summary of rate case expense requested for this docket. (R. 95 at 16-19; *see also*, R. 92 at 90-91; R. 104 at 79-80).

KCPL again increased its rate case expense claim to over \$9 million in the testimony and evidence submitted in response to the above directive from the Commission. (R. 95 at 142, 146, 153-154, 156-157; R. 93 at 1-2, 130-131). The \$9 million rate case expense claim included \$7.7 million in KCPL-only rate case expense. (R. 93 at 1-2; R. 95 at 142, 153-154).

The evidentiary hearing in the rate case expense proceeding was held September 6-8, 2011. (R. 100; R. 101; R. 102; R. 103).

The invoices submitted by KCPL on rate case expense consist of 2,500 to 3,000 pages in KCPL Exhibit 2 and KCPL's responses to Staff data requests 554 and 555. (R. 103 at 190-191).

KCPL's schedules and invoices contained only general descriptions without any detailed information regarding the work performed:¹ Weisensee summary schedules (R. 100 at 107-115; R. 93 at 140-141, 151-212; R. 94 at 1-82; R. 96 at 5-8; R. 95 at 34); Meyer Construction (R. 100 at 152-161; R. 124 at 4-11; R. 93 at 204); Pegasus Global Holdings (R. 100 at 161-164; R. 124 at 12-35; R. 94 at 52-63); SNR Denton (Sonnenschein) (R. 100 at 164-172; R. 124 at 36-41; R. 93 at 207-212); Management Application Consulting (R. 100 at 172-174; R. 124 at 42-54; R. 94 at 20-26); Global Prairie (R. 93 at 168; R. 100 at 176-182; R. 124 at 55-63); Black & Veatch (R. 100 at 180-181; R. 124 at 64-65; R. 126 at 0 [disc, *Black_and_Veatch.pdf*]; R. 94 at 1-6); J. Wilson & Associates (billed through Schiff Hardin) (R. 93 at 198-200; R. 100 at 236-237; R. 125 at 36-68; R. 126 at 0 [disc, *J_Wilson_and_Associates.pdf*, invoice dates

¹ More detailed descriptions of this evidence are contained at R. 104 at 10-20. Space did not permit a full description in Appellant's Brief.

04/30/2010, 05/31/2010, 06/30/2010, 07/31/2010, 08/31/2010)]; NextSource (R. 103 at 202-207; R. 125 at 93; R. 94 at 27-51; R. 90 at 84); Financo (R. 94 at 7-10; R. 126 at 0 [disc, *FINANCO.pdf*, Invoice Dates 11/30/2009, 12/31/2009, 06/30/2010, 07/31/2010, 08/31/2010, 09/30/2010, 10/31/2010]); Siemens (R. 94 at 64-67; R. 126 at 0 [disc, *Siemens.pdf*, invoice dates 09/15/2009 and 10/20/2009]); Gannett Fleming (R. 94 at 11-19; R. 126 at 0 [disc, *Gannett_Fleming.pdf*]); Duane Morris (R. 93 at 155-162; R. 126 at 0 [disc, *Duane_Morris.pdf*, subcontractor Charles W. Whitney, invoice date 09/08/2010]); CCA. (R. 94 at 68-70; R. 126 at 0 [disc, *CCA.pdf*]); Towers Watson (R. 94 at 71-74; R. 126 at 0 [disc, *Towers_Watson.pdf*, page 1]); Morgan Lewis (R. 126 at 0 [disc, *Morgan_Lewis.pdf*, Invoice Date 05/25/2010]; R. 93 at 163-168); Steven Jones (R. 126 at 0 [disc, *Schiff_Hardin_July_1_2009_to_June_30_2010.pdf*, sub-contractor Steven Jones invoice nos. 2010-Schiff-002, and 2010-Schiff-003]; R. 93 at 201-202).

KCPL's invoices contained expenses for work on other matters improperly charged to this docket that were block billed:² SNR Denton (Sonnenschein) (R. 100 at 164-172; 228-229; R. 124 at 36-41; R. 25 at 22; R. 93 at 207); Morgan Lewis (R. 100 at 207-208; R. 124 at 131-135); Polsinelli (R. 100 at 208-221; R. 125 at 1-19; R. 98 at 30-32); Cafer (R. 100 at 221-227, 229-234; R. 125 at 20-21; 23-32); Schiff Hardin (R. 100 at 229-240; R. 125 at 23-35); Financo (R. 126 at 0 [disc, *FINANCO*, Invoice Date 11/30/2009]).

KCPL attorney and consultant travel expense invoices typically contained no detailed information:³ Pegasus Global Holdings (R. 100 at 161-163; R. 124 at 12-35); SNR Denton (Sonnenschein) (R. 100 at 172; R. 124 at 37); Management Application

² *Id.*

³ *Id.*

Consulting (R. 100 at 172-176; R. 124 at 43, 45); Meyer Construction (R. 126 at 0 [disc, *Schiff_Hardin_July_1_2009_to_June_30_2010.pdf*, sub-contractor Meyer Construction Consulting invoice nos. KCPL-46-KA-UNIT 2, KCPL-45-KA-UNIT 2, and KCPL-44-KA-UNIT 2]; R. 93 at 204; R. 100 at 152-161; R. 124 at 4-35); Jim Wilson & Associates (billed through Schiff Hardin) (R. 93 at 206; R. 100 at 236-237; R. 125 at 36-68; R. 126 at 0 [disc, *J_Wilson_and_Associates.pdf*, Invoice Dates 07/31/2010 and 08/31/2010]); Financo (R. 126 at 0 [disc, *FINANCO.pdf*, Invoice Date 08/31/2010]); Duane Morris (R. 126 at 0 [disc, *Duane_Morris.pdf*, Invoice Dates 08/10/2009, 09/14/2009, 11/03/2009, 01/08/2010, 07/08/2010, 09/08/2010, 09/30/2010]; R. 93 at 155-162); Steven Jones (billed through Schiff Hardin) (R. 126 at 0 [disc, *Schiff-Services_October_1_2010_to_January_31_2011.pdf*, subcontractor Steven Jones invoice nos. 2010-Schiff-007B, and 2010-Schiff-008]; R. 93 at 201).

KCPL witness John Weisensee admitted it would be *impossible* for the Commission to determine the exact amount of time spent by attorneys performing specific tasks because of the block billing practice by KCPL's attorneys. (R. 100 at 197-198, 228). Staff witness Jeffrey McClanahan testified that "Many examples of these potential duplicative efforts can be found," and that in light of the massive volume of time entries and multiple issues that qualify for closer scrutiny of possible duplication of efforts, the task was simply too great. (R. 96 at 9). At least 12 different attorneys reviewed Drabinski's testimony and prepared for cross examination with block billing time entries (R. 100 at 185-188; 191-197; R. 124 at 66-67; 78-85), and multiple attorneys and firms researched the prudence issue utilizing block billing. (R. 100 at 188-190; R. 124 at 68-74). Multiple attorneys submitted invoices with block billing for reviewing,

identifying and marking confidential designations related to Drabinski testimony (R. 100 at 190-197; R. 124 at 75-85), and multiple attorneys submitted invoices with block billing for drafting and preparing testimony for experienced employees and consultants of KCPL. (R. 100 at 198-203; R. 124 at 86-125).

KCPL-only rate case expense consisted of six law firms with 47 timekeepers charging over 16,000 hours and eight outside consulting firms with 46 timekeepers charging over 9,700 hours, for a total of over 25,000 attorney and consultant hours. (R. 95 at 9-10, 19, 156; R. 104 at 82, 146-150). The hourly rates charged by KCPL's attorneys and consultants ranged as high as \$855 and \$650 per hour, respectively. (R. 98 at 131-133; R. 95 at 156).

The total rate case expense incurred by CURB, representing residential and small commercial customers, was \$188,051, using primarily one in-house attorney and three consultants (only two filed testimony). The total rate case expense incurred by Staff, using four in-house attorneys, one outside consultant, and in-house technical Staff, was \$1,233,828.41 (which included expenses incurred by Commission Advisory Staff of \$105,226). The amount spent by the Company for KCPL-only rate case expense was over forty times the amount spent by CURB, and over five times the amount spent by CURB and the Commission Staff combined, including KCC Advisory Counsel. (R. 95 at 163-164; R. 94 at 83-139).

The Commission Staff testified and argued that KCPL did not properly adhere to the Commission directive of providing detailed rate case expense data, and that KCP&L failed to provide sufficient detail of each timekeeper to provide the Commission with a sound basis to determine whether any duplication or unreasonable levels of service were

billed to the rate case expense that should be denied recovery from ratepayers. (R. 96 at 5-9; R. 103 at 213; R. 104 at 28-29).

With regard to the attorney detailed billings required by the Commission, Commission Staff found the “nature of the activity” *severely lacking* in KCP&L’s filings. (R. 104 at 29). With respect to meeting the legal requirement for attorneys fees, Commission Staff found the required “meticulous, contemporaneous time records” *severely lacking* in KCPL’s filings. (R. 104 at 29). Commission Staff found no documentation showing KCPL took any steps to avoid duplicative or excessive work and could find no substantive challenges to any billings presented to KCPL. (R. 104 at 30-31).

Commission Staff concluded its post-hearing brief with the following:

Staff concludes by highlighting the fact that this is not a case where no duplication or waste was found after a full review of detailed billings and timekeeper summaries. *Quite the opposite*. The lack of evidence of distinct duplication and waste was the result of the essentially *impossible task of evaluating the vague and general summaries and billings* to determine any patterns or episodes of duplication or waste - particularly under the aforementioned standards applicable to this matter. (R. 104 at 31).

With respect to the rate case expense expended by the Company, Great Plains Energy/KCP&L President and Chief Operating Officer of William Downey testified that KCPL viewed the rate case as a “2 billion dollar bet the company investment,” that it was “absolutely mission critical” to the Company to “explain, defend, and validate all the work we had done over the past 5 years...,” and that he “would have erred in terms of effort and cost in terms of spending in that area ... because there was so much at risk for the Company.” (R. 101 at 98-99, 126, 131).

B. January 18, 2012, Commission Order

On January 18, 2012, the Commission issued its decision on rate case expense following the September 6-8, 2011, hearing. The Commission noted the standard applicable to determining the reasonableness of rate case expense:

When the Commission is called upon to determine the reasonableness of time billed and labor expended in litigating a case, the utility holds the information needed to support its request. The utility has the burden to prove that the hours billed are reasonable "by submitting meticulous, contemporaneous time records that reveal, for each lawyer for whom fees are sought, all hours for which compensation is requested and how those hours were allotted to specific tasks." (footnote citing *Case v. Unified Sch. Dist. No. 233*, 157 F.3d 1243, 1250 (10th Cir. 1998), *Kansas Industrial Consumers v. Kansas Corporation Comm'n*, 36 Kan. App. 2d 83, 111-12, 138 P.3d 338 (2006) (the reviewing court will determine if substantial evidence in the record supports an agency's findings of appropriate attorney fees), February 21, 2011 Order, ¶¶ 21-22 and notes 36-38; November 22, 2010 Order, pp. 88-89.)

(R. 104 at 78).

After noting KCPL was given specific guidance and directed to provide three levels of information for any rate case expense sought in this proceeding, including detailed information for each timekeeper, the Commission made the following specific findings in the January 18, 2012, Order:

[T]he Commission finds the evidence submitted in this proceeding *still lacked detail desired to calculate rate case expense*. For example, the description of work performed given by timekeepers was *almost always set out as block descriptions per day* rather than breaking out time spent on specific issues; this rendered *impossible* any meaningful comparison of work to identify duplication of effort on issues. This lack of detail made it *impossible* to rationally analyze billings submitted by multiple attorneys from several different law firms. For some consultants, *essentially no description was made* that could be used to decipher what issues were being addressed by individual timekeepers. The lack of detail in descriptions made it *impossible* to determine whether the claimed work was actually performed in a competent manner and useful in the rate case, whether the company was prudent in incurring costs for each attorney or consultant, and whether it is just and reasonable to pass these costs

through to ratepayers as rate case expense. (R. 104 at 80-81 [emphasis added]).

...

Identifying duplication of attorney work among law firms is tedious and requires laborious review of invoices that was made *impossible* here because attorneys billed work using block descriptions rather than detailed descriptions of work efforts. (R. 104 at 101 [emphasis added]).

...

Billings by consultants present issues similar to the law firm billings. Invoices were inconsistent in their detail and it was *impossible* to determine the degree to which work effort was properly undertaken, duplication of work effort occurred, and any effort was made to review and manage billings by consultants. (R. 104 at 111[emphasis added]).

...

The Commission *does not know, and cannot know, how many undiscovered billing errors remain in the invoices presented.* What the Commission knows from its review of this record is that neither the law firms nor KCP&L made any billing adjustment to account for billing errors in attorney hours. And it is unreasonable to conclude that no billing errors were made by the 34 lawyers at six law firms billing a total of 12,395 hours. (R. 104 at 108 [emphasis added]).

...

In this case, six law firms with 47 timekeepers (lawyers, consultants and paralegals) billed more than 16,000 hours toward this case. In addition to the law firms, eight outside consulting firms with a total of 46 individual timekeepers billed more than 9,700 hours. Thus, the total work effort of outside attorneys and consultants on behalf of KCP &L involved 90 individual timekeepers billing *more than 25,000 hours of legal and professional services* to the litigation portion of this regulatory proceeding. *These numbers shock the conscience of the Commission.* (R. 104 at 82 [emphasis added]).

The Commission noted in its January 18, 2012, Order that KCPL did not consider block billing problematic, and concluded that the testimony by KCPL witness Tim Rush that no duplication of billing occurred in this case “borders on stating a deliberate falsehood but will deem to be a sign of indifference.” (R. 104 at 95).

The Commission utilized the lodestar calculation in determining an appropriate amount to award for rate case expense because so much of the rate case expense was

attributable to attorney fees. (R. 104 at 93). The Commission stated that consistently, “courts have required each lawyer for whom fees were sought to provide meticulous, contemporaneous time records documenting the time allotted to specific tasks.” (R. 104 at 93-94). The Commission “consistently encountered” problems with applying the lodestar analysis due to the practice of block billing by KCPL attorneys and consultants:

A problem we consistently encountered in reviewing records submitted by KCP&L was the use of block billing. This was particularly problematic in trying to sort out what attorney work was duplicated, both within a law firm and amount attorneys at several law firms. We found block billing was used for time expended during a day even if multiple tasks were performed.

...

Block billing was even used when work had to be billed to more than one jurisdiction or involved issues not included in this rate case proceeding. When block billing is use, the reviewer cannot decipher how much time is spent on a particular task, which is necessary to determine whether tasks are duplicated with respect to that activity.

...

Attorneys clearly know how to record separate time for specific projects on a daily basis. Anne Callenbach of Polsinelli Shughart billed her daily time using a granular identification of tasks; on June 22, 2011, Callenbach billed a total of 7.90 hours by dividing her time into 5 separate notations. *Unfortunately, the Commission has found no other attorney invoices that follow this example.*

(R. 104 at 94-95 [citations omitted, emphasis added]).

In applying the lodestar analysis to attorney billings, the Commission denied rate case expense for services provided by the law firms of Duane Morris, Morgan Lewis, and SNR Denton, leaving the remaining three firms -- Polsinelli Shughart, Schiff Hardin, and the Cafer Law firm – and a beginning combined total of 11,487 attorney hours for its lodestar analysis. (R. 104 at 97-98). Because no firm adjusted for duplication of work, lost time, and coming up to speed, the Commission deducted 10% of the 5,298 Polsinelli Shughart hours, 30% of the Schiff Hardin hours, and 5% of the Cafer Law hours,

reducing the total attorney hours from 11,487 to 9,510. (R. 104 at 98-100). The Commission then adjusted an additional 310 hours for duplication related to working on Staff prudence witness Walter Drabinski's testimony during June 2010, reducing total adjusted attorney hours from 9,510 to 9,200. (R. 104 at 101-104). The Commission then deducted an additional 875 hours for unnecessary witness training, reducing total adjusted attorney hours from 9,200 to 8,325. (R. 104 at 104-107). Finally, the Commission deducted an additional 416 hours to account for billing errors, reducing total adjusted attorney hours from 8,325 to 7,909 under its lodestar calculation. (R. 104 at 107-108).

The Commission next concluded that it must determine a reasonable hourly rate to complete the lodestar calculation, and found that the range of \$275, \$285, and \$300 per hour provided a range of appropriate attorney fees to consider in determining just and reasonable rate case expense. Using this range of attorney hourly rates times the 7,909 hours, the Commission concluded lodestar calculation resulted in reasonable attorney fees of \$2,174,975, \$2,254,065, and \$2,372,700. However, the Commission did not indicate which of amounts it would use in its final KCPL-only rate case expense award. (R. 104 at 108-111).

For determining rate case expense for non-attorney consultants, the Commission indicated that, at a high level, using the percentages resulting from its lodestar analysis it used to adjust attorney fees (58%, 56.2%, and 53.8%) would result in a range of allowed rate case expenses for legal and consulting services between \$2.92 million at \$275 per hour to \$3.21 million at \$300 per hour. (R. 104 at 111-112).

The Commission next proceeded to address whether each outside consultants' expenses and found the following prudently incurred and just and reasonable to recover in rates: Black and Veatch, FINANCO, Inc., Gannett Fleming, Inc., Siemens Energy, Inc., and Towers Watson.

The Commission adjusted the expenses of the following consultants: Management Applications Consulting, Inc. (reduced by 10% to \$100,118). The Commission concluded hiring Pegasus Global Holdings, Inc. to conduct an independent audit of the Iatan Project was prudent, but the work performed and billed after completing the independent study far exceeded the amount that was expected. The Order is unclear as to what adjustment, if any, the Commission made to the Pegasus billings. (R. 104 at 117-118).

The Commission denied expenses for the following consultants: Meyer Construction Consulting (R. 104 at 118-120); J. Wilson & Associates (R. 104 at 120-121); Steven Jones (R. 104 at 121); Schiff Hardin (R. 104 at 122-124); Global Prairie (R. 104 at 132).

It is unclear what the Commission did with respect to the expenses of Next Source: "Overall, the Commission finds KCP&L failed to presented (*sic*) evidence sufficient to show why such extensive use of NextSource was necessary and essential to presenting its case in this proceeding. We have taken this into account in setting the rate case expense in this proceeding." (R. 104 at 124-125).

It is also unclear exactly what the Commission determined with respect to Other Vendor Services (Kuhn & Wittenborn, Inc., XACT Data Discovery, XPEDX, Hampton Inn lodging expense, Miscellaneous Vendors, and Expense Reports): "In reaching our

decision, we took into account the total miscellaneous expenses KCP&L asked to be reimbursed by ratepayers. We find that the total amount of expenses requested is excessive based upon the evidence presented and that it is appropriate for KCP&L shareholders to bear the costs of such expenses *not covered by the rate case expense we award.*" (R. 104 at 125-127 [emphasis added]).

With respect to how KCPL monitored its rate case expense, the Commission stated, "The Commission finds the failure to develop and implement such a review process with regard to rate case expense supports our conclusion that not all rate case expense accumulated by KCP&L was prudently incurred." (R. 104 at 127-130).

Despite the above findings in the January 18, 2012, Order, the Commission awarded the identical amount of KCPL-only rate case expense, \$4.5 million, as it awarded in its November 22, 2010, Order, and increased the amount of rate case expense related to Commission and CURB assessments, for a total rate case expense award of \$5,922,832. (R. 104 at 70-71).

In the January 18, 2012, Order, the Commission made the following statement with regard to its award of \$4.5 million in KCPL-only rate case expense: "The Commission is not persuaded that KCP&L has presented sufficient evidence to justify increasing the award of KCP&L-only rate case expense *above what the Commission originally approved in its November 22, 2010 Order.*" (R. 104 at 70 [emphasis added]).

On February 2, 2012, CURB filed its Petition for Reconsideration of Order on Rate Case Expense, urging the Commission to reconsider its decision granting KCPL rate case expense in excess of the uncontested \$2.1 million claimed in the Application and its decision awarding \$4.5 million for KCPL-only rate case expense identical to the amount

awarded in the Commission's November 22, 2010 Order. CURB argued the Commission's February 2, 2012 decision awarding KCPL rate case expense in excess of the uncontested \$2.1 million claimed in the Application and awarding the identical \$4.5 million in KCPL-only rate case expense was erroneous, arbitrary and capricious, and not based on substantial competent evidence. (R. 104 at 210-218).

On March 5, 2012, the Commission denied CURB's request for reconsideration in a final order. (R. 104 at 252-265). On April 4, 2012, CURB filed its petition for judicial review of the Commission's order with this court, which has exclusive jurisdiction under K.S.A. 66-118a(b) to hear appeals of decisions of the KCC arising from a rate hearing.

ARGUMENTS AND AUTHORITIES

I. Standard of Review

CURB seeks a determination under K.S.A. 77-621 that the Commission's award of \$4.5 million for KCPL-only rate case expense is not supported by substantial competent evidence when viewed in light of the record as a whole, is otherwise unreasonable, arbitrary and capricious, and results in an erroneous interpretation or application of law.

Under K.S.A. 66-118c, appeals of decisions from the KCC are governed by the Act for Judicial Review and Civil Enforcement of Agency Actions ("KJRA"), K.S.A. 77-601 *et. seq.* K.S.A. 77-621 sets forth the scope of review of administrative decisions. The relevant provisions of K.S.A. 77-621 applicable to this appeal include:

- (c) The Court shall grant relief only if it determines any one or more of the following:
 - ...
 - (4) the agency has erroneously interpreted or applied the law;

- ...
- (7) the agency action is based on a determination of fact, made or implied by the agency, that is not supported by the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this act; or
 - (8) the agency action is otherwise unreasonable, arbitrary, or capricious.

(d) For purposes of this section, ‘in light of the record as a whole’ means that the adequacy of the evidence in the record before the court to support a particular finding of fact shall be judged in light of all the relevant evidence in the record cited by any party that detracts from such finding as well as all of the relevant evidence in the record, compiled pursuant to K.S.A. 77-620, and amendments thereto, cited by any party that supports such finding, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witness and the agency’s explanation of why the relevant evidence in the record supports its material findings of fact. In reviewing the evidence in light of the record as a whole, the court shall not reweigh the evidence or engage in de novo review.

The scope of review of administrative action under the Kansas Judicial Review Act (“KJRA”) related to determinations of fact was recently discussed in *Kotnour v. City of Overland Park*, 43 Kan.App.2d 833, 233 P.3d 299 (2010):

Under K.S.A.2009 Supp. 77-621(c)(7) of the KJRA, an appellate court reviews questions of fact, in light of the record as a whole, to determine whether an agency’s findings are supported to the appropriate standard of proof by substantial evidence. An appellate court shall grant relief if it determines that “the agency action is based on a determination of fact, made or implied by the agency, that is not supported by evidence that is substantial when viewed in light of the record as a whole.” K.S.A.2009 Supp. 77-6231(c)(7). (*sic*)⁴

K.S.A.2009 Supp. 77-621(d) further defines an appellate court’s task in reviewing questions of fact, “in light of the record as a whole,” as follows:

“[I]n light of the record as a whole’ means that the adequacy of the evidence in the record before the court to support a particular finding of fact shall be judged in light of all the relevant evidence in the record

⁴ The statutory citation should read, “66-621(c)(7)”

cited by any party that detracts from such finding as well as all of the relevant evidence in the record, compiled pursuant to K.S.A. 77-620, and amendments thereto, cited by any party that supports such finding, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witness and the agency's explanation of why the relevant evidence in the record supports its material findings of fact. In reviewing the evidence in light of the record as a whole, the court shall not reweigh the evidence or engage in de novo review."

Thus, K.S.A.2009 Supp. 77-621(d) defines "in light of the record as a whole" to include the evidence both supporting and detracting from an agency's finding. Moreover, under K.S.A.2009 Supp. 77-621(d), this court must consider the credibility determination that the hearing officer made "who personally observed the demeanor of the witness." If the agency head, here the Board, does not agree with those credibility determinations, the agency should give its reasons for disagreeing. This court must consider the agency's explanation as to why the relevant evidence in the record supports its material factual findings. For this court to fairly consider an agency's position should it disagree with a hearing officer's credibility determination, an explanation of the agency's differing opinion is generally needed. Although the statute does not define the term "*substantial evidence*," *case law has long stated that it is such evidence as a reasonable person might accept as being sufficient to support a conclusion. Herrera-Gallegos*, 42 Kan.App.2d at 363, 212 P.3d 239.

Further explaining how the "in light of the record as a whole" standard is to be applied, Judge Steve Leben in *Herrera-Gallegos* states as follows:

"The amended statute [K.S.A.2009 Supp. 77-621] finally reminds us that we do not reweigh the evidence or engage in de novo review, in which we would give no deference to the administrative agency's factual findings. Indeed, the administrative process is set up to allow an agency and its officials to gain expertise in a particular field, thus allowing the application of that expertise in the fact-finding process. But we *must now consider all of the evidence—including evidence that detracts from an agency's factual findings—when we assess whether the evidence is substantial enough to support those findings*. Thus, the appellate court now must determine whether the evidence supporting the agency's decision has been so undermined by cross-examination or other evidence that it is insufficient to support the agency's conclusion." 42 Kan.App.2d at 363, 212 P.3d 239.

43 Kan.App.2d at 836-37 (emphasis added). The revised standard of review of an agency's factual determination made by the Kansas Legislature was effective July 1,

2009, prior to the agency action at issue in this appeal. *Redd v. Kansas Truck Center*, 291 Kan. 176, 182-83, 239 P.3d 66 (2010).

In *Katz v. Kansas Dept. of Revenue*, 45 Kan.App.2d 877, 256 P.3d 876 (2011), the Court discusses whether the standards for determining whether agency action is unreasonable, arbitrary, or capricious, or in error because the agency erroneously interpreted or applied the law:

“An administrative action is unreasonable when it is so arbitrary that it can be said it was taken without regard to the benefit or harm involved to the community at large, including all interested parties, and was so wide of the mark that its unreasonableness lies outside the realm of fair debate. Whether an action is reasonable or not is a question of law, to be determined upon the basis of the facts which were presented to the [agency].” *Board of Johnson County Comm'rs v. City of Olathe*, 263 Kan. 667, Syl. ¶ 3, 952 P.2d 1302 (1998).

...
“The arbitrary or capricious test relates to whether a particular action should have been taken or is justified, such as the reasonableness of an agency's exercise of discretion in reaching a determination or whether the agency's action is without foundation in fact.” *Sokol v. Kansas Dept. of SRS*, 267 Kan. 740, Syl. ¶ 2, 981 P.2d 1172 (1999).

...
K.S.A. 77-621(c)(4) allows the administrative hearing officer and the district court to consider whether the administrative action was in error because “the agency has erroneously interpreted or applied the law.” Kansas law provides that “[a]n appellate court's review of an agency's statutory interpretation is unlimited, with no deference being given to the agency's interpretation.” *Powell*, 290 Kan. 564, Syl. ¶ 3, 232 P.3d 856.

45 Kan.App.2d at 887-889.

Examining whether agency action is arbitrary and capricious was discussed in *Wright v. Kansas State Bd. of Educ.*, 46 Kan.App.2d 1046, 268 P.3d 1231 (2012):

An agency action is arbitrary and capricious if it is unreasonable or without foundation in fact. *Chesbro v. Board of Douglas County Comm'rs*, 39 Kan.App.2d 954, 970, 186 P.3d 829, *rev. denied* 286 Kan. 1176 (2008). A rebuttable presumption of validity attaches to all actions of an administrative agency, and the burden of proving arbitrary and capricious conduct lies with the party challenging the agency's actions. *Connelly v.*

Kansas Highway Patrol, 271 Kan. 944, 965, 26 P.3d 1246 (2001), *cert. denied* 534 U.S. 1081, 122 S.Ct. 813, 151 L.Ed.2d 698 (2002). Our Supreme Court “ ‘has defined arbitrary to mean ‘without adequate determining principles ... not done or acting according to reason or judgment;’ ... [and] capricious as ‘changing apparently without regard to any laws.’ [Citations omitted.]” ‘ ” *Dillon Stores v. Board of Sedgwick County Comm'rs*, 259 Kan. 295, 299, 912 P.2d 170 (1996).

46 Kan.App.2d at 1059.

The distinction between substantial evidence test for reviewing an agency decision, and the test for action that is otherwise unreasonable or arbitrary and capricious was discussed in *In re Protests of Oakhill Land Co.* 46 Kan.App.2d 1105, 269 P.3d 876 (2012):

When a party claims that an agency's decision isn't supported by substantial evidence, we must consider all the evidence—including evidence contrary to the agency's decision—in our review. See K.S.A. 2010 Supp. 77–621(c)(7); K.S.A. 2010 Supp. 77–621(d). To uphold that decision, the evidence in support of it must be substantial, meaning that a reasonable person could accept it as being sufficient to support the conclusion reached. See *Herrera-Gallegos v. H & H Delivery Service, Inc.*, 42 Kan.App.2d 360, 362–63, 212 P.3d 239 (2009). Sometimes, part of the evidence may have been so undermined by cross-examination or other evidence that a reasonable person would no longer accept it as sufficient to support the agency's conclusion. 42 Kan.App.2d at 363, 212 P.3d 239. In such cases, we essentially filter out that evidence and determine whether what remains is enough for a reasonable person to accept the agency's factual findings and conclusions. See *Abdi v. Tyson Fresh Meats, Inc.*, No. 104,132, 2011 WL 3444330, at *3 (Kan.App.2011) (unpublished opinion).

The landowners' claim that the decision should be set aside under K.S.A. 2010 Supp. 77–621(c)(8) as otherwise unreasonable or arbitrary is, on our facts, really just another claim that the evidence supported another conclusion. As the landowners phrased it in their appellate brief, the agricultural classification was “not based on the substantial evidence contained in the record as a whole, and is *therefore* arbitrary and capricious.” (Emphasis added.) Although the landowners correctly cite to some cases that indicate that a decision not supported by substantial evidence is arbitrary, such language improperly conflates the separate tests set out in K.S.A. 2010 Supp. 77–621(c)(7)—the substantial-evidence test—and in K.S.A. 2010 Supp. 77–621(c)(8)—the test for action that is “otherwise unreasonable” or arbitrary and capricious.

These tests mean different things. A challenge under K.S.A. 2010 Supp. 77-621(c)(8) attacks the quality of the agency's reasoning. See *Kansas Dept. of Revenue v. Powell*, 290 Kan. 564, 569, 232 P.3d 856 (2010) (stating that agency may have acted arbitrarily when it fails to properly consider factors courts require it to consider to guide its discretionary decision); *Wheatland Electric Cooperative*, 46 Kan.App.2d 746, Syl. ¶ 5, 265 P.3d 1194 (providing factors to consider when determining whether agency acted within its discretion); Gellhorn & Levin, *Administrative Law and Process in a Nutshell*, p. 103 (5th ed. 2006) (“[T]he emphasis in arbitrariness review [is on] the *quality of an agency's reasoning*.”). Although review must give proper deference to the agency, its conclusion may be set aside—even if supported by substantial evidence—if based on faulty reasoning. A challenge under K.S.A. 2010 Supp. 77-621(c)(7) attacks the quality of the agency's fact-finding, and the agency's conclusion may be set aside if it is based on factual findings that are not supported by substantial evidence.

46 Kan.App.2d at 1114-15.

The appellate review of the record as a whole under the KJRA was discussed recently in *In the Matter of the Equalization Appeal of PRIEB PROPERTIES, L.L.C.*, ___ Kan.App.3d ___, ___ P.3d ___ (No 105,298), 2012 WL 892183 (2012):

For purposes of our review of fact findings express or implied, our review of the record as a whole means that

“the adequacy of the evidence in the record before [us] to support a particular finding of fact shall be judged in light of all the relevant evidence in the record cited by any party that detracts from such finding as well as all of the relevant evidence in the record ... cited by any party that supports such finding, including determinations of veracity by the presiding officer....”

We do not, however, reweigh the evidence or engage in de novo review. K.S.A.2010 Supp. 77-621(d).

2012 WL 892183, at 6.

However, the Commission's latitude in weighing the facts is not boundless: “Not only must an agency's decreed result be within the scope of its lawful authority, but also the process by which it reaches that result must be logical and rational.” *Home*

Telephone Co. v. Kansas Corporation Comm'n, 31 Kan.App.2d 1002, 1012 (2003), citing *Allentown Mack Sales Service, Inc. v. NLRB*, 522 U.S. 359, 374, 139 L.Ed.2d 797, 188 S.Ct. 818 (1998).

Reasoned decision making, in which the rule announced is the rule applied, promotes sound results, and unreasoned decision making the opposite. The evil of a decision that applies a standard other than the one it enunciates spreads in both directions, preventing both consistent application of the law by subordinate agency personnel (notably ALJ's), and effective review of the law by the courts.

31 Kan.App.2d at 1012-13 (citing *Allentown*, 522 U.S. at 375).

CURB has the burden of proving the invalidity of the Commission's actions on appeal. K.S.A. 77-621(a)(1). *Citizens' Utility Ratepayer Bd. v. Kansas Corporation Comm'n*, 28 Kan.App.2d 313, 315, 16 P.3d 319 (2000), *rev. denied* 271 Kan. 1035 (2001). However, the burden of proof to establish rate case expense is known and measurable is with the utility. *Greely Gas Company v. State Corp. Comm'n*, 15 Kan. App.2d 285, 288, 807 P.2d 167 (1991); *Home Telephone Co. v. Kansas Corporation Comm'n*, 31 Kan. App.2d 1002, 1005, 76 P.3d 1071 (2003). The utility also bears the burden of proof to establish rate case expenses are prudently incurred by the utility. *Kansas Industrial Consumers v. Kansas Corporation Comm'n*, 36 Kan. App.2d 83, 111, 138 P.3d 338 (2006); *Home Telephone*, 31 Kan. App.2d at 1015.

With respect to rate case expense and attorneys fees, the utility has the burden to prove that the hours billed are reasonable "by submitting meticulous, contemporaneous time records that reveal, for each lawyer for whom fees are sought, all hours for which compensation is requested and how those hours were allotted to specific tasks." *Case v. Unified Sch. Dist. No. 233*, 157 F.3d 1243, 1250 (10th Cir. 1998). "Fees which are not supported by 'meticulous, contemporaneous time records' that show the specific tasks

being billed should not be allowed.” *Davis v. Miller*, 269 Kan. 732, 748-751, 7 P.3d 1223 (2000).

A utility is not entitled to recover every expense incurred by the Company in establishing rates, *Columbus Telephone Co. v. Kansas Corporation Comm'n*, 31 Kan. App. 2d 828, 835-36, 75 P.3d 257 (2003), and the Commission is permitted to deny duplicative expenses. *Sheila A. v. Whiteman*, 259 Kan. 549, 568-69, 913 P.2d 181 (1996).

In determining rate case expense, the Commission should balance the interest of all concerned parties, including investors vs. ratepayers, present ratepayers vs. future ratepayers, and the public interest. *Kansas Gas & Electric v. Kansas Corporation Comm'n*, 239 Kan. 483, 489-491, 720 P.2d 1063 (1986).

II. Arguments on the Issues and Relevant Authorities

CURB seeks a determination under K.S.A. 77-621 that the KCC’s order is not supported by substantial competent evidence when viewed in light of the record as a whole, is otherwise unreasonable, arbitrary and capricious, and results in an erroneous interpretation or application of law for the reasons specified below.

- A. **The Commission’s decision to award \$4.5 million in KCPL-only rate case expense is not supported by substantial competent evidence when viewed in light of the record as a whole, which included evidence the Commission specifically determined lacked the detail desired to calculate rate case expense, included block descriptions of work, and rendered impossible the comparisons, analysis, and determinations necessary to determine just and reasonable rate case expense.**

The standard of review applicable to this issue is under K.S.A. 77-621(c)(7) and the authorities cited in the Standard of Review section, *supra*. The issues raised by

CURB are located at (R. 79 at 72-73; R. 88 at 51-59; R. 90 at 113-122; R. 104 at 1-25, 210-218, 234-246), and were ruled upon by the Commission at (R. 87 at 159-168; R. 90 at 39-45; R. 91 at 21-23, 28-38; R. 104 at 67-150, 252-265).

The Commission's decision to award \$4.5 million in KCPL-only rate case expense is not supported by substantial competent evidence when viewed in light of the record as a whole. CURB is not asking this Court to reweigh the evidence or engage in a *de novo* review, but instead determine whether the Commission's award of \$4.5 million is "supported by the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole" K.S.A. 77-621(c)(7). The Commission's own findings with respect to the record as a whole ("all of the relevant evidence in the record." K.S.A. 77-621(d)), do not support its award of \$4.5 million in KCPL-only rate case expense.

Both of the Commission orders awarding \$4.5 million in KCPL-only rate case expense (November 22, 2010, and January 18, 2012), found a lack of the required detail in the record to determine reasonable and prudent rate case expense (R. 87 at 161-163, 165; R. 90 at 40; R. 104 at 80). KCPL's failure to provide the detailed information in the subsequent rate case expense proceeding leading to the January 18, 2012, Order is inexcusable because the Commission gave KCPL clear guidance regarding the level of detail required to recover rate case expense. (R. 92 at 89-91; R. 95 at 16-19).

The Commission determined that the evidence submitted by KCPL lacked the detail required to calculate rate case expense, making it *impossible* for the Commission to rationally analyze the billings. (R. 87 at 161-163, 165, R. 90 at 40-41; R. 100 at 197-198, 228; R. 104 at 80-81, 101, 108, 111). The record demonstrates that the block-billing

practice was utilized by all but one (R. 104 at 94-95) of the attorneys retained by KCPL (R. 96 at 9; R. 100 at 185-203; R. 124 at 66-74, 75-125), a problem that the Commission found “particularly problematic” (R. 104 at 94-95). KCPL witness Weisensee admitted the block billing issue would make it impossible for the Commission to determine the exact amount of time spent by attorneys on specific tasks. (R. 100 at 197-198, 228).

The deficiencies in the rate case expense evidence submitted by KCPL in the record as a whole were so pervasive that the Commission made multiple findings that KCPL’s evidence made it:

- *impossible* to make meaningful comparison of work to identify duplication of effort on issues (R. 104 at 80, 101);
- *impossible* to rationally analyze billings by multiple attorneys from different law firms (R. 104 at 80);
- *impossible* to determine whether the claimed work was actually performed competently and useful in the rate case (R. 104 at 80-81);;
- *impossible* to determine whether the company was prudent in incurring costs for each attorney or consultant (*Id.*);
- *impossible* to determine whether it was just and reasonable to pass these costs through to ratepayers as rate case expense (*Id.*); and
- *impossible* to determine the degree to which work effort was properly undertaken, duplication of work effort occurred, and any effort was made to review and manage billings by consultants (R. 104 at 111).

The Commission found the block billing problem so serious that it described the testimony by KCPL witness Tim Rush as follows: “Rush testified that no duplication of

billing occurred in this case, which we find borders on stating a deliberate falsehood but will deem to be a sign of indifference.” (R. 104 at 95).

The utility has the burden to bring forward substantial evidence of costs in a rate case, and substantial evidence is “such evidence as a reasonable person might accept as being sufficient to support a conclusion.” *Herrera-Gallegos v. H & H Delivery Service, Inc.*, 42 Kan.App.2d 360, 363, 212 P.3d 239 (2009).

In this case, KCPL failed to provide substantial evidence of its rate case expense. The evidence provided by KCPL, aptly described by the Commission Chairman as a “chaotic mess” (R. 100 at 11), hardly qualifies as “substantial evidence” that a reasonable person might accept as being sufficient to support the Commission’s \$4.5 million KCPL-only rate case expense award, in light of the “appropriate standard of proof.” K.S.A. 77-621(c)(7).

The appropriate standard of proof for rate case expense is that “[f]ees which are not supported by ‘meticulous, contemporaneous time records’ that show the specific tasks being billed should not be allowed.” *Davis v. Miller*, 269 Kan. at 748-751.

Incongruously, after determining that the evidence submitted by KCPL rendered *impossible* the comparisons, analysis, and determinations necessary to determine just and reasonable rate case expense, the Commission awarded KCPL \$4.5 million in KCPL-only rate case expense – the same amount it had awarded in its November 22, 2010, Order. In attempting to do that which it had declared *impossible*, the Commission ignored its own findings about the evidence in the record.

The Commission's decision must not only be within the scope of its lawful authority, but also the process by which it reaches that result must be logical and rational." *Home Telephone Co. v. Kansas Corporation Comm'n*, 31 Kan.App.2d at 1012.

Reasoned decision making, in which the rule announced is the rule applied, promotes sound results, and unreasoned decision making the opposite. The evil of a decision that applies a standard other than the one it enunciates spreads in both directions, preventing both consistent application of the law by subordinate agency personnel (notably ALJ's), and effective review of the law by the courts.

31 Kan.App.2d at 1012-13.

It is simply not logical and rationale, nor is it reasoned decision making, for the Commission to award \$4.5 million in KCPL-only rate case expense after specifically concluding that the evidence submitted by KCPL rendered *impossible* the comparisons, analysis, and determinations necessary to determine just and reasonable rate case expense. KCPL's fees were not supported by "meticulous, contemporaneous time records" that show the specific tasks being billed, and should therefore not be allowed. *Davis v. Miller*, 269 Kan. at 748-751.

The Commission's \$4.5 million KCPL-only rate case award must be reversed as it is not based on substantial competent evidence when viewed in light of the record as a whole *and* the Commission's own findings. The matter should be remanded to the KCC with specific directions to deny KCPL-only rate case expense in excess of the uncontested \$2.1 million amount and to order the appropriate refunds to ratepayers.

B. The Commission's decision is otherwise unreasonable, arbitrary and capricious because it is contrary to specific findings made by the Commission and failed to adequately specify how the Commission arrived at the \$4.5 million amount.

The standard of review applicable to this issue is under K.S.A. 77-621(c)(8) and the authorities cited in the Standard of Review section, *supra*. The issues raised by CURB are located at (R. 79 at 72-73; R. 88 at 51-59; R. 90 at 113-122; R. 104 at 1-25, 210-218, 234-246), and were ruled upon by the Commission at (R. 87 at 159-168; R. 90 at 39-45; R. 91 at 21-23, 28-38; R. 104 at 67-150, 252-265).

The Commission's decision to award \$4.5 million in KCPL-only rate case expense is otherwise unreasonable, arbitrary and capricious because it is contrary to specific findings made by the Commission and failed to adequately specify how the Commission arrived at the \$4.5 million amount.

Agency action is unreasonable when it is so arbitrary that it can be described as being "taken without regard to the benefit or harm involved to the community at large, including all interested parties, and was so wide of the mark that its unreasonableness lies outside the realm of fair debate. Whether an action is reasonable or not is a question of law, to be determined upon the basis of the facts which were presented to the [agency]." *Board of Johnson County Comm'rs v. City of Olathe*, 263 Kan. 667, Syl. ¶ 3, 952 P.2d 1302 (1998).

An agency action is arbitrary and capricious if it is unreasonable or without foundation in fact. *Wright v. Kansas State Bd. of Educ.*, 46 Kan.App.2d at 1059. Arbitrary has been defined as action taken without adequate determining principles or not done or acting according to reason or judgment, and capricious has been defined as changing apparently without regard to any laws. *Id.*

As discussed at length above, the Commission determined that the evidence submitted by KCPL lacked the detail required to calculate rate case expense, making it *impossible* for the Commission to rationally analyze the billings. (R. 87 at 161-163, 165, R. 90 at 40-41; R. 96 at 9; R. 100 at 185-203, 228; R. 104 at 80-81, 94-95, 101, 108, 111; R. 124 at 66-74, 75-125).

Instead of disallowing the rate case expense as required by *Davis v. Miller* (“Fees which are not supported by ‘meticulous, contemporaneous time records’ that show the specific tasks being billed *should not be allowed.*”), the Commission attempted to apply lodestar analysis even though it had determined the evidence rendered impossible the comparisons, analysis, and determinations necessary to determine just and reasonable rate case expense. (R. 104 at 80-81, 101, 108, 111). The Commission’s decision is unreasonable, arbitrary, and capricious.

The Commission’s January 18, 2012, Order also fails to adequately show how the Commission calculated and arrived at the identical amount (\$4.5 million) of KCPL-only rate case expense it previously awarded in its November 22, 2010, Order. While the Commission explained some of its reductions from the Company’s overall claim, the Commission failed to articulate how it ultimately arrived at the identical \$4.5 million amount of KCPL-only rate case expense awarded in the November 22, 2010 Order.

The Commission’s February 21, 2011, Order granted reconsideration of its November 22, 2010, rate case expense award, opened the record to receive new evidence on rate case expense, directed KCPL and CURB to file evidence regarding rate case expense, allowed the parties to conduct discovery on rate case expense, and scheduled an evidentiary hearing. (R. 91 at 21). The Commission stated that it would “base its

decision on rate case expense for this docket upon the evidence presented in this additional proceeding that is limited to this issue.” (R. 91 at 31).

Instead, after months of discovery, pre-filed testimony, and a three-day contested hearing, the Commission arrived at the identical \$4.5 million amount of KCPL-only rate case expense it awarded in November 2010. While the Commission attempts to justify its award by referencing its attempted use of the lodestar approach (R. 104 at 93-132, 259), courts utilizing the lodestar method *require* each lawyer for whom fees are sought to provide meticulous, contemporaneous time records documenting the time allotted to specific tasks. (R. 104 at 93-94, 95, 214-215). *Case v. Unified Sch. Dist. No. 233*, 157 F.3d 1243, 1250 (10th Cir. 1998).

Here, the Commission’s findings clearly establish that KCPL failed to provide meticulous, contemporaneous time records documenting the time allotted to specific tasks, despite the fact the Prehearing Officer and the Commission ordered KCPL to provide this level of detail. Because meticulous, contemporaneous time records are necessary, it is easy to see why the Commission “consistently encountered” difficulty in applying the lodestar approach due to the block-billing practice utilized by all but one of the 40-plus attorneys retained by KCPL. (R. 104 at 94). The Commission found this “particularly problematic” in trying to sort out what attorney work was duplicated, both within a law firm and among attorneys at several law firms. (R. 104 at 94). The Commission found block billing used for time expended for entire days even when multiple tasks were performed and when work had to be billed for more than one jurisdiction or involved issues not included in this rate case proceeding. (R. 104 at 94). The Commission even noted that when block billing is used, “the reviewer *cannot*

decipher how much time is spent on a particular task, which is necessary to determine whether tasks are duplicated with respect to that activity.” (R. 104 at 94). Yet the Commission’s rate case expense award attempted to do exactly that which it concluded was impossible.

Multiplying a range of attorney hourly rates (\$275 to \$300) times the adjusted 7,909 attorney hours the Commission calculated using a lodestar calculation resulted in three potential reasonable attorney fees amounts: \$2,174,975, \$2,254,065, and \$2,372,700. However, the Commission did not indicate which of these amounts it ultimately arriving at its final KCPL-only rate case expense award. (R. 104 at 108-111).

The Commission’s analysis of consultant fees was even less precise, as it is unclear how the Commission went from the \$2.174 to \$2.372 million range for attorney fees to the \$4.5 million in KCPL-only rate case expense award. (R. 104 at 108-111).

The Commission initially computed a “high level” calculation of legal and consultant fees using the percentages resulting from its attorney fee lodestar analysis (58%, 56.2%, and 53.8%), resulting in a range of allowed rate case expenses for legal and consulting services between \$2.92 million to \$3.21 million. (R. 104 at 111-112). Again, the Commission did not indicate whether it utilized this “high level” calculation in arriving at the \$4.5 million award.

Next, the Commission attempted to analyze whether each outside consultants’ expenses were prudently incurred and just and reasonable to recover in rates. The Commission approved some in their entirety (and Veatch, FINANCO, Inc., Gannett Fleming, Inc., Siemens Energy, Inc., and Towers Watson), denied some in their entirety (Meyer Construction Consulting, J. Wilson & Associates, Steven Jones. Schiff Hardin,

and Global Prairie), and denied one in part (Management Applications Consulting, Inc.). (R. 104 at 111-124).

However, while the Commission discussed several other consultants' expenses it did not specify what amount it concluded should be approved or denied (Global Holdings, Inc., Pegasus Global, NextSource, Kuhn & Wittenborn, XACT, XPEDX, Hampton Inn, Miscellaneous Vendors, and "Expense Reports."). (R. 104 at 117-118, 124-127). With respect to these consultants and vendors, the Commission made vague comments that gave no indication on what was included and what excluded from the \$4.5 million award:

Overall, the Commission finds KCP&L failed to presented (*sic*) evidence sufficient to show why such extensive use of NextSource was necessary and essential to presenting its case in this proceeding. We have taken this into account in setting the rate case expense in this proceeding." (R. 104 at 124-125). "In reaching our decision, we took into account the total miscellaneous expenses KCP&L asked to be reimbursed by ratepayers. We find that the total amount of expenses requested is excessive based upon the evidence presented and that it is appropriate for KCP&L shareholders to bear the costs of such expenses *not covered by the rate case expense we award.*" (R. 104 at 125-127 [emphasis added]).

How the Commission arrived at the \$4.5 million is anyone's guess. CURB sought reconsideration on this issue, but the Commission refused to clarify how it arrived at the \$4.5 million award. By refusing to adequately specify how the Commission arrived at the \$4.5 million amount (R. 104 at 215-217, 259-260), it would appear that the Commission simply decided to revert to the \$4.5 million awarded in its November 22, 2010, Order, where the Commission chose to "*exercise its judgment*" to determine the rate case expense award because the required detailed information ("meticulous, contemporaneous time records") was not in the record (R. 87 at 162). (R. 90 at 76-77, 82-89; *See also*, R. 95 at 140-141). Since KCPL failed to provide the detailed

information required by the Commission and Kansas law (meticulous, contemporaneous time records), it appears the Commission reverted to its previous position that it couldn't deny rate case expense entirely (or anything above the *uncontested* \$2.1 million amount) so it would "exercise its judgment" to arrive at a rate case expense award.

In reviewing the Commission's January 18, 2012, Order, it is simply impossible to determine how the Commission arrived, for the second time, at the identical \$4.5 million amount of KCPL-only rate case expense it awarded in November 2010. The ranges of attorneys fees reached under the Commission's attempt to apply a lodestar analysis and the Commission's ambiguous discussion regarding the remaining consultant fees and expenses simply does not quantify how the Commission arrived at \$4.5 million for the second time.

The Commission's \$4.5 million KCPL-only rate case award must be reversed as it is otherwise unreasonable, arbitrary and capricious because it is contrary to specific factual findings made by the Commission and the Commission failed to specify how it arrived at the \$4.5 million amount. The matter should be remanded to the KCC with specific directions to deny KCPL-only rate case expense in excess of the uncontested \$2.1 million claim and to order the appropriate refunds to ratepayers.

- C. The Commission's decision results in an erroneous interpretation or application of law because the award is not supported by meticulous, contemporaneous time records that reveal all hours for which compensation is requested and how those hours were allotted to specific tasks.**

The standard of review applicable to this issue is under K.S.A. 77-621(c)(4) and the authorities cited in the Standard of Review section, *supra*. The issues raised by CURB are located at (R. 79 at 72-73; R. 88 at 51-59; R. 90 at 113-122; R. 104 at 1-25,

210-218, 234-246), and were ruled upon by the Commission at (R. 87 at 159-168; R. 90 at 39-45; R. 91 at 21-23, 28-38; R. 104 at 67-150, 252-265).

The Commission's award of \$4.5 million results in an erroneous interpretation or application of law because the award is not supported by meticulous, contemporaneous time records. The Kansas Supreme Court has addressed the reasonableness of attorney fees under Rule 1.5 and held that "[f]ees which are not supported by 'meticulous, contemporaneous time records' that show the specific tasks being billed should not be allowed." *Davis v. Miller*, 269 Kan. at 748-751.

In the January 18, 2012 Order, the Commission correctly specified the standard by which rate case expense should be determined:

The utility has the burden to prove that the hours billed are reasonable 'by submitting meticulous, contemporaneous time records that reveal, for each lawyer for whom fees are sought, all hours for which compensation is requested and how those hours were allotted to specific tasks.' (R. 104 at 78 [citations omitted]).

Consistently, those courts required each lawyer for whom fees were sought to provide meticulous, contemporaneous time records documenting the time allotted to specific tasks. (R. 104 at 93-94).

Furthermore, the Commission gave KCPL advance notice that it required detailed information for each timekeeper, including (i) the hourly rate charged for that timekeeper, (ii) the number of hours worked by that timekeeper, (iii) dates these hours were worked, and (iv) a description of the work performed on those dates by the timekeeper. (R. 104 at 79-80; R. 92 at 90-91).

Finally, the Commission determined that the evidence submitted by KCPL lacked the detail required to calculate rate case expense, and this lack of detail made it

impossible for the Commission to rationally analyze the billings. (R. 87 at 161-163, 65, R. 90 at 40-41; R. 100 at 197-198, 228; R. 104 at 80-81, 101, 108, 111).

Despite (1) providing KCPL advance notification of its obligation to provide detailed information, (2) correctly specifying the required standard requiring “meticulous, contemporaneous time records,” and (3) concluding that KCPL failed to provide the detailed time records as required, the Commission erroneously applied the law by failing to disallow the rate case expense as required by the *Davis v. Miller* decision (“Fees which are not supported by ‘meticulous, contemporaneous time records’ that show the specific tasks being billed *should not be allowed*.”). Instead of disallowing the rate case expense as required by *Davis v. Miller*, the Commission attempted to utilize a lodestar analysis even though it had determined the evidence rendered impossible the comparisons, analysis, and determinations necessary to determine just and reasonable rate case expense. (R. 104 at 80-81, 101, 108, 111).

In its original November 22, 2010, Order, the Commission awarded \$4.5 million in KCPL-only rate case expense even though the Commission determined there wasn’t adequate evidence, but the Commission attempted to justify its erroneous decision by stating it would nonetheless *exercise its judgment to determine a prudent, just, and reasonable amount of rate case expense*.

Because that detailed information is not contained in this record, the Commission has considered denying recovery of all rate case expense in this proceeding. Upon reflection, however, the Commission has concluded such a ruling would be improper. Instead, the Commission will exercise its judgment to determine an amount of rate case expense that is prudent, just, and reasonable that KCPL will be allowed to recover from ratepayers as part of this proceeding. (R. 87 at 162 [emphasis added]).

The Commission reconsidered its November 2010 decision, arguably because it became clear from CURB's petitions for reconsideration that it was an erroneous interpretation or application of the law. Now, after granting reconsideration and declaring that it would "base its decision on rate case expense for this docket upon the evidence presented in this additional proceeding" (R. 91 at 31), the Commission has again determined the lack of detail in the record rendered *impossible* the comparisons, analysis, and determinations necessary to determine just and reasonable rate case expense.

The problem is, the Commission erroneously awarded \$4.5 million in KCPL-only rate case expense for the second time, an amount unsupported in the November 22, 2010, Order *and* now unsupported in the January 18, 2012, Order. By "exercising its judgment," the Commission has again attempted to do what it says is *impossible* – *perform the necessary* comparisons, analysis, and determinations from a deficient record to determine just and reasonable rate case expense.

As discussed above in detail, the Commission's January 18, 2012, Order fails to adequately specify how it calculated the identical amount (\$4.5 million) of KCPL-only rate case expense it previously awarded in its November 22, 2010, Order. In the Commission's January 18, 2012, Order, the Commission attempts again to *exercise its judgment to determine an amount of rate case expense* because the required detailed information ("meticulous, contemporaneous time records") was not in the record. Careful scrutiny of the of the January 18, 2012, Order fails to reveal exactly how the Commission arrived at the identical \$4.5 million in KCPL-only rate case expense, an

error the Commission refused to clarify in its March 4, 2012, Order. (R. 104 at 215-217, 259-260).

The Commission's award of rate case expense in excess of the uncontested \$2.1 million amount should therefore be reversed as it is the result of an erroneous interpretation or application of law because the award is not supported by meticulous, contemporaneous time records that reveal all hours for which compensation is requested and how those hours were allotted to specific tasks. The matter should be remanded to the KCC with specific directions to deny KCPL-only rate case expense in excess of the uncontested \$2.1 million amount and to order the appropriate refunds to ratepayers.

D. The Commission's decision results in an erroneous interpretation or application of the law by failing to adequately specify how the Commission arrived at the \$4.5 million amount.

The standard of review applicable to this issue is under K.S.A. 77-621(c)(4) and the authorities cited in the Standard of Review section, *supra*. The issues raised by CURB are located at (R. 79 at 72-73; R. 88 at 51-59; R. 90 at 113-122; R. 104 at 1-25, 210-218, 234-246), and were ruled upon by the Commission at (R. 87 at 159-168; R. 90 at 39-45; R. 91 at 21-23, 28-38; R. 104 at 67-150, 252-265).

The Commission's January 18, 2012, Order results in an erroneous interpretation or application of law by failing to adequately specify how it calculated the identical amount (\$4.5 million) of KCPL-only rate case expense it previously awarded in its November 22, 2010, Order. As discussed in detail above, while the Commission explained some of its reductions from the Company's overall claim, the Commission failed to articulate how it ultimately arrived at the identical \$4.5 million amount of KCPL-only rate case expense awarded in the November 22, 2010 Order.

When the Commission granted reconsideration of its November 22, 2010, rate case expense award, it indicated that it would “base its decision on rate case expense for this docket upon the evidence presented in this additional proceeding that is limited to this issue.” (R. 91 at 31). However, after months of discovery, pre-filed testimony, and a three-day contested hearing, the Commission arrived at the identical \$4.5 million amount of KCPL-only rate case expense it awarded in November 2010, yet left the parties with no way of ascertaining how it arrived at that amount.

It is impossible to ascertain how the Commission arrived at the \$4.5 million KCPL-only rate case expense award, with only a range of attorney fees amounts (\$2,174,975, \$2,254,065, and \$2,372,700), and vague statements about the consultant fees that may or may not have been denied. By refusing to adequately specify how the Commission arrived at the \$4.5 million amount in response to CURB’s February 2, 2012, petition for reconsideration (R. 104 at 215-217, 259-260), one is left with the impression that the Commission simply reverted to the \$4.5 million awarded in its November 22, 2010, Order, arrived at by the Commission *exercising its judgment* because the required detailed information (“meticulous, contemporaneous time records”) was not in the record (R. 87 at 162).

Equally important, the Commission appears to have relied upon a different, new, and undisclosed legal standard for determining the rate case expense award: “The Commission is not persuaded that KCP&L has presented sufficient evidence *to justify increasing the award of KCP&L-only rate case expense above what the Commission originally approved* in its November 22, 2010 Order.” (R. 104 at 70 [emphasis added]).

This is clearly erroneous and contrary to the Commission's February 21, 2011, Order, which specified that the KCC would:

Taking into account the many factors that must be considered in determining an appropriate rate case expense, the Commission recognizes that an appropriate amount of rate case expense for this proceeding may well exceed \$2.1 million. *However, the Commission will not prejudge this issue.* CURB will be allowed to examine any evidence offered by KCP&L on rate case expense.

...
The Commission *will base its decision on rate case expense for this docket upon the evidence presented in this additional proceeding that is limited to this issue.* Thus, the *purpose of granting reconsideration and setting a hearing as announced in this Order is to allow development of a record that will provide the Commission with evidence needed to determine an appropriate adjustment for rate case expense that was prudently incurred by KCP&L and that is a just and reasonable amount to recover from KCP&L's ratepayers. Based upon this review, the Commission may decide to grant a smaller or larger amount for rate case expense for this proceeding than decided in its November 22, 2010 Order.* (R. 91 at 21, 31 [emphasis added]).

The Commission's January 18, 2012, Order appears to declare that the November 22, 2012, award of \$4.5 million was some sort of benchmark that the parties had the burden to prove should be changed, up or down. That is *not* what the Commission ordered in the February 21, 2011, Order, quoted above. The Commission clearly and expressly declared it would "*not prejudge this issue*" and would "*base its decision on rate case expense for this docket upon the evidence presented in this additional proceeding.*" At no time did the Commission advise the parties that they would be required to bear a burden to persuade the Commission to grant more or less than the awarded in November 2010, which is an erroneous interpretation or application of the law, as the entire burden of proving rate case expense was on KCPL, not CURB.

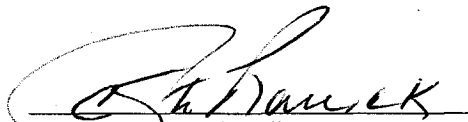
The Commission's award of rate case expense in excess of the uncontested \$2.1 million amount should therefore be reversed because the decision results in an erroneous

interpretation or application of the law by failing to adequately specify how the Commission arrived at the \$4.5 million amount. The matter should be remanded to the KCC with specific directions to deny KCPL-only rate case expense in excess of the uncontested \$2.1 million amount and to order the appropriate refunds to ratepayers.

REQUEST FOR RELIEF

Pursuant to K.S.A. 77-621, CURB respectfully requests that this Court reverse the portions of the KCC Orders awarding \$4.5 million in KCPL-only rate case expense, remand this matter to the KCC with specific directions to deny KCPL-only rate case expense in excess of the uncontested \$2.1 million amount, order the appropriate refunds, and for such other relief as may be necessary or appropriate, whether mandatory, injunctive, declaratory, temporary or permanent, equitable or legal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that two true and correct copies of the above and foregoing document were placed in the United States mail, postage prepaid, or hand-delivered this 24th day of April, 2012, to the following:

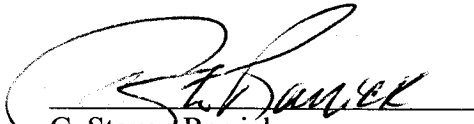
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**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Jay Scott Emler, Chairman
Shari Feist Albrecht
Pat Apple

In the Matter of Kansas City Power & Light's Application to Deploy and Operate its Proposed Clean Charge Network.)))
Docket No. 16-KCPE-160-MIS

ORDER DENYING KCP&L'S APPLICATION FOR APPROVAL OF ITS CLEAN CHARGE NETWORK PROJECT AND ELECTRIC VEHICLE CHARGING STATION TARIFF

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On January 26, 2015, Kansas City Power & Light Company (KCP&L) announced its planned Clean Charge Network (CCN) to install and operate more than 1,000 electric vehicle (EV) charging stations capable of supporting more than 10,000 EVs in KCP&L's service territories. On June 17, 2015, in Docket No. 15-KCPE-116-RTS, the Parties filed a Joint Motion for Approval of Unanimous Partial Settlement Agreement on Revenue Requirement (Settlement),¹ which included an agreement to jointly petition the Commission to investigate and evaluate the issue of EV charging stations. Accordingly, on September 24, 2015, KCP&L, Commission Staff (Staff), and the Citizens' Utility Ratepayer Board (CURB) filed a Joint Petition to Open a General Investigation Docket (Petition) requesting the Commission open a docket to investigate issues related to EV charging stations.

2. On February 2, 2016, the Commission issued an Order Opening Docket to address KCP&L's proposed CCN and EV charging station tariff. While KCP&L requested a general

¹ The Settlement was approved by the Commission on September 10, 2015.

investigation, since the Commission was presented with a specific program proposed by KCP&L, the Commission limited the scope of this Docket to evaluating the CCN proposed by KCP&L.² On February 16, 2016, KCP&L filed its Application for Approval of its Clean Charge Network Project and Electric Vehicle Charging Station Tariff. KCP&L intends the tariff to take effect January 1, 2017.³ The CCN will consist of EV charging stations manufactured by ChargePoint, Inc. (ChargePoint), and which will be part of ChargePoint's network of more than 20,000 charging spots in North America.⁴ Through partnerships with companies at host locations and with Nissan Motor Company, KCP&L plans to offer free charging on every station in its CCN to all drivers for the first two years or until a tariff is in place.⁵

3. The CCN is expected to cost approximately \$16.6 million, of which approximately \$5.6 million would be borne by Kansas jurisdictional customers.⁶ KCP&L is requesting Kansas ratepayers pay for the appropriately \$5.6 million in capital costs, along with the depreciation and approximately \$250,000 in annual operations and maintenance costs.⁷ Currently 230 of the planned 315 stations are in service,⁸ with the CCN expected to be completed by the end of the third quarter of this year.⁹ According to Charles A. Caisley, Vice President – Marketing and Public Affairs for KCP&L, based on customer research and national studies, there is “significant customer interest in electric vehicles.”¹⁰ KCP&L claims its proposed CCN is in the public interest “because it places Kansas in the forefront of

² Order Opening Docket, Feb. 2, 2016, ¶ 4.

³ Application of Kansas City Power & Light Company for Approval of Its Clean Charge Network Project and Electric Vehicle Charging Station Tariff (Application), Feb. 16, 2016, ¶ 10.

⁴ Attachment A to Application, Feb. 16, 2016, p. 1.

⁵ *Id.*

⁶ Direct Testimony of Charles A. Caisley (Caisley Direct), Feb. 16, 2016, p. 8.

⁷ Direct Testimony of Darrin Ives (Ives Direct), Feb. 16, 2016, p. 15.

⁸ Rebuttal Testimony of Darrin R. Ives (Ives Rebuttal), June 16, 2016, p. 18.

⁹ Direct Testimony of Kristin L. Riggins, Feb. 16, 2016, p. 11.

¹⁰ Caisley Direct, p. 10.

accommodating and promoting development of an industry that is expected to advance quickly in the near future.”¹¹ Specifically, Caisley explains:

The [EV] industry can only advance if there are adequate charging stations throughout the country, similar to what we now have for gasoline-powered vehicles. The lack of EV charging station infrastructure presents a barrier to market penetration at scale in the industry and the lack of a standardized financial transaction infrastructure also inhibits the industry’s growth. KCP&L can help alleviate those barriers in its service territory.¹²

4. As part of its Application, KCP&L filed a brief addressing the legal issues presented in this Docket. The first issue that KCP&L raises is whether providing EV charging services qualifies as a public utility function under Kansas law. After explaining offering EV charging services is a legitimate public utility function under Kansas law under K.S.A. 66-104 and K.S.A. 66-101a,¹³ KCP&L noted:

should the Commission determine that promoting and provisioning electric service for transportation purposes is necessary for carrying out Kansas public policy with regard to promoting and expanding the use of EVs in the state, then it would become part of the services and activities a public utility should make available to Kansas customers in order to meet the legal standard of providing “efficient and sufficient service and facilities” at just and reasonable rates, as required by K.S.A. 66-101b.¹⁴

5. In essence, K.S.A. 66-101b requires every electric public utility to furnish reasonably efficient and sufficient service.

6. On June 6, 2016, Commission Staff filed their Brief on Legal Issues, explaining while “EV charging service is a public utility function, the Kansas statutes do not answer important questions pertaining to the necessity or scale of such service.”¹⁵ Staff characterized the crux of this Docket as “what, if any, CCN property and operating expenses are reasonably

¹¹ Application, ¶ 14.

¹² Caisley Direct, pp. 10-11.

¹³ Brief of Kansas City Power & Light Company on Legal Issues, Feb. 16, 2016, p. 2.

¹⁴ *Id.*, p. 3.

¹⁵ Commission Staff’s Brief on Legal Issues, June 6, 2016, ¶ 4.

necessary to maintain reasonably sufficient and efficient electric service.”¹⁶ CURB did not brief the legal issues.

7. On June 6, 2016, Joshua P. Frantz and Robert H. Glass, Ph.D. filed direct testimony on behalf of Staff and Andrea Crane filed direct testimony on behalf of CURB. All three testified against the proposed program. Staff’s main critique of the proposed program is KCP&L has not demonstrated a demand for charging stations.¹⁷ Frantz characterized the proposed CCN program as a speculative investment to create demand for EVs.¹⁸ Furthermore, Frantz opined that KCP&L is already providing reasonably sufficient and efficient service to its EV customers without the CCN.¹⁹ Frantz concluded EV drivers typically charge their EVs at home²⁰ based on: (1) the testimony of KCP&L witness Daniel Bowermaster,²¹ (2) Tesla recommending home charging for its vehicles, and (3) studies of EV drivers’ charging habits conducted by Idaho National Laboratory. He explained EVs can easily be charged at home with a proper cord and ordinary three-prong 120-volt outlet.²² Frantz also questioned whether the CCN stations would be used or useful throughout the expected lifespan of the project based on technological advances.²³ With improved battery life and the possibility that wireless charging could become the dominant charging method, Frantz cautions the CCN could be obsolete before 2025.²⁴

¹⁶ *Id.*, ¶ 6.

¹⁷ Direct Testimony of Robert H. Glass Ph.D. (Glass Direct), June 6, 2016, p. 7.

¹⁸ Direct Testimony of Joshua P. Frantz (Frantz Direct), June 6, 2016, p. 5.

¹⁹ *Id.*, p. 6.

²⁰ *Id.*, pp. 6-7.

²¹ *Id.*

²² *Id.*, p. 6.

²³ *Id.*, p. 9.

²⁴ *Id.*, pp. 11, 13.

8. Dr. Glass explained Staff opposed the proposed network as a highly speculative, ratepayer-funded program to expand rate base, customer load, and customer demand.²⁵ According to Glass, “KCP&L does not present any statistical evidence of correlation between interest in EVs and a demand for commercial charging stations.”²⁶ As an alternative, Glass suggested recommending the legislature amend K.S.A. 66-104 to grant an exemption to private charging stations akin to the one given to private natural gas providers, and establishing a time of use rate for home charging of EVs.²⁷

9. Crane also urged the Commission to reject the proposed CCN program because: (1) KCP&L has not demonstrated a need for the program; (2) the program is potentially anti-competitive; and (3) the program would result in all Kansas customers cross-subsidizing EV owners.²⁸

10. On June 16, 2016, Darrin R. Ives and Charles A. Caisley filed rebuttal testimony on behalf of KCP&L. Ives reiterated that customers have requested and are utilizing the EV stations installed as part of the CCN.²⁹ In doing so, Ives admits, “it is true that KCP&L does not have a specific forecast for the growth in EV purchases within the KCP&L service territory, the fact is that customers are demonstrating firsthand that there is a need and a demand for the charging stations.”³⁰ Ives also appears to acknowledge the speculative aspect of the CCN proposal by expressing a willingness to share the costs of the program between customers and shareholders “to be reassessed at the time of KCP&L’s next full general rate case, when additional information and analysis will be available”.³¹

²⁵ Direct Testimony of Robert H. Glass, Ph.D., June 6, 2016, p. 3.

²⁶ *Id.*, p. 6.

²⁷ *Id.*, p. 26.

²⁸ Direct Testimony of Andrea C. Crane, June 6, 2016, p. 5.

²⁹ Ives Rebuttal, p. 2.

³⁰ *Id.*, p. 12.

³¹ *Id.*, p. 25.

11. Caisley disputes Frantz's assertion that home charging is adequate for the majority of KCP&L customers who own or are considering purchasing EVs.³² He cites four factors to argue home charging is not sufficient: (1) drivers sometimes travel more miles than their average daily use; (2) EVs lose some functionality as battery life diminishes; (3) fully recharging a nearly depleted battery at home could take twelve to sixteen hours; and (4) range anxiety is more pronounced for EV drivers.³³ Caisley also explained that 52% of households cannot park a car within 20 feet of an electrical outlet, and thus cannot charge at home.³⁴ In addressing Frantz's concerns that CCN stations will not be useful throughout their lifetime, Caisley testified "KCP&L is unaware of any automaker, especially U.S. automakers, that has provided commercially available EVs with built-in wireless charging as Navigant predicted in early 2014. Nor is the Company aware of any U.S. automaker that plans to introduce this technology in their commercial product line within the immediate future."³⁵ But wireless charging is only one example of a technological advancement that Frantz identified that might render the CCN obsolete.³⁶ Another possibility is improved battery life. Caisley ignored his own testimony on the potential for improved battery life ("[i]n just a few, short years, we have seen the second generation of EVs nearly double their battery life and range").³⁷ As Frantz points out, with continued improvements to battery life, there is less need for public charging stations, as EVs can remain charged on one night's worth of home charging.³⁸ Caisley did not rebut Frantz's testimony that improved battery life would decrease the demand for public charging stations.

³² Rebuttal Testimony of Charles A. Caisley, June 16, 2016, p. 2.

³³ *Id.*, pp. 4-5.

³⁴ *Id.*, p. 5.

³⁵ *Id.*, p. 18.

³⁶ Transcript of Evidentiary Hearing (Tr.), p. 298.

³⁷ Caisley Direct, p. 21.

³⁸ Frantz Direct, p. 13.

12. An evidentiary hearing was held on June 28 and June 29, 2016. KCP&L, Staff, CURB, and ChargePoint appeared by counsel, with KCP&L, Staff, and CURB having submitted prefiled testimony. The Commission heard live testimony from a total of eight witnesses, including four on behalf of KCP&L, two on behalf of Staff, one each on behalf of CURB and ChargePoint. The parties had the opportunity to cross-examine the witnesses at the evidentiary hearing as well as the opportunity to redirect their own witnesses. Following the evidentiary hearing, all of the parties submitted posthearing briefs.

13. The issue facing the Commission is not whether KCP&L can or should build and operate the CCN, but whether KCP&L should be able to recover the costs of building and operating the CCN from all of its customers, rather than its shareholders and EV owners.³⁹

14. The threshold issue is whether the CCN network is necessary to provide sufficient and efficient service.⁴⁰ The Commission concludes it is not.

15. As the Applicant, KCP&L bears the burden of proof. It failed to meet its burden. As the Commission will explain in greater detail below, based on the evidence presented, the Commission finds KCP&L has failed to demonstrate a legitimate demand for the CCN. Admittedly, KCP&L's CCN is designed to promote EV adoption.⁴¹ At the hearing, Caisley testified, "one of the benefits of the Clean Charge Network is to create the platform to discuss these things [cost of EVs] as part of being an enabler and catalyst for this industry."⁴² While stimulating EV ownership and usage may be a laudable goal, it is not within the scope of KCP&L providing sufficient and efficient service. Promoting EV ownership and usage is better left to the automobile industry.

³⁹ See Initial Post-Hearing Brief of Kansas City Power & Light Company, July 15, 2016, p. 13; see also Tr., pp. 25-26.

⁴⁰ See Tr., p. 26.

⁴¹ Tr., p. 52 (Caisley Cross).

⁴² *Id.*, p. 81.

16. Similarly, Caisley acknowledges that under KCP&L’s proposal, KCP&L’s ratepayers, rather than retail businesses will bear the cost of the CCN.⁴³ Caisley explained businesses “want to do something that will attract customers and be valuable to their customers that they don’t have to outlay capital for.”⁴⁴ The Commission does not agree that ratepayers should be subsidizing the cost of the CCN for the benefit of businesses. Businesses have already demonstrated that they are willing to install stations to attract and retain employees, customers, or tenants.⁴⁵ As Anne Smart, Director of Government Relations and Regulatory Affairs for ChargePoint, testified 92 charging ports have already been sold outside KCP&L’s program to private entities in Kansas, such as universities, cities, and Sprint.⁴⁶ Even more to the point, Ives cited to his colleague Caisley’s testimony that, “our hosts...have been signing up to participate in this. And we probably will have a waiting list when we run out of capacity for the network. And none of them are charging us for the space”.⁴⁷ Therefore, the evidence suggests that rather than add a costly program to rate base, it is best left to private businesses and landlords to install stations as incentives to attract customers. Accordingly, it is not necessary for ratepayers to fund the CCN. The private sector appears willing to finance an effective EV charging network.

17. KCP&L views the CCN as part of its regulated distribution network necessary to provide efficient and sufficient service.⁴⁸ It follows that KCP&L believes that EV owners currently lack efficient electric service in KCP&L’s service territory.⁴⁹ Yet the evidence does not suggest there is a legitimate demand for the CCN.

⁴³ *Id.*, p. 120.

⁴⁴ *Id.*, p. 121.

⁴⁵ Tr., p. 161 (Riggins Cross).

⁴⁶ Tr., p. 256-257, 271 (Smart Cross).

⁴⁷ Tr., p. 247 (Ives Redirect).

⁴⁸ *Id.*

⁴⁹ *Id.*

18. When presented with a California Transportation Electrification study from his direct testimony, which concluded most drivers of battery/electric vehicles do not need a charge outside their home on most days, Caisley acknowledged “[w]e do believe that 70, 80 percent of the charging occurs at home.”⁵⁰

19. When challenged on his claim that 52% of households cannot park a car within 20 feet of an electrical outlet, and thus cannot charge at home, Caisley admitted he had no statistics on EV adoption levels by residents of multi-dwelling units and that since he presumed that such residents did their due diligence, he was not making a demand claim.⁵¹ Accordingly, the Commission does not believe Caisley’s testimony offers any reason to believe a significant number of KCP&L customers need the CCN.

20. In evaluating the credibility of the witnesses on the question of the necessity of the CCN program, the Commission finds KCP&L sorely lacking. KCP&L resorts to character assassination, questioning the seriousness of Glass’s analysis, which KCP&L alleges arises to a lack of sincerity;⁵² and questioning the expertise of both Frantz and Crane. Frantz is criticized for relying on online research.⁵³ Yet, KCP&L fails to support its conclusions with any studies or data. For example, during KCP&L’s cross-examination of Frantz on whether the CCN is necessary for an EV driver who does not have a garage or access to an electrical outlet, Frantz testified that KCP&L did not provide any data to show any EV drivers were unable to charge their vehicles or that the vehicles were underused.⁵⁴ While neither KCP&L nor Staff performed any primary research or provided any data on the question of whether such customers exist or

⁵⁰ *Id.*, p. 58.

⁵¹ *Id.*, pp. 63-63.

⁵² Post-Hearing Reply Brief of Kansas City Power & Light Company, Aug. 5, 2016, ¶ 7.

⁵³ *Id.*, ¶ 4.

⁵⁴ Tr., p. 292 (Frantz Cross).

have experienced difficulty in charging their EVs,⁵⁵ KCP&L bears the burden of proving the necessity of the program. Therefore, the lack of supporting studies or data is fatal to their claim.

21. KCP&L relies on Crane's admitted lack of familiarity with the EV network in her home state of Connecticut to question her expertise.⁵⁶ But the Commission does not see the relevance in this line of attack. There is no evidence that Crane has consulted on Connecticut's network. Likewise, the record is devoid of any evidence on whether Connecticut has similar legislation to K.S.A. 66-101b. KCP&L tries to undermine Crane's ability to testify on the EV charging network as being outside the scope of her knowledge.⁵⁷ Yet her testimony deals with possible rate base treatment of the CCN.⁵⁸ Based on her numerous appearances before the Commission, where she has offered expert testimony on rate base treatment of programs, the Commission finds Crane qualified to offer her opinion on whether the CCN should be incorporated in rate base. The Commission agrees with Crane's recommendation that KCP&L's shareholders should absorb the CCN program costs since KCP&L took it upon itself to make the investment and the sheer size of the program.⁵⁹

22. In evaluating the evidence presented, the Commission finds KCP&L did not introduce credible evidence supporting the need for the CCN. First, KCP&L fails to provide support for its claims that there is demand for such a large EV network. As envisioned, the CCN could support 12,000 EVs with no wait time for users, and as many as 25,000 EVs with moderate wait time.⁶⁰ But under the Electric Power Research Institute (EPRI)'s most optimistic estimate, there would still be less than 12,000 EVs in KCP&L's service territory by 2020.⁶¹ KCP&L relies

⁵⁵ *Id.*

⁵⁶ Post-Hearing Reply Brief of Kansas City Power & Light Company, ¶ 8.

⁵⁷ *Id.*, ¶ 8.

⁵⁸ Tr. p., 285 (Crane Cross).

⁵⁹ Tr., p. 285 (Crane Cross).

⁶⁰ Tr., p. 157 (Riggins Cross).

⁶¹ Tr., p. 159 (Riggins Cross).

on EPRI to demonstrate demand for the EV network. EPRI also presents a more pessimistic estimate of 2,954 EVs by 2020, and an intermediate estimate of 8,245 by 2020.⁶² Through February 2016, an estimated 969 EVs were sold in KCP&L's service territory.⁶³ Based on the few EVs sold thus far and the wildly varying estimates of future sales presented by EPRI, the Commission appreciates how speculative any demand for a charging station is and questions why ratepayers should fund a CCN scaled to EPRI's most optimistic projections.

23. Despite KCP&L's repeated claims of strong interest for the CCN from its customers, Caisley admits KCP&L did not keep track of residential customers who called his Marketing and Public Affairs Department about charging stations.⁶⁴ So, KCP&L has no evidentiary support for its claims of strong consumer interest. Instead, they are forced to extrapolate territory-wide demand based on a survey of 1,169 members of their Customer Advisory Online Panel.⁶⁵ In that survey, one-third of the respondents would consider purchasing an EV.⁶⁶ KCP&L attempts to use the survey of 1,169 to argue that one-third of its overall Kansas customer base would consider purchasing an EV.⁶⁷ It stretches credibility to think 70,000 KCP&L customers would consider purchasing an EV based on an online advisory panel survey of less than 1,200 customers. Not only is the Commission troubled that KCP&L is attempting to extrapolate system-wide demand based on its survey of its online advisory panel, the Commission notes the survey simply asks if they would "consider" purchasing an EV, not whether they were likely to purchase an EV. The distinction is critical. The same survey reveals

⁶² *Id.*

⁶³ *Id.*, pp. 159-160.

⁶⁴ Tr. p. 105 (Caisley Cross).

⁶⁵ Tr., pp. 162-163 (Riggins Cross).

⁶⁶ Tr., p. 166 (Riggins Cross).

⁶⁷ Tr., pp. 168-169.

that 64% of KCP&L's customer advisory panel would not consider buying an EV even if KCP&L located a station in their area.⁶⁸

24. If anything, the survey KCP&L relies on indicates there is little demand for the CCN. Darrin Ives, KCP&L's Vice President of Regulatory Affairs, acknowledged KCP&L could not demonstrate customer demand for the CCN when he testified, "while it is true that KCP&L does not have a specific forecast for the growth in EV purchases within the KCP&L service territory, the fact is that customers are demonstrating firsthand that there is a need and demand for the charging station."⁶⁹ KCP&L offers no measurable evidence of customer demand for the CCN. Therefore, the Commission cannot in good conscience ask ratepayers to finance the CCN based on mere conjecture.

25. If anything, KCP&L's own witnesses make the case for home charging of EVs or allowing private businesses and landlords to install their own stations, rather than building the CCN. As Caisley testified, "obviously overnight is when a lot of charging is going to occur or when you get to your place of employment, if you can charge there."⁷⁰ Since a significant amount of charging will take place overnight or at work, it is difficult to articulate a reason to have ratepayers fund the CCN. Caisley inadvertently advocated for in-home charging by analogizing the CCN to the internet. In his testimony, Caisley recalled going to his college library to access his email and wondering why anyone would ever go to the trouble of going to a computer lab to use email.⁷¹ One of the reasons internet use is so widespread is it can be and is typically accessed on smart phones or on personal computers. People no longer need to go to computer labs or public libraries to use the internet. In other words, people use the internet

⁶⁸ Tr. p. 166 (Riggins Cross).

⁶⁹ Tr., p. 210 (Ives Cross).

⁷⁰ Tr., pp. 129-130 (Caisley).

⁷¹ Tr., pp. 93-94 (Caisley Cross).

because it is convenient. It follows that people are more likely to purchase EVs if they can charge at home, rather than go to an EV station where there may be a wait or they have to leave their EV unattended for a lengthy period of time as the EV charges. It is far more convenient to charge a vehicle in the security of one's own garage or office parking lot. The EV industry is more likely to develop through home charging.

26. KCP&L has given the Commission no reason to believe the stations installed prior to the CCN are inadequate to meet the needs of current and future EV owners. As Smart testified, there are already 92 stations installed at universities, municipalities, and private businesses. Those entities have demonstrated a willingness to finance those stations as an incentive for customers to use their business or rent at their apartment buildings. Similarly, Ives testified that several employers in the Kansas City metropolitan area have installed EV charging stations as a benefit to their employees, guests and customers.⁷² In testifying that a number of entities have advised KCP&L that they are never going to charge drivers to use their stations because the entities believe it incentivizes customers to come to their locations, Caisley leads the Commission to believe the best approach is to let private industry install stations as they will be the beneficiaries of increased business.⁷³ In other words, let the private sector invest in the EV market, rather than have ratepayers finance the speculative venture.

27. Another reason to conclude that the CCN is not necessary to provide service is that KCP&L has no plans on how to proceed if the Commission denies its Application.⁷⁴ If the CCN were truly necessary, KCP&L would commit to building the network and having its shareholders finance the project. If KCP&L is as confident in EPRI's projections as it claims to

⁷² Ives Rebuttal, p. 17.

⁷³ Tr., p. 92 (Caisley Cross).

⁷⁴ Tr., p. 132 (Caisley Cross).

be, KCP&L should be willing to invest its own money in the CCN as it stands to make a handsome profit if EV usage increases tenfold.

28. Since KCP&L fails to demonstrate the necessity of the CCN, the Commission must reject its Application. Besides there being no showing of necessity, the Commission is also troubled that the CCN might be technologically obsolete before the program expires. Frantz raised concerns that the CCN would not be “used and required to be used” throughout its expected lifespan due to wireless charging, Level 3 DC charging, and improved battery life.⁷⁵ Rather than provide facts to support why the CCN will remain used and useful throughout its expected ten-year lifespan, KCP&L engages in pure speculation. Caisley testified, “even if there is inductive charging that is not widespread and useable at that point, we fully expect from our conversations with auto manufacturers, we expect that the Level 2 and Level 3 plugs will still be on every vehicle and not obsolete”.⁷⁶ Again, in contrast to Frantz’s research and reference to studies, KCP&L refers to its expectations, without providing any sources to support those expectations.

29. Even if the Commission were to have found there is a need for the CCN and that the program would be used and useful throughout its lifespan, there is still the issue of cross-subsidization. “One class of consumers should not be burdened with costs created by another class.”⁷⁷ KCP&L’s proposal presents three cross-subsidization concerns: (1) KCP&L customers in Leavenworth, Miami, Wyandotte, and Linn Counties may be subsidizing Johnson County EV owners since all of the stations are deployed in Johnson County;⁷⁸ (2) the 275,000-300,000

⁷⁵ Frantz Direct, pp . 9, 11-13.

⁷⁶ Tr., p. 127 (Caisley Cross).

⁷⁷ *Jones v. Kansas Gas & Elec.*, 222 Kan. 390, 401 (1977).

⁷⁸ Post-Hearing Brief of the Citizens’ Utility Ratepayer Board (CURB Brief), July 29, 2016, p. 25.

Kansas jurisdictional customers⁷⁹ will be subsidizing the approximately 1,000 EV owners in KCP&L's service territory; and (3) the EV owners that will benefit are generally high income earners, who will be subsidized by lower income individuals unable to afford EVs.⁸⁰ KCP&L's response to concerns over cross-subsidization is essentially all consumers will benefit through cleaner air and increased load, which will spread the overall fixed costs of its system over more kilowatts.⁸¹

30. The Commission is not convinced that there are benefits to non-EV owners that outweigh its concerns over cross-subsidization. Daniel Bowermaster, a Program Manager at EPRI, who testified on behalf of KCP&L, explained charging an average EV using KCP&L's generation fleet results in power plant emissions equivalent to emissions produced by a gasoline powered vehicle with a 35 mpg fuel economy rating.⁸² To conclude there is an environmental benefit, Bowermaster compared that fuel economy to a 25.3 mpg average for new vehicles.⁸³ On cross-examination, Bowermaster refused to hypothesize whether EVs would replace smaller sedans with higher fuel economies or larger vehicles with lower fuel economies.⁸⁴ Based on Bowermaster's testimony, it is far from certain the CCN would produce environmental benefits sufficient to overcome cross-subsidization concerns. Even if KCP&L could demonstrate environmental benefits from the CCN, the Commission has previously rejected societal tests, recognizing that it is too difficult to quantify indirect societal environmental and health benefits.⁸⁵

⁷⁹ Tr., p. 104 (Caisley Cross).

⁸⁰ CURB Brief, p. 23.

⁸¹ Ives Rebuttal, p. 20.

⁸² Tr., p. 150 (Bowermaster Cross).

⁸³ *Id.*

⁸⁴ *Id.*, pp. 150-152 (Bowermaster Cross).

⁸⁵ Order, Docket No. 12-GIMX-337-GIV, March 6, 2013, ¶ 15.

31. The Commission also questions whether additional off-peak electricity sales will occur. As Ives admits, KCP&L has not conducted statistical modeling or forecasting to support its assumptions of future EV load.⁸⁶ More importantly, KCP&L's argument of additional off-peak sales is based on nighttime home charging.⁸⁷ If anything, the CCN would compete with nighttime home charging. If the CCN deterred nighttime home charging, it might actually impair off-peak sales and cause more electricity sales during peak hours. Again, the supposed benefit of additional load does not overcome concerns related to cross-subsidization.

32. At the time of its announcement, the CCN would have been the largest EV charging network in the country. While KCP&L repeatedly characterizes the CCN as a pilot plan, its scale exceeds that of a typical pilot program. KCP&L downplays its earlier pilot program, a partnership with the United States Department of Energy (DOE), which began around 2012 with approximately 50 stations.⁸⁸ The Commission questioned why KCP&L seeks to expand the scale of stations from 50 to 1,000.⁸⁹ Essentially, KCP&L explained the pilot program was too small in scope and not supported with enough advertising to affect customer behavior.⁹⁰ The lesson KCP&L apparently learned from its pilot program with DOE was not that there was insufficient demand for charging stations, but that the program was not large enough to stimulate demand. The Commission reaches a far different conclusion -- the results of the pilot program do not justify rapid expansion of the build out of charging stations at the ratepayers' expense.

33. Frantz raised an additional reason to discount the utilization data -- it did not account for how customers would react if they were asked to pay for the electricity at the EV

⁸⁶ Tr., p. 194.

⁸⁷ Post-Hearing Brief of Commission Staff, July 29, 2016, ¶ 57.

⁸⁸ Tr., p. 109 (Caisley Cross).

⁸⁹ Tr., p. 111.

⁹⁰ Tr., p. 112-113 (Caisley Cross).

stations.⁹¹ Currently, EV drivers are using the charging stations without having to pay for their electricity. Frantz testified that by providing free electricity at the EV stations, KCP&L's already sparse demand data is skewed, and that once customers are required to pay for the electricity, demand for charging outside the home will decline.⁹² The Commission finds Frantz's reasoning compelling. It is a matter of common sense that individuals may be very willing to accept something free, but scoff at having to purchase that same item. Until KCP&L actually charges its customers for using the EV stations, the data collected from its EV charging stations is suspect.

34. KCP&L claims it will take several years to gather sufficient data to draw reasonable conclusions from the CCN.⁹³ Based on that timeframe, the Commission questions the timing of KCP&L's Application. Adding to the Commission's consternation is Caisley's testimony that it takes upwards of one year to plan and install a station.⁹⁴ The Commission believes KCP&L would have been better served to gradually expand its EV network and seek approval of the CCN after it had sufficient data to establish actual demand for the program.

35. The Commission denies KCP&L's request to have ratepayers finance the CCN. The evidence demonstrates the CCN is not necessary. To the contrary, private businesses are already installing stations to incentivize customers, employees, and guests. Rather than burden the ratepayers, the Commission believes either KCP&L shareholders or private businesses should bear the costs of building and operating EV charging stations, as they are the beneficiaries of increased EV ownership. Relying on the private sector to finance an EV network also eliminates concerns of cross-subsidization.

⁹¹ Frantz Direct, p. 8.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Caisley Rebuttal., p. 8.

THEREFORE, THE COMMISSION ORDERS:

A. KCP&L's Application for approval of its Clean Charge Network project and electric vehicle charging station tariff is denied.


B. The parties have 15 days from the date of electronic service of this Order to petition for reconsideration.⁹⁵

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: SEP 13 2016



Amy L. Gilbert
Secretary to the Commission

BGF

EMAILED

SEP 13 2016

⁹⁵ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

16-KCPE-160-MIS

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on SEP 13 2016.

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