EXHIBIT

Exhibit No.:	
Issue(s):	Miscellaneous
Witness/Type of Exhibit:	Hyneman/Surrebuttal
Sponsoring Party:	Public Counsel
Case No.:	ER-2016-0285

SURREBUTTAL TESTIMONY

OF

CHARLES R. HYNEMAN

Submitted on Behalf of the Office of the Public Counsel

KANSAS CITY POWER & LIGHT COMPANY

CASE NO. ER-2016-0285

January 27, 2017

EXHIBIT

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light Company's Request for Authority to Implement A General Rate Increase for Electric Service	))))	Case No. ER-2016-0285

AFFIDAVIT OF CHARLES R. HYNEMAN

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Charles R. Hyneman, of lawful age and being first duly sworn, deposes and states:

1. My name is Charles R. Hyneman. I am the Chief Public Utility Accountant for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

C R Hyneman

Charles R. Hyneman, C.P.A.
Chief Public Utility Accountant

Subscribed and sworn to me this 27th day of January 2017.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

JERENE A. BUCKMAN
My Commission Expires
August 23, 2017
Cole County
Commission #13751037

Jerene A Buckman

Jerene A. Buckman
Notary Public

My Commission expires August 23, 2017.

9

TABLE OF CONTENTS

SURREBUTTAL TESTIMONY

OF

CHARLES R. HYNEMAN

KANSAS CITY POWER & LIGHT COMPANY

FILE NO. ER-2016-0285

Introduction

Q. Please state your name and business address.

A. Charles R. Hyneman, PO Box 2230, Jefferson City, Missouri 65102.

Q. By whom are you employed and in what capacity?

A. I am employed by the Missouri Office of the Public Counsel ("OPC") as the Chief Public Utility Accountant.

Q. Are you the same Charles R. Hyneman who filed direct and rebuttal testimony in this case?

A. Yes, I am

Q. What is the purpose of your surrebuttal testimony?

A. The purpose of this testimony is to address some of the statements made and positions taken in rebuttal testimonies of certain Kansas City Power & Light Company ("KCPL") witnesses and the rebuttal testimony of Staff witness Mark Oligschlaeger. My testimony is organized as follows:

Section	Witness	Issue	Party
1	Ron Klote	KCPL Cost Allocation Manual	KCPL
2	Kevin Bryant	Capital Structure	KCPL
3	Edward Blunk	Fuel Adjustment Clause	KCPL
4	Tim Rush	Fuel Adjustment Clause	KCPL
5	Tim Rush	Rate Case Expense	KCPL
6	Ron Klote	KCPL Management Expenses	KCPL
7	Steve Busser	OPC Expense Account Recommendations	KCPL
8	Kelly Murphy	Supplemental Executive Retirement Plan	KCPL
9	Ron Klote	Supplemental Executive Retirement Plan	KCPL
10	Mark Oligschlaeger	Regulatory Lag	Staff
11	Mark Oligschlaeger	Expense Trackers in Rate Base	Staff

KCPL Cost Allocation Manual ("CAM")-Ron Klote

Q. What is a CAM?

A. As described in the Commission's Affiliate Transaction Rule for electric utilities, 4 CSR 240-20.015 ("affiliate rule"), a CAM is a document that includes "the criteria, guidelines and procedures" a Missouri electric utility will follow to be in compliance with the affiliate rule.

Q. At page 41 line 5 of his rebuttal testimony Mr. Klote states that KCPL's CAM should be submitted for approval in Case No. EO-2014-0189 at an unknown future date. Does he provide a good reason why Commission approval of this CAM should be delayed and not addressed in this rate case?

A. No. The only reason I can see why Mr. Klote wants to delay the implementation of KCPL's CAM is that KCPL's parent company, Great Plains Energy ("GPE"), is currently in the process of seeking to acquire an out-of-state Kansas utility company, Westar, Inc.

Q. Does Mr. Klote confirm that it is only KCPL's parent company's proposed acquisition of a Kansas utility company that is delaying the implementation of the new KCPL CAM?

A. Yes. He confirms this at 41 lines 9 through 12 of his rebuttal testimony.

Q. Does OPC believe that KCPL's customers will be better protected from actual or potential affiliate company abuses when the Commission approves this CAM and it is implemented by KCPL?

A. Yes, it does. KCPL has never had a Commission-approved CAM as is required by the affiliate rule. It is OPC's position, based on its experience with KCPL's affiliate transactions, that KCPL's current non-Commission approved CAM is not sufficient. OPC believes KCPL's current non-Commission approved CAM does not include the necessary criteria, guidelines and procedures to protect KCPL's ratepayers from KCPL subsidizing its affiliate and nonregulated operations.

Q. Does OPC believe that KCPL's customers are being harmed by this OPC proposed CAM not currently being in effect?

A. Yes, it does. To delay the implementation of OPC's proposed CAM because of KCPL's affiliate parent company's acquisitions is not reasonable.

Q. At page 43 line 1 through page 44 line 2 KCPL proposes certain changes to the draft KCPL CAM attached to your direct testimony in this rate case. Does OPC take issue with any of the changes to the draft CAM proposed by KCPL?

A. No. OPC is willing to accept the CAM that is attached to Mr. Klote's rebuttal testimony.

Q. Have you been involved with and participated in all, or substantially all of the meetings, discussions, and negotiations related to KCPL's draft CAM since September 6, 2013?

A. Yes. I was one of the primary participants in these meetings and discussions. The other primary participants were Ron Klote and Darrin Ives of KCPL and Steve Dottheim, and Bob Schallenberg of the Commission's Staff ("Staff").

Q. Do you believe the fact that KCPL's parent company is seeking to acquire an out-of-state utility company should be a basis to delay the implementation of a Commission-approved KCPL CAM?

A. No. I would add KCPL's CAM should be approved by the Commission in this rate case as no party in this rate case has expressed any disagreement with any of the provisions of the CAM. I do not believe that GPE's acquisition of Westar will require significant changes to the policies and procedures in KCPL's CAM. However, even if it does require KCPL's CAM to be modified, this CAM can be modified, if necessary, when the issue of GPE's proposed acquisition is resolved.

Q. Please summarize OPC's position on this KCPL CAM issue.

A. The KCPL CAM attached to the rebuttal testimony of KCPL witness Ron Klote is acceptable to OPC and should be approved by the Commission in this rate case. KCPL's customers are harmed each day KCPL operates without a Commission-approved CAM.

There is no good reason to further delay the implementation of this CAM. OPC knows of no party to this case that disagrees with any part of this CAM. If the CAM needs to be modified at some point in the future as a result of GPE's acquisitions, there is no reason why it cannot be modified at some future date. The Commission should approve the KCPL CAM attached to the rebuttal testimony of KCPL witness Ron Klote in this rate case.

<u>KCPL Capital Structure-Kevin Bryant</u>

Q. Please describe KCPL's parent company, GPE.

A. GPE is a Missouri corporation incorporated in 2001 and headquartered in Kansas City, Missouri. GPE is a public utility holding company and does not own or operate any significant assets other than the stock of its subsidiaries. GPE's wholly owned direct subsidiaries with significant operations are KCPL, KCP&L Greater Missouri Operations ("GMO") and GPE Transmission Holding Company, LLC ("GPETHC"). GPETHC owns 13.5% of Transource Energy, LLC with the remaining 86.5% owned by AEP Transmission Holding Company, LLC, a subsidiary of American Electric Power Company, Inc.

Q. Please summarize this issue.

A. KCPL and GMO have proposed setting utility rates on GPE's consolidated capital structure for many years. The Commission has ordered the use of GPE's consolidated capital structure in KCPL and GMO rate cases for many years. Mr. Kevin Bryant, KCPL's capital structure witness in this case has supported the use of GPE's consolidated capital structure to set rates for KCPL as recently as 2014.Suddenly, after the announcement of GPE's proposed acquisition of Westar, everything changed. KCPL now argues that the use of GPE's capital structure to set rates for KCPL and GMO is no longer appropriate.

OPC very strongly objects to KCPL allowing its parent company's merger and acquisition ("M&A") policy to determine the Commission's ratemaking policies and options. Allowing the result of a parent company acquisition to eliminate a sound ratemaking policy that has been widely accepted by all parties to KCPL's rate cases is the definition of a merger detriment and should not be allowed by the Commission.

Q. What is OPC's recommended capital structure the Commission should use to determine KCPL's overall weighted cost of capital ("rate of return") in this rate case?

A. In general, OPC's recommendation is consistent with and supportive of the Commission's consistent long-term approach to setting the capital structure for KCPL. That capital structure is the actual capital structure for KCPL and GMO's parent company, GPE.

Specifically OPC recommends GPE's actual consolidated capital structure at September 30, 2016 as adjusted to remove the amounts associated with the asset referred to as Goodwill. Goodwill has historically not been considered as a regulated utility rate base asset and, as such, should not be included in a utility's regulated capital structure.

Q. In his rebuttal testimony KCPL witness Kevin Bryant takes issue with a Staff assertion that GPE manages its utility finances on a consolidated basis. Does GPE, in fact, manage its utility finances on a consolidated basis?

A. Yes, it certainly does and it has done so for several years.

Q. Is KCPL witness Kevin Bryant correct when he states that GPE has not managed its utility finances on a consolidated basis?

A. No. KPCL has supported the financing of its utility operations through the use of GPE's consolidated capital structure for several years. GMO has supported the financing of its utility operations through the use of GPE capital structure for several years. It is very difficult to understand how Mr. Bryant can assert that either KCPL or GMO manages its finances separately when KCPL and GMO's whole financial structure is based on a consolidated parent company capital structure.

Q. Did Mr. Terry Bassham Chairman, President and CEO, GPE and KCPL admit that KCPL, GMO and GPE operate under a consolidated capital structure?

A. Yes. GPE filed a Form 425 document with the SEC on June 2, 2016, which included a transcript of GPE's discussions with certain members of the financial community. In this meeting Mr. Bassham explained how GPE maintains its capital structure:

> No. In the past, in the past we have basically maintained a capital structure at the holding company that looked like the operating companies because that's the way it worked. That we were comfortable operating that way.

That's not the requirement. Ultimately, the law would be that it is the capital structure at the holding company

Q. At page 3 of his rebuttal testimony Mr. Bryant said "The continued use of GPE's consolidated capital structure to establish revenue requirements for both KCP&L and GMO limits their ability to manage their own credit ratings using their own utility-specific capital structure and financing plans." Please comment.

A. KCPL supported using a consolidated capital structure for the past ten years. It is just now, when GPE has an opportunity to acquire a Kansas utility company, that KCPL and the Commission's 10-year practice of using a consolidated capital structure is detrimental to KCPL and GMO operations. The argument of "limiting an ability to manage a credit rating" appears to be a red herring.

Q. Why do you believe Mr. Bryant's "credit rating management limitation" argument is a red herring?

A. Because with the exception of GPE's announcement of its acquisition of Westar, nothing of substance has occurred with KCPL or GMO that could justify a departure from a 10-year Commission practice of using a parent company consolidated capital structure.

Q. At page 5 of his rebuttal testimony Mr. Bryant said using GPE's cost of debt and its capital structure would contradict your direct testimony at pages 14 and 15 related to the Commission's affiliate rule. Please comment.

A. Mr. Bryant quoted from this section of my direct testimony related to a separate rate case issue, which is the issue of KCPL operating without a Commission-approved CAM as required by the affiliate rule.

Q. Do you believe the CAM attached as CRH-D-1 to this testimony is a significant improvement over the CAMs that are currently used by Missouri's regulated gas and electric utilities?

A. Yes, I do. OPC's proposed CAM includes the required policies, procedures and internal controls that are necessary, given KCPL's organizational structure discussed above, to reduce the opportunity and risk for KCPL to subsidize its affiliate transactions and non-regulated operations. This CAM, if approved by the Commission, will go a long way to assist KCPL in its efforts to comply with the Commission's Affiliate Transaction Rule. This OPC proposed CAM for KCPL will also provide the public with greater assurance that the regulated utility is not subsidizing the operations its affiliates.

From this testimony Mr. Bryant said that he "concurs with me that the maintenance of separate transactions among affiliates is both prudent and appropriate." However, I never said anything related to "maintenance of separate transactions among affiliates" anywhere in my testimony. In addition, the concept of "maintenance of separate transactions among affiliates" is not even a concept addressed by the affiliate rule.

Q. Even though you never made the point in your testimony, Mr. Bryant stated that he in fact believes the maintenance of separate transactions among affiliates is both prudent and appropriate. Based on this belief, he concludes that "it is inconsistent for Mr. Hyneman to argue that it is acceptable for KCP&L to benefit from lower cost debt issued by its affiliate GMO." Do you understand this conclusion?

A. No. It is not clear if Mr. Bryant is asserting the historical rate case consolidated capital structure recommendations made by KCPL, GMO, Staff, OPC and other parties and adopted by the Commission over the past 10 years are not consistent with the Commission's affiliate transaction rule. If that is his point, he should make that point and provide evidence in support of that point. He does not.

Q. Mr. Bryant states that GMO issues debt. Does GMO issue debt?

A. No. GMO's parent company GPE issues debt for and on behalf GMO. GMO, unlike KCPL, is not a separate and distinct financial entity apart from GPE. GPE and GMO's financial results are combined in GPE's SEC financial statements. Given that GMO itself does not issue debt, it certainly is not clear that GMO actually has a lower cost of debt than KCPL.

Q. Why do you say that GMO does not issue debt?

A. One significant piece of evidence that GMO does not issue debt as a standalone entity is found in GPE and KCPL's Annual Reports. At page 3 of KCPL's and GPE's combined 2015 Annual Report to the Securities and Exchange Commission ("SEC"), Form 10-K, includes the following disclaimers about the information provided in the Form 10-K.

These disclaimers show that GMO does not issue an annual report as KCPL does. GMO's financial statements are embedded in GPE's financial statements, including its balance sheet. Further, GPE and KCPL's combined 2015 10-K makes it clear there are only two distinct entities when it relates to debt securities. One entity is KCPL and the other entity is GPE and its subsidiaries. Unlike KCPL, GMO is not mentioned as having debt securities.

> Neither Great Plains Energy nor its other subsidiaries have any obligation in respect of KCP&L's debt securities and holders of such securities should not consider Great Plains Energy's or its other subsidiaries' financial resources or results of operations in making a decision with respect to KCP&L's debt securities. Similarly, KCP&L has no obligation in respect of securities of Great Plains Energy or its other subsidiaries. (KCPL and GPE Form SEC For 10-K for the year ended December 2015)

Q. Even if you were to assume hypothetically that GMO does issue debt securities for its utility operations, it is possible to attribute a specific cost rate for GMO as Mr. Bryant indicates?

A. No. GPE acquired GMO in 2008. Since 2008 GPE has consistently guaranteed GMO's debt. In its SEC Form 425 filed by GPE on August 5 2016, GPE stated that it guarantees 45% of GMO's debt. Therefore, any debt cost rate attributed to GMO has to be viewed with the understanding that this rate is affected, possibly to a material degree, by the fact that it is guaranteed by GPE.

With this understanding, it is doubtful that Mr. Bryant knows the true and actual cost of debt rate for GMO as a standalone utility and therefore he cannot make any comparisons with KCPL's actual cost of debt rate. It is very possible that, without GPE's guaranteeing of GMO's debt, GMO's cost of debt rate would be higher than KCPL's cost of debt rate.

In addition, GPE's significant financial support of GMO in the form of debt guarantees is disclosed in GPE's 2015 SEC Form 10-K:

> Great Plains Energy has issued guarantees covering $97.7 million of GMO's long-term debt. Great Plains Energy also guarantees GMO's commercial paper program. At December 31, 2015, GMO had $43.7 million of commercial paper outstanding. The guarantees obligate Great Plains Energy to pay amounts owed by GMO directly to the holders of the guaranteed debt in the event GMO defaults on its payment obligations. Great Plains Energy may also guarantee debt that GMO may issue in the future. Any guarantee payments could adversely affect Great Plains Energy's liquidity. (GPE and KCPL SEC Form 10-K 2015 page 16)

Q. Does the fact that GPE guarantees GMO's debt provide further evidence that GPE operates its utility subsidiaries on a consolidated basis?

A. Yes. As noted in the GPE description above, GPE has no significant assets of its own. Since it has no significant assets, it has no significant revenue or income on which to guarantee GMO's debt. In substance, it is KCPL's utility assets, revenues and income that provide the ability for GPE to guarantee GMO's debt issuances. This is just further

evidence of how GPE operates its utility subsidiaries on a consolidated basis, as confirmed by Mr. Bassham, GPE's Chairman and Chief Executive Officer.

Q. Did KCPL management previously state that KCPL and GMO operate on a combined basis?

A. Yes. In response to Staff Data Request No. 385 ("DR 385") in Case No. ER-2016-0156, KCPL management stated that GMO's utility operations are "combined" with KCPL electric utility operations and KCPL and GMO's utility generation plant are interdependent and the generation assets are grouped together.

KCPL management made the following assertions about the "one utility" nature of KCPL and GMO in DR 385:

- Great Plains Energy has one reportable segment, Electric Utility.
- GMO's electric utility operations in GPE's segment disclosure are combined with GPE's KCP&L electric utility operations.
- The electric utility segment is comprised of multiple jurisdictions subject to traditional, cost-based rate regulation.
- The utility is comprised of a generation fleet with a diverse fuel mix consisting primarily of nuclear and various types of fossil fuels providing peaking and base load generation.
- This group/collection of assets combined meet the electric utility's service obligation and produce joint cash flows.
- These plants are interdependent and necessary to appropriately meet the needs of the Company's customers; therefore, the generation assets are grouped. (Q0385_2011 2Q Generation Assets Impairment Test.docx)

Q. What are your conclusions based on KCPL management's response to DR 385?

A. KCPL management asserts that utility generation plant assets of KCPL and GMO are interdependent and must be grouped as one utility for financial reporting purposes and for utility operations purposes. However, when it comes to the capital cost structure that

financed these same generation assets, KCPL management now asserts that they are not interdependent at all and must be separated into two separate utilities – "GMO specific" and "KCPL specific".

The Commission should conclude that this "new" KCPL capital structure position supported by Mr. Bryant is not consistent with KCPL's past positions and the Commission's past positions on KCPL and GMO's capital structure. The Commission should determine that it will not change a longstanding and reasonable regulated utility ratemaking practice just because KCPL's parent company engages in merger and acquisition activities.

KCPL FAC – Edward Blunk

Q. At page 15 of his rebuttal testimony KCPL witness Wm. Edward Blunk discusses fuel additives KCPL books to account 501, Fuel. He indicates that because additives are booked to account 501, they should be included in KCPL's FAC. Are fuel additives actually fuel?

A. No. Fuel additives are not fuel and therefore do not belong in a FAC. It is not only OPC that understands fuel additives are not fuel and do not belong in a FAC, the Federal Energy Regulatory Commission ("FERC") understands this as well. It does not appear that Mr. Blunk and KCPL are willing to recognize that fuel additives are not fuel. Therefore, they continue to attempt to include this non-fuel cost in an FAC where it does not belong.

Q. Are fuel costs defined by FERC?

A. Yes. FERC has its own FAC. FERC defines "fuel" in its Uniform System of Accounts ("USOA") account 151, Fuel Stock. Mr. Blunk should be very familiar with this account. As will be more fully discussed in the surrebuttal testimony of OPC witness John Riley, FERC's FAC allows only fossil fuel expenses eligible to be charged to USOA account 151,

Fuel Stock, to be included in the FERC FAC. It also allows nuclear fuel charges to USOA account 518, Nuclear Fuel to be charged to its FAC.

In its FAC (18 CFR Section 35.14 paragraph 6) FERC explains that only the fuel items listed in Account 151, Fuel Stock, and Account 518, are to be included in a FAC.

> (6) The cost of fossil fuel shall include no items other than those listed in Account 151 of the Commission's Uniform System of Accounts for Public Utilities and Licensees. The cost of nuclear fuel shall be that as shown in Account 518, except that if Account 518 also contains any expense for fossil fuel which has already been included in the cost of fossil fuel, it shall be deducted from this account. (Paragraph C of Account 518 includes the cost of other fuels used for ancillary steam facilities.) (18 CFR S35.14).

Q. How does FERC define fossil fuel?

A. FERC defines fossil "fuel" as follows:

> **USOA Account 151, Fuel stock .** This account shall include the book cost of fuel on hand. Items 1. Invoice price of fuel less any cash or other discounts. 2. Freight, switching, demurrage and other transportation charges, not including, however, any charges for unloading from the shipping medium. 3. Excise taxes, purchasing agents' commissions, insurance and other expenses directly assignable to cost of fuel. 4. Operating, maintenance and depreciation expenses and ad valorem taxes on utility-owned transportation equipment used to transport fuel from the point of acquisition to the unloading point. 5. Lease or rental costs of transportation equipment used to transport fuel from the point of acquisition to the unloading point.

Q. At page 16 Mr. Blunk accuses OPC witness Mantle of "cherry picking" fuel items to include in a FAC. Is Mr. Blunk's accusation a fair representation of Ms. Mantle's testimony?

A. Not at all. Ms Mantle clearly laid out what fuel costs are appropriate to include in an FAC in her direct testimony. She proposes to include only direct costs of fuel, which is the exact approach taken by the FERC when it defined the nature of the fuel costs that are eligible to be included in its FAC.

KCPL is not entitled to a FAC. It is clear in Section 386.266 RSMo that a FAC is a privilege, not a right. It is the Commission that approves a FAC. It is also clear in this statute that the only costs allowed are fuel and purchased power, including transportation.

KCPL's FAC, if approved by the Commission, should only be allowed to include actual fuel costs. Mr. Blunk's proposal to include all costs that can possibly be charged to a fuel account coupled with his suggestion that KCPL be permitted the "flexibility" to add or remove costs at will, and without Commission oversight in the FAC, would be detrimental to KCPL's customers if approved by the Commission.

Q. How would you characterize Mr. Blunk's request for including fuel costs in its FAC?

A. It can be most accurately described as the "kitchen sink" approach. KCPL is attempting to include costs only tenuously tied to fuel, even to the point of inserting vague language to give itself "flexibility" to add additional costs without Commission approval.

Mr. Blunk's suggestion that KCPL be allowed to determine what costs should be included in the FAC ordered by the Commission is contrary to the Commission's ruling in KCPL's last rate case when the Commission decided:

> [A]llowing a new cost or revenue to flow through an FAC is a modification to that FAC, which under Section 386.266, RSMo, only the Commission has the authority to modify. It is the Commission that should make the determination as to what costs or revenues should flow through the FAC, not the electric utility. (Report and Order, ER-2014-0370. p. 39).

The Commission should reject the KCPL's approach and instead adopt OPC's clearly defined approach offered by OPC Witness Mantle.

As the Commission has noted in recent utility cases, FERC's policy is not mandatory on the Commission but it provides the Commission with very good guidance. As it relates to fuel costs, OPC recommends the Commission adopt OPC's approach, which is consistent with the FERC, and only allow direct fuel costs that can appropriately be charged to Account 151, as well as direct nuclear fuel costs appropriately charged to Account 518 in KCPL's FAC.

Q. In her testimony OPC witness Mantle recommends to the Commission the specific types of costs that OPC believes should be included in a FAC. How does Mr. Blunk mischaracterize the action taken by Ms Mantle?

A. Beginning at page 16 line 9 Mr. Blunk accuses Ms. Mantle of "micro-managing" KCPL's operations. He also equates policy testimony with micromanaging in other parts of his testimony. He even refers to Ms. Mantle's recommendations to the Commission as a "micromanaging edict". Mr. Blunk's testimony is absurd on its face.

OPC witness Mantle is doing nothing more than making recommendations to the Commission to adopt a FAC that would be designed to significantly reduce risk to KCPL but still provide at least some protection to KCPL's ratepayers from unjust and unreasonable rates.

OPC recommends the Commission disregard Mr. Blunk's ad hominem attacks and focus on the lack of real substance in Mr. Blunk's testimony related to the FAC. Mr. Blunk's testimony focuses on the minutia of a fuel additive rather than to address the point that fuel additives should not be included in the FAC.

KCPL, as most reflective in Mr. Blunk's rebuttal testimony, has appeared to have developed an "entitlement mentality" as it related to the Commission's FAC. First, Mr. Blunk's testimony suggests that any recommendation that does not permit KCPL the "flexibility" to add costs as it see fit amounts to "micro-management".

As mentioned above, OPC's recommendation in no sense a penalty but is actually a recommendation to the Commission to approve a FAC that is subject to clearly defined reasonable terms in order to both reduce risk to the company and provide some protection to ratepayers from unreasonable rate increases.

Q. **Please continue.**

A. A second aspect of Mr. Blunk's rebuttal testimony which should concern the Commission is his statement at page 16 line 19 that:

> Given the very clear incentive to minimize all costs retained in fixed rates, if the utility were to follow Ms. Mantle's incentive to the next logical step, it could avoid using PAC or trona by using a more expensive fuel such as natural gas or purchasing higher priced power neither of which require additives such as PAC to control for mercury emitted from coal combustion.

First of all it should be noted that Mr. Blunk's statement acknowledges that including costs in fixed rates gives the utility the "very clear incentive to minimize all costs". This is the inventive that regulatory lag places on utility management that is eliminated when a utility cost is included in the Commission's FAC. The Commission well recognizes that management efficiency incentives are eliminated, or at the very least minimized, for each and every cost KCPL is allowed to include in a Commission FAC. It is refreshing to see this fact recognized by Mr. Blunk.

The rest of his statement goes on to suggest if certain costs are not included in the FAC then the utility would purchase only the kinds of fuels that could be recovered through the FAC even if it was more expensive. In other words, Mr. Blunk suggests that he would recommend KCP purchase more expensive fuel and power because these costs would be recovered directly through the FAC. The Commission should take note of this testimony and

possibly explore with KCPL the apparently imprudent and ratepayer detrimental actions it will take if it does not get its way with the FAC.

Mr. Blunk's statement is also apparent attempt to demonstrate that Ms. Mantle's recommendation would somehow increase costs to customers. Mr. Blunk's scenario might increase costs, but it would be clearly imprudent for him to manage KCPL's fuel costs in that way. Rather than demonstrate his point that OPC's recommended FAC would increase costs for ratepayers, this testimony illustrates the need for the Commission to carefully determine what goes into an FAC and then to scrutinize the utility's compliance. These comments give me grave concern about how KCPL manages its fuel costs under the FAC and complies with the Commission's existing FAC for KCPL.

KCPL must be made to realize it is the Commission, and nobody except the Commission, that determines whether a utility gets an FAC and what costs should be included in that FAC. OPC and other parties to rate cases have every right to make recommendations to the Commission without being accused of "cherry picking" and "micro-managing" the utility. Ms. Mantle is one of the top experts on the FAC in Missouri. She has served the Commission well with FAC recommendations for many years including years in a leadership position with the Commission Staff. Her testimony is reasonable, prudent and well supported by the facts. In comparison, Mr. Blunk's testimony is devoid of substantive facts and is just full of false and unwarranted personal attacks.

Q. **At page 18 line 23 continuing through page 19 line 2 Mr. Blunk suggests non-KCPL witnesses cannot make FAC recommendations stating "Attempting to incent the Company through micro-management edicts advocated every few years by parties without fuel, power, transportation, or transmission market and operational experience will likely have unintended results." Please respond.**

A. The Company's statement about "micro-management edicts" implies that OPC's testimony on the FAC is not sincere or is otherwise in bad faith. It also suggests that it is only

appropriate to consider utility witnesses' FAC testimony. The Commission should reject this tactic by KCPL just as the Kansas Corporation Commission ("KCC") did recently.

Its September 13, 2016 ORDER DENYING KCP&L'S APPLICATION FOR APPROVAL OF ITS CLEAN CHARGE NETWORK PROJECT AND ELECTRIC VEHICLE CHARGING STATION TARIFF issued in Docket No. 16-KCPE-160-MIS ("KCC EV Order") at paragraph 20, the KCC called out KCPL's tactics and scolded the utility:

> 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; and questioning the expertise of both Frantz and Crane.

Mr. Blunk's testimony in this case questions the sincerity and seriousness of Ms. Mantle with phrases like "cherry-picking" and "micro-managing" without offering substantive evidence to support the company's request to be left alone to determine what costs it passes though the FAC.

It is time for KCPL to look at itself. Only one part of the KCC's EV Order scolds KCPL for engaging in character assassination and questioning witness sincerity and seriousness as Mr. Blunk does here. The other part of the KCC EV order provides overwhelming evidence to support the KCC's conclusion that KCPL witnesses in that case provided no evidentiary support for its positions, again as Mr. Blunk fails to do in his rebuttal testimony on the FAC. KCPL has duplicated that tactic in its rebuttal testimony in this case. Mr. Blunk provides no evidentiary support for his position and simply relies on KCPL's sense of entitlement and ad hominem attacks without any foundation to support its position on the FAC in this case. Like the KCC, I hope the Commission sees through this distortion and grasps on to the facts of this issue. If the Commission ignores the personal attacks and focuses on the facts and the evidence, OPC's recommendations will be adopted.

Q. At page 16 line 3 and 19 Mr. Blunk uses the term incentives as it related to the FAC. Please comment.

A. Each time the Commission decides to include a specific cost in a FAC for KCPL, it must make this decision knowing that there will be minimal or no incentive for KCPL management, to act efficiently and minimize that cost. Once KCPL gets a particular type of cost in an FAC, since it knows that it will likely not face any prudence challenges, and any prudence challenges that are levied will not be successful, it will move on to focus efficiency measures on utility expenses that are not in an FAC.

Including a specific cost in an FAC comes with a trade off. The Commission must decide that it is absolutely necessary for the utility to include a specific FAC cost in the FAC in order for it to have a reasonable opportunity to earn a fair rate of return on its rate base. Once it decides this, the Commission must understand and be comfortable with the fact that this cost item will no longer be subject to any competitive price pressures that other non-FAC or non-tracked expenses experience through regulatory lag.

Q. At page 17 line 3 of his rebuttal testimony Mr. Rush refers to OPC's FAC recommendation to the Commission as a "micro-management edict" and suggests OPC's recommendations will result in untimely recovery of fuel costs. Please comment.

A. Aside from the gross mischaracterization and attack of Ms. Mantle's testimony, Mr. Blunk's testimony here is just factually wrong. OPC is supporting including fuel costs in KCPL's FAC in this rate case. Mr. Blunk, however, is trying to mislead the Commission into believing that fuel additives and other non-fuel costs are actually fuel costs. They are not fuel costs and that is a fact that is even recognized by the FERC.

If a cost is not eligible to be included in FERC account 151, it is not a fuel cost and it is not eligible to be included in a FAC. None of these types of items addressed in Mr. Blunk's testimony are eligible to be included in FERC Account 151, and thus, are not fuel costs.

Q. At page 17 line 12 Mr. Blunk references FAC prudence audits. Do you consider prudence audits to be effective in protecting KCPL's customers against KCPL's imprudent fuel purchasing practices?

A. No. Even the Commission recognized the inherent limitations of FAC prudence audits. Based the Commission's prudence standards and my experience with FAC prudence audits in Missouri I believe prudence audits are not effective and, at best, only provide a very small level of ratepayer protection.

Q. Is Mr. Blunk and accountant or an auditor?

A. No. I have known Mr. Blunk for several years. Based on my knowledge and the fact that he is neither an accountant nor an auditor, I do not believe Mr. Blunk is qualified to discuss prudence audits. I do not believe that Mr. Blunk has any education or training as an auditor and I do not believe that he has ever conducted or participated in a prudence audit. I recommend the Commission not assign any credibility to his testimony on prudence audits.

Q, Do you have an example of the limitations of an FAC prudence audit?

A. Yes. OPC witness Mantle provided an example on page 20 of her direct testimony. Briefly, Staff prudence audits of KPCL's sister company GMO did not find $4.6 million in costs that were included in GMO's FAC rates, even though the Commission had ordered these costs not be included in GMO's FAC.

Q. Could the Commission take actions that would make a FAC prudence audit easier, more transparent and more effective in protecting ratepayers against the actions of a monopoly utility?

A. Yes, there are several actions the Commission could take. In addition to adopting OPC's recommended 90-10 sharing mechanism, other actions include making mandatory certain utility employees' compensation contingent on meting specific fuel and purchased power cost criteria as their sole incentive compensation criteria.

The Commission could also set up a working docket to review its unnecessarily burdensome, and what I would characterize as almost unattainable prudence standards for non-rate case prudence cost dockets.

Finally, and what is most important in this rate case, is to adopt the FAC recommendations of OPC witness Mantle and reject outright KCPL's "kitchen sink" approach to the Commission's FAC.

Q. Does Mr. Blunk's rebuttal testimony statements at page 16 lines 19-23 give you particular concern?

A. Yes. I am not sure if Mr. Blunk is sincere, but his testimony here indicates that if KCPL cannot include a particular fuel additive in the FAC then it will intentionally increase its cost of service by replacing the fuel additive with a higher cost fuel.

This along with Mr. Blunk's response to OPC's data request 8015 ("DR 8015"). In DR 8015 Mr. Blunk stated that, if the Commission did not include a cost in the FAC, it signifies the Commission is making a policy statement that the activity is "to be minimized, are not justified, or are not to be employed". This statement gives me great concern.

If the Commission ever found a utility engaging in such an imprudent manner, either by employing a more expensive alternative because the lesser cost alternative is not in the FAC, or through the discontinuation of an activity that would have resulted in lower fuel costs because the cost of the activity is not in the FAC, it would easily have grounds for imposing significant penalties on the utility. OPC would certainly take every possible action to ensure

that this grossly imprudent management behavior (apparently threatened by Mr. Blunk) is properly stopped and punished, so that it never happens again.

Q. At page 18 line 21 Mr. Blunk describes KCPL's FAC as a "complex interrelated conglomeration of trade-off". Do you agree that KCPL's FAC is way too complex?

A. There is little disagreement that KCPL's FAC is complex. That is one major problem with KCPL's FAC. The Commission did not make it that way, KCPL management, including Mr. Blunk and Mr. Rush did.

KCPL designed its FAC to be complex by including many costs that are in no way appropriate to include in a FAC, such as fuel additives, administrative costs, and KCPL employees' cell phone costs.

OPC has solutions that make major improvements in KCPL's FAC. These solutions add transparency, increases management incentives for cost control, provide some ratepayer protection through easier and more transparent FAC audits, and reduce the number of KCPL errors in operating the FAC. KCPL rejects all such improvements and only supports its very narrowly-focused goal of including everything including the kitchen sink in the FAC.

There are many benefits to both ratepayers and KCPL by making KCPL's FAC less complex and consistent with the original intent of the FAC. FACs are supposed to include "fuel" costs. FERC understands this, but KCPL does not. I understand that FERC may be the only regulatory body that has defined fuel costs. KCPL must comply with this definition both for its Missouri jurisdictional utility accounting and for its FERC accounting and ratemaking requirements.

OPC's recommended FAC fuel costs are consistent with FERC's definition. Therefore, OPC urges the Commission to require KCPL to adopt the FERC definition of fuel costs (cost that are eligible to be booked to FERC Account 151, Fuel Stock and nuclear fuel) if KCPL is allowed to continue with a FAC in Missouri.

KCPL FAC – Tim Rush

Q. Below I list some statements made by Mr. Rush in his rebuttal testimony. These statements reflect KCPL's position that OPC should define fuel costs in the same manner as how the FERC defines fuel costs. Does OPC agree with Mr. Rush?

A. Yes, very much so. While OPC's position on the appropriate level types of fuel costs to include in a FAC was similar to the FERC's definition of the types of fuel costs it allows in an FAC, it was not exactly the same. For the purposes of KCPL's FAC in this rate case, OPC will adopt Mr. Rush's recommendations to apply the FERC standard definition for FAC fuel costs. That standard is that the only fuel costs that are allowed to be in a FERC FAC are the types of fuel costs that meet the FERC USOA Account 151 definition of fuel costs.

Mr. Rush's testimony on the issue is below:

> …The statute does not define the terms Fuel, Purchased Power, Transportation or Off-system Sales. However, the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts ("USoA") does provide definitions for these terms (transportation includes transmission expense according to a Missouri Court of Appeals decision) and provides guidance for where certain costs should be recorded. KCP&L follows the USoA in determining where costs should be charged. Therefore, there is no need for Ms. Mantle to re-establish what fuel, including transportation, purchased power costs and revenues are.
>
> **Q. Do you disagree with Ms. Mantle's contention on page 6 of her Direct Testimony that costs for the fuel "commodity" itself, transporting that commodity to KCP&L's generating facilities, and the purchased power to serve native load are the "purest" definitions of fuel, transmission and purchased power costs?**
>
> A. Yes, I do. The definition Ms. Mantle argues for now seeks to exclude a large number of fuel and purchased power cost components recognized as the cost of fuel and purchased power by

the FERC USoA, industry practice and this Commission's own definition of fuel, transmission and purchased power costs, as evidenced by its treatment of these cost components over many years.

Q. Do you agree with Ms. Mantle's view that her definition of fuel, transmission and purchased power costs is consistent with Section 386.266.1?

A. No. FERC and the industry use the terms fuel, transmission, and purchased power much more broadly than OPC recommends.

Q: Has Ms. Mantle proposed to limit components of costs properly included in the fuel, purchased power, transmission and off-system sales accounts found in the USoA issued by FERC in the Code of Federal Regulations?

A: Yes. As indicated above Ms. Mantle is proposing to significantly limit the components of costs to be included in the FAC. She is not, however, proposing to limit any off-system sales revenues from flowing through the FAC.

Q. At page 27 of his rebuttal testimony Mr. Rush, addressing the direct testimony of OPC witness Lena Mantle states "She goes on to say that including these costs in the FAC removes the incentive to take action to decrease non-fuel and non-purchased power costs. This claim has been consistently rejected by the Commission." Do you agree with this statement?

A. No, in fact, just the opposite is true. Even the drafters of Section 386.266.1, RSMo (Supp. 2008), the statute that allows the Commission to establish a fuel adjustment clause recognized the fact that a FAC will reduce utility management incentives to minimize costs. The language in the statute authorized the Commission to include features designed to provide the utility with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities. Section 386.266.1, RSMo (Supp. 2008) states:

> Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities. (emphasis added).

To all with a knowledge of ratemaking principles, it is well understood that guaranteeing the rate recovery of any cost under an expense tracker, or an FAC, will eliminate or significantly reduce utility management incentives to be most efficient in managing that cost. That is one of the clearly recognized detriments of FACs and expense trackers.

The Commission has repeatedly asserted that trackers such as a FAC remove utility management cost control incentives. I have never seen any instance where the Commission has stated that this is not true.

The Commission must decide that it is absolutely necessary for the utility to include a specific FAC cost in the FAC in order for it to have a reasonable opportunity to earn a fair rate of return on its rate base. Once it decides this, the Commission must understand and be comfortable with the fact that this cost item will no longer be subject to any competitive price pressures that other non-FAC or non-tracked expenses experience through regulatory lag. At page 40 of its Report and Order in Case No. ER-2008-0318, Union Electric, the same Report and Order that authorized Ameren Missouri's FAC, the Commission noted that a tracker gives a utility a blank check to spend however much it wants with assurance that any expenditure will likely be recovered from ratepayers.

The Commission also noted that a prudence review is not a complete substitute for a good financial incentive. I would differ with the Commission only to the extent that I

would go further and state that a prudence review (at least how prudence reviews are conducted in Missouri) is no substitute at all for a good financial incentive.

> The Commission finds a ten percent cap on the tracker to be appropriate. Without a cap, the tracker would essentially give AmerenUE a blank check to spend however much it wants on vegetation management with assurance that any expenditure will likely be recovered from ratepayers. Of course, any such expenditure would still be subject to a prudence review in the next rate case, but a prudence review is not a complete substitute for a good financial incentive.

At page 70 of its Report and Order in AmerenUE's 2008 rate case ER-2008-0314, the Commission stated:

> The statute that authorizes the Commission to establish a fuel adjustment clause for AmerenUE already includes features designed to give the company an incentive to maximize its income from off-system sales and minimize its costs. Specifically, the statute requires a utility operating under a fuel adjustment clause to file a new rate case every four years, and requires the Commission to review the prudence of the company's purchasing decisions every 18 months. But regulatory reviews are only a partial substitute for the direct incentives that can result from a utility's quest for profit. Therefore, the statute allows the Commission to include features "designed to provide the electrical corporation with incentives to improve the efficiency and cost effectiveness of its fuel and purchased-power procurement activities."

Q. At page 35 of Mr. Rush's rebuttal testimony he states :

> FERC's Uniform System of Accounts ("USoA") provides a description of the accounts to be used for expenses. It is not possible for FERC or any other regulatory body to address every situation. However, the USoA is very clear as to where expenses should be recorded. For example, FERC mandated accounts

501 (Fuel), 509 (Allowances), 518 (Nuclear Fuel Expense), 547 (Fuel).....

Does FERC consider most of the charges KCPL records to account 501 to be fuel costs and eligible to be included in FERC's FAC?

A. No. FERC does not consider these expenses to be fuel expenses and expressly prohibits them from being included in FERC's FAC. FERC only allows the fuel costs that are eligible to be included in Account 151, Fuel Stock, and transferred to Account 501 as the fuel is consumed, to be included in a FAC. The same for Account 547.

For nuclear fuel, FERC allows nuclear fuel costs to also be included in a FAC. But none of the dozens of costs that KCPL charged to account 501 and 502 and other accounts are considered fuel costs and are specifically prohibited by the FERC from being included in a FAC. The FERC's rules on FAC fuel costs are almost exactly the same as the position taken by OPC in this rate case as well as others.

Q. At page 37 Mr. Rush states that "The Company has also requested only the FERC assessment costs in account 928 to be recovered within the FAC as other regulatory commission expenses are recovered on an annualized and normalized basis in the revenue requirement of a rate case proceeding." Please comment.

A. First, the FERC assessment is a regional transmission organization ("RTO") cost assessed by SPP to member entities. FERC assessments are considered a transmission cost and not a fuel or purchased power cost. With very limited exceptions, such as when transmission costs are appropriately classified as transportation costs, transmission costs should not be included in an FAC.

Q. How did KCPL witness John Carlson, KCPL's transmission expert , describe FERC assessment costs in his direct testimony in this rate case?

A. He stated "The Company does not expect to see much variability with the FERC Schedule 12 Fees in the years to come. Costs for FERC administration have remained relatively constant from year to year."

So, KCPL is not only seeking a "non-eligible transmission costs" to be included in the FAC, it is also seeking a transmission cost that its own Transmission expert witness stated in direct testimony are not variable and has remained constant from year to year.

This FAC position alone, as expressed by Mr. Rush, should give the Commission a lot of information as to KCPL's very lightly-veiled attempt to throw in everything it can get away with into its FAC. Given this approach by KCPL, the Commission should exercise great care in determining which specific fuel and purchased power costs belong in an FAC and only allow inclusion of the individual costs that meet all of the Commission's past FAC inclusion standards, such as material in amount, significant volatility, and management control.

Q. At page 38 of his rebuttal testimony Mr. Rush states "As the Company explained to Ms. Mantle in a meeting regarding the FAC in this case, based upon operational changes at the power plant, costs previously recorded in FERC account 502 and not included in the FAC are now more appropriately considered fuel costs and are recorded in FERC account 501." Does Mr. Rush explain how a non-fuel cost automatically changes its nature and turns into a fuel cost based on utility changes at a power plant?

A. No. However, these "newly-transformed fuel costs" as described by Mr. Rush are not considered to be fuel costs by the FERC definition and therefore should not be included in a FAC. Nothing that is booked to FERC Account 502 by KCPL is, was or ever will be a fuel cost eligible to be included in a FAC.

Q. At page 38 of his rebuttal testimony Mr. Rush states "Limiting the costs and revenues which are included in the FAC will only serve to diminish the effectiveness and transparency of the FAC overall while increasing the potential for error by excluding specific costs that are correctly recorded in their appropriate FERC accounts." Is what Mr. Rush asserts here even possible?

A. No. This statement is counterintuitive and nonsensical. He states the less information to include and calculate in a ratemaking mechanism the higher the will chance for error. He states that increasing the number of items in a ratemaking calculation will lower the chance of error. That is just nonsense. The level of nonsense of this statement is even greater when you consider the complexity of the items KCPL seeks to include in a FAC.

Q. Mr. Hyneman, have you conducted prudence audits under the Commission's prudence audit standards?

A. Yes. I have conducted several prudence audits.

Q. Has Mr. Rush ever conducted a prudence audit?

A. No, I do not believe he has ever conducted a prudence audit.

Q. Based on your experience with ratemaking mechanisms in general, your ratemaking knowledge, you experience with Commission prudence audits, and you accounting education and experience as a CPA, what do you conclude about this issue?

A. The fact is that adopting OPC's FAC recommendations in this rate case will significantly decrease the complexity of a FAC prudence audit and significantly reduce the likelihood of FAC errors by KCPL employees and FAC auditors. I cannot see the possibility for any other result.

Limiting the FAC to the main components – actual fuel (as defined in FERC Account 151), and actual purchased power costs as described by OPC witness Mantle, can only

make the FAC more effective and transparent. It will make the FAC easier to audit. And it can only make the FAC less susceptible to errors. Any statement to the contrary ought to be supported. Mr. Rush does not do so and offers only unsupported claims that are counterintuitive to common sense and to ratemaking principles.

Q. At page 39 of his rebuttal testimony Mr. Rush states that "Excessively picking and choosing which fuel and purchased power costs should be excluded or included in the FAC needlessly complicates the process of preparing and reviewing the FAC." Please comment?

A. Again, this statement just does not make any sense. For example, if the Commission issues the list of costs that can be included in KCPL's FAC in this case and that list is reduced from previous FACs, it would make the process of preparing and reviewing the FAC less complicated. When you have to prepare a FAC with fewer cost items, it will be less complicated and easier to audit.

Q. At page 39 of his rebuttal testimony Mr. Rush states that "As proposed by Ms. Mantle, reducing the number of components of fuel, purchased power and transmission included in the FAC will prevent KCP&L from recovering the costs that the Commission has previously approved in prior FAC's for KCP&L and other Missouri utilities." Is this testimony relevant to this issue or even correct?

A. No. It is blatantly false. The Commission is charged with reviewing the FAC every four years in a rate case and making any adjustments it needs to ensure that the FAC is meeting its intended purpose, consistent with limiting ratepayer detriments. That is what the Commission is supposed to do when setting just and reasonable rates. The Commission's role is not to simply make sure that certain costs that were included in a previous FAC are always included in all future FACs as Mr. Rush suggests. That is not at all the Commission's role.

Not only is this testimony not relevant to the issue, it is simply not true. Just because a particular cost is not in an FAC does not mean that it will not be recovered. It only means, and I want to emphasize the word "only" that the 100% guarantee of rate recovery of that cost is not given to the utility. If Mr. Rush's testimony is to be believed, then we all must believe that none of the non-FAC costs incurred by KCPL, (the costs included only in base rates) are being recovered by KCPL from ratepayers. That is simply not accurate.

Q. **At page 45 of his rebuttal testimony Mr. Rush states "Ms. Mantle requests that all of the costs and revenues included in the FAC be listed by sub-account for the current month and the preceding 12 months. She notes that currently costs are aggregated and complains that this provides insufficient detail. Her proposal would add another layer of complexity to KCP&L's reporting which, notably, Staff has not requested. KCP&L does not believe this is necessary for monthly reporting." Please comment.**

A. It does not matter if KCPL believes this information is necessary, it only matters if the people who have to audit this FAC believes this information is necessary to audit KCPL's FAC. Mr. Rush does not audit FACs. It is likely that Mr. Rush does not think this requested reporting is necessary because KCPL does not have to audit or review this FAC, Ms. Mantle does.

Mr. Rush, to my knowledge, has never audited a FAC. Ms. Mantle has performed FAC audits and supervised FAC audits for many years. Mr. Rush's perspective appears to be that audits should be less rigorous and that an auditor should only look at information KCPL wants them to look at. Such an approach is very much counter to professional auditing standards. The Commission should reject KCPL's self-serving argument and instead require the information requested by OPC's experienced FAC auditor.

Q. At page 46 of his rebuttal testimony Mr. Rush states "I disagree with Ms. Mantle's exclusion of other fuel and fuel related costs that have been historically included in the FAC as these limitations significantly diminish the effectiveness of the FAC and will actually accomplish the opposite of what Ms. Mantle hopes to achieve." Please comment.

A. First, Mr. Rush cites the FERC and the USOA throughout his FAC and appears to defer to the FERC's rules and regulations. OPC agrees with this as it relates to fuel costs and has adopted the FERC's USOA definition of fuel costs as stated in FERC Account 151, Fuel Stock. Any disagreement on the issue of fuel costs in the FAC can be eliminated if Mr. Rush would accept his own testimony and agree to adopt the FERC FAC rules on fuel cost FAC eligibility as is consistent with OPC's position.

Second, Mr. Rush does not explain what he means by "significantly diminish the effectiveness of the FAC". What is the effectiveness of an FAC? How will it be diminished? He fails to answer these questions.

The FERC, the regulatory body to which Mr. Rush defers, takes the opposite position to Mr. Rush. The FERC position is that any fuel cost included in an FAC that does not meet the FERC Account 151 definition (such as all of KCPL's non fuel cost referred to as "fuel-related costs") is detrimental to the public interest. Mr. Rush should reexamine his position and decide if he agrees with the FERC or he does not agree with the FERC. His position, as expressed in his testimony, is totally inconsistent and uniquely unhelpful to the Commission in reaching the correct decision on this issue in this rate case.

<u>Rate Case Expense – Tim Rush</u>

Q. At page 59 line 22 of his rebuttal testimony Mr. Rush states the customer is the primary beneficiary when a utility is able to fulfill its statutory obligation to provide safe, adequate and reliable service. Do you agree?

A. No. When a utility fulfills its obligations both shareholders and customers benefit equally. Customers receive the utility service and shareholders receive profits on utility investments. I do not believe that a utility that did not provide safe and adequate service would be able to provide profits to shareholders for any length of time. So, there is no primary beneficiary under this scenario, only equal beneficiaries.

That being said, customers do not benefit in any way from utility expenditures incurred in an effort to increase utility rates over and above what is required to provide safe and adequate service. The Commission had determined that ratepayers should only pay in rates the portion of incurred rate case expense that is necessary for KCPL to provide safe and adequate service at reasonable rates, and nothing more.

Q. At page 60 line 12 Mr. Rush says that such a regulatory practice (the Commission's ordered rate case expense allocation method) with power plant costs would quickly drive a utility into dire financial straits, and adversely impact its ability to provide safe and adequate service to its customers. Please comment.

A. Assuming Mr. Rush is comparing this rate case expense issue to the cost of a power plant, his testimony is nothing more than hyperbole. The facts are clear. Even if none of KCPL's incurred rate case expense in this rate case is charged to ratepayers, or recovered in rates, KCPL would still be a strong and viable regulated utility company that is likely earning at, above, or near its Commission- authorized return on equity.

While this rate case expense issue is important from a regulatory and ratemaking policy standpoint, it is not significant to KCPL's financial operations. Under no circumstances will any Commission decision on rate case expense in this rate case have any influence on KCPL's ability to provide safe and adequate service.

For example, assume that KCPL incurred $800,000 of rate case expense in this rate case and this entire amount was allocated to ratepayers in KCPL's cost of service revenue requirement calculation. Assuming a 4-year amortization period, KCPL will increase its cost of service in this case by $200,000 less the annual amount of rate case expenses

reflected in current rates. Assuming the level of rate case expense in rates is $100,000. The dollar value of this issue in a rate case would only be $100,000, which is immaterial to KCPL operations.

Q. At page 61 line 14 Mr. Rush asserts that there are Commission regulations that contribute to the level of rate case expense that are beyond the control of a utility. Does his testimony in this area have any merit or substance?

A. No. First Mr. Rush references the 4-year rate case requirements for fuel adjustment clauses ("FACs"). There is no Commission regulation that requires KCPL to have a FAC. KCPL chooses to take advantage of this Commission privilege. KCPL can choose to terminate its FAC in this rate case and eliminate any need to file for a rate case every four years.

Next, Mr. Rush uses the example of required line loss studies and depreciation studies. This example has no merit. Mr. Rush is aware, or should be aware, that the Commission has stated that the cost of this mandatory rate case work will be fully allocated to ratepayers.

At page 72 of its Report and Order in Case No. ER-2014-0370 the Commission stated that its rate case expense adjustment does not apply to rate case expenses KCPL is required to incur by Commission regulation. The Commission stated:

> The Commission also finds that it is appropriate to require a full allocation to ratepayers of the expenses for KCPL's depreciation study, recovered over five years, because this study is required under Commission rules to be conducted every five years.

Q. At page 62 line 18 of his rebuttal testimony Mr. Rush states that the Commission's 2014 rate case methodology effectively restricts the Company's ability choose its legal and regulatory strategy before the Commission in rate case litigation that is required to obtain adequate rate levels. Please comment.

A. Again that statement is just factually wrong and just more hyperbole. The Commission has placed absolutely no restrictions on KCPL management's ability to choose anything. In fact, the Commission's 2014 rate case expense methodology fully supports KCPL's legal and regulatory strategy if that strategy is to secure reasonable rates and no more than reasonable rates.

That however, is not KCPL management's legal and regulatory strategy. A simple review of rate increase sought by KCPL and the rate increase granted by the Commission shows that KCPL management is only interested in seeking excessive electric utility rates. That is a fact that is supported by overwhelming evidence and requests by the utility for mechanisms that shift risk away from shareholders and onto ratepayers including multiple trackers, FACs, and other extraordinary ratemaking mechanisms.

The Commission should consider that it is this same KCPL management who sought to increase rates for GMO by almost $60 million and then ultimately settled for a rate increase of $3 million. In that rate case, No. ER-2016-0156, this same KCPL management sought to charge GMO's ratepayers with excessive utility rates. This same KCPL management wanted GMO's customers pay for the rate case expense incurred in its attempt to charge GMO's customers excessive utility rates. That is the rate case expense ratemaking treatment that Mr. Rush supports in his testimony.

In the current case, KCPL seeks to increase rates by $90 million dollars. The Commission's Staff recommended no increase in its direct testimony. Mr. Rush's approach would have customers pay KCPL for all KCPL attempts to seek rate increases 20 times greater (or more) than the rate increase necessary to set reasonable rates. The Commission should reject KCPL's unreasonable and unjust request.

Q. At page 62 line 20 Mr. Rush states that, in the past, the Commission recognized a public utility's right to make these decisions as long as its costs are prudently incurred. He then included a Commission statement from a Report and Order in Missouri Gas Energy rate case number GR-2004-0209, p. 75, "The Commission is

hesitant to disallow expenses incurred by MGE in prosecuting its rate case. The company is entitled to present its case as it sees fit and the Commission will not lightly intrude into the Company's decision about how best to present its case." Do you agree with the Commission comment cited by Mr. Rush?

A. Yes I do. The concerns expressed by the Commission in the GR-2004-0209 case are exactly reflected in the actions taken by the Commission when it designed the rate case expense methodology in KCPL's 2014 rate case.

In the MGE case the Commission said it was hesitant to disallow rate case expense. In the 2014 KCPL rate case, the Commission said it was not disallowing any rate case expense. The Commission continues to believe that a utility can spend what it wants to spend to prosecute a rate case but that spending must be carefully monitored and allocated to the parties who benefit from that spending.

The Commission was consistent in the MGE case cited by Mr. Rush and KCPL's 2014 rate case where it adopted its rate case expense allocation methodology. Allocating a portion of rate case expense to shareholders for costs incurred to only benefit shareholders benefit is just and reasonable.

Q. In its ER-2014-0370 Report and Order did the Commission correctly assess that it is very difficult to classify and assign specific levels of imprudent expenses in rate case expense?

A. Yes it did. At page 69 of its Report and Order in Case No. ER-2014-0370 the Commission explained clearly why it was not making a prudence disallowance but making an equity-based allocation:

> Staff and OPC allege that the expenses of witness Overcast should be disallowed because his testimony was duplicative and those expenses were imprudent. Similarly, OPC and MECG argue that the fees of KCPL's outside attorneys were imprudent and should be reduced to $200/hour or disallowed entirely.

> These expenses for experts, consultants, and attorneys do not lend themselves to review for prudence. Unlike industry standards for pipe size or transmission line capacity, there is no accessible appropriate standard for determining whether one consultant's analysis was truly unnecessary or if one attorney's expertise is worth more than another's. The evidence does not reveal a bright line solution to this problem, and the Commission will not disallow these or any other rate case expenses in this case.(emphasis added)

Q. **At page 63 of his rebuttal testimony Mr. Rush states that it is appropriate and reasonable for the Commission to review rate case expenses as to reasonableness and prudence. He also states the Commission has disallowed rate case expense costs in the past on grounds of imprudence, and this serves as ample incentive for the Company to make certain that its rate case expenses are reasonable. Did you review the Commission's history on rate case expense disallowances?**

A. Yes and I will continue to do so. I have been involved in many Commission rate cases since 1993 and, while it very well may have, I do not recall one instance where the Commission made a rate case disallowance in a normal rate case.

With the exception of some unique disallowances of excess expenses associated with the Iatan 1 and Iatan 2 construction projects in 2009, I do not believe that the Commission ever made a significant disallowance, on prudence grounds, of any of KCPL or GMO rate case expense in the approximately 10 combined rate case since 2006.

Winning prudence issues in a Commission case is very, very difficult. This is evidenced by the very few instances that it has occurred. As described above in the MGE rate case, the Commission correctly concluded that making prudence decisions with rate case expenses is a very difficult process and it is hesitant to make such disallowances.

Q. **Mr. Rush included Schedule TMR-10 with his rebuttal testimony. This is a flowchart which he says depicts the process KCPL uses to manage rate case expenses. He states that this process helps ensure the monitoring and control of those costs. Please comment on Schedule TMR-10.**

A. Schedule TMR-10 is nothing more than a typical and generic flowchart of an internal control process over outside services expenses that every company will have developed and employed. These are the types of internal control procedures that a company's outside auditors will review for existence and, if they do not exist, will likely require the Company to develop and follow before the auditing firm will issue a clean audit opinion on internal controls.

While I have seen significant deviations to KCPL's actual compliance with the processes in this flowchart, primarily in KCPL's management of the Iatan construction projects, TMR-10 is nothing more than a basic internal control document that is common to all companies and does not address at all whether or not the expenses incurred to process a rate case are incurred to benefit shareholders or ratepayers.

Q. At page 63 Line 15 Mr. Rush states that KCPL does not recover its rate case expenses on a dollar-for -dollar basis under the traditional method of handling rate case expenses. He states that often rate case expenses are amortized or normalized over a greater number of years than the period between rate cases. Please comment.

A. KCPL did not file for a rate case for the 20 years prior to 2006. So assuming that KCPL's rate case expense in its last rate case expense prior to 2006 was $600,000 amortized over three years, or $200,000 per year, KCPL would have reaped the benefits of a windfall profit of $3.4 million (17 years x $200,000) from regulatory lag of Missouri jurisdictional rate case expense alone.

Also, for several rate cases beginning with KCPL's 2006 rate case under KCPL's regulatory plan, KCPL was allowed to use a rate case expense tracker during its regulatory plan rate cases. It has only been relatively recently, since the end of KCPL's regulatory plan rate cases, that KCPL's rate case expense is treated as any other normalized utility expense subject to both positive and negative regulatory lag.

Depending on the interval between rate cases, KCPL has an equal opportunity to benefit from regulatory lag as to experience any minor negative effects of regulatory lag.

Q. Is Mr. Rush seeking an expense tracker for KCPL's rate case expense in this rate case?

A. Yes. Mr. Rush recommends rate case expense from this case be treated as a deferral and amortized over a three year period. He argues that in this way, a regulatory asset can be established and tracked based on the Stipulation and Agreement in Case No. ER-2014-0370.

Q. Did you review Case No. ER-2014-0370 for any Stipulation and Agreement related to rate case expense that Mr. Rush refers to above?

A. Yes, I reviewed the relevant documents in this docket. However, I could not find any Stipulation and Agreement in that case related to rate case expense regulatory assets and do not believe any such document exists.

Q. Discuss the merits of Mr. Rush's proposed rate case expense tracker?

A. Mr. Rush is seeking an expense tracker for a routine and non-material utility expense. This ratemaking request is unreasonable and should not even be considered by the Commission as it does not qualify under and standard for trackers or any range of reasonableness related to ratemaking principles. KCPL's rate case expense is immaterial to its operations, is under total control of KCPL management, and meets none of the standards or criteria established by the Commission for an expense tracker. This proposal by Mr. Rush does not benefit ratepayers and is nothing but an additional rate case proposal that is pursued by KCPL management to benefit shareholders only while potentially increasing rate case expenses it seeks to allocate to ratepayers

Q. At page 65 line 1 Mr. Rush states that KCPL is required to file a rate case every four years under the Commission's FAC regulations to maintain its ability to use the FAC. Is KCPL required to have a FAC?

A. No. KCPL's use of a FAC is purely at its management's discretion. It's use of a FAC, should not be used as a basis on which to seek preferential treatment for rate case expense. This is especially true given that OPC considers the specific FAC sought by KCPL to be detrimental to the public interest.

Q. At page 60 line 2 Mr. Rush states rate cases and the regulatory mechanisms approved in rate cases are necessary and essential if the company is to be in a position to adequately attract capital and have a reasonable opportunity to earn its authorized rate of return. Please Comment.

A. KCPL went for 20 years without a rate case. Given that fact it does not appear that periodic rate cases are necessary and essential for KCPL to attract capital and earn a reasonable rate of return.

More recently, since the Commission's 2014 rate case Order implementing its rate case allocation approach, KCPL's financial performance has significantly improved. It is not unrealistic to believe that if the expense efficiency incentives supported by the Commission in its 2014 KCPL rate case Report and Order were applied to other expenses, KCPL would continue to see improved earnings and delay and need for another rate case.

Unlike other Missouri electric utilities, KCPL management has not done a good job at being efficient. There are likely many reasons for KCPL's management poor performance. I believe the lack of expense efficiency incentives is one of them. The Commission can incent KCPL to be more efficient in its incurrence of rate case expense by allocating an appropriate portion of rate case expense to shareholders. This Commission rate case expense allocation method which KCPL opposes is not only systematic and rational, fair and equitable, but it also acts as a management incentive mechanism to not to overspend on rate cases.

Q. Mr. Rush states that under a long-standing regulatory precedent, shareholders are expected to have a reasonable opportunity to earn Commission-authorized returns.

He characterized the Commission's rate case expense allocation method as an arbitrary, ironic and perverse. Please comment.

A. As noted earlier, KCPL has been operating under the Commission's new rate case expense methodology since rates from its 2014 rate case went into effect in 2015. For the first time is several years KCPL has exceeded its authorized rate of return. KCPL's earnings, and the improvement in earnings since the Commission's 2014 rate case Report and Order are reflected at page 4 of Staff witness Keith Majors' rebuttal testimony in this case.

Mr. Rush's accusation that the Commission's current ratemaking treatment for KCPL's rate case expenses is arbitrary is baseless and inaccurate. The Commission's preferred rate case expense adjustment is nothing but a systematic and rational approach to addressing this particular expense when setting just and reasonable rates.

Mr. Rush's claim that the Commission's current ratemaking treatment of KCPL's rate case expense is a disallowance is also incorrect. It is clear in the Commission's Report and Order in the 2014 rate case that the Commission's preferred approach is not a disallowance but rather a reasonable allocation of the expense.

Labeling a Commission-created ratemaking method as perverse is not a constructive way to approach this issue. If Mr. Rush believes this method is perverse it is because he either does not understand the purpose of the methodology or he refuses to take the time to understand it. This is evident from his repeated incorrect characterization of this adjustment as a disallowance instead of an allocation.

Finally, if Mr. Rush can produce evidence that the Commission's 2014 rate case ratemaking allocation of KCPL's rate case expense would prevent KCPL's shareholders from earning a reasonable rate of return, he should do so. So far, KCPL has not supported its claims with any evidence.

As noted in the rebuttal testimony of Staff witness Matthew Young, the Commission's rate case allocation method not only appropriately allocates costs to the entity that

benefits from that cost, but it also encourages management efficiency in the incurrence of rate case expense. The Commission felt the need to fix the rate case expense process because of KCPL's management had excessive and imprudent rate case expense in the past. The Commission's preferred approach to allocate a portion of rate case expense to shareholders is a reasonable approach that balances ratepayers need for just and reasonable rates and KCPL's desire to increase profits.

Q. At page 60 line 17 of his rebuttal testimony Mr. Rush states that he does not believe the Commission's 2014 rate case allocation methodology creates an incentive, and eliminates a disincentive, on the utility's part to control rate case expense to reasonable levels. He refers to the Commission's methodology as arbitrary and he believes this ratemaking treatment makes it more difficult for KCPL to earn its authorized rate of return. Does OPC agree with any of these opinions?

A. No. Mr. Rush's arguments are illogical. He argues that when a utility has more risk of expense non-recovery, it will do nothing in response to this risk. That would be the definition of irrational management behavior. There is an understanding both in the ratemaking academic world and the ratemaking practical world that the more risk a utility has related to expense non-recovery the more effort utility management will make to minimize the risk of non-recovery.

Prior to the Commission's Report and Order in KCPL's 2014 rate case, KCPL experienced almost no risk of non-recovery of rate case expense. It could spend freely and without limits because it believed it could charge everything to ratepayers. It did not need to act prudently because it never experienced much threat of rate case expense disallowance in its previous rate cases. With the Commission's new rate case allocation methodology that mindset should no longer exist for KCPL.

KCPL is now forced to act prudently when it makes decisions to incur rate case expenses. It must act prudently when it determines how much of a rate increase it seeks from the Commission. If it is forced to act prudently when it incurs other types of utility

expenses, it will enjoy the benefit of being an efficient utility with a lower cost of service to pass on to its customers.

Q. At page 61 line 5 Mr. Rush states that much of the rate case expenses are driven by the quantity and complexity of the issues that are raised by other parties to the case. Do you agree with this assertion?

A. No. Typical KCPL rate cases do not present complex issues raised by parties other than KCPL. The exception being KCPL's 2010-0355 rate case where major Iatan and Iatan 2 construction audit prudence issues were raised in this rate case. Disregarding that one rate case, I do not consider KCPL management as being incapable of handling all of the issues in normal rate cases, to include cost of capital and capital structure issues.

Furthermore, it is not the parties to KCPL rate cases that raise complex issues; it is KCPL management who raises complex issues in rate cases. However, by hiring outside experts on such basic ratemaking issues as regulatory lag and FAC, KCPL often decides that its own management is not competent enough to explain and support these issues to the Commission. I disagree. I believe that KCPL's management has the education and experience and competence necessary to address any issues it brings before the Commission in a rate case.

I also believe that KCPL's in-house attorneys, who are very experienced in rate case litigation, are more than capable of processing KCPL's rate cases. Hopefully, as a result of the Commission's rate case expense allocation, KCPL will start processing its rate cases with a greater use of its own management employees and attorneys instead of incurring incremental costs for hiring outside consultants and attorneys.

Q. Are you stating that KCPL should never hire outside consultants or outside attorneys?

A. No, but KCPL should evaluate the resources it has available in-house before it contracts with outside parties and incurs additional expenses to process rate cases. For example,

KCPL's regulatory attorneys are very involved and have spent many hours working on KCPL's parent company, Great Plains Energy's proposed acquisition of Westar, Inc.

If KCPL has to spend more money on outside counsel to process a Missouri rate case because of this acquisition taxing the resources of in-house counsel that is a significant imprudent action by KCPL management. KCPL management must put the interest of utility operations first and foremost before it is to consider the needs of its non-regulated affiliates.

Q. At page 62 line 5 Mr. Rush states that KCPL has an incentive to control its rate case expenses. He states that KCPL strives to balance cost control measures with providing the best level of service possible.

A. It does not appear KCPL tries to limit its rate case expense. KCPL has been unreasonable and imprudent in its attempt to charge its customers with excessive and unreasonable rate case expense for several years. OPC's recommendation to use the Commission's preferred rate case expense allocation method is a real incentive for the company to control costs while ensuring that ratepayers are not unreasonably forced to pay for costs incurred to benefit shareholders only.

Q. You addressed several of the comments made by the Commission in its ER-2014-0370 Report and Order. Are there some comments that are significant and relevant to your surrebuttal testimony?

A. Yes. These Commission comments and where they can be found in the Commission's ER-2014-0370 Report and Order are listed below:

> Awarding a utility all of its incurred rate case expenses could provide that utility with a significant financial advantage over other participants in the rate case process, who may be constrained by budgetary and other financial restrictions. Such a practice does not encourage reasonable levels of cost containment in the utility's rate case expense decisions.

An incentive for a utility to limit its rate case expense is to tie a utility's percentage recovery of rate case expense to the percentage of its rate increase request that the Commission finds just and reasonable. Use of this approach would directly tie a utility's recovery of rate case expense to both the reasonableness of its issue positions and the dollar value sought from customers in a rate case.

KCPL previously filed rate cases in 2006, 2007, 2009, 2010, and 2012. In recent rate cases, KCPL has incurred rate case expenses substantially higher than historical levels and higher than other utilities in Missouri.

Prudence is not the only consideration in determining what costs should be included in rates; the benefit to customers must also be considered when deciding what costs are reasonable for customer rates.

KCPL has pursued issues in this case that benefit only the shareholders, such as La Cygne construction accounting and some elements of the rate of return recommendation. Utility expenses that are highly discretionary and do not benefit customers, such as charitable donations, political lobbying expenses, and incentive compensation tied to earnings per share, are typically allocated entirely to shareholders.

Staff and OPC allege that the expenses of witness Overcast should be disallowed because his testimony was duplicative and those expenses were imprudent. Similarly, OPC and MECG argue that the fees of KCPL's outside attorneys were imprudent and should be reduced to $200/hour or disallowed entirely. These expenses for experts, consultants, and attorneys do not lend themselves to review for prudence. Unlike industry standards for pipe size or transmission line capacity, there is no accessible appropriate standard for determining whether one consultant's analysis was truly unnecessary or if one attorney's expertise is worth more than another's. The evidence does not reveal a bright line solution to this problem, and the Commission will not disallow these or any other rate case expenses in this case.

However, rate case expense is also different from most other types of utility operational expenses, in that 1) the rate case process is

adversarial in nature, with the utility on one side and its customers on the other; 2) rate case expense produces some direct benefits to shareholders that are not shared with customers, such as seeking a higher return on equity; 3) requiring all rate case expense to be paid by ratepayers provides the utility with an inequitable financial advantage over other case participants; and 4) full reimbursement of all rate case expense does nothing to encourage reasonable levels of cost containment.

Moreover, this Commission has already found rate case expense sharing to be just and reasonable in at least one prior case. In a 1986 decision, In the Matter of Arkansas Power and Light Company, the Commission "adopted Public Counsel's proposed disallowance of one-half of rate case expense."

The Commission finds that in order to set just and reasonable rates under the facts in this case, the Commission will require KCPL shareholders to cover a portion of KCPL's rate case expense. One method to encourage KCPL to limit its rate case expenditures would be to link KCPL's percentage recovery of rate case expense to the percentage of its rate increase request the Commission finds just and reasonable. The Commission determines that this approach would directly link KCPL's recovery of rate case expense to both the reasonableness of its issue positions and the dollar value sought from customers in this rate case.

Management Expense Adjustment – Ron Klote

Q. In his rebuttal testimony KCPL witness Klote takes issue with OPC's adjustment related to KCPL's management expenses. What is the purpose of OPC's management expense adjustment as sponsored by OPC witness Amanda Conner?

A. The purpose is to protect KCPL's customers from KCPL. OPC devoted a tremendous amount of audit time and audit resources to develop its management expense adjustment in this rate case. The need for OPC to devote so much time and resources to this one adjustment is because KCPL management has refused to stop incurring and forcing on its

captive utility customers the costs of its imprudent, excessive and unreasonable management spending.

KCPL has continued to incur imprudent, excessive and unreasonable management expenses since its 2006 rate case. KCPL management's imprudent behavior continued from 2006 through the test year in this 2016 rate case. Because of KCPL management's refusal to stop this behavior OPC and, until this rate case the Staff, has been required to devote substantial audit resources in an attempt to protect KCPL ratepayers from the expense account abuses of KCPL management.

OPC's adjustment in this rate case is very similar to the adjustment Staff proposed in KCPL's 2014 rate case, No. ER-2014-0370. Through its adjustment in this case, OPC is continuing the efforts of the Staff in KCPL's 2014 rate case, to protect KCPL's customer from being charged excessive and imprudent management expenses.

Q. In recent rate cases had KCPL refused to provide explanations and justifications of the reasonableness of its management expense charges?

A. Yes. Not only has KCPL failed to ever support the level of management expense report charges it seek to recover in rates, KCPL has taken the position in past rate cases that it does not even need to respond to questions about the prudence of its management expenses.

Q. What conclusion does an auditor make when an entity refuses to answer legitimate audit inquiries?

A. At a minimum, in any situation where an entity refuses to cooperate with auditor requests for data, an auditor will elevate the level of audit risk assigned to that specific audit area. Given KCPL's serious problems with its management spending on expense accounts, I do not believe any professional auditor would assign the risk of inappropriate and excessive management expenses being included in rates as other than very high.

This audit risk evaluation is the reason OPC found it necessary to devote the amount of resources it did to this one rate case issue.

Q. Given the existence of a very high audit risk of excessive management expense report charges being passed on to ratepayers, what action does an auditor need to take to mitigate this risk level?

A. Faced with strong evidence of a very high risk of excessive expense account charges by a utility's management, a rate case auditor must do the work necessary to determine the risk of excessive charges being passed on to ratepayers in a rate case. Once this audit work is completed, a rate case auditor must determine the dollar amount of an expense adjustment that would reduce this risk to an acceptable level. OPC's adjustment in this rate case reduces this risk to an acceptable level.

Q. As a CPA who has over 20 years experience developing and supporting utility rate case cost of service adjustments, do you believe that OPC's adjustment in this rate case is well-supported and based on substantial evidence?

A. I do. Under my direction, OPC witness Conner devoted what I would estimate to be hundreds of hours reviewing, analyzing and auditing KCPL officer expense reports. Based on her analysis OPC determined that the excessive KCPL management spending was so pervasive at KCPL that a significant adjustment was required to protect KCPL's ratepayers from this excessive spending.

Because KCPL employs approximately 1000 managers, it would be impossible to review all management monthly expense reports. Given this audit scope limitation, OPC used an audit technique commonly performed by professional auditors. That audit technique is referred to as audit sampling. Ms. Conner also describes this audit technique in her surrebuttal testimony.

Q. What is audit sampling?

A. Audit sampling is a primary audit procedure used by professional auditors. Auditing Standard ("AS") 2315 defines audit sampling as "the application of an audit procedure to less than 100 percent of the items within an account balance or class of transactions for the purpose of evaluating some characteristic of the balance or class."

AS 2315 states there are two general approaches to audit sampling: nonstatistical and statistical. OPC employed the nonstatistical audit sampling approach and selected the expense account transactions be KCPL's officers. The basis of this audit decision was that these individuals develop, implement and enforce KCPL's expense account processes and policies. The "tone at the top" set by KCPL officers is likely followed by the rest of KCPL management. Based on OPC's findings from the officer expense account charges, OPC applied a reasonable dollar amount of excessive management spending and imputed that amount to all KCPL management. OPC's approach to this adjustment requires auditor judgment as noted by AS 2315 below:

> Both approaches require that the auditor use professional judgment in planning, performing, and evaluating a sample and in relating the evidential matter produced by the sample to other evidential matter when forming a conclusion about the related account balance or class of transactions. Either approach to audit sampling can provide sufficient evidential matter when applied properly. This section applies to both nonstatistical and statistical sampling

Q. If you had to use one word to describe the source of this management expense account spending problems at KCPL, what word would you chose?

A. Entitlement.

Q. Please elaborate.

A. In a past Ameren regulatory proceeding, Case No. EA-2015-0146, Commissioner Rupp, when questioning an Ameren witness, said that corporate culture is defined by "the behavior the leadership is willing to tolerate." I believe that is absolutely correct. The

behavior that KCPL's leadership and its Board of Directors is willing to tolerate with respect to management expenses reflects its strong corporate culture of entitlement.

KCPL's management has been advised for over ten years that its behavior is not appropriate. KCPL's own auditor has found problems with KCPL's expense accounts. KCPL even admits on several occasions that it has incurred unreasonable management expenses. Yet, this imprudent behavior continues because KCPL management believes it is entitled to continue this behavior.

Q. Do you have any doubt that even if the Commission finds in favor of OPC only on this expense adjustment that KCPL may continue to incur excessive and unreasonable management expenses?

A. I have no doubt at all that it will take much more than the Commission's acceptance of OPC's expense adjustment in this case to change this decade old issue. It is my belief that simply forcing KCPL's shareholders to absorb the cost of imprudent KCPL management expenses will not stop KCPL management behavior. Commission action is necessary to address the excessive spending by KCPL management

Q. Does the Commission have an opportunity to take actions that will increase the likelihood that KCPL management will at least modify its excessive spending habits?

A. Yes. In my direct testimony I proposed five actions that the Commission can take to address KCPL management's imprudence. The Commission can communicate to KCPL in its report and order in this rate case that if KCPL expects to recover management expenses in future rate cases it will have to demonstrate that each and every proposed expense was reasonable and prudent.

In the alternative, the Commission can direct KCPL that if it develops and places into effect the following policies and procedures, it will be more likely to find that KCPL has

justified the prudence and reasonableness of its management expense charges. In my direct testimony I provide the reasons why KCPL needs to adopt the following policies and procedures:

1. Review its internal controls over management expense reports and adopt basic internal controls such as requiring that an expense report be approved by an employee at least one level above the employee who submits the report for approval.
2. Exclude non-travel meal costs, such as management employee meals in the Kansas City, Missouri area from rates.
3. Adopt a per diem management meal expense policy for meals, lodging and other costs incurred while on business travel.
4. Develop protocol for KCPL's Internal Audit Department to take a more aggressive role in auditing management expenses and make periodic reports on progress improvements to quarterly Board of Director Audit Committee meetings.
5. Make mandatory a company rule that no cost of alcoholic beverage will be charged to ratepayers under any circumstances.

Q. Did Mr. Klote propose an adjustment in his direct testimony to remove certain KCPL employee expense account charges?

A. Yes he did. Mr. Klote's approach is simply to remove an immaterial amount of management expense account charges and he assumes, without any additional audit or review work that the other millions of dollars in management expenses are prudent and reasonable and should be charged to ratepayers.

Mr. Klote well understands that no party to this rate case has available sufficient audit resources to perform a comprehensive audit of all KCPL management expenses. Therefore, he is willing to accept any immaterial dollar adjustment based on a "specific identification audit approach", such as the approach adopted by Staff in this rate case.

Q. Has the Staff used the "audit sampling" audit technique in past rate cases?

A. Yes. Staff used this approach in KCPL's last rate case, No. ER-2014-0370. As KCPL is doing with OPC in this rate case, Mr. Klote took much the same issue with Staff's approach in the 2014 rate case. Because Staff did not do any review of management expenses in this rate case, nor did it propose any adjustment in this rate case, Mr. Klote supports the Staff's approach to this rate case issue, which is to not make any adjustment but simply accept Mr. Klote's miniscule token adjustment.

Q. Did Staff explain why it changed its audit approach to KCPL's management expenses in this rate case?

A. No. I am concerned that if Staff was interested in protecting ratepayers from abusive utility spending, it would have continued the same approach it took in KCPL's 2014 rate case. In this 2016 KCPL rate case Staff abandoned the "audit sampling" approach for this adjustment and relied on the specific identification approach by accepting KCPL's immaterial adjustment in KCPL's adjustment CS-11.

It may be that due to Staff's limited audit resources, Staff did not have had sufficient audit resources to devote to this issue. That is understandable. However, Staff's approach in this case is insufficient to protect KCPL's ratepayers from excessive and imprudent management expenses.

Q. Is there another reason you are particularly concerned that Staff abandoned this rate case issue, an issue it invested significant time and resources in for ten years?

A. Yes. KCPL admits that because of Staff's efforts in its 2014 rate case it has made changes and what it considers to be improvements in its expense report procedures. KCPL has very far to go but it made an attempt at improvements only because Staff forced the issue in the past and in the 2014 rate case. Staff's lack of work in this issue in this rate case sends a signal to KCPL that it is no longer interested n this issue.

Q. At page 59 line 11 of his rebuttal testimony Mr. Klote states that KCPL is in agreement with the expense reimbursement adjustment performed and proposed in the Staff's Cost of Service Report. To your knowledge, is this the first time in the approximately 10 rate cases filed by KCPL management since 2006 that KCPL agreed with Staff's adjustment, or lack of adjustment on management expense report charges?

A. Yes it is. From an auditing perspective, this is strong indication that Staff's adjustment (or Staff accepting KCPL's immaterial adjustment) of this cost of service expense is significantly insufficient.

Q. Did Staff perform any KCPL expense account review in this rate case?

A. No. Staff merely accepted the immaterial CS-11 $15,109 adjustment proposed by Mr. Klote in his direct testimony workpapers. At page 114 and paragraph 3 of the Staff's Cost of Service Report, Staff stated that it accepted Mr. Klote's proposed adjustment CS-11 to "reclassify the costs of non-recoverable dues and expense reports to "below-the-line." Staff proposed no management expense adjustment of its own and accepted Mr. Klote's adjustment as its own.

Q. At page 59 of his rebuttal testimony did Mr. Klote expresses a belief that Staff actually proposed a management expense adjustment?

A. Yes. Mr. Klote incorrectly stated that Staff calculated a test year adjustment of employee expense reports. Staff merely accepted KCPL's adjustment as its own adjustment. Mr. Klote states:

> **Q: Did Staff calculate an adjustment associated with expense reporting?**
>
> A: Yes. It appears Staff calculated a test year adjustment of employee expense reports. Their adjustment in this case totaled

approximately $15,000 which is similar to the Company's expense report review adjustment.

Q. Do you have any other source of information that indicates Staff's adjustment in this case is inadequate?

A. Yes. In KCPL's last rate case the Commission directed Staff to conduct a management audit of KCPL. Staff filed its Report (Report) in Docket EO-2016-0124. Of note the Report includes the finding:

> While the Company has taken positive action to address various expense account weak internal controls identified by Staff in prior rate cases as well as has performed various focused Internal Audit examinations of aspects of its expense process, opportunities for improvement still exist. The Company's expense account definition for reimbursement for travel and entertainment is written overly broadly and the Company's internal control over its expense account process, while improved, has not been consistently effective, particularly in light of the Company's public and well documented concerns regarding its inability to earn its ROE. (report p. 2)

Q. At page 56 line 13 of Mr. Klote's rebuttal testimony he describes new "enhanced practices" related to KCPL's expense report reimbursements. Why did KCPL need to create these so-called enhanced practices?

A. Pursuant to paragraph G of the July 1, 2015 *Partial Non-Unanimous Stipulation and Agreement as to Certain Issues* in KCPL's 2014 rate case (ER-2014-0370), KCPL provided a copy of its changes to its expense report procedures. This document is attached to this testimony. In addition to adding controls on appropriate accounting for expense account reimbursements, KCPL also added the following controls:

> **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.

Q. Is it possible the new "enhanced" changes that came out of KCPL's last rate case will somewhat decrease the level of excessive management expenses KCPL will seek to recover from customers?

A. It is possible. However, I have seen no improvements to date. I am hopeful these changes will lead to at least some improvements in the future. I am hopeful that someday OPC will no longer be required to devote valuable time and audit resources seeking to protect KCPL's customers from KCPL management's excessive and imprudent spending. There are many other important rate case issues on which OPC could be devoting its resources to protect ratepayers from paying unreasonable utility rates.

OPC is requesting the Commission order KCPL to make the 5 specific changes in its management expense policies and procedures that are listed and described in my direct testimony. These changes are reasonable and necessary. These changes will protect ratepayers from abusive utility spending while also provide KCPL management with much needed assistance in acting more efficiently in operating the utility business.

Q. Do any of KCPL's new "enhanced" management expense report procedures affect the core problem with KCPL's expense account policies and procedures, which is excessive, imprudent and unreasonable spending by KCPL management?

A. No. KCPL made the decision not to make any changes in this area. As long as KCPL management refuses to place restrictions on the number of local meals charged by management as well as the reasonableness of its meals and travel expenses, these new

controls will add only minimal improvements to KCPL's management expense report process.

KCPL must make significant changes in how it defines the term "reasonable" in its expense report polices. Currently, KCPL does not have any definition or criteria on how to determine if a management expense is reasonable or unreasonable. It is almost unbelievable that a utility can operate in this manner and define these actions as prudent. Currently, my understanding is that any dollar amount incurred by a KCPL management employee is automatically stamped "approved" and determined to be reasonable.

Q. Do you have examples that support your understanding?

A. Yes. For example, in November 2015 five KCPL officers dined at a restaurant in Hollywood, Florida. The total bill for this one meal was $1,203. This is an average per meal charge of $240. OPC asserts $240 for a travel meal is not reasonable. However, the leadership of KCPL management believes it is. This one example shows that the term "reasonable" in KCPL's expense account policies has no meaning.

The KCPL officers who incurred $240 each for one travel meal are the same officers who create and enforce KCPL's expense report reimbursement policies. These are the same individuals who wrote and enforce the policy that to be reimbursed, employee meal expenses must be "reasonable".

KCPL's senior management, who validate one single employee travel meal that cost $240 as allowable under their standard of reasonableness sets and defines the acceptable standard for a per meal cost. KCPL's senior management publishes this new standard to all of KCPL management by reimbursing themselves for this charge. They set the "tone at the top" for all employees to follow.

Q. Have you reached a conclusion after ten years of auditing KCPL's employee expense accounts that KCPL's corporate culture, as it relates to expense account

charges, is to spend ratepayer funds imprudently, excessively, unreasonably, and without any concern at all about the financial well being of its customers?

A. Yes. KCPL should be concerned with the well-being of its customers. It is not. Some of the KCPL witnesses in this rate case who testify about KCPL's customer service initiatives and express concern about customers are the very individuals at KCPL who are the most serious abusers of the expense account process.

Attached to this testimony I have included portions of past Staff testimony over 10 years addressing KCPL's imprudent and excessive expense report charges. These Staff findings in past KCPL rate cases go back to the 2006 rate case, No. ER-2006-0316, and go through KCPL's last rate case, No. ER-2014-0370. Prior to the 2006 rate case KCPL had not sought a rate increase for twenty years. A simple review of these attachments, as well as the evidence provided by OPC in this 2016 rate case should convince the Commission of the very serious nature of this problem. It is a problem that the Commission should resolve in this rate case by accepting OPC's proposed adjustment and ensuring KCPL adopts OPC's 5 recommendations.

Q. How do you respond to Mr. Klote's assertion in his rebuttal testimony that OPC's management expense adjustment is arbitrary?

A. I describe above how OPC applied professional audit standards and used professional judgment in the development of this adjustment. It is clear that there in nothing at all arbitrary about the nature of OPC's adjustment. Mr. Klote has made the same accusation in past KCPL rate cases. I will respond now the same way I responded then. Merriam Webster's online dictionary defines "arbitrary" in part as "not planned or chosen for a particular reason: not based on reason or evidence: done without concern for what is fair or right." If that is what Mr. Klote had in mind when he characterized this adjustment as arbitrary, then I disagree.

OPC's adjustment was planned with a reason to protect KCPL's ratepayers from excessive, imprudent, or inappropriately allocated charges. The adjustment was based on OPC's review and analysis of hundreds of documents related to KCPL's employee expense report charges. There is nothing even remotely close to "arbitrary" associated with OPC's adjustment. The adjustment itself was based on a professional audit technique known as audit sampling. As Mr. Klote is a certified public accountant, he is, or should be, very familiar with the concept of audit sampling.

Q. Should Mr. Klote be concerned with why such a rate case adjustment is necessary and not criticize the only party to this rate case that made a strong and sincere effort to protect KCPL's ratepayers from excessive management expenses?

A. Yes. Mr. Klote explains that KCPL has made improvements in its management expense report process. However, instead of just making this statement, he should have made a comprehensive effort to review as many test year excessive charges as he could review and solicit the assistance of other KCPL employee to remove all the excessive charges in KCPL's test year books and records. He did not make such an effort. As a result, OPC has to make this effort and take the lead on this issue to protect KCPL's ratepayers. Even if Mr. Klote believes this issue is resolved for the future, given the evidence produced by OPC in this rate case he certainly cannot believe that KCPL's 1000 management employees only charged $15,000 in excessive charges in the test year. That is just not a reasonable position for Mr. Klote to take before the Commission.

Q. Does the definition of arbitrary provided above appropriately describe Mr. Klote's inadequate $15,000 management expense adjustment?

A. Yes. Mr. Klote has been associated with this management spending issue in several of KCPL's prior rate cases. In at least one rate case he was tasked with reviewing each and every officer expense report charged in the test year. In one prior rate case he was also

associated with KCPL's decision to remove all KCPL officer expense reports from KCPL's cost of service request.

Mr. Klote's proposed $15,000 adjustment in this case is arbitrary in that he knows or should know that it is not based on reason or evidence. He knows or should know that it was not done with concern for what is fair or right. In my opinion Mr. Klote's $15,000 adjustment is wholly inadequate and merely perpetuates KCPL management's practice to pass on excessive, imprudent and unreasonable management expenses to KCPL's customers.. The evidence in his case and in KCPL's previous cases supports no other conclusion.

Q. Did you provide examples of inappropriate and excessive KCPL officer expense report charges in your testimony in KCPL's sister utility GMO's 2016 rate case, No. ER-2016-0156?

A. Yes. GMO has no management and no employees. KCPL management manages all of GMO's operations. In my direct testimony in that case, I provided just a few examples of excessive officer expense report charges and a list that included several excessive charges by just one single KCPL officer.

In my direct testimony, I referenced a March 2015 charge for goods and services from Gibson's Bar & Steakhouse in Chicago, IL for $516 for two individuals. KCPL management refused to provide any additional information related to this charge.

In my direct testimony I also referenced an OPC data request about a March 2015 charge for goods and services from Capital Grille in the amount of $455 for three individuals. KCPL management refused to answer any questions related to these employee expense report charges.

Finally, OPC sought data from KCPL management about a June 2015 charge for goods and services from Kauffman Stadium of $1,929. KCPL management refused to provide a response.

Q. Please provide an example of the type of expenses that Mr. Klote included in his cost of service adjustment CS-11 where he removes some management expense account charges?

A. In July 18 of 2014, a high ranking KCPL officer attended a convention in Los Angeles unrelated to the regulated utility industry. This officer charged KCPL a total of $359 for one meal. This amount was reduced due to the employee's wife meal charge of $90 deemed a non-cost of service account. The KCPL officer's meal and, it appears, the meal of someone not related to KCPL, was charged to a regulated cost of service account 921 in the test year in this case. As shown below, ratepayers were charged $269 for a meal at this entertainment event that was not related in any way to utility operations. This is a charge that one of KCPL's most senior officers considers to be a reasonable and necessary expense to provide utility service to its customers.

October 8, 2014	Dinner	Fleming's - Los Angeles, CA	$269.41	921000
October 8, 2014	Dinner	Fleming's - Los Angeles, CA - Spouse	$89.80	417100

This one KCPL officer has been with KCPL for many years and is very familiar with KCPL's expense report policies and procedures. He obviously thought it was appropriate to charge ratepayers for excessive meal costs for him and guests not related to utility operations. This officer is an individual who enforces KCPL's policies and procedures and helps set the tone at the top of KCPL. This one example shows that KCPL has no internal controls nor any concern over the expense report costs it charges to its regulated utility ratepayers.

Q. Has Mr. Klote been making adjustments to remove KCPL officer expense report charges in many of KCPL and GMO's past rate cases?

A. Yes. Based on the problems found by Staff in KCPL Case No. ER-2007-0291 and problem areas found by KCPL's own internal auditors during that period, Mr. Klote and another KCPL employee were assigned to review officer expense reports and remove inappropriate charges through a cost of service adjustment in its subsequent rate cases. I don't know how many individual rate cases Mr. Klote performed such a review but it was at least done in one prior KCPL rate case.

In KCPL's last rate case, ER-2014-0370, Mr. Klote did not make any adjustment to remove excessive expense report charges when it filed its revenue requirement in direct testimony. However, when he received certain data requests from Staff in that case, Mr. Klote decided to make a rate case adjustment to remove the expense account charges associated with certain officers of Great Plains Energy.

In Response to Staff DR 502 in Case No. ER-2014-0370 KCPL responded:

> KCPL Response to DR 502:
> Subsequent to its direct filing in this case, the Company informed MPSC Staff that it was removing all GPE Officers expense report costs, this includes.... from its request. There are no longer any expense report costs incurred by (REDACTED) requested by the Company in this case. In total, the Company informed MPSC Staff that the impact of removing GPE Officer expense report costs from its Direct Case totaled $67,521.55. Information provided by: Ron Klote Attachments: Q0502_HC_expense report charges.xlsx Q0502_Verification.pdf

Q. Why did Mr. Klote propose an adjustment to remove these charges late in its 2014 rate case?

A. KCPL management refused to answer specific expense report questions proposed by the Staff in the 2014 rate case. The questions posed by Staff in DR 502 in Case No. ER-2014-0370 that KCPL refused to answer are shown below:

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

A Nos. 37-40, please explain the reason for over $800 in cell phone charges
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
C. Item number 8, was the cost of the baby shower charged to regulated customers? If so, why?
D. For the Ipad related charges. Why were these Ipads purchased? Have they been and are they currently being used for regulated utility operations?
E. For the Ipad related charges. Why were these Ipads not capitalized to plant in service accounts?
F. No. 2, why is this cost charged to KCPL regulated accounts?
G. No. 18, what is the business purpose of this trip?
H. No, 19 how is this book related to KCPL's regulated operations?
I. No. 20, what is the business purpose of this trip?
J. No. 6, what is the business purpose of this trip?
K. No. 14, what is the business purpose of this trip?
L. No. 15, what is the business purpose of this trip?
M. Nos. 17,27,28, Does KCPL pay approximately $300 to $400 per month for one employee's cell phone service? If so, is this the fair market price for one cell phone?

In KCPL's 2014 rate case, the Company made the decision that it would not provide justification for certain officer expense report costs addressed in Staff DR 502. KCPL decided just to remove these costs from the rate case and stopped any further discussions of the issue.

Q. Please summarize your response to Mr. Klote's rebuttal testimony.

A. There are several good definitions of "corporate culture" including the one used by Commission Rupp referenced above. Another definition I found to be very good is that corporate culture:

> ...refers to the beliefs and behaviors that determine how a company's employees and management interact and handle outside business transactions. Often, corporate culture is implied, not expressly defined, and develops organically over time from the cumulative traits of the people the company hires.

For KCPL, that leadership is its management, officers and its board of directors ("Board"). KCPL's corporate culture as it relates to management expense report charges has to change and its management and its Board need to be committed to ensuring the change is long-lasting. KCPL and its Board has been "willing to tolerate" this inappropriate behavior on the part of KCPL management and officers for far too long.

It is one thing for the management of a competitive business to spend lavishly in its expense accounts when the firm is subject to price competition and the competition for the acquisition of customers. The customers of a competitive business are free to terminate their business relationship at any time and for any reason they chose. KCPL customers are captive to its monopolistic nature and do not have this freedom to choose.

Without Commission action, KCPL customers will continue to be forced to pay for management expenses that provide them no benefit and are excessive and imprudent.

KCPL management believes it is reasonable and perfectly acceptable to charge customers $250 as the cost for one meal. KCPL's senior management believes it is perfectly appropriate to charge utility ratepayers for the cost of non-utility entertainment events including the cost of alcoholic beverages. This one fact alone should be enough to convince the Commission that KCPL needs to undergo a major change in corporate culture. There is no other entity except the Commission that has the power to make sure that this change occurs.

Firms that are required to operate in a competitive environment actually try to minimize costs and operate efficiently. KCPL knows that its costs will be paid by its customers. This includes expense account costs such as travel, business meals, and entertainment.

KCPL's actions have demonstrated time after time that it has little regard about cost when it comes to spending on itself and its personal meals, entertainment, and travel.

While KCPL does not operate in a competitive environment, it is expected of a utility that it will operate responsibly and seek to minimize costs as if it actually does operate in a competitive market. It is the primary role of the Commission to see that Missouri utilities act in this manner. If Missouri utilities do not, the Commission is charged with the responsibility to ensure the utility operates as a competitive firm would operate. The Commission is the only entity that has the power to protect captive ratepayers from being burdened with excessive and imprudent costs.

One way the Commission can fill that responsibility in this particular KCPL rate case is to accept OPC's expense account adjustment and require KCPL to make substantive changes in its policies, such as adopting the five specific changes I proposed in my direct testimony.

Q. Based on your review of KCPL management expense reports, does it appear that KCPL's officers purchase alcohol at meals and at entertainment events and charge the cost to ratepayers?

A. Yes, they do.

Q. Do KCPL's policies allow for alcohol consumption during work activities?

A. No. KCPL's *Guiding Principles and Code of Ethical Business Conduct* provide the structure for the decisions it makes and how it deals with legal and ethical issues. It also describes how KCPL treats its employees, customers, shareholders, regulators, legislators, and communities.

According to this document, there is an expectation KCPL's Board of Directors and employees will maintain the highest ethical standards while doing their jobs. The policy on alcohol consumption is as follows:

> Substance Abuse
> Employees are expected to report for work in a condition that allows them to perform their job duties. An employee's off-the-job and on-the-job involvement with drugs and alcohol can have an impact on workplace relationships, job availability and performance. At no time does the company allow employees to purchase, use, possess, sell, distribute, manufacture or be under the influence of illegal drugs, including misused prescription drugs, during working hours (including lunch or break periods) or on company or customer property. Employees will be subject to discipline, including discharge, if they report for work with a blood alcohol concentration of 0.02 or greater or are under the influence of a controlled substance.
>
> Disciplinary action will also be taken if an employee possesses or uses alcohol or a controlled substance, except legally obtained prescription drugs, during working hours (including lunch or break periods) on company or customer property.
>
> Exceptions for the use or possession of alcohol in connection with authorized events will be approved in advance by the chief compliance officer. (emphasis added).

Q. Does KCPL allow for reimbursement of employees and guests personal use of alcohol?

A. Yes. Just one example was a $1,628 charge by a KCPL management employee at Kansas City's Kaufman Stadium May 6, 2015. KCPL reimbursed an employee for $648 in alcohol charges for that one event. KCPL charged this expense to account 107 (construction work in progress) that, if not charged to a different entity, will eventually be charged to KCPL's rate base as plant in service.

When this happens, KCPL's customers will then be required to pay KCPL a profit on this purchase of alcohol as well as the associated incremental interest expense, property taxes and depreciation expense. KCPL management finds this to be perfectly reasonable and appropriate to charge to its customers.

This event was not even related to KCPL's regulated operations. The charges for this event were for food, alcohol and entertainment for KCPL and Transource employees (an affiliate of KCPL) in a celebration of the Iatan-Nashua transmission line, a non-regulated transmission line, being in-service.

Q. Did you review several other examples where the use of alcohol was reimbursed by KCPL?

A. Yes.

Q. Do you believe it is ever reasonable for KCPL to charge its utility ratepayers for KCPL management's purchase of alcohol?

A. No, it would never be appropriate.

Q. If no real changes in KCPL's expense report procedures are made as a result of this rate case, will this issue continue in KCPL's current rate case and beyond?

A. Yes. While Staff appears to have dropped this expense account audit scope from its rate case audit, OPC intends to expand the scope of its audit work in this area in future KCPL rate cases.

Q. When it comes to expense account charges, does KCPL have completely different standards for itself than it does for work performed by professional consultants?

A. Yes, they are completely different. I have reviewed a KCPL contract with a vendor that includes very reasonable and prudent standards on the amount of expense account charges that KCPL will reimburse its professional consultants.

For example, below is a list of requirements that KCPL placed on a consultant under services provided to KCPL a few years ago. I have removed the name of the vendor. The actual contract that includes these expense account requirements is reflected as Staff Exhibit 244HC in Case No. ER-2014-0370, which is a June 2, 2015 KCPL response to Staff Data Request No. 619:

> Travel Expenses
> *Travel and other out-of-pocket expenses shall be paid by GPES in addition to the hourly rates stated above, and shall be reasonable, customary and actual charges, passed through at _____'s cost, with no markup.....
> *Airfare shall be at coach-class fares. *_____ personnel shall share ground transportation whenever practical.
> *Per diem meal charges shall not exceed $50.00.
> *Lodging shall be at reasonable rates. _____ shall use GPES preferred hotels or hotels at which _____ has negotiated preferred rates, when possible.
> *Receipts shall be provided for all out-of-pocket expenses of $25.00 or more.

OPC's Management Expense Recommendations – Steve Busser

Q. What was KCPL's response to your proposal that KCPL adopt a per diem policy as addressed in the rebuttal testimony of KCPL witness Busser?

A. The positions taken by Mr. Busser in his testimony are premised on his assumption that KCPL's meal reimbursement policy only reimburses reasonable, legitimate, and properly documented meal expenses. It has been proven over the past ten years for KCPL that this

statement is false. The whole premise of Mr. Busser's testimony, that there is no need for a change in KCPL's expense report procedures, is wrong.

My conclusion that a per diem policy is needed is based on overwhelming evidence that KCPL currently has no controls on the level of meal charges for which its employees can seek reimbursement. A meal reimbursement policy for a public utility that permits $250 costs of one meal is not reasonable. However, Mr. Busser apparently believes KCPL employees should be able to go to a restaurant, incur a $250 bill for food and alcohol, and charge that $250 to the utility and its ratepayers. Mr. Busser and I disagree on this issue.

KCPL regularly and habitually reimburses excessive, inappropriate, and imprudent meal charges without any regard for the ratepayers who ultimately pays for these costs. If Mr. Busser believes that KCPL only reimburses reasonable meal charges, I suggest he review again the evidence OPC provides in this rate case and the evidence provided by Staff in KCPL rate cases over the past 10 years.

Q. Mr. Busser states at page 6 line 15 of his rebuttal testimony that, in his "professional opinion", KCPL and KCPL's expense report policies protect ratepayers. What is your response?

A. Given the substantial evidence to the contrary in this rate case and over the past ten years, the Commission should consider the credibility of KCPL witness Busser's testimony based on his "professional opinion" that KCPL expense report policies and procedures protect ratepayers. The Commission should weigh the evidence put forth by OPC in this case as well as consider the historical problems with KCPL in this area when they evaluate the credibility of KCPL witness Busser's rebuttal testimony.

Q. At page 4 his rebuttal testimony, Mr. Busser states that adopting a per diem policy will add to administrative burdens. Is he correct?

A. No. Adopting a per diem policy will actually reduce KCPL's expense report administrative burdens by eliminating the need to keep, track, and audit receipts for expenses. Mr. Busser may not be aware, but under a per diem policy there is not a need to endure the administrative burden of managing receipts. To the extent that a per diem policy would add to administrative burdens at KCPL perhaps that is because KCPL's present compliance is unreasonably lax.

Q. Mr. Busser states that by adopting a per diem policy KCPL would have to "track meal cost indices by region". Is that correct?

A. No it is not correct. While it is not at all difficult or administratively burdensome to track individual city per diems, KCPL could adopt average per diem in a particular state or region. In lieu of that, KCPL could adopt the policy of using the highest per diem rate published by GSA and just use that one single rate for all expense reports per year. That would be approximately $75 per day for employees in travel status and significantly less than the current charges incurred by KCPL management. If KCPL adopted the highest per diem rate allowable, it will save ratepayers thousands of dollars in meal charges each year.

These are just some ways KCPL could make the inherent reduction in administrative costs of adopting a per diem policy even greater.

Q. Mr. Busser states at page 4 that he thinks adopting a per diem policy will lead to higher costs. Do you agree?

A. No. Mr. Busser's statement is counter-intuitive. Adopting a per diem policy reduces costs by limiting inappropriate and excessive employee charges as well as reducing the administrative expenses of processing expense reports by eliminating need to keep, track, document, and audit meal receipts.

Q. In the past, did the Commission require its Staff to keep and provide receipts for travel meals for a period of time prior to adopting its current a per diem policy?

A. Yes and I was a member of the Staff during that short time period. In my personal experience, not having to deal with meal receipts allowed by the adoption of a per diem policy significantly reduced the administrative burden on the employee seeking reimbursement and on the employees who are required to audit requests for reimbursements.

Q. Mr. Busser concludes his rebuttal testimony by stating that the use of per diems is not customary in the utility industry. Please comment on this assertion

A. The fact whether or not it is "customary" in the utility industry is not relevant at all to this rate case issue with KCPL. Mr. Busser's conclusions on what is customary is based solely on a utility he used to work for, El Paso Electric, Westar, Inc. Ameren Missouri and a utility company he talked to through an online message board. I would not make any such broad conclusion based on only four of the hundreds of utility companies in the U.S.

But even if one does assume that per diem policies are not customary in the utility industry, the expense account problems that have been experienced with KCPL are unjust and unreasonable. This problem calls out for special treatment for KCPL due to the nature and severity of its problems.

Q. At page 9 beginning at line 19 of his rebuttal testimony does Mr. Busser seem to recognize that KCPL has had major problems with its expense report process?

A. Yes. He testifies that KCPL's new expense report policies that it adopted as a result of its Stipulation and Agreement in its 2014 rate case has led to "significant improvements" in its expense reimbursement process.

Q. Do you agree that there have been improvements in KCPL's expense reimbursement process?

A. There may have been incremental progress. However, no real progress can be made until KCPL adopts OPC's five recommendations made by OPC in my direct testimony, including KCPL's adoption of a per diem policy and a commitment not to charge KCPL management's alcohol costs to ratepayers.

Q. Did KCPL make these changes to its expense report process on its own volition?

A. No, it did not. It only made these changes as a result of the position taken by Staff in KCPL's 2014 rate case related to KCPL's expense reimbursement problems. In that rate case I was the sole Staff witness on that issue.

Q. Mr. Busser testifies that KCPL's expense reimbursement process has improved and this improvement was caused by the positions you took in testimony in KCPL's 2014 rate case. Do you believe that if KCPL heeded you recommendations to the Commission in this rate case that KCPL's management expense reimbursement processes will improve further?

A. I do not think there is any question that it would. The positions I took in KCPL's last rate case have led to improvements. I strongly believe that the positions I take in this rate case, if adopted by KCPL, will lead to significant improvements. In fact, if KCPL adopted each of the recommendations in my direct testimony, I do not believe that this issue, which has drained resources for the past ten years, will continue to exist.

The problem will not be fixed by KCPL's management acting on its own because KCPL does not seem to recognize that it is unjust and unreasonable to require ratepayers to pay for excessive and imprudent management expenditures. This entitlement is so engrained in the culture at KCPL that Mr. Busser states at page 13 line 6 that any attempt to stop

KCPL management from consuming alcohol and charging that cost of alcohol to ratepayers is micro-managing the company.

Q. Is the Commission charged with supervising Missouri utilities?

A. Yes it is.

Q. Do you believe that it is within the Commission's authority to order KCPL not to charge its customers for the purchase of alcohol?

A. Yes, I do and I hope the Commission will do so in its Report and Order in this rate case.

Q. Does KCPL appear to realize that it is a public utility that is accountable to its customers?

A. No. KCPL management appears to regard its duty to ratepayers as merely incidental to their mission. A company concerned about affordability would not force these unreasonable and imprudent costs onto customers. Based on past behavior and the evidence in this case, KCPL's customers who do not have a choice in their electric provider will continue to be forced to pay for the expensive lunches and alcohol for KCPL management unless the Commission acts. Public Counsel requests the Commission admonish KCPL for its practices and direct it to adopt the recommendations contained in my direct testimony.

<u>SERP – Kelly Murphy</u>

Q. Is KCPL required to make lump sum SERP payments?

A. No. A SERP is an additional compensation program created and controlled by a company's board of directors. KCPL does not have to offer a SERP at all and it can limit the SERP plan to annual recurring payments.

Q. Because of its unique nature and the fact that it represents an additional executive pension benefit over and above what is already provided in the regular pension plan, the Staff has traditionally treated SERP costs somewhat differently than normal employee pension costs. Is that correct?

A. Yes. The Staff's policy in the past recommended SERP costs be included in cost of service if they are not significant, are reasonably provided for and able to be quantified under the known and measurable standard.

Q. Does KCPL have a history of paying its former executives SERP lump sum payments that are unreasonable and excessive, and therefore should not be included in cost of service?

A. Yes. According to KCPL's response to Staff Data Request Nos. 196 in Case No. ER-2009-0089 and 187 in Case No. ER-2012-0174, KCPL paid a lump sum SERP payment to one employee in 2001 of $3,337,402 . In 2004 KCPL also made a SERP lump sum payment to one employee of $2,464,055. In 2011 KCPL made a lump sum SERP payment to and employee who was an employee of KCPL for just over 5 years in the amount of $708,003.

Q. Do you believe that it is possible to pay an employee a lump sum SERP payment of $3.3 million dollars under a basic restoration SERP plan as Ms. Murphy suggests?

A. No. It certainly should not be possible. Assuming the SERP buyout payment was based on an actuarial assumption that this retired KCPL employee will live 14 years past retirement. This means that the "supplemental" pension payment would be $235,000 annually ($3.3M/14 years). That annual payment of a "supplemental" pension payment, over and above the employee's regular pension payment is excessive and clearly not based on base salary as Ms. Murphy claims. To illustrate, assume that this individual's regular annual pension payments was equals his or her SERP, the annual pension

payment to this one former utility employee would be $470,000. Clearly this is some other factor other than base salary that was included in this individual's SERP calculation. Ms. Murphy does not address this.

Q. Is it possible that KCPL made changes to its SERP and no longer includes the types of compensation you referred to in your direct testimony?

A. Yes it is. However, I am not aware of any changes and even if these changes were made, that in no way means that KCPL's SERP is a basic restoration SERP. KCPL's SERP includes additional benefits based on credited additional years of service over and above the actual years of service earned. These bonus years of service results in bonus payments through a SERP that will be paid based on a change of control. These are benefits that are not provided in a qualified pension plan but are provided only to certain KCPL employees.

Q. Has KCPL admitted that its SERP is not a basic restoration SERP?

A. Yes. In response to Staff Data Request No. 282 in Case No. ER-2009-0089, KCPL explained that it could provide no such assurance that KCPL's SERP was a simple SERP restoration plan.

> KCPL response: The plan's actuaries could not "certify" that the SERP calculations only represented a restoration of amounts that were lost in the qualified plan due to IRS imposed limits. The benefit accrual formula includes an increased accrual rate, and in some cases may include extra years of service.

Q. Please explain why OPC does not believe annual lump sum SERP payments should be included in KCPL's cost of service.

A. These lump sum payments are not a known and measurable expense. The prior amounts of SERP lump sum payments made by KCPL have been so volatile that no reasonable estimation of future lump sum payments can be made. For example, in the three year

period 2007 through 2009 KCPL made only one lump sum SERP payment. Over the entire time KCPL has made lump sum payments, the range of payments has been from a low of $300 to a high of $3.3 million. KCPL's history of lump sum SERP payments do not meet the basic ratemaking requirement of being known and measurable and thus cannot be quantified accurately enough to be included in cost of service.

Q. Does Ms Murphy explain her understanding of the term "known and measurable" in her rebuttal testimony?

A. Yes. She states that a lump sum SERP payment is known and measurable at the time of payment.

Q. Do you agree?

A. Yes certainly an expense is known and measurable when it is eventually paid. But that is not the Commission standard for including costs in utility rates. The Commission recently explained its known and measurable standard in its Report and Order in Case No. WR-2016-0064, at page 18:

> Since it occurs after the update period, to be included in Hillcrest's cost of service the expense must have been realized (known) and must be calculable with a high degree of accuracy (measurable). However, the evidence shows that the 2016 property tax amount has not yet been paid, is an estimate of the property tax costs, and could change during the summer of 2016. Therefore, that property tax estimate is not known and measurable, so it is inappropriate to include that amount in the revenue requirement for this case. The correct property tax expenses to include in Hillcrest's cost of service are the amounts determined by Staff based on actual property tax paid in 2015, as those amounts are consistent with the matching principle.

To be included in rates the Commission ruled that a cost must be realized (future lump sum SERP payments are not realized) and must be measurable – able to be calculated with a high degree of accuracy. KCPL's lump sum SERP payments are highly irregular

and are not able to be calculated with any degree of accuracy, let alone a high degree of accuracy.

Q. Does Ms. Murphy effectively admit in her rebuttal testimony that lump sum SERP payments do not meet the Commission's known and measurable standard?

A. Yes. Ms Murphy admits that no lump-sum SERP payments were made in the test year in this rate case. She also said due to the "sporadic nature" of executive separations, SERP lump sum payments can vary significantly from year to year.

Q. Does KCPL's annuity-based SERP payments, as opposed to lump sum SERP payments, meet the Commission's known and measurable standard?

A. Yes.

Q. Should the Commission waive the application of its rate case known and measurable standard for KCPL's SERP payments simply because KCPL's officers want to receive SERP benefits up front and not in the manner that the payments were designed, as an annuity?

A. No. The Commission should determine that KCPL's lump sum payments are exactly as Ms Murphy described. They are sporadic and they are not able to be calculated with any degree of accuracy. The Commission should rule that if KCPL wants ratemaking treatment of all of its SERP expenses, it should eliminate lump sum payments and pay all of its SERP benefits on an annuity basis.

Q. Are the SERP payments for former WCNOC employees excessive?

A. Yes, they are. KCPL's payments to former WCNOC are excessive with an average supplemental pension payment in excess approximately $70,000. This is contrasted with an average SERP payment to former KCPL executives of $8,800. OPC calculated an appropriate and reasonable SERP expense for WCNOC by multiplying the seven former

WCNOC employees receiving payments by the average KCPL annual SERP payment for an annual amount of $61,834.

Q. Does KCPL witness Murphy disagree with your conclusion that WCNOC SERP payments are excessive compared to KCPL?

A. Yes. However, she did not perform any analysis to show that these WCNOC payments are not excessive compared to KCPL. Her rationale appears to be that WCNOC payments are not excessive because KCPL makes more lump sum payments. Unless KCPL can provide an analysis to show that the WCNOC payment levels are appropriate, I stand by the analysis I provided in my direct testimony which shows that WCNOC SERP payments are excessive compared to KCPL and should be adjusted to a level comparable to KCPL

SERP – Ron Klote

Q. At page 51 line 17 of his rebuttal testimony Mr. Klote states that I used the year 2015 to base my SERP calculation and 2015 was the lowest level in five years. Why did you select 2015?

A. I used the year 2015 because it was the last full year of SERP data available at the time of my adjustment. Therefore I used the latest known and measurable data.

Q. Would you be willing to update this SERP calculation based on updated 2016 data?

A. Yes. Contrary to Mr. Klote's insinuation that I used 2015 only because it was the lowest cost in five years, even if 2016 was higher, I would be willing to update my adjustment based on 2016 data.

Q. At page 51 line 22 Mr. Klote stated that Ms. Murphy's testimony demonstrates that I do not understand what the SERP payments for KCPL's plan are based on when calculated. Please comment.

A. I do very much understand that KCPL's SERP is not at all a basic restoration SERP. In my example above where KCPL made a $3.3 million lump sum SERP payout, I demonstrated my understanding that KCPL's SERP benefits were not just a restoration of basic benefits lost due to IRS limitations. I also admit that KCPL could have made changes in its SERP to remove certain types of compensation since it made the $3.3 million SERP payment. I do agree that there is a possibility that KCPL's SERP includes the same compensation as KCPL's basis pension plan, but I do not believe that is correct. Other than the little chart in Ms. Murphy's testimony, she provides not such evidence. I have seen evidence that KCPL's SERP is not only based on regular compensation.

Q. **Even if KCPL's SERP plan was a basic restoration plan, would that have any impact on your SERP analysis or SERP adjustment?**

A. No. That fact is not significant to my KCPL or WCNOC SERP adjustment. The foundation of my adjustment is reasonableness.

Q. Did you read Mr. Klote's testimony on capitalization of SERP costs at page 53 of his rebuttal testimony?

A. Yes.

Q. Can you make any sense of his rationale for capitalizing SERP costs at page 53 lines 8 through 17?

A. I tried, but I could not. This rationale is not based on any accounting theory, accounting principle or ratemaking theory or principle of which I am familiar. This testimony is unsound from either an accounting or a ratemaking standpoint. Mr. Klote apparently

believes it is reasonable to charge, as a capital cost to utility plant, SERP expenses paid to a former employee who retired years ago and provided no benefit to that construction project. That is just not understandable.

This KCPL approach is not easy to understand and is in direct conflict with accounting principles advocated by the Financial Accounting Standards Board. I believe that soon generally accepted accounting principles ("GAAP") will forbid the type of accounting Mr. Klote supports for pension-type expenses, such as a SERP. I agree with the FASB and GAAP on this issue and disagree with Mr. Klote and KCPL's newly-changed approach to SERP capitalization.

As an example, under the FASB approach to expense capitalization, assume a former KCPL employee worked for KCPL in 1980 and retired in 1981. This employee may have provided benefit to KCPL's construction projects in 1980, but not after he retired in 1981. His employee compensation costs in 1980 would have been appropriately charged to plant projects in 1980.

Under Mr. Klote's approach annual SERP payments to that former employee who retired in 1981 are still being charged, in part, to KCPL's 2017 utility plant projects although that employee provided no benefit to KCPL at all since 1980.

Q. In previous rate case did a KCPL officer agree with your recommendation not to capitalize SERP expenses to plant projects?

A. Yes. KCPL correctly accounted for SERP costs for a period. However, KCPL has now accepted Mr. Klote understanding of the proper accounting for SERP and has return to its old and incorrect accounting.

Regulatory Lag – Mark Oligschlaeger

Q. At page 8 of his rebuttal testimony Staff witness Mark Oligschlaeger discusses one of the problems with expense trackers, which is the reduction in the level of incentives for utility employees to take actions to keep costs as low as possible. Do you agree with Staff that trackers reduce the incentive for utilities to keep costs low as possible?

A. It is axiomatic in ratemaking that guaranteeing the rate recovery of any cost under an expense tracker or an FAC will eliminate or significantly reduce utility management incentives to be efficient in managing that cost. That is one of the clearly recognized detriments of FACs and expense trackers. I generally agree with Staff's position on this issue with one exception. Mr. Oligschlaeger makes the statement "Excessive use of trackers can serve to eliminate or weaken these beneficial incentives." I find that there are two problems with this testimony.

Q. What is the first problem with this statement?

A. Any and all use of trackers in a utility's cost of service reduces cost reduction incentives. Mr. Oligschlaeger puts a qualifier on this fact by asserting only that "excessive" use of trackers reduces cost reduction incentives. To make this statement correct and reasonable, it should state that "any" use of trackers will eliminate or weaken cost efficiency incentives.

Q. What is the second problem you find with Mr. Oligschlaeger's statement that excessive use of trackers can serve to eliminate or reduce beneficial incentives?

A. The second problem is Mr. Oligschlaeger's use of the term "can serve" when he describes the ratepayer detriment that is caused by the use of trackers. As noted above, it is axiomatic in utility regulation that trackers do, by definition, reduce utility management incentive to keep the expenses recovered under a tracker as low as possible. This is not merely a possibility as Mr. Oligschlaeger's statement could be read to imply. Trackers result in higher costs because utility management has no inventive to keep costs low. Utility management will focus cost control efforts on costs that are not guaranteed rate recovery which can impact its net income and shareholder return. The main focus on

utility management is on company (including parent company and affiliate) net income, the bottom line in the income statement and meeting company earnings targets.

Q. You say that there are no incentives for utility management to keep costs that are subject to a tracker as low as possible. What about potential prudence audits?

A. In Missouri, there is no effective use of prudence audits. Based on my experience and in my opinion, the very high Commission prudence cost disallowance standards, as well as other reasons, has resulted in the absence of effective prudence audits of special rate recovery mechanisms in Missouri utility regulation.

Q. Has the Commission in the past recognized the inherent weakness of a prudence audit as a substitute for the competitive pressures of regulatory lag?

A. Yes. At page 40 of its Report and Order in Case No. ER-2008-0318 for Union Electric, the same Report and Order that authorized Ameren Missouri's FAC, the Commission noted that a tracker gives a utility a blank check to spend however much it wants with assurance that any expenditure will likely be recovered from ratepayers. The Commission also noted that a prudence review is not a complete substitute for a good financial incentive. I would differ with the Commission only to the extent that I would go further and state that a prudence review (at least how prudence reviews are conducted in Missouri) is no substitute at all for a good financial incentive.

> The Commission finds a ten percent cap on the tracker to be appropriate. Without a cap, the tracker would essentially give AmerenUE a blank check to spend however much it wants on vegetation management with assurance that any expenditure will likely be recovered from ratepayers. Of course, any such expenditure would still be subject to a prudence review in the next rate case, but a prudence review is not a complete substitute for a good financial incentive.

<u>Expenses in Rate Base – Mark Oligschlaeger</u>

Q. At pages 18-19 of his rebuttal testimony, Mr. Oligschlaeger states, in general, Staff believes the question of rate base treatment of tracker balances is best determined on a

case-by-case basis by the Commission. Do you agree with this position, which provides great Commission flexibility in its ratemaking decisions?

A. Yes, I do. OPC generally supports maximum Commission flexibility in its ratemaking determinations. However, if the Commission has a policy, or has provided guidance on a particular ratemaking issue, and it decides not to apply that particular issue in a rate case, the Commission should, at least, provide reasons why it is not applying that policy or practice in a particular case.

Q. At page 19 Mr. Oligschlaeger states that utility "customers" are typically given rate recovery of tracked expenses through a multi-year amortization to expense. Does this statement make any sense to you?

A. None at all. I am not sure why Mr. Oligschlaeger believes that utility customers are given rate recovery when they are the party that is charged for a utility expense in utility rates. This statement is just factually wrong and may likely be just an oversight by Mr. Oligschlaeger.

Q. At page 19 of his rebuttal testimony Mr. Oligschlaeger states that allowing rate base treatment of unamortized tracker balances gives full rate recovery of the cost differential to utility customers. Does that statement make any sense to you?

A. Similar to the last statement, it makes no sense at all. It is not clear how "utility customers" are given "full rate recovery" of a tracked cost by allowing a tracked expense to be included in rate base. Mr. Oligschlaeger may be referring to an occasion when the utility has recovered all of a tracked cost the tracker records any potential double recovery of the costs in order to prevent that from occurring. While his testimony is not clear, that is the only explanation that could make sense.

Q. Mr. Oligschlaeger, who has been an accountant with the Commission Staff for approximately 30 years, is not aware of any obligation on the part of the Commission

to allow rate base treatment of trackers in a rate case. Do you agree with Mr. Oligschlaeger?

A. Yes, based on my experience with the ratemaking treatment of trackers, Mr. Oligschlaeger is correct. The Commission has total freedom on the ratemaking treatment of all trackers (other than trackers that have been ordered by statute) in a rate case. I would add the Commission has the freedom to change the ratemaking treatment of trackers from one case to the next based on the circumstances of the rate case. This is the policy that appears to be supported by Staff and is supported by OPC.

Q. At page 21 of his rebuttal testimony Mr. Oligschlaeger states the longer the amortization period, the more the economic value of the deferral will be lost to the customer if the unamortized balance of the deferral is not included in utility rate base. Does that statement make any sense to you?

A. No. That statement makes no sense to me at all. It is just too far outside the range of reasonableness to try to make any sense of this testimony.

Q. At page 7 Mr. Oligschlaeger defends Staff's ratemaking treatment of AAOs for ice storms and other similar events and refers to these items as extraordinary. Are ice storms for a Midwest electric utility and extraordinary event?

A. No. Ice storms and the related costs that have been incurred by Missouri electric utilities are not extraordinary events or extraordinary costs under generally accepted accounting principles ("GAAP"). Also, they are not extraordinary events under FERC's interpretation of its own Uniform System of Accounts ("USOA"). Given that ice storms for a Midwest utility are not considered an extraordinary event by GAAP nor by FERC, it is not clear to me why Staff continues to refer to these events as extraordinary and relies on the USOA as the basis for this position.

Q. In his testimony Mr. Oligschlaeger states Staff supports rate treatment of AAOs for events such as ice storms as an incentive to utilities to restore service. However he does not support rate base treatment for these ice storm expenses. In contrast, however, Mr. Oligschlaeger supports full rate base treatment and an amortization to expense for normal and recurring operation and maintenance expenses related to newly constructed utility plant. Is that a logical and coherent ratemaking position?

A. No. If the Staff is concerned with providing an incentive to a utility to move quickly to fix power outages from an ice storm and restore power as soon as possible, it is logical that Staff would support full rate base treatment of the ice storm expenses as well as an amortization to expense of the deferred expenses. They do not. Instead Staff reserves its full ratemaking treatment to normal regulatory lag where there is no reason to provide an incentive to a utility.

A utility has total control over when it files a rate case. It should time its rate case to be in sync with the time its newly-constructed plant is placed in service. If it does not do so, it is utility management who should be required to absorb the risk that regulatory lag will not allow 100 percent recovery of the costs of that plant (primarily depreciation expense and a financial return) to be recovered in rates before rates are changed in a rate case. If a utility times its rate case appropriately then it will only experience modest regulatory lag from the date the plant is placed in service until the date rates are changed in the rate case. This is typical regulatory lag that should be absorbed by shareholders.

Q. Does Mr. Oligschlaeger believe this is the type of regulatory lag that should be absorbed by shareholders?

A. No. He assigns the 100 percent cost of this regulatory lag to ratepayers and assigns no costs of this regulatory lag to shareholders. It would be bad enough if Staff only allowed an

amortization of these deferred plant in service costs. But the position advocated by Mr. Oligschlaeger goes much further. Staff not only supports the deferral and amortization of these plant costs but also supports full rate base treatment and full profit returns on these normal and recurring utility operating expenses. That is not reasonable and it is simply an excessively utility-supportive ratemaking position. Staff, in this particular instance, abandons any sense that it is charged with balancing the interests of ratepayers and shareholders and only supports the interests of the utility and its shareholders.

Q. Do you believe it is time for Staff to rethink and revaluate its policies on ratemaking treatment of trackers?

A. Yes. Staff's position is not only illogical; it is directly contrary to Staff's stated policy goals of balancing the interests of ratepayers and shareholders.

Q. In an attempt to justify his position, Mr. Oligschlaeger states that the Iatan deferral are capital costs that belong in rate base. Is this correct?

A. No. Mr. Oligschlaeger states that "these deferrals clearly arose from KCPL's construction activities". I agree with this statement, however almost all of KCPL's normal and recurring everyday operations and maintenance (O&M) expenses arose from KCPL's construction activities. Construction accounting deferrals are nothing more than deferrals of normal and recurring utility costs and expenses. They include normal and recurring depreciation expense, normal and recurring interest expense, normal and recurring property tax expense and normal and recurring cost of equity, none of which is eligible for rate base inclusion under a reasonable understanding of what constitutes a rate base asset.

Q. Does the Commission have a reasonable understanding of what constitutes a rate base asset?

A. Yes, it does and it expressed this understanding in its Report and Order in KCPL's 2006 rate case, ER-2006-0314. The Commission described that additions to rate base must be an

"asset". The Commission also described an "asset" as "some sort of possession or belonging worth something that is owned or controlled by the utility." A regulatory asset expense deferral has no intrinsic value. It has no value other than a value that the Commission attributes to that deferral. The Commission stated to include expense projects in rate base, as KCPL proposed in its 2006 rate case, was making a "mockery" out of what constitutes a rate base asset. The Commission made the following 7 points:

> 1. "...In order for an item to be added to rate base, it must be an asset. Assets are defined by the Financial Accounting Standards Board (FASB) as 'probable future economic benefits obtained or controlled by a particular entity as a result of past transactions or events' (FASB Concept Statement No. 6, Elements of Financial Statements).
>
> 2. Once an item meets the test of being an asset, it must also meet the ratemaking principle of being 'used and useful' in the provision of utility service. Used and useful means that the asset is actually being used to provide service and that it is actually needed to provide utility service. This is the standard adopted by many regulatory jurisdictions, including the Missouri Public Service Commission."
>
> 3. The Commission finds that the competent and substantial evidence supports the position of Staff, and finds this issue in Staffs favor.
> While KCPL's projects appear to be prudent, KCPL produced insufficient evidence for the Commission to find that these projects rise to the level of an asset, on which the company could earn a rate of return.
>
> 4. What is at issue is not whether a project is a "probable future economic benefit", as KCPL asserts in its brief; what is at issue is the remainder of the FASB definition Mr. Hyneman quoted, which is "obtained or controlled by an particular entity as a result of past transactions or events."
>
> 5. In other words, an asset is some sort of possession or belonging worth something. KCPL obtains or controls assets, such as generation facilities and transmission lines.
>
> 6. To attempt to turn an otherwise legitimate management expense, such as a training expense, into an asset by dubbing it a "project" makes a mockery of what an asset really is, which is some type of property.
>
> 7. Using KCPL's argument, any expense is potentially an asset by simply calling it a "project", and thus could be included in rate base. KCPL's projects do not rise to the level of rate base.

Q. Do you believe Staff must meet a burden of proof when it attempts to overcome a Commission Report and Order?

A. Yes. However, Mr. Oligschlaeger just seems to take a dismissive view of the Commission's 2006 KCPL Report and Order. In his testimony rebutting the Commission's finding in that Report and Order he failed to substantively address any of the Commission findings of what constitutes a rate base asset. Unless Mr. Oligschlaeger can provide evidence to the Commission why the Commission was wrong in its 2006 KCPL Report and Order, and why the Commission should change its position and allow KCPL's latan deferred expenses in rate case, the Staff should comply with the Commission's Order and not support the inclusion of costs in rate base that do not meet Commission standards for rate base inclusion.

Q. Does this conclude your surrebuttal testimony?

A. Yes, it does.

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.

No. 1013

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 accommmodations 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/Kiewett 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 meeitng	$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 Meeitng	$2.24
	r/t mileage for the Iatan - Nashua Land Acquisition elebratory 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 Kiewett Demo	$22.40
	room service while staying at the Hilton in Columbus while attending the AEP/Kiewett 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 Utilities 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 Fundrasing Meeting.	$10.08
	Roundtrip mileage less daily commute to attend Zoo Executive Committe 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

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

CRH-S-6
1/35

29. KCPL and Great Plains Officer Expense Report Adjustment

In its review of KCPL responses to Staff Data Request Nos. 0339 and 0341, Staff reviewed several Great Plains/KCPL officer expense reports. Staff found that several charges to KCPL's cost of service by Great Plains/KCPL officers appeared to be imprudent, unreasonable, excessive, and incorrectly allocated to KCPL's regulated accounts. In several previous KCPL rate cases Staff has also found problems with the prudence, excessiveness and reasonableness of KCPL and Great Plains officer expense report charges. Staff is aware of attempts by KCPL to mitigate the detriment to its customers from these types of expenses, including, in a previous rate case, KCPL making rate case adjustments to remove all officer expense report charges. In response to Staff's concerns in these prior cases KCPL appeared to implement internal control procedures designed to reduce the risk of unreasonable, imprudent and excessive officer expenses from being charged to KCPL ratepayers. It seems KCPL has either failed to continue with these internal control measures or the measures are ineffectively administered.

Staff questioned KCPL on the appropriateness of a selected small sample of officer expense report charges in Staff Data Request No. 0502. Just a few of the charges that Staff addressed in Staff Data Request No. 0502 were:

a. Thousands of dollars in iPad purchases acquired through an expense report instead of normal procurement processes where the charges were expensed instead of capitalized as required by normal accounting procedures;

b. Over $700 in meals expenses related to an employee baby shower in Kansas City;

c. A $327 dinner charge for a meeting between a KCPL employee and a Kansas City Royals official;

d. A $270 dinner charge for a KCPL employee and a former Great Plains/ KCPL Chief Executive Officer at Sullivan's Steak House in Kansas City;

e. Meal charges associated with Allconnect, Inc. non-regulated operations charged to regulated cost of service;

f. A $293 meal charge for a KCPL employee and a former KCPL employee to discuss governmental affairs at Capital Grille in Kansas City;

g. A $659 meal for a customer meeting at Capital Grille in Kansas City;

h. A $1,120 meal at Capital Grille in Kansas City for a Public Affairs and Marketing Retreat; and

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

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

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

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

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

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

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

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

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

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

Q. Please explain.

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

<u>Staff's Consolidated Corporate Allocations/Affiliated Transactions Adjustment</u>

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

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

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

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

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

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

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

Item	Tran Amt	Merchant	Long Descr
1	$5,447	APPLE STORE #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	APPLE STORE #R283	IPad for Communications team.
5	$916	MGM GRAND/CRAFTSTEAK	Travel 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 disucss 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/Heartland 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/Heartland 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 dicuss customer research.
25	$301	THE MAJESTIC RESTAURANT	Business meal to discuss IFactor additonal 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	APPLE STORE #R097	Ipad equipment for Corporate Communications Team
30	$269	SULLIVANS STEA00085365	Dinner w/(REDACTED), Kansas City Water
31	$263	APPLE STORE #R283	Ipad expense for Corporate Communicaiton 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

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

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

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

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

D. For the Ipad related charges. Why were these Ipads purchased? Have they been and are they currently being used for regulated utility operations?

E. For the Ipad related charges. Why were these Ipads not capitalized to plant in service accounts?

F. No. 2, why is this cost to KCPL regulated accounts?

G. No. 18, what is the business purpose of this trip?

H. No, 19 how is this book related to KCPL's regulated operations?

I. No. 20, what is the business purpose of this trip?

J. No. 6, what is the business purpose of this trip?

K. No. 14, what is the business purpose of this trip?

L. No. 15, what is the business purpose of this trip?

M. Nos. 17, 27, 28, Does KCPL pay approximately $300 to $400 per month for one employee's cell phone service? If so, is this the fair market price for one cell phone?

KCPL's response to DR 502, in part, was that "[s]ubsequent to its direct filing in this case, the Company informed MPSC Staff that it was removing all GPE Officers expense report costs." KCPL failed to attempt to explain or even address any of the individual Staff questions listed above in DR 502.

Q. How do you as an auditor respond to KCPL's response to DR 502?

A. When a regulated utility company such as KCPL refuses to provide a responsive answer to a Staff Data Request and also does not object to the data request that is always a concern. In this particular instance KCPL is attempting to just substitute providing money rather than a substantive response to the Staff Data Request. This is even a bigger problem for a Staff auditor.

If KCPL is unable to justify one dollar of expense for a list of expenses paid to one employee, it is the regulatory auditor's responsibility to determine the risk of inappropriate and excessive costs for all of KCPL management employees being passed on to Missouri ratepayers. While I increasingly view Staff Adjustment 5 to be more and more conservative, it is made with the intent, not just to quantify Great Plains' Officer excessive and imprudent charges, but all of KCPL's approximately 1,000 managers' excessive charges. Great Plains'

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Staff Data Request No. 560
1. Reference Expense Report 0000038916. Was the purchase of IPads for KCPL's Corporate Communications Team on December 16, 2013 in compliance with KCPL's Procurement policies in general and its procurement policies for computers in particular? 2. Since this charge was booked to Operating Unit 101106, how does the use of these IPads for the Corporate Communications Team only benefit KCPL and GMO's regulated utility operations? 3. If this purchase does not only benefit KCPL and GMO's regulated operations, why was it booked to Operating Unit 101016 and account 921? 4. Please provide the name of the KCPL employee who approved this purchase. 5. Was the approval made prior to or subsequent to the purchase? 6. Please provide a copy of the KCPL policy which allows KCPL Officers to purchase computer equipment on their expense reports. 7. Please provide a copy of all KCPL's internal controls which reduces the potential for employees to charge to Operating Unit 101106 Utility Mass Formula, when the charge should be to 101105 Corporate Mass Formula. 2. Reference expense report 0000038628 and the November 11, 2013 "business meeting" with . . . and a KCPL employee at the Sullivan's Steak House in Leawood Kansas charged to account 921 101106 Utility MASS Formula 1. Who is . . . and what services did he provide to KCPL? 2. Please describe these services in detail. 3. Since the charge was made to Operating unit 101106, please explain in detail how these charges benefit only KCPL and GMO regulated operations and not GPE

> businesses in general. 4. Has KCPL ever entered into a contract or agreement with . . .? If yes, please provide a copy. If not, why did KCPL believe it was necessary to charge KCPL and GMO ratepayers to meet with . . . DR requested by Chuck Hyneman (Chuck.Hyneman@psc.mo.gov).
>
> **KCPL Response to Staff Data Request No. 560**
> The Company made an adjustment to reduce rate recovery of GPE Officer expenses by approximately $67k (Missouri jurisdictional) in recognition of inconsistent coding of expenses during the test year. The Company and Staff personnel have made significant progress in establishing an agreed upon CAM which the Company expects will improve consistency of coding going forward. The charge questioned above should have been coded to Operating Unit 10105 which would have spread the cost across all Business Units (including non-regulated units).

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

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

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

A. Yes.

Q. Are you a CPA?

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Officer incurred expenses in May 2013 (0000036408) the date of the expense report was October 16, 2013 and the officer signed attesting to the accuracy of the expenses on December 30, 2013.

2. Officer incurred expenses in June 2013 (0000036729) the date of the expense report was October 20, 2013 and the officer signed attesting to the accuracy of the expenses on December 26, 2013.

3. Officer incurred expenses in July 2013 (0000036734) the date of the expense report was October 29, 2013 and the officer signed attesting to the accuracy of the expenses on December 26, 2013.

4. Officer incurred expenses in September 2013 (0000036742) the date of the expense report was October 29, 2013 and the officer signed attesting to the accuracy of the expenses on December 26, 2013.

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

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

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

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

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

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

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

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

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

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

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

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

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

> **Staff Data Request No. 576**
> Reference Expense Report 0000036742, airfare for the "MEM Board Retreat" charged to Operating Unit 10106, account 921. 1) Is "MEM" referenced in this expense report the "Missouri Employers Mutual," a provider of workers compensation insurance? 2) What does the Missouri Employers Mutual Board Retreat have to do with KCPL or GMO? 3) Who approved this payment to the requesting KCPL employee? 3) Why was this payment approved? 4) Why was the Operating Unit – Utility Mass Formula allocated only to KCPL and GMO regulated operations selected as the appropriate allocation factor?
>
> **KCPL Response to Staff Data Request No. 576**
> The Company made an adjustment to reduce rate recovery of GPE Officer expenses by approximately $67k (Missouri jurisdictional) in recognition of inconsistent coding of expenses during the test year. The Company and Staff personnel have made significant progress in establishing an agreed upon CAM which the Company expects will improve consistency of coding going forward. The charge questioned above should have been coded to Operating Unit 10105 which would have spread the 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, 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, 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.

KCP&L-226

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 NP
Date 1/18/11 Reporter LMB
File No. ER-2010-0355

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

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

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

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

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

> Data Request No. 0556
> Company Name Kansas City Power & Light Company
> Case/Tracking No. ER-2009-0089
> Date Requested 2/26/2009
> Brief Description WHD Expense Report 9/28/07
>
> Description: Reference WHD expense report approved on 9/28/07. 1. Please provide the business purpose of WMD traveling from Chicago to Denver instead of KC to Denver (What was his business purpose of being in Chicago) 2. Please provide a copy of the receipts for the $1,606.38 Dinner charged on 6/18/07 at Kevin Taylor Restaurant in Denver and provide the business purpose of charging this expense to KCPL's regulated customers. 3. Please provide a copy of the receipts for business meal with L. Cheatum re: personnel on 6/21/07.
>
> Objection: KCPL objects to this data request as it calls for information which is irrelevant, immaterial, inadmissible and not reasonably calculated to lead to the discovery of admissible evidence. The costs mentioned in this data request were inadvertently included in KCPL's cost of service. KCPL is no longer seeking recovery in rates of any of the costs mentioned in the data request.

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

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

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

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

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

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

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

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

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

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

> Case: ER-2009-0089
> Date of Response: 02/03/2009
> Information Provided By: Gerry Reynolds
> Requested by: Schallenberg Bob
>
> Question No. : 0490 Please provide copies of all the documentation supporting the development, review, analysis and approval of the contingency and executive contingency included in the control budget estimate for environmental upgrades at Iatan 1.
>
> Response: The current Control Budget Estimate for Iatan 1 is $484 million. Due to their confidential nature, all of the documentation supporting the development, review, analysis and approval of the contingency and executive contingency included in the current control budget estimate for environmental upgrades at Iatan 1 are available by contacting Tim Rush 816-556 2344 or Lois Liechti 816-556-2612 to make arrangements to view these documents. Response provided by Iatan Construction Project, Project Controls. This information was provided for onsite viewing to the Commission Staff in early 2008 as part of its investigation in Case No. EM-2007-0374.

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

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

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

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

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

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

As will be discussed in the surrebuttal testimony of Staff witness Keith Majors, once KCPL fails to provide documentation supporting the development of its Control Budget 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 1-26-11 Reporter TU
File No ER-2010-0355

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

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

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

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

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

OF

CHARLES R. HYNEMAN

KANSAS CITY POWER AND LIGHT COMPANY

CASE NO. ER-2006-0314

Jefferson City, Missouri
August 2006

Denotes Highly Confidential Information

NP

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

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

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

EXECUTIVE /DIRECTOR RETREAT COSTS

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

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

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

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

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

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

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

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

MISCELLANEOUS ADJUSTMENTS

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

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

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

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

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

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

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

Q. Please explain adjustment S-81.8.

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

Q. Please provide an example.

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

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

Q. Does this conclude your testimony?

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: [redacted]

1. See attached file of supporting receipts. Costs were charged to CORPDP-KCPL and assigned 100% to KCPL because [redacted] 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 **

NP

CRH-S-9
1/14

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. They 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 polices 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

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

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

"BUSINESS EXPENSE" DISALLOWANCES

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

A. As noted in the Staff's Cost of Service Report, the Staff made an adjustment that reflects its 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 officer expense reports. These costs were not only excessive and inappropriate from a regulated utility standpoint, but from a normal business expense standpoint as well.

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

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

A. No. 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 GPE and KCPL will continue to focus on keeping costs as low as possible. In my experience auditing KCPL over these past three years, especially in the area of officer expense report expenses, I have not seen any focus on the part of KCPL's officers on keeping costs as low as possible. In fact, my experience in auditing KCPL in three successive rate cases leads me to conclude that there is no concern about the level of costs that KCPL will attempt to pass on to its Missouri ratepayers.

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

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

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

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

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

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

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

1. Did KCPL remove the capitalized portion of these costs from its plant in service and CWIP accounts?

2. Has KCPL taken any steps to prevent the activities underlying these costs from being a cash drain on its operations in the future? If "yes," what steps?

3. Are any of these costs included in the calculation of its "additional amortization" in this case? If "yes," will these costs be removed?

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

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

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

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

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

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

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

Q. Does this conclude your surrebuttal testimony?

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 Make Certain Changes in its Charges for Electric Service To Continue the Implementation of Its Regulatory Plan.	)))))	Case No. ER-2009-0089

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

ER-2016-0156 Test Year Meal Charges for One KCPL Management Employee

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	Piropos Briarcliff - 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	$27.32	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 Kiosk - Chicago, IL	$5.77	921000	Dinner	McDonald's - Lenexa, 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	$8.32	921000
November 5, 2014	Lunch	Bootleggers - Chicago, IL	$91.66	417100	Lunch	12th & Baltimore - 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	Shenanigan's House of Beer - Chicago, IL	$19.33	232105				
Receipt not on Report												
November 5, 2014	Alcoholic Drinks	Toby Keith's	$48.05		Dinner	Westside Local - KC, MO	$104.28		Dinner	Urban Table	$144.22	
October 15, 2014	Dinner	Piropos BriarCliff - KC, MO	$610.97	921000	Dinner	Next Door Pizza & Pub - Lees Summit	$53.59	426500	Breakfast	Classic Cup - KC, MO	$30.38	921000
October 15, 2014	Lunch	Gather Dining Room - Boston, MA	$32.82	921000	Dinner	Del Friscos - Boston, MA	$559.20	921000	Dinner	Sullivan's - Leawood, KS	$393.93	426500
October 15, 2014	Snack	Dunkin' Donuts - Boston, MA	$4.46	921000	Dinner	1111 & The Roof - JC, MO	$28.25	426500	Dinner	1111 & The Roof - JC, MO	$7.50	426500
October 15, 2014	Dinner	Majestic Restaurant - KC, MO	$201.09	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/Kauffman Stadium - KC, MO	$24.00	426500
October 15, 2014	Breakfast	Market Place - Las Vegas, NV	$14.25	921000	Breakfast	Starbuck's - 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	$7.33	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 Patisserie - Las Vegas, NV	$19.19	921000	Breakfast	Starbuck's - Sedalia, MO	$5.68	426402
October 15, 2014	Dinner	Mario's Prime Steakhouse - Tampa, FL	$591.67	426500	Alcoholic Drinks	Aria Refreshment Center	$7.57	426500				
October 15, 2014	Dinner	Piropos Briarcliff - 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	$44.57	426403	Breakfast	Meridian - Washington, DC - Funeral	$8.80	426500	Drinks	Cibo Express Gromet Market - Washington, DC - Fu	$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	$340.90	426500	Room Service	Westin' - Arlington, VA - Funeral	$2.00	921000	Drinks	Starbuck's - Arlington, VA - Funeral	$2.53	921000
On Report, No Receipt												
October 15, 2014	Dinner	The Misx - KC, MO	$63.44	921000								
December 23, 2014	Dinner	Piropos BriarCliff - 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	Panera 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									
January 15, 2015	Breakfast	Krispy Kreme - OP, KS	$74.76	921000	Drinks	Krispy Kreme - OP, KS	$2.05	921000	Dinner	H. Toad's - Camden on the Lake, MO	$35.00	426102
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	Starbuck's - 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	Starbuck's - KC, MO	$6.68	921000	Snack	Brioche Doree - KC, MO	$3.75	921000	Lunch	KC, MO	$15.00	921000
January 28, 2015	Dinner	Café 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				
On Report, No Receipt												
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	Alexis Brasserie - KC, MO	$57.99	921000	Dinner	Sullivan's - Leawood, KS	$555.16	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	Starbuck's - San Diego, CA	$5.80	921000
March 13, 2015	Lunch	Starbuck's - San Diego, CA	$5.80	921000	Lunch	Travel meal w/Cara Hoover	$27.86	921000				
May 29, 2015	Dinner	Johnny's Tavern - KC, MO	$117.50	921000	Breakfast	Alexis - 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	Cody's La Jolla - La Jolla, CA	$27.13	921000	Lunch	12th & Baltimore - KC, MO	$27.38	921000	Breakfast	Starbuck's - San Diego, CA	$15.80	921000
May 29, 2015	Breakfast	Starbuck's - 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	$609.75	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

CRH-S-1

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)
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
(785) 271-3200 (telephone)
(785) 271-3116 (facsimile)

Attorney for Appellant
Citizens' Utility Ratepayer Board

Dated: April 24, 2012

Oral Argument: 15 Minutes

TABLE OF CONTENTS AND AUTHORITIES

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CITIZENS' UTILITY RATEPAYER BOARD Appellant	)	
vs.	)	Case No. 12-107897-A
THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS Appellee.	)	

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]); Gannet 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 r*ather 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, complied 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 erroneous 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,

C. Steven Rarrick #13127
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Telephone: (785) 271-3200
Facsimile: (785) 271-3116

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:

Patrice Petersen-Klein
Executive Director
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604
Hand Delivered

Brian G. Fedotin, Advisory Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604
Hand Delivered

Dana A. Bradbury, General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604
Hand Delivered

Heather Humphrey, Corporate Counsel
Denise Buffington, Corporate Counsel
Kansas City Power & Light Company
One Kansas City Place
1200 Main St, 16 Floor
PO Box 418679 (64141-9679)
Kansas City, MO 64105

Frank A. Caro, Jr., Attorney
Anne E. Callenbach, Attorney
Polsinelli Shughart
6201 College Blvd, Ste 500
Overland Park, KS 66211-2435

C. Steven Rarrick

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 home[20] 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 customers[79] 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.

GLENDA CAFER, ATTORNEY
CAFER PEMBERTON LLC
3321 SW 6TH ST
TOPEKA, KS 66606
Fax: 785-233-3040
glenda@caferlaw.com

THOMAS J. CONNORS, ATTORNEY AT LAW
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
tj.connors@curb.kansas.gov

MICHAEL DUENES, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
m.duenes@kcc.ks.gov

JAMES ELLIS
CHARGEPOINT, INC.
254 EAST HACIENDA AVENUE
CAMPBELL, CA 95008
james.ellis@chargepoint.com

BRIAN G. FEDOTIN, DEPUTY GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3314
b.fedotin@kcc.ks.gov

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
Fax: 785-242-1279
jflaherty@andersonbyrd.com

ANDREW FRENCH, SENIOR LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3314
a.french@kcc.ks.gov

ROBERT J. HACK, LEAD REGULATORY COUNSEL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST 19th FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
Fax: 816-556-2787
rob.hack@kcpl.com

DARRIN R. IVES, VICE PRESIDENT, REGULATORY AFFAIRS
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST 19th FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
Fax: 816-556-2110
darrin.ives@kcpl.com

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.nickel@curb.kansas.gov

CERTIFICATE OF SERVICE

16-KCPE-160-MIS

DAVE PACKARD
CHARGEPOINT, INC.
254 EAST HACIENDA AVENUE
CAMPBELL, CA 95008
dave.packard@chargepoint.com

TERRI PEMBERTON, ATTORNEY
CAFER PEMBERTON LLC
3321 SW 6TH ST
TOPEKA, KS 66606
Fax: 785-233-3040
terri@caferlaw.com

ANNE SMART
CHARGEPOINT, INC.
254 EAST HACIENDA AVENUE
CAMPBELL, CA 95008
anne.smart@chargepoint.com

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.smith@curb.kansas.gov

SHONDA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
sd.smith@curb.kansas.gov

ROGER W. STEINER, CORPORATE COUNSEL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST 19th FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
Fax: 816-556-2787
roger.steiner@kcpl.com

MARY TURNER, DIRECTOR, REGULATORY AFFAIR
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST 19th FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
Fax: 816-556-2110
mary.turner@kcpl.com

NICOLE A. WEHRY, SENIOR PARALEGAL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST 19th FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
Fax: 816-556-2787
nicole.wehry@kcpl.com

/S/ DeeAnn Shupe
DeeAnn Shupe

EMAILED

SEP 13 2016