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**AUDITING DEPARTMENT**

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**SURREBUTTAL TESTIMONY**

**OF**

**MARK L. OLIGSCHLAEGER**

**KANSAS CITY POWER & LIGHT COMPANY**

**CASE NO. ER-2018-0145**

**AND**

**KCP&L GREATER MISSOURI OPERATIONS COMPANY**

**CASE NO. ER-2018-0146**

Jefferson City, Missouri  
September, 2018

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CASE NO. ER-2018-0146**

Q. Please state your name and business address.

A. Mark L. Oligschlaeger, P.O. Box 360, Suite 440, Jefferson City, MO 65102.

Q. Please describe your educational background and work experience.

A. I attended Rockhurst College in Kansas City, Missouri, and received a Bachelor of Science degree in Business Administration, with a major in Accounting, in 1981. I have been employed by the Missouri Public Service Commission ("Commission") since September 1981, within the Auditing Department.

Q. What is your current position with the Commission?

A. In April 2011, I assumed the position of Manager of the Auditing Department within the Commission Staff Division.

Q. Are you a Certified Public Accountant (CPA)?

A. Yes, I am. In November 1981, I passed the Uniform Certified Public Accountant examination and, since February 1989, have been licensed in the state of Missouri as a CPA.

Q. Have you previously filed testimony before this Commission?

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1           A.     Yes, numerous times. A listing of the cases in which I have previously filed  
2 testimony before this Commission, and the issues I have addressed in testimony in cases from  
3 1990 to current, is attached as Schedule MLO-s1 to this surrebuttal testimony.

4           Q.     What knowledge, skills, experience, training, and education do you have in the  
5 areas of which you are testifying as an expert witness?

6           A.     I have been employed by this Commission as a Regulatory Auditor for  
7 approximately 36 years and have submitted testimony on ratemaking matters numerous times  
8 before the Commission. I have also been responsible for the supervision of other Commission  
9 employees in rate cases and other regulatory proceedings many times. I have received  
10 continuous training at in-house and outside seminars on technical ratemaking matters since  
11 I began my employment at the Commission.

12          Q.     Have you participated in the Commission Staff's ("Staff") review  
13 of the applications filed by Kansas City Power & Light Company ("KCPL") in  
14 Case No. ER-2018-0145 and KCP&L Greater Missouri Operations ("GMO") in  
15 Case No. ER-2018-0146 to increase customer rates?

16          A.     Yes, I have, with the assistance of other members of Staff.

17 **EXECUTIVE SUMMARY**

18  
19          Q.     Please summarize your surrebuttal testimony in this proceeding.

20          A.     In this testimony, I will address the position taken by KCPL and GMO  
21 witnesses Darrin R. Ives and Ronald A. Klote that the financial impact of the Tax Cuts and  
22 Jobs Act ("TCJA") on KCPL and GMO should not be considered as an "extraordinary event"

1 for ratemaking purposes. For the reasons set forth in this testimony, Staff disagrees with  
2 KCPL and GMO on this point.

3 Q. Are other Staff witnesses addressing the impact of the TCJA on KCPL's and  
4 GMO's revenue requirements in surrebuttal testimony?

5 A. Yes, Staff witness Karen Lyons is also addressing the TCJA in her  
6 surrebuttal testimony.

7 **TCJA**

8  
9 Q. What is the Tax Cuts and Jobs Act ("TCJA")?

10 A. The TCJA is a federal law enacted in December 2017 that significantly  
11 changed tax policy for individuals and corporations. For corporations (including  
12 investor-owned utilities such as KCPL and GMO), among other provisions, the TCJA lowers  
13 the federal corporate income tax rate from 35% to 21%.

14 Q. What impact on the state's major utilities does Staff expect the TCJA to have?

15 A. Staff expects the TCJA will result in a lowering of cost of service for large  
16 Missouri utilities in a material amount, all other things being equal.

17 Q. Are TCJA impacts known and measurable in the context of KCPL's and  
18 GMO's current rate case?

19 A. Yes. The TCJA was effective January 1, 2018. The true-up period in these  
20 rate cases goes through June 30, 2018.

21 Q. How do KCPL and GMO recommend that TCJA impacts be reflected in  
22 customer rates resulting from these cases?

1           A.    KCPL and GMO have calculated their revenue requirements using  
2 the 21% federal corporate income tax rate now in effect due to the TCJA. In addition,  
3 KCPL and GMO have included amounts related to a flow-back of excess accumulated  
4 deferred income taxes to customers as part of their cases. Finally, KCPL and GMO have  
5 proposed to defer the financial impact of the income tax savings realized as a result of the  
6 TCJA from January 1, 2018, to the effective date of rates. (KCPL and GMO refer to this  
7 proposal as the “stub period deferral.”) However, KCPL and GMO contend that the stub  
8 period deferral calculation should be offset by an amount equivalent to its alleged  
9 under-earnings for the twelve months ending December 31, 2018.

10           Q.    At this time, have KCPL and GMO quantified the amount of the offset they  
11 recommend be applied to income tax savings component of the stub period deferral?

12           A.    No.   Staff understands that KCPL and GMO plan to present this  
13 recommendation at the time of the surrebuttal/true-up direct filing set for these proceedings.

14           Q.    What is Staff’s positions regarding KCPL’s and GMO’s treatment of TCJA  
15 tax savings in this case?

16           A.    Staff supports reflection of the new 21% federal corporate income tax rate in  
17 KCPL’s and GMO’s revenue requirements. However, Staff disagrees with some aspects of  
18 KCPL’s and GMO’s proposals for flow-back of excess ADIT. Staff witness Lyons will  
19 address these issues in her surrebuttal testimony. Staff also opposes use of any offset to apply  
20 against the stub period deferral, if the deferral is authorized. Both Staff witness Lyons  
21 and I will discuss this issue in surrebuttal testimony.

1 Q. Before going into detail concerning the reasons for Staff's opposition to  
2 KCPL's and GMO's proposal for quantification of the stub period deferral, please  
3 define "deferral."

4 A. The accounting term "deferral" refers to treating certain financial impacts as a  
5 "deferred asset/liability" or "regulatory asset/liability" on the utility's balance sheet instead of  
6 charging the cost as a period revenue or expense item on the utility's income statement as  
7 would be normally required under the USOA adopted by the Commission for  
8 accounting purposes.

9 Q. How do utilities typically make deferral requests?

10 A. Utilities often request authority from the Commission to defer certain costs  
11 through filing of "accounting authority orders" (AAOs), though such requests can also be  
12 made in general rate proceedings as KCPL and GMO have done here.

13 Q. What are AAOs?

14 A. An AAO is an order from the Commission allowing a jurisdictional utility to  
15 account for a reporting item in a different manner than normally prescribed in the utility's  
16 uniform system of accounts, adopted by the Commission for accounting purposes.

17 Q. What is the Commission's expressed criteria for granting utility  
18 deferral requests?

19 A. In prior cases, the Commission has held that a cost can be deferred by a utility  
20 only if it is associated with an extraordinary event. As a secondary consideration, the  
21 Commission will also consider whether the cost is material in amount.

22 Q. What are "extraordinary events?"

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1           A.     Extraordinary events are events that are unusual, unique, and not-recurring.  
2     The classic example of an extraordinary event impacting utility operations and costs are the  
3     occurrence of natural disasters, or so-called “acts of God,” such as severe wind and ice  
4     storms, and major flooding.

5           Q.     What is the advantage to a utility of deferring costs?

6           A.     By deferring a cost that would otherwise be charged against net income  
7     immediately, the costs are preserved on the utility’s balance sheet and the full amount likely  
8     can be sought for rate recovery in future rate cases. In other words, deferral of a cost allows  
9     the utility to avoid immediate charging of a cost against its income, and also increases the  
10    probability that the company can ultimately receive rate recovery of the cost in question even  
11    if the cost was incurred outside the ordered test year, update period or true-up period ordered  
12    in a general rate proceeding.

13          Q.     Is there a similar advantage to utility customers from cost savings deferrals?

14          A.     Yes. In this instance, the utility experiencing the lower cost would reflect the  
15    financial benefit of the cost reduction on its balance sheet, instead of reflecting the change  
16    immediately in the income statement. This would increase the likelihood that utility  
17    customers can receive the full benefit of the cost reduction in rates in the next general  
18    rate proceeding.

19          Q.     Does Staff view the financial impact of the TCJA on major utilities under  
20    Commission jurisdiction as being extraordinary?



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1           A.     Yes. The Commission has included language in at least one recent order  
2 indicating its agreement that the TCJA represents an extraordinary change to Missouri utility  
3 ratemaking assumptions.<sup>1</sup>

4           Q.     Why does Staff contend that enactment of the TCJA was an  
5 extraordinary event?

6           A.     Staff holds this view because the passage of the TCJA fits all of the criteria the  
7 Commission has used in the past to determine whether an event was extraordinary or not.  
8 Simply put, the event was unusual, unique and non-recurring.

9           Q.     What makes the TCJA unusual, unique and non-recurring?

10          A.     From enactment of the Tax Reform Act effective January 1, 1987, it took a full  
11 31 years for another material reduction in federal corporate income tax rates to take effect.<sup>2</sup>  
12 Major changes to the federal tax code on the scale of the TCJA have occurred very rarely, and  
13 not every year or every few years or even every decade. The TCJA was certainly not a  
14 “business as usual” type of event.

15          Q.     Is the financial impact of the TCJA on major Missouri utilities material  
16 in nature?

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<sup>1</sup> Refer to the *Amended Report and Order* for Case Nos. GR-2017-215 and GR-2017-216, Spire Missouri, at pages 115-116: “Therefore, the Commission finds that based on the extraordinary event of the passage of the TCJA happening at the later stages of this rate case, it is just and reasonable to reduce income tax expense in this case using the TCJA effective composite income tax rate of 25.4483 percent.” (Emphasis added.)

<sup>2</sup> The Tax Reform Act of 1986 lowered the federal corporate tax rate from 46% to 34%. In 1993, a new tax law increased the federal corporate income tax rate from 34% to 35%.

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1           A.     Yes. Staff has previously presented estimates from the major Missouri utilities  
2 that the TCJA should lead to reductions in cost of service up to approximately 7.0% of  
3 pre-TCJA annual revenues.<sup>3</sup>

4           KCPL's recommended cost of service in this case reflects a \$38.4 million reduction in  
5 cost of service from the TCJA, all other things being equal. This amount results  
6 in a 4.0% reduction compared to current operating revenues. For GMO, the comparable  
7 numbers are \$29.1 million and 3.8%, respectively.<sup>4</sup> These quantifications are clearly material  
8 to both KCPL and GMO.

9           Q.     Why do KCPL and GMO contend that the TCJA is not an extraordinary event?

10          A.     KCPL and GMO assert that payment of income taxes is an ordinary operation  
11 for business entities, and for that reason changes in annual income tax payments should not be  
12 considered to be extraordinary. At page 14, lines 10 – 15 of this rebuttal testimony,  
13 KCPL/GMO witness Ives states the following:

14                                 Like other annual payments for transmission fees and property taxes  
15 that can vary from year to year, the payment of income taxes is a  
16 normal business expense incurred by the Company. As discussed  
17 above in my testimony, the Commission has found that KCPL's  
18 transmission and property taxes are normal, ordinary and recurring  
19 operating costs and not extraordinary. [Footnote omitted.] Similarly,  
20 the Commission should find that the income taxes paid by the  
21 Company are also not extraordinary.

22           Q.     To what is Mr. Ives referring to in regard to prior Commission determinations  
23 concerning transmission expenses and property taxes?  
24

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<sup>3</sup> Refer to the *Staff Report Regarding the Effects Upon Missouri Utilities of the Tax Cuts and Jobs Act*, p. 2, File No. AW-2018-0174.

<sup>4</sup> The cost of service reduction percentages due to the TCJA for both KCPL and GMO were calculated using Staff's adjusted Missouri operating revenues amounts found in the direct filing accounting schedules.

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1           A.     In several recent general rate cases and AAO requests, KCPL and GMO sought  
2 authority from the Commission to defer the year-to-year changes for property taxes in general  
3 and for certain incurred transmission expenses. In all of those instances, the Commission  
4 rejected the requests on the grounds that the underlying expenses were not extraordinary  
5 in nature.

6           Q.     Does Staff agree that income taxes are a normal expense for utilities?

7           A.     Yes. State and federal income tax return filings are an annual event for  
8 Missouri utilities (and, in fact, all taxpayers). However, what KCPL's and GMO's testimony  
9 ignores is that there are circumstances under which income taxes, as well as all other  
10 categories of costs, can be considered extraordinary even if that type of cost is usually  
11 incurred on a frequent and recurring basis. There is no category of cost that is inherently  
12 extraordinary, and it is possible that utilities may experience extraordinary expenses in many  
13 different cost categories.

14          Q.     Please provide an example of the relationship between ordinary and  
15 extraordinary costs within the same cost category.

16          A.     The costs to repair utility infrastructure and restore service to customers after  
17 major storm events occur in electric utility service territories has been a fairly common  
18 deferral event in Missouri. The Commission has rightly considered this type of cost to be  
19 extraordinary in nature, and thus deserving of special regulatory treatment. However, storm  
20 repair and restoration costs should not be considered to be inherently extraordinary in nature  
21 as, in any given year, an electric utility can be expected to incur expenses in response to  
22 multiple storms causing minor amounts of infrastructure damage and customer outages.  
23 These costs are not and should not be subject to deferral, and are charged to current expense

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1 as incurred along with all other ordinary and recurring costs. It is only in the rare event that a  
2 storm event causes a massive amount of damage threatening the provision of safe and  
3 adequate service to customers that the Commission has deemed such events to be  
4 extraordinary, and the associated costs subject to deferral.

5 Q. Should income tax expense be viewed as an ordinary expense occasionally  
6 subject to extraordinary impacts?

7 A. Yes. Since utilities are liable to pay income taxes to the federal government  
8 every year, this is indeed an ordinary and ongoing expense item. However, very rarely,  
9 events may occur that have an extraordinary impact on utility payment of federal income  
10 taxes. Staff's position is that the TCJA is one such event.

11 Q. Does Staff agree with Mr. Ives' comparison of the impact of the TCJA to prior  
12 denials of requests to defer transmission and property tax expenses?

13 A. No. As previously discussed, KCPL and GMO were seeking in those  
14 proceedings to defer ongoing annual changes to transmission expenses and property taxes. In  
15 contrast, enactment of the TCJA is a "one-time" event. A more accurate comparison to  
16 KCPL's and GMO's earlier applications in the present context would be if a party had  
17 proposed deferral of the ongoing amount of changes to KCPL's and GMO's income tax  
18 payments year after year.

19 Q. Does Staff agree with KCPL and GMO that any TCJA deferral must be offset  
20 with a measurement of revenue requirement increases?

21 A. No, as the TCJA should be considered to be extraordinary. In the past, the  
22 financial impact of the extraordinary costs has been deferred without any offsets for other  
23 unrelated cost of service changes.

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1           Accordingly, Staff is opposed in these cases to the use of any non-extraordinary  
2 revenue requirement impacts to offset against TCJA financial impacts. Please refer to the  
3 surrebuttal testimony of Staff witness Lyons for a more detailed discussion of KCPL's and  
4 GMO's offset proposals for the stub period deferral.

5           Q.     Has the Commission considered other requests in the past to offset recovery of  
6 booked deferrals with non-related changes to revenue requirement?

7           A.     Yes. In the past, such requests pertained to non-utility parties seeking to offset  
8 rate recovery of deferral regulatory assets with an asserted amount of prior utility excess  
9 earnings. To my knowledge, the Commission has not authorized use of deferral offsets in this  
10 context, primarily because of the difficulty in quantifying past earnings results in a manner  
11 consistent with normal ratemaking treatments. While KCPL and GMO are seeking in this  
12 case to offset a deferral of potential savings to customers from the TCJA with asserted  
13 under-earnings, the underlying principle is the same.

14          Q.     Are other public utility commissions ordering deferrals of TCJA impacts on  
15 utilities operating in their jurisdictions?

16          A.     Yes. KCPL and GMO witness Klote specifically mentions at page 17,  
17 lines 11 – 17 of his rebuttal testimony that the Kansas Corporation Commission has required  
18 KCPL to book a TCJA deferral in that jurisdiction. Staff is aware that KCPL has entered into  
19 a stipulation in Kansas that contains a provision that KCPL will not seek to adjust its TCJA  
20 deferral in that jurisdiction with any offsets for other cost of service changes..

21          Q.     Does this conclude your surrebuttal testimony?

22          A.     Yes, it does.

23

