

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

**In the Matter of a Proposed Experimental Regulatory    )       Case No. EO-2005-0329**  
**Plan of Kansas City Power & Light Company            )**

**LIST OF ISSUES, ORDER OF WITNESSES TO BE HEARD EACH DAY, ORDER OF  
CROSS-EXAMINATION AND REQUEST FOR WAIVER OF RULE**

Comes now Staff of the Missouri Public Service Commission (Staff) in response to the Commission's May 6, 2005 Order Establishing Procedural Schedule directing that no later than May 31 the parties shall agree upon, and the Staff shall file, a list of issues to be heard, the witnesses to appear on each day of the hearing, the order in which the witnesses shall be called, and the order of cross-examination for each witness. The Order also states that any issues not contained in the list of issues will be viewed as uncontested and not requiring resolution. Pursuant to the Commission's May 6, 2005 Order, the parties have assembled the following list of issues, order of witnesses to be heard each day and order of cross-examination. The Staff, on behalf of all of the parties including itself, requests, pursuant to 4 CSR 240-2.015, that for good cause, the Commission waive the requirements of 4 CSR 240-2.080(21). The parties believe that the issues set out below generally frame the questions presented by this case, with the limitation noted below, and that each party will have the opportunity in its statement of position to briefly state its position and, very briefly, anything else it believes appropriate. (Nonetheless, the parties would note that the statements of positions are not intended to serve as pretrial briefs.)

The listing of issues below is not to be considered as an agreement by any party that any particular listed issue is, in fact, a valid or relevant issue. Indeed, in their subsequent filing of position statements, some parties may state that they consider a particular listed issue to not be a

valid issue. This “non-binding” listing of issues is not to be construed as (a) impairing any party’s ability to argue about any of these issues or related matters, (b) restricting the scope of any party’s response to arguments made by other parties, or (c) impairing any party’s ability to argue that any of the issues listed herein are beyond the proper scope of this case.

All parties reserve the right to inquire into and establish a position, regarding any issue that is relevant to these proceedings that arises during the course of the proceedings as a new issue based on matters which could not reasonably have been contemplated based on the filings and pleadings herein as of the date hereof.

Counsel for the Missouri Joint Municipal Electric Utility Commission (MJMEUC), a Signatory Party to the Stipulation and Agreement, will only be able to attend the hearing on June 6 and 7. Thus, if the Commissioners or the Regulatory Law Judge have any questions for counsel for MJMEUC, he will not be in attendance at the hearing on June 8.

Counsel for AmerenUE, a non-signatory to the Stipulation and Agreement, will not be available during the afternoon of June 7. Thus, if the Commissioners or the Regulatory Law Judge have any questions for counsel for AmerenUE, he will not be in attendance at the hearing during the afternoon of June 7.

**Order of Opening Statements**

KCPL  
Staff  
Public Counsel  
MDNR  
Ford  
MIEC  
City of Kansas City  
Praxair  
Aquila  
Empire  
MJMEUC  
Jackson County  
USDOE

Concerned Citizens of Platte County/Sierra Club  
AmerenUE  
Trigen  
MGE

**Order Of Witnesses:**

**KCPL**

Giles  
Cline  
Grimwade  
Phillips (adopting Nathan's testimony)  
Wright  
Blunk  
Herdegan

**Public Counsel may file the prepared testimony of Chief Accountant Russell Trippensee, or if Public Counsel does not file prepared testimony, but the Commissioners/RLJ have questions for Public Counsel, Public Counsel technical staff will be available, and parties may want to cross-examine on the basis of the questions from the bench.**

**Staff will not file testimony, but if Commissioners/RLJ have questions for Staff, Staff technical staff will be available, and parties may want to cross-examine on the basis of the questions from the bench.**

**Concerned Citizens of Platte County and Sierra Club**  
Ned Ford  
Troy Helming

**Order Of Cross-Examination:**

**KCPL witness**

AmerenUE  
Trigen  
MGE  
City of Kansas City  
Aquila  
Empire  
MJMEUC  
Ford  
MIEC  
Praxair  
MDNR  
Public Counsel  
Staff

Jackson County  
USDOE  
Concerned Citizens of Platte County/Sierra Club

**Public Counsel witness(es) -- Public Counsel may file prepared testimony of Chief Accountant Russell Trippensee, or if Public Counsel does not file prepared testimony, but the Commissioners/RLJ have questions for Public Counsel technical staff, and parties want to cross-examine on the basis of the questions from the bench.**

AmerenUE  
Trigen  
MGE  
City of Kansas City  
Aquila  
Empire  
MJMEUC  
Ford  
MIEC  
Praxair  
MDNR  
Staff  
KCPL  
Jackson County  
USDOE  
Concerned Citizens of Platte County/Sierra Club

**Staff witness(es) -- if Commissioners/RLJ have questions for Staff technical staff, and parties want to cross-examine on the basis of the questions from the bench.**

AmerenUE  
Trigen  
MGE  
City of Kansas City  
Aquila  
Empire  
MJMEUC  
Ford  
MIEC  
Praxair  
MDNR  
Public Counsel  
KCPL  
Jackson County  
USDOE  
Concerned Citizens of Platte County/Sierra Club

**Concerned Citizens of Platte County/Sierra Club witnesses**

AmerenUE  
Trigen  
MGE  
Jackson County  
USDOE  
City of Kansas City  
Aquila  
Empire  
MJMEUC  
Ford  
MIEC  
Praxair  
MDNR  
Public Counsel  
Staff  
KCPL

**Issues** (the listing of statutes, rules and case law respecting some of the issues below is not intended to be exhaustive – parties may provide additional citations in their Statements Of Positions and/or post-hearing briefs):

Issue No. 1

What relief is KCPL and/or the other Signatory Parties to the Stipulation and Agreement in Case No. EO-2005-0329, filed on March 28, 2005, seeking by the filing of the Stipulation and Agreement?

Issue No. 2

1. Has the jurisdiction of the Commission been invoked by KCPL and/or the other Signatory Parties, when no application has been filed by any of the Signatory Parties, no authority, statutory or other, has been cited in the Stipulation And Agreement seeking to invoke the Commission's jurisdiction, and no statement has been made of the legal significance of an approval of the Stipulation and Agreement by the Commission? *See* 4 CSR 240-2.060 and 4 CSR 240-2.80(3).
2. Could KCPL, or any of the other Signatory Parties, cure any flaw in the filing of the Stipulation and Agreement by now filing an application which meets the requirements of Commission rules?
3. Should the Commission approve the Stipulation and Agreement without KCPL and/or the other Signatory Parties curing any flaw in the filing of the Stipulation and Agreement?

Issue No. 3

Is Case No. EO-2005-0329 a “contested case,” and if it is not, has KCPL or any of the other the Signatory Parties to the Stipulation And Agreement invoked the jurisdiction of the Commission by not proceeding in a contested case proceeding?

Issue No. 4

What would be the legal and precedential effect on the Commission of the Commission approving the Stipulation and Agreement in this case? Would the Commission's approval constitute a determination by the Commission that:

- (i) the Stipulation and Agreement is just and reasonable;
- (ii) the Stipulation and Agreement is among the Signatory Parties and the Commission does not approve any of the contents of the Stipulation and Agreement;
- (iii) the Commission acknowledges the Agreement is among Signatory Parties and the Commission does not approve any of the contents of the Stipulation and Agreement; or
- (iv) the Stipulation and Agreement is in the public interest?

Issue No. 5

1. Is the Stipulation and Agreement a contract among the Signatory Parties and what is its legal effect before and on the Commission; e.g., does the Commission have the authority to approve a contract among the Signatory Parties which binds the parties to specific regulatory action to which the Commission cannot be bound? *See State ex rel. Capital City Water Company v. Public Serv. Comm'n*, 850 S.W.2d 903, 911 (Mo.App. 1993); *Union Electric Company v. Public Serv. Comm'n*, 136 S.W.3d 146 (Mo.App. 2004); Paragraph III.B.10.g. at pages 53-54 of the Stipulation and Agreement.
2. Is it within the Commission's statutory authority to approve this Stipulation and Agreement for an "Experimental Regulatory Plan" for the construction of electric plant, such as Iatan 2?

Issue No. 6

1. Can facts and information that the Signatory Parties have agreed were presented to them in Case No. EW-2004-0596, a non-contested case outside of the record in this case, and not presented to the Commission, be considered by the Commission in Case No. EO-2005-0329 as competent and substantial evidence as to whether the Commission should approve the Stipulation and Agreement?
2. Are conclusions of the Signatory Parties in the Stipulation and Agreement regarding matters these parties considered in Case No. EW-2004-0596, a non-contested case outside of the record in the present case, competent and substantial evidence which the Commission may consider in support of the Stipulation and Agreement filed in this case?
3. Must the evidence that the Commission consider in support of the Stipulation and Agreement be limited to competent and substantial evidence presented at the hearing, or otherwise, in the record in this case, Case No. EO-2005-0329?
4. Are the various components of the Stipulation And Agreement, such as the provision for additional amortizations, supported by competent and substantial evidence in Case No. EO-2005-0329?
5. KCPL has filed direct testimony and schedules in Case No. EO-2005-0329 and an evidentiary hearing has been scheduled for June 6-8, 2005. May this testimony and the evidentiary hearing scheduled for June 6-8, 2005 provide competent and substantial evidence for the Commission to approve the Stipulation and Agreement filed on March 28, 2005?

*See* Section 536.070 RSMo and 4 CSR 240-2.130; *State ex rel. Fischer v. Missouri Public Service Commission*, 645 S.W.2d 39 (Mo. App. 1982).

Issue No. 7

1. Do the various provisions of the Stipulation and Agreement, such as those relating to the prudence of various KCPL decisions concerning the construction of Iatan 2, place on ratepayers some of the risk that KCPL has the obligation to assume due to its assumption of the obligation to provide electric service as a public utility; if the Stipulation and Agreement does shift such risk, what would be the effect of the Commission approving such Stipulation And Agreement; and does the Commission have the authority to approve such a Stipulation and Agreement? *See Capital City Water Company v. Public Serv. Comm'n*, 850 S.W.2d 903, 911 (Mo.App. 1993); Sections 393.130 and 393.170 and *State ex rel. Missouri Power & Light Co. v. Public Serv. Comm'n*, 669 S.W.2d 941, 947 (Mo.App. 1984).

Issue No. 8

1. Are additional amortizations to maintain financial ratios provided for in Section III B.1. I, page 18 of the Stipulation and Agreement, supported in the record before the Commission and whether it is lawful for the Commission to allow an amortization expense that is unsupported by any cost to be amortized in the case?
2. Does Section 393.135 RSMo prohibit the additional amortizations to maintain financial ratios provided for in Section III B.1. I, page 18 of the Stipulation and Agreement, which permits additional amortizations in the event of revenue short falls that would cause KCPL's bond rating to fall below investment grade?
3. Do the additional amortizations provided for in the Stipulation and Agreement cause present ratepayers to pay higher rates and future ratepayers to pay lower rates, causing an intergenerational subsidy which may result in undue discrimination?
4. Is it proper or sound regulatory policy for the Commission to approve such additional amortizations, and on what basis?

Issue No. 9

Does Section IIIB.1.o of the Stipulation and Agreement, respecting the Resource Plan modification process, place the Commission, the Commission Staff or the other KCPL non-signatory parties in the position of managing or being requested to manage KCPL; and if it does so, does it do so contrary to statute or case law? *See State ex rel. Kansas City Transit, Inc. v. Public Serv. Comm'n*, 406 S.W.2d 5, 11 (Mo. banc 1966); *Re Union Electric Co.*, Case No. EA-79-119, 24 Mo.P.S.C.(N.S.) 72 (1980).

Issue No. 10

Is it proper and lawful for the Commission to approve the Stipulation and Agreement which itself involves terms and conditions regarding the construction of utility generation and environmental enhancements in the future? *State ex rel. Harline v. Public Serv. Comm'n*, 343 S.W.2d 177 (Mo.App. 1960); *Re Union Electric Co.*, Case No. EA-79-119, 24 Mo.P.S.C.(N.S.) 72 (1980).

Issue No. 11

1. What effect would Commission approval of the Stipulation and Agreement have on any of the future rate cases scheduled to be filed by KCPL beginning in 2006 as contained in the Stipulation and Agreement?

2. Can the Commission in this case make any findings which would bind it, customers of KCPL, the Staff, the Public Counsel or any other affected entity in ratemaking treatment of any issues necessary to arrive at the determination of just and reasonable rates in future rate cases?

See *State ex rel. AG Processing, Inc. v. Public Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003).

#### Issue No.12

In asking the Commission to approve the Stipulation and Agreement, are the Signatory Parties asking that:

- (i) the Commission agree that the construction of Iatan 2 and the environmental enhancements, i.e., these proposed additions to infrastructure, are prudent and in the public interest?
- (ii) the Commission find that the entire Stipulation and Agreement is just and reasonable?
- (iii) the Commission approve the Stipulation and Agreement among the Signatory Parties without approving any of the specific contents of the Stipulation and Agreement?

#### Issue No. 13

The suspension period agreed to in Case No. EO-99-365 for the Commission's Chapter 22 resource planning rules (4 CSR 240-22.010 to 4 CSR 240.080) for each electrical corporation is scheduled to end. As a result, each electrical corporation will again be required by Chapter 22 to file consistent with the requirements of Chapter 22. KCPL is scheduled to file by July 5, 2006. KCPL may request that the Commission again suspend Chapter 22 as it applies to it or may request variances from specific provisions of Chapter 22. Should the Commission suspend hearings in this case and its consideration of the Stipulation and Agreement until after KCPL has complied with the required Commission Rule Chapter 22 filing to be made by KCPL on July 5, 2006?

#### Issue No. 14

If Senate Bill 179 (S.B. 179) becomes law, what is the effect, if any, of S.B. 179 on Case No. EO-2005-0329?

#### Issue No. 15

Does KCPL need additional generation capacity by 2010 to serve native system load or is KCPL seeking to build Iatan 2 in order to make off system sales?

#### Issue No. 16

What is the applicable definition of the standard "in the public interest" respecting Commission consideration of whether to grant approval of the Stipulation and Agreement; e.g., who is the "public" that is to be considered and what is the scope of the "public interest" to be considered by the Commission?

#### Issue No. 17

If KCPL needs additional generation capacity by 2010, does KCPL have an appropriate alternative to its generation needs for 2010, and a reasonable period of time thereafter, which does not require the construction of additional generation capacity? If KCPL needs additional



generation capacity by 2010, and a reasonable period of time thereafter, is there an alternative to the technology that will be used for Iatan 2, such as integrated gasification combined cycle (IGCC), that would be prudent and in the public interest for KCPL to use?

Issue No. 18

If KCPL needs additional generation capacity by 2010, does KCPL have an appropriate alternative to its generation needs for 2010, and a reasonable period of time thereafter, that is less costly in direct costs than Iatan 2, and is KCPL required by statute or case law to choose the alternative that is the least costly in direct costs, e.g., is any alternative chosen by KCPL, other than the alternative that has the least cost in direct costs, imprudent and/or not in the public interest? Should KCPL's analysis consider potential new environmental regulations, such as a CO<sub>2</sub> tax, and has KCPL appropriately considered in its analysis potential new environmental regulations?

Issue No. 19

If KCPL needs additional generation capacity by 2010, does KCPL have an appropriate alternative to its generation needs for 2010, and a reasonable period of time thereafter, that has less of an environmental effect than Iatan 2, and is KCPL required by statute or case law to choose the alternative that has the least environmental effect, e.g., is any alternative chosen by KCPL, other than the alternative that has the least environmental effect, imprudent and/or not in the public interest?

Issue No. 20

If KCPL needs additional generation capacity by 2010, does KCPL have an appropriate alternative to its generation needs for 2010, and a reasonable period of time thereafter, that has less of a human health effect than Iatan 2, and is KCPL required by statute or case law to choose the alternative that has the least human health effect, e.g., is any alternative chosen by KCPL, other than the alternative that has the least human health effect, imprudent and/or not in the public interest?

Issue No. 21

If an electrical corporation has a certificate of convenience and necessity to construct electric plant or the electric plant is to be constructed in the certificated service area of the electric utility and the electrical corporation has received all necessary environmental and health related permits to construct and operate the electric plant, does the Commission have jurisdiction to consider the environmental and health related issues raised by any party opposed to the construction of the electric plant?

Issue No. 22

Is KCPL's proposed experimental regulatory plan reasonable and consistent with KCPL's current marketing practices?

**WHEREFORE**, the Staff, in compliance with the Commission's May 6, 2005 Order Establishing Procedural Schedule, submits the list of issues to be determined by the Commission, the order of witnesses to be heard each day and the order of cross-examination the parties have agreed to set forth above; and the Staff, on behalf of all the parties including itself, requests the Commission, for good cause shown, to waive the requirements of Commission 4 CSR 240-2.080(21) regarding lists of issues.

Respectfully submitted,  
DANA K. JOYCE  
General Counsel

/s/ Steven Dottheim  
Steven Dottheim  
Chief Deputy General Counsel  
Missouri Bar No. 29149

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102-0360  
(573) 751-7489 (Telephone)  
(573) 751-9285 (Fax)  
e-mail: stevedottheim@psc.state.mo.us

#### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record 31st day of May 31 2005.

/s/ Steven Dottheim