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	))))	**File No. ER-2016-0285**

PUBLIC COUNSEL'S STATEMENT OF POSITIONS

COMES NOW the Office of the Public Counsel ("OPC" or "Public Counsel") and for its *Statement of Positions* states:

I. Commission Raised Issues

A. Installation of AMI smart meters for residential and commercial customers

OPC Position: For KCPL, the time for an open and robust dialogue about expectations and parameters will likely begin in the near future presumably after its system-wide AMI and CIS installation. As it stands, OPC takes no formal position at this time in regards to AMI deployment in the KCPL service territory.

B. Plug-in Electric Vehicle Rate

OPC Position: OPC supports the development of a specialized plug-in EV rate to better reflect the real price of electricity. At this stage, a TOU rate similar to what is offered in the Commission's referenced Georgia Power rate design would appear to be a viable option. As it stands, OPC has not formally proposed an EV-specific, TOU, opt-in rate in this case.

C. Optional Residential Time-of-Use rates (hourly) and Time-of-Day rates

OPC Position: OPC supports the use of TOU rates on an opt-in basis; however, it has not developed a specific TOU rate for this case.

D. PACE-Property Assessed Clean Energy Programs

OPC Position: OPC supports the use of this financing option, but does not believe that PACE financing falls under the Commission's oversight.

E. PAYS-Pay As You Save Programs

OPC Position: OPC is currently investigating into the applicability and appropriateness of introducing the PAYS Tariff for future demand-side programs. As it stands, it has no formal position in regards to this financing option in the case.

F. Infrastructure Efficiency Tariff

OPC Position: OPC supports Staff's recommendation for KCPL to modify its facility extension tariff provisions to more fully consider the incremental costs a customer causes to a system in determining how much, if any, customer advance is required. OPC does not support Staff's proposed infrastructure efficiency discount to classes in impacted area.

II. Cost of Capital

A. Return on Common Equity – what return on common equity should be used for determining rate of return?

OPC Position: Public Counsel witness Hyneman offered testimony disputing KCPL witnesses' belief that the regulatory environment in Missouri is a reason for the Commission to authorize a higher ROE. Staff witness Mr. Woolridge recommends a *decrease* to 8.65% (based on a range of 7.9% to 8.75%). MECG witness Mr. Gorman recommends a *decrease* to 9.20%. Only the Company's witness recommends an increase. Public Counsel recommends the Commission *decrease* the authorized ROE. An appropriate ROE for KCPL will fall in the range of 7.9% to 8.75%.

B. Capital structure – what capital structure should be used for determining rate of return?

OPC Position: The Commission should continue its longstanding practice of using GPE's consolidated capital structure to set rates for KCPL.

C. Cost of debt – what cost of debt should be used for determining rate of return?

OPC Position: Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

III. Fuel Adjustment Clause ("FAC")

A. Has KCPL met the criteria for the Commission to authorize it to continue to have an FAC?

OPC Position: KCPL has not met the minimum FAC filing requirements.

B. Should the Commission authorize KCPL to continue to have an FAC?

OPC Position: In Direct testimony OPC recommended the Commission authorize an FAC as described in the testimony of Ms. Mantle. However, after having reviewed the testimony of KCPL on the issue, OPC is greatly alarmed that KCPL appears to view the FAC, not as a cost recovery mechanism, but as a determinant in how it meets its customers' energy needs and as a policy statement of costs the Commission deems "important." When a utility views the FAC as anything other than the opportunity for cost recovery of prudently incurred fuel and purchased power costs and changes its fuel procurement practices, not to improve efficiencies and cost-effectiveness but based on recovering the most money from its customers, the Commission should seriously consider whether or not the utility is deserving of the privilege of an FAC.

C. What costs should flow through KCPL's FAC?

OPC Position: Only direct fuel and purchased power costs and the direct costs of transportation of that fuel or purchased power as follow:

- Fuel as defined by FERC for its FAC
- Cost of Uranium
- Cost of energy purchased through bilateral contracts
- Cost of capacity of bilateral contracts of less than one year
- Cost of "true" purchased power calculated as required by FERC order 668
- Cost of transmission directly tied to purchased power.

D. What revenues should flow through KCPL's FAC?

OPC Position: The revenues listed below should be included in the FAC:

- Revenues from the sale of energy
- Net insurance recoveries, subrogation recoveries and settlement proceeds related to costs and revenues included in the FAC.

E. What is the appropriate sharing mechanism of the difference between actual and base fuel costs in KCPL's FAC?

OPC Position: 90% of the change in costs should be billed to the customer.

F. What FAC-related reporting requirements should the Commission impose?

OPC Position: The Commission should order KCPL to continue to provide the information it ordered KCPL to supply in ER-2014-0370. However, the Commission should also order KCPL to grant OPC the same access to documents listed and provide the same notices to OPC. Furthermore, the Commission should order KCPL to provide, in its FAC monthly report, the costs and revenues included in its FAC, by subaccount, for the month and the 12 months ending that month.

G. What is the appropriate base factor?

OPC Position: The appropriate base factor should be calculated using the revenue requirement cost and revenues in this case for the costs and revenues the Commission determines should be in the FAC. Until the Commission determines the disputed issues, an exact base factor cannot be provided.

H. Should the Commission direct the parties to determine baseline heat rates for each of the utility's nuclear and non-nuclear generators, steam and combustion turbines and heat recovery steam generators?

OPC Position: Yes. These baselines are an important resource that will enable parties to determine if KCPL is prudent in its maintenance of its generation fleet once it is granted an FAC.

D. If the Commission authorizes KCPL to have a FAC, should KCPL be allowed to add cost and revenue types to its FAC between rate cases?

OPC Position: No. Section 386.266 RSMo only grants the Commission the authority to modify an FAC.

IV. Transmission Fees Expense and Transmission Revenues

A. What level of transmission fees expense should the Commission recognize in KCPL's revenue requirement?

OPC Position: Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

B. Should the Commission authorize KCPL prospectively to compare its actual transmission expenses that it does not recover through its fuel adjustment clause with the level of transmission expense used for setting permanent rates in this case, and to accrue and defer the difference for potential return to customers in future rate cases, i.e., to employ an asymmetrical tracker?

OPC Position: No.

C. Should the Commission accept KCPL's revenue adjustment R-80 to remove utility transmission revenues from its cost of service?

OPC Position: No. KCPL should treat its transmission revenues consistent with the way it treats its transmission expenses. There is no basis for the company's adjustment and it unfairly harms ratepayers.

D. Should the adjustment for Transource incentives as proposed by KCPL be adjusted for KCPL's cost of debt?

OPC Position: OPC supports Staff's position on this issue.

E. What level of transmission revenues should the Commission recognize in KCPL's revenue requirement?

OPC Position: Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

F. Should the Commission authorize KCPL prospectively to compare its actual transmission revenues that do not flow through its fuel adjustment clause with the level of transmission revenue used for setting permanent rates in this case, and to accrue and defer the difference for potential return to customers in future rate cases, i.e., to employ an asymmetrical tracker?

OPC Position: No.

G. What level of RTO administrative fees, FERC Assessment Fees, and NERC Assessment Fees should the Commission recognize in KCPL's revenue requirement?

OPC Position: Public Counsel supports Staff's position on this issue.

H. Should the Commission authorize KCPL prospectively to compare its actual RTO administrative fees with the level of RTO administrative fees used for setting permanent rates in this case, and to accrue and defer the difference for potential return to customers in future rate cases, i.e., to employ an asymmetrical tracker?

OPC Position: No.

I. Is there currently regulatory lag preventing KCPL from achieving its authorized return and, if so, does the amount of such regulatory lag experienced currently and in the recent past by KCPL justify adoption of its tracker proposal for transmission expense in this proceeding?

OPC Position: No. By reviewing the testimony of Staff Witness Majors the Commission can see that KCPL has earned at or above its authorized ROE.

V. Transmission Revenue ROE adjustment- Should transmission revenues be adjusted to reflect differences between MoPSC and FERC authorized ROEs?

OPC Position: No. This adjustment is the R-80 adjustment and should be rejected by the Commission. *See* OPC position on item IV.C above.

VI. Property Tax Expense

A. What level of property tax expense should the Commission recognize in KCPL's revenue requirement?

OPC Position: Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

B. Should the Commission authorize KCPL prospectively to compare its actual property tax expense with the level of property tax expense used for setting permanent rates in this case, and to accrue and defer the difference for potential return to customers in future rate cases, i.e., to employ an asymmetrical tracker?

OPC Position: No.

C. Does the amount of regulatory lag experienced currently and in the recent past by KCPL justify adoption of its tracker proposal for special ratemaking treatment of property tax expense in this proceeding?

OPC Position: No. By reviewing the testimony of Staff Witness Majors the Commission can see that KCPL has earned at or above its authorized ROE.

VII. Incentive Compensation

A. What methodology should be used to determine the level of incentive compensation included in KCPL's cost of service used for setting rates in this case?

OPC Position: Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

B. Should that level be based on data not known and measurable as of the true up cutoff date of December 31, 2016?

OPC Position: Yes.

VIII. Supplemental Executive Retirement Program ("SERP")

A. What level of SERP expense should the Commission recognize in KCPL's revenue requirement?

OPC Position: A SERP is a supplemental pension plan that provides additional retirement benefits to a select group of employees. The IRS Audit Guide states that SERPs are maintained primarily for a select group of management or highly compensated employees. In theory, a SERP is designed to supplement qualified retirement plans such as KCPL's all-employee Defined Benefit pension plan by restoring benefits that are not included above a certain compensation threshold.

The Commission should recognize an adjusted SERP expense amount of $59,829 is for KCPL and $61,834 is for Wolf Creek. (Hyneman Direct p. 28).

B. Should SERP expense be capitalized?

OPC Position: No. The utility does not benefit in current utility operations or in its capital plant operations from the services provided by retired former executives and so these associated SERP expenses should not be capitalized. In addition it is inconsistent with generally accepted accounting principles theory. (Hyneman Direct p. 29).

IX. Severance- Should employee severance expenses be reflected in the cost of service?

OPC Position: No for several reasons. The primary reason is that severance payments are often recovered by the utility through regulatory lag. Regulatory lag usually allows a utility to not only recover the amount of severance payments, but in some cases recover two and three times the amount of the severance payment. This is the result of a utility recovering the salaries and benefits, after the employees have been severed, in rates until rates are changed in the next utility rate case. (Conner Direct p. 8).

An additional reason why the cost of utility severance agreements should not be included in cost of service is that the agreements required to be signed by the severed employee contains language designed to protect utility officers and shareholders from potential litigation and embarrassment. The cost of securing these agreements should not be borne by ratepayers. (Conner Direct p. 8).

X. Kansas City Earnings Tax- What level of Kansas City Earnings Tax expense should the Commission recognize when determining KCPL's revenue requirement?

OPC Position: Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

XI. Trackers in Rate Base-Should expense trackers be included in rate base?

OPC Position: No. Expense trackers are simply mechanisms to track 1) the payment or income statement recognition of an expense by the utility and 2) the direct rate recovery by the utility of normal and recurring utility operating expenses. With the exception of certain DSM assets, none of KCPL's deferred recurring operating expenses should be classified as shareholder investments and included in rate base. (Hyneman Direct p. 19).

XII. Bad debt gross-up – Should bad debt expense be grossed-up for the revenue requirement change the Commission finds for KCPL in this case?

OPC Position: Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

XIII. Dues and Donations

A. What level of dues and donations expense should the Commission recognize in KCPL's revenue requirement?

OPC Position: No dues and donations associated with the Edison Electric Institute or EPRI should be included in rates.

B. What level of Edison Electric Institute expense should the Commission recognize in KCPL's revenue requirement?

OPC Position: None. The Company has not demonstrated ratepayer benefit from the company's membership.

C. What level of EPRI expense should the Commission recognize in KCPL's revenue requirement?

OPC Position: None. The Company has not demonstrated ratepayer benefit from the company's membership.

XIV. **Credit Card Acceptance Fees**-What level of Credit Card Fee expense should the Commission recognize in KCPL's revenue requirement?

OPC Position: Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

XV. **Bank Fees-** What level of accounts receivable bank fee expense should the Commission recognize in KCPL's revenue requirement?

OPC Position: Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

XVI. **Rate case expense**

A. Were any rate case expenses claimed by KCPL imprudently incurred?

OPC Position: Public Counsel did not review any rate case expense invoices for prudence but reserves the right to base a final position on the testimony provided at hearing. The need for a prudence review is reduced by adoption of the rate case expense allocation methodology used in KCPL's 2014 rate case.

B. Should the Commission allocate a portion of proposed rate case expense to KCPL shareholders?

OPC Position: Yes. It is unreasonable for ratepayers to bear the portion of rate case expense incurred only for the benefit of shareholders.

C. What method of rate case expense allocation should the Commission order in this case?

OPC Position: In this case Public Counsel recommends the adjustment approach of allocating rate case expense based on the ratio of the dollar revenue requirement ordered by the Commission, to the dollar revenue requirement sought by a utility in its rate case application. (Conner Direct p. 3).

XVII. Depreciation Study Expense- Over what period of time should KCPL's normalized depreciation study expense be amortized to determine the level of depreciation study expense to include in KCPL's revenue requirement?

OPC Position: OPC supports Staff's position of a five year normalization of the expense. This is consistent with the Commission Rule requiring a Company to file a depreciation study every five years. (Robinett Surrebuttal p. 3).

XVIII. Depreciation

A. Should the Commission allow terminal net salvage in the calculation of KCPL's depreciation rates?

OPC Position: The Company is asking the Commission to change its accepted practice on depreciation in order to include costs of terminal net salvage related to future retirements that may occur many years from now. (Robinett Surrebuttal p. 4). The accepted practice in Missouri is to calculate net salvage using historical data experienced, and not the future estimated costs of retirement or dismantlement costs. This has been the practice of the Commission since at least 2005. (Robinett Surrebuttal p. 4). The Company has not provided sufficient support for increasing depreciation rates for unknown and not measurable future costs and so this proposal by the company should be rejected.

B. What depreciation rates should the Commission order KCPL to use?

OPC Position: The Commission should order KCPL to continue to use the current ordered depreciation rate ordered in Case No. ER-2014-0370.

XIX. Greenwood Solar Energy Center— Should the Commission allocate any of the capital costs, operating and maintenance costs, etc., attributable to the Greenwood Solar Energy Center between GMO and KCP&L? If so, how should it be allocated?

OPC Position: No. OPC opposes including any costs related to the Greenwood facility in rates.

XX. Revenues

A. Should KCPL be permitted to make an adjustment to annualize kWh sales in this rate case as a result of KCPL's Missouri Energy Efficiency Investment Act ("MEEIA") Cycle 1 demand-side programs?

OPC Position: No. Such an adjustment has already taken place through the MEEIA surcharge and to do it again here would result in double recovery of assumed lost revenues. (Marke Rebuttal p. 28).

B. How should the Large Power class kW demand billing units be adjusted when a customer leaves the Large Power class?

OPC Position: Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

C. How should customers who left the Large Power class and switched into the Large General Service and Medium General Service classes be annualized?

OPC Position: Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

D. What methodology should be utilized to measure customer growth?

OPC Position: Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

XXI. Rate Design/Class Cost of Service

A. What interclass shifts in revenue responsibility, if any should the Commission order in this case?

OPC Position: OPC has not recommended interclass shifts in revenue responsibility. The Company's proposal to apply any increase equally to the classes is not unreasonable. If the Commission elects to bring classes closer to producing the system average rate of return by incorporating a revenue neutral shift, OPC's recommendation would be aligned with the Staff's proposal to shift to Large Power Services. (Marke Rebuttal p. 2).

B. How should any increase ordered in this case be applied to each class?

OPC Position: The Company's proposal to apply any increase equally to the classes is not unreasonable. If the Commission elects to bring classes closer to producing the system average rate of return by incorporating a revenue neutral shift, OPC's recommendation would be aligned with the Staff's proposal to shift to Large Power Services. (Marke Rebuttal p. 2).

C. Should KCPL be permitted to increase the fixed customer charge on residential customers?

OPC Position: No. OPC is recommending that the Commission maintain the current residential customer charge of $11.88. If an increase in rates is ordered, OPC advocates the increase be administered through the energy charge that places more control of the bill in low-income and fixed income households and does not penalize efficient, conservative and environmentally responsible ratepayers. (Marke Rebuttal p. 3).

D. Should KCPL be required to implement the block rate structure proposed by the Division of Energy for residential customers?

OPC Position: Yes. OPC supports DE's proposal. The proposed inclining block rate would have the desired effect of sending an efficiency-inducing price signal to higher usage ratepayers with an added benefit of reducing bills for low-usage ratepayers including low-income households. (Marke Rebuttal p. 4).

E. Should KCPL be required to propose time-varying rate offerings for residential customers in future cases?

OPC Position: Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

F. How should any increase to Rates LGS and LPS be distributed?

OPC Position: Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

XXII. Clean Charge Network

A. Is the Clean Charge Network a regulated public utility service?

OPC Position: No. For electric vehicle charging stations, government intervention is not warranted and if pursued will inhibit EV promotion.

B. Should capital and O&M expenses associated with the Clean Charge Network be recovered from ratepayers?

OPC Position: No.

C. Should KCPL develop a PEV-TOU rate to be considered in its next general rate case?

OPC Position: If KCPL wishes to encourage EV adoption it should do so primarily through offering time-of-use ("TOU") rates on an "opt-in" basis that encourages charging during low-cost, off-peak hours.

D. Should the session charge be removed from the tariff?

OPC Position: Yes.

XXIII. Economic Relief Pilot Program ("ERRP") - Should the program annual funding be decreased to $589,984 for both ratepayers and shareholders? Should enrollment for the program be extended to include other community action agencies?

OPC Position: No, the program funding should remain at its current level. The ERPP is a financial assistance program funded equally between ratepayers and shareholders. In the last rate case, the Commission commended the company for expanding its program. Unfortunately, the program expansion may not be reaching eligible customers as evidenced by the growing unspent reserve funds despite customer need. OPC recommends the program continue to be funded at the same level approved in the last case and asks the Commission to encourage KCPL to extend invitations to additional assistance agencies to help coordinate distributing the allocated funds to customers in need.

XXIV. Cost Allocation Manual ("CAM")- Should the Commission approve a CAM for KCPL in this case?

OPC Position: Yes. 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. KCPL does not have a Commission-approved CAM.

The Commission should approve the KCPL CAM attached to the rebuttal testimony of KCPL witness Ron Klote in this rate case. There is no reason to further delay the implementation 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. (Hyneman Surrebuttal p. 4).

XXV. Management Expense

A. Is KCPL incurring and charging imprudent and excessive management expenses to ratepayers?

OPC Position: Yes. As described in detail in the testimony of OPC witness Hyneman KCPL has a history of incurring imprudent, excessive and unreasonable management expenses since at least 2006. OPC witness Conner offers specific examples showing that KCPL management's imprudent behavior has continued through the test year in this 2016 rate case.

B. Should the Commission adjust KCPL's management expense amount as proposed by OPC witnesses?

OPC Position: Yes. 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. OPC's conclusion, based on audit sampling, is that there is a significant level of excessive and inappropriate management expenses charged to KCPL's expense books and records. Based on these facts and circumstances, OPC's adjustment is reasonable and necessary and should be adopted by the Commission to protect ratepayers. (Conner Surrebuttal p. 5).

C. Should the Commission direct or encourage KCPL to adopt the expense report policy changes as listed at page 9 of OPC witness Mr. Hyneman's Direct testimony?

OPC Position: Yes. Commissioner Rupp has described corporate culture as "the behavior the leadership is willing to tolerate." (Hyneman Surrebuttal p. 49). 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. (Hyneman Surrbuttal p. 50).

To address this issue Public Counsel recommends that the Commission direct or encourage the Company 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.

(Hyneman Surrebuttal p. 51).

XXVI. **Customer disclaimer –** Should the Commission order KCPL to adopt a customer declaimer as proposed by OPC witness Marke?

OPC Position: Yes. The disclaimer would inform customers who are considering rooftop solar that the systems are subject to possible future rules and/or rate changes which could have an impact on the economic assumptions behind their purchase. (Marke Direct p. 6).

XXVII. **Customer Experience-** Is KCPL's strategy with respect to customer service, customer experience and community involvement in the interest of its customers?

OPC Position: No. KCPL management may have a focus on meeting some customer needs such as reliability of electric service but the company ignores other significant customer needs such as affordability. KCPL management ignores this need when it fails to act reasonably and prudently when incurring management expense costs without cost control measures. In addition to the company's inability to control management expense costs, it has had recent issues with improperly disclosing customer information to a marketing firm without customer consent. Public Counsel also believes the company has not prioritized managing its Economic Relief Pilot Program Funds. Customers need to be able to afford the utility service; this is the ultimate customer service a company can provide.

WHEREFORE Public Counsel submits its *Statement of Positions*.

Respectfully,
OFFICE OF THE PUBLIC COUNSEL

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 2nd day of February 2017:

/s/ Tim Opitz