BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

STAFF'S POST-HEARING BRIEF

Introduction

In asking the Commission to approve the Stipulation And Agreement, the Signatory Parties are asking that the Commission approve the Stipulation And Agreement as just and reasonable and the construction of Iatan 2 and the environmental enhancements as prudent and in the public interest at this time. The Signatory Parties have agreed that such a determination by the Commission does not relieve Kansas City Power & Light Company (KCPL) of the requirement that KCPL on a going forward basis continue to assess the need for (1) the capacity represented by Iatan 2 and (2) Iatan 2 as the appropriate resource to meet that need for capacity. The Signatory Parties also have agreed that KCPL has an obligation to prudently manage the design, engineering and construction of Iatan 2 and the environmental enhancements.

Proposed Report And Order/Findings Of Fact And Conclusions Of Law

The Commission's May 6, 2005 Order Establishing Procedural Schedule states at page 2 that "[a]ny issue not contained in this list of issues will be viewed as uncontested and not requiring resolution by the Commission." In contravention of the Commission's May 6, 2005 Order Establishing Procedural Schedule, Concerned Citizens of Platte County and Sierra Club (Concerned Citizens/Sierra Club) have raised in their Proposed Findings Of Fact And Conclusions Of Law filed on July 19, 2005 several "issues" for the first time. The Staff anticipates that Concerned Citizens/Sierra Club will argue these items in the Post-Hearing Brief they will file this date, July 21, 2005. Although it would have been in contravention of the

Commission's May 6, 2005 Order Establishing Procedural Schedule to do so, Concerned Citizens/Sierra Club did not raise these "issues" in their Statement Of Positions, Prehearing Brief or Opening Statement. In one instance in particular Concerned Citizens/Sierra Club conducted cross-examination of a witness on one of these items, but this occurred at a date still well beyond the May 31, 2005 date by which issues were to be raised in the List Of Issues to be submitted to the Commission.

These items raised by Concerned Citizens/Sierra Club are not new matters that they have been unable to discern until recently. While the Staff does not waive any right to object to Concerned Citizens/Sierra Club's new "issues," the Staff will offer a response to each of these new "issues" in the instant Post-Hearing Brief. The "issues" raised for the first time by Concerned Citizens/Sierra Club in their Proposed Findings Of Fact And Conclusions Of Law filed on July 19, 2005 are, in particular, as follows at pages 7, 8 and 9 of their Proposed Findings Of Fact And Conclusions Of Law:

> 6. The Stipulation is unlawful in that it calls for the creation of a Customer Programs Advisory Group ("CPAG") in violation of Chapter 610 of Missouri's Revised Statutes, the "Sunshine Law;" and therefore, since the stipulation provides that if one provision fails the entire stipulation must not be approved, the stipulation must not be approved. (S&A, p. 53.)
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> . . . .
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> 9. The Stipulation is facially invalid and cannot be approved because there is no permit for convenience and necessity. KCPL is required by law to seek such a permit. The old certificate from 1972 is not sufficient to negate this requirement in that KCPL did not commence construction of this unit (Iatan 2) within two years after receiving the certificate. Section 393.170, RSMo.
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> . . . .
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> 12. The case is not ripe for review in that the Stipulation discussed at the hearing held in June and July, 2005, is not the final version of the Stipulation. The Missouri Constitution creates a right to judicial review of "final" administrative decisions. Finality is found when the agency arrives at a terminal, complete resolution of the case before it. An order lacks finality in this sense while it remains tentative, provisional, or contingent, subject to recall, revision or

> reconsideration by the issuing agency. *City of Park Hills v. Public Service Commission of the State of Missouri et al.*, 26 S.W.3d 401, 406 (Mo. App. W.D. 2000). In this case, the Commission is unable to issue an order granting the request to approve the stipulation, because such an order would lack finality in that it would remain tentative, provisional, contingent, subject to recall, revision or reconsideration by the MPSC depending on the changed terms of the stipulation.

Respecting Concerned Citizens/Sierra Club's item "6" above, the Commissioners, not the Staff of the Commission, are the "public governmental body" covered by Chapter 610. In addition the Staff also would note Section 386.480 RSMo 2000 and the last sentence of Section 393.140(3) which are unique to the Commission. In essence Concerned Citizens/Sierra Club seems to be asserting that any meeting that the Staff has with entities and individuals outside of the Commission are required to be open meetings. That is simply not the scope and effect of Chapter 610. Moreover, KCPL intends to file tariffs for any Demand Response, Efficiency or Affordability Program that it proposes to implement. This filing of tariffs would accord Concerned Citizens/Sierra Club an opportunity to address the proposed program.

Respecting Concerned Citizens/Sierra Club's item "9" above, "permit for convenience and necessity," that matter is addressed in a degree hereinbelow toward the end of the instant Post-Hearing Brief. Finally, respecting Concerned Citizens/Sierra Club's item "12," it is not the Staff's intention that any changes be made in the Stipulation And Agreement/KCPL Experimental Regulatory Plan, as a result of what the KCC does in Docket No. 04-KCPE-1025-GIE, without this matter being brought before the Commission for Commission approval of the amendment revision of the Stipulation and Agreement/KCPL Experimental Regulatory Plan.

Proposed Report And Order/Findings Of Fact And Conclusions Of Law Filed By KCPL

KCPL expended considerable effort in drafting the Proposed Report And Order/Findings Of Fact And Conclusions Of Law, which KCPL filed on July 19, 2005. The Staff assisted and in

doing so also engaged in a considerable effort. As a consequence, the Staff was not able to cover certain areas in the instant brief that are covered in the Proposed Report And Order/Findings Of Fact And Conclusions Of Law filed by KCPL on July 19, 2005. In particular, the Staff wishes to incorporate herein by reference the discussion of Mr. Helming's testimony found in the Proposed Report And Order/Findings Of Fact Conclusions Of Law filed by KCPL

Legal Issues Previously Addressed By Staff

The only parties that posed issues in the instant case are Concerned Citizens/Sierra Club and United States Department of Energy (USDOE). Although USDOE initially raised various concerns regarding the Stipulation And Agreement, counsel for USDOE stated at end of the second day of the evidentiary hearing after cross-examining KCPL witness Chris B. Giles and Office of the Public Counsel (Public Counsel) witness Russell W. Trippensee that USDOE no longer had any concerns, and while it does not support the Stipulation And Agreement, it also does not oppose it: "On the basis of what we have gone through and reviewed and listened and the competent and substantial evidence, we would submit that we do not oppose the Commission approving the Stipulation & Agreement as proposed in this case." (Vol. 5, Tr. 564, ln. 25 – Tr. 565, ln. 4).

The Staff, Public Counsel and KCPL have apparently addressed USDOE's concerns; the Staff apparently having done so in its May 10, 2005 Suggestions In Support Of The Stipulation And Agreement, June 2, 2005 Statement Of Positions and June 15, 2005 Prehearing Brief. Nonetheless, since Concerned Citizens/Sierra Club indicated positions on the issues raised by USDOE, the Staff will address these issues by using a chart directing the Commission to where in prior filings the Staff dealt with these issues with the legal argument. The Staff will address below the testimony and evidence adduced at the evidentiary hearings held on June 23, 24 and

27 and July 12, 2005 respecting the issues that have been raised or adopted by Concerned Citizens/Sierra Club. Commissioner Clayton at the conclusion of the evidentiary hearing on June 27, 2005 suggested that from his perspective the post-hearing briefs should be supplemental in nature and not repetitive. (Vol. 7, Tr. 836, lns. 4-14). That is how the Staff has attempted to proceed.

The KCPL Experimental Regulatory Plan is not a violation of Section 393.135 (Proposition 1), single-issue ratemaking, retroactive ratemaking or any other statute or judicial holding. The issues addressed by the Staff and the prior filings with the Commission in this case entailing a discussion by the Staff of statutes, Commission rules and case law are as follows:

Staff Suggestions In Support Of Stipulation And Agreement (Filed May 10, 2005):	
Amortizations	pp. 10-12, 23-24
Additional Amortizations (Use Of Financial Ratios)	pp. 21-23
Demand Response, Efficiency And Affordability Programs	pp. 24-27
Iatan 2 Partnership Issues	pp. 35-36
Preapproval (Scope And Legal Effect of Stipulation And Agreement: No *Stare Decisis*, Prudence Determinations, Not A Contract With Commission, and Nonsignatories Not Bound)	pp. 27-32
Senate Bill 179	pp. 32-35
Section 393.135 RSMo 2000, Proposition 1	pp. 12-19
Attachment 1: Index To Stipulation And Agreement	
Attachment 2: Differences Between Stipulation And Agreement Before KCC and Stipulation And Agreement Before MoPSC	
Attachment 3: Precedent For Commission Use Of Financial Ratios and Such Use Not A Violation Of Law	

Staff Statement Of Positions (Filed June 2, 2005):	
Invoking Jurisdiction Of Commission	pp. 2-3
Contested Case: Present Case (EO-2005-0329) Is Contested Case	p. 3
Legal And Precedential Effect Of Commission Approval Of Stipulation And Agreement	pp. 3-4
Contract: Stipulation And Agreement Akin To Contract Among Signatory Parties, Which Commission Has Authority To Approve	pp. 4-6
Workshop Case And Present Case: Effect Of EW-2005-0596 On Present Case - Competent And Substantial Evidence Prefiled In Present Case And To Be Adduced At Evidentiary Hearing[1]	pp. 6-7

[1] In addition to KCPL filing prepared direct testimony in advance of the evidentiary hearings, Public Counsel filed the prepared direct testimony of Russell W. Trippensee on June 22, 2005.

Continuing Monitoring Of Need For, And Economies Of, Iatan 2

What is guaranteed by the Stipulation And Agreement or by Commission approval of the Stipulation And Agreement is limited. More than anything else, the Stipulation And Agreement establishes an experimental regulatory process, not an end result. For example, the Stipulation And Agreement provides in the subsections entitled "Infrastructure" at pages 31, 36, 39 and 42-43 that the Signatory Parties will not challenge KCPL's decision to (a) build Iatan 2 and (b) make environmental enhancements to Iatan 1 and LaCygne 1. However, in the section entitled "Resource Plan Monitoring" at pages 24-27 KCPL agrees on a going forward basis to actively monitor the major factors and conditions which influence the need for, and the economies of, all elements of its Resource Plan. The Signatory Parties agree that if there are no significant changes in conditions, the Signatory Parties will not challenge KCPL's continuing decision to (a) build Iatan 2 and (b) make environmental enhancements to Iatan 1 and LaCygne 1. Thus, a Signatory Party may raise as an issue significant changes in factors or circumstances and a Signatory Party does not waive any rights to contest, in any proceeding, that KCPL did not

properly monitor significant factors or circumstances, and as a result did not properly execute its Resource Plan.

Customer Programs Advisory Group

The Stipulation And Agreement, including appendices, is in total nearly 100 pages. It would be quite unreasonable to expect others to identify all of the nuances of the provisions when the Signatory Parties themselves are still discovering nuances that they as Signatory Parties were not necessarily aware of or had not thought of. One such nuance was raised at hearing during the cross-examination of KCPL witness, Sue Nathan, by counsel for Concerned Citizens/Sierra Club who raised the matter of Concerned Citizens/Sierra Club, whose issues and expertise include efficiency programs, not being invited to attend or participate in the Customer Program Advisory Group (CPAG). Concerned Citizens/Sierra Club has now raised this matter in its July 19, 2005 filing as noted hereinabove. Ms. Nathan related that the first meeting of the CPAG was scheduled for Thursday, June 30, 2005 and that questions such as the attendance and participation of Concerned Citizens/Sierra Club would be taken up at that time.

A June 30, 2005 meeting and meetings for four subsequent Wednesdays had been tentatively established by KCPL. The June 30 meeting occurred at the offices of MDNR in Jefferson City. In addition to KCPL, MDNR, Praxair, Public Counsel and Staff, a representative from the Kansas Corporation Commission (KCC) Staff and a representative from the Sierra Club appeared. The question first arose as to whether it was appropriate for the KCC Staff and Sierra Club representatives to be in attendance. Although the KCC Staff was a signatory to the KCPL Kansas Experimental Regulatory Plan/Stipulation And Agreement, it was not a signatory to the KCPL Missouri Experimental Regulatory Plan/Stipulation And Agreement, which states in part at page 47 as follows:

> The Staff, Public Counsel, MDNR and any other interested Signatory Party will serve as an advisory group ("Customer Programs Advisory Group" or "CPAG") to KCPL in the development, implementation, monitoring and evaluation of the Demand Response, Efficiency and Affordability Programs. . . .
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> . . . Further evaluation needs to be made on the Efficiency Programs detailed in Appendix C prior to implementation to determine the impact of the Efficiency Programs on KCPL and the anticipated cost-effectiveness of the Efficiency Programs presented. KCPL will work with the CPAG to complete the necessary pre-implementation evaluations to determine the initial implementation plan for the Efficiency Programs within four (4) months of the effective date of an Order Approving Stipulation and Agreement. The initial implementation plan for Efficiency Programs may be modified (such modifications may include deleting currently proposed programs or adding new programs, as well as increases in the overall funding level for Efficiency Programs) based on results from the pre-implementation evaluations and input from the CPAG.

Ultimately, it occurred to those in attendance, that the meeting on June 30, 2005 was not a meeting of the CPAG, since the Commission has not approved the Stipulation And Agreement. No meeting of the CPAG will occur, unless and until the Commission approves the Stipulation And Agreement.

Due Process Accorded Concerned Citizens/Sierra Club More Than Adequate

Concerned Citizens/Sierra Club in their Statement Of Position On The Issues, which they filed on June 2, 2005, in response to Issue Nos. 1 and 11 at pages 1 and 7, argue that "KCPL is attempting to circumvent a required hearing by seeking approval of a new plant before it is fully operational" and that Commission approval of the Stipulation And Agreement "would set in place a series of events allowing KCPL to have abbreviated hearings when it seeks rate increases, as the need for the increases will have already purportedly been established by the stipulation." The Staff would note that the Commission put no limitations on the evidentiary proceedings in the instant case. The transcript, Volume 1, of the May 3, 2005 prehearing conference in the instant case reflects that the Commission did not proceed with any

predetermined schedule. The transcript reflects that the Commission was looking to the parties to provide guidance as to what would be required regarding the length of the proceedings:

> Mr. Zobrist: Does the Commission have a -- a preference at all for time frame for those local hearings?
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> Judge Mills: Honestly, I think until you all talk, I'm not sure the Commission really even knows how – I mean, whether we're talking, you know, a three-week time frame for the – for the entire case or three months or nine months. So depending on where we wind up on that I think depends on when the local public hearing should be held. . . .

Vol. 1, Tr. 8, ln. 17 – Tr. 9, ln. 2.

At page 5 of its Prehearing Brief filed on June 15, 2005, Concerned Citizens/Sierra Club assert that the Commission lacks jurisdiction to approve the Stipulation And Agreement because there is no provision in statute or regulations authorizing the Commission to approve a stipulation entered into pursuant to a noncontested case. The Commission is being asked to approve the Stipulation And Agreement in the context of Case No. EO-2005-0329, which is a contested case. The Commission is considering the Stipulation And Agreement on a schedule which Concerned Citizens/Sierra Club agreed to, and when Concerned Citizens/Sierra Club requested additional time to prepare for the evidentiary hearings, the Commission granted the request of Concerned Citizens/Sierra Club.

The Commission did not seek to limit Concerned Citizens/Sierra Club's opportunity to call or cross-examine witnesses. In fact, although the Staff showed a willingness to accommodate Concerned Citizens/Sierra Club's desire to cross-examine Staff witnesses, when schedule was discussed at the hearing on June 27, 2005, Counsel for Concerned Citizens/Sierra Club clearly stated a desire to conclude the evidentiary hearing and a willingness to forego any cross-examination of the Staff:

> [Mr. Dottheim:] Also, too, I don't want to forget that Ms. Henry has indicated to me that if certain Staff witnesses take the stand, she has some questions. And regardless of whether the Commissioners would want to ask questions, we certainly will make those individuals available for any questions that Ms. Henry - -
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> MS. HENRY: I only have a couple questions and I don't want them called on my account. I'd be just as happy to skip it.

Concerned Citizens/Sierra Club have questioned the lawfulness of the procedure that has been followed respecting the development of the KCPL Experimental Regulatory Plan and its presentation to the Commission. Thus, it is curious that Concerned Citizens/Sierra Club proposes at pages 4-5 and 6 of its Prehearing Brief and at the evidentiary hearing on June 24, 2005 that there should be meetings and negotiations immediately between KCPL and the Commission to develop a strong energy efficiency program that would be adopted by the Commission at the time of a 2006 rate case and that would financially reward KCPL for energy efficiency programs to alleviate the need for Iatan 2. The Stipulation And Agreement filed with the Commission on March 28, 2005 by KCPL is not an agreement that was negotiated with the Commissioners, as Concerned Citizens/Sierra Club are advocating should occur respecting their proposal. Concerned Citizens/Sierra Club's Prehearing Brief states, in part, and its witness Mr. Ned Ford testified as follows:

> **III.***H.* *KCPL and the PSC should immediately being* [sic] *meeting, in order to have an effective proposal ready at the time of the proposed 2006 rate case, whereby KCPL would receive significant financial compensation for embarking upon a strong energy efficiency program so that KCPL will not suffer revenue erosion by employing measures that are better for the consumer and the environment* [pp. 4-5, Concerned Citizens/Sierra Club's Prehearing Brief]
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> . . . .
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> **IV.**B.2. The Public Service Commission should enter into negotiations with KCPL to reward KCPL financially for pursuing these better alternatives.
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> . . . It is incumbent upon the Commission to enter into financial negotiations as expeditiously as possible before KCPL pursues its plans further to build an

> unnecessary and costly coal-fired power plant. [p. 6, Concerned Citizens/Sierra Club's Prehearing Brief]
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> . . . .
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> And one of my recommendations is that the company work very fast and very hard with its customers and with the Commission to come up with a realistic compensation mechanism that will share the net savings, the difference between the 3 cents and the 7 or 8 or 9 cents, because that savings is more than adequate to allow the company to have a real rate of return that is even as much as 100, 150 basis points above what they're getting right now, and still be enormously less expensive than building Iatan 2. [Vol. 5, Tr. 336, ln. 23 – Tr. 337, ln.7].
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> . . . .
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> There would be the need for a close discussion and analysis to determine what all the factors are, whether they'd want to reward the company generously now to give them an incentive to do this efficiency program rapidly or hold hostage the prospect of reduced or increased rate of return after a few years based on what the performance is. [Vol. 5, Tr. 344, ln. 23 – Tr. 345, ln. 4].
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> . . . .
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> What I said specifically was consider an award in the neighborhood of 50 to 150 basis points, a ½ to 1 ½ percent return rate increase or reduction based on the performance of this desirable outcome. [Vol. 5, Tr. 378, lns. 13-16].

When asked whether he would recommend that KCPL be given a rate of return incentive to adopt energy efficiency programs and what specific level of incentive KCPL should be offered, Mr. Ford responded that he could not make a specific recommendation: "I do not know what Kansas City Power & Light's current earnings are or any of the history that is involved in their current rates, so I can't make a specific recommendation. I was trying to make a reference that would put it into context." (Vol. 5, Tr. 378, lns. 5-9).

Regarding lost revenues compensation, Mr. Ford testified that in Ohio lost revenues compensation was "out of control. It was too large, and the utilities actually loved the programs, but the state decided to kill them." (Vol. 5, Tr. 333. lns. 21-24).

Regarding Concerned Citizens/Sierra Club's proposal that KCPL be rewarded financially for pursuing an efficiency program, the Staff would note that the Commission engaged in (a)

financially acknowledging Missouri Public Service Company's (MPS) management inefficiency by reducing MPS's authorized rate of return on water rate base 100 basis points and (b) financially rewarding Empire District Electric Company's (Empire) and KCPL's efforts in management efficiency and economy by increasing Empire's and KCPL's authorized return on common equity 40 basis points in rate cases in 1982 and 1983. *Re Missouri Public Service Co.*, Case Nos. ER-82-39 and WR-82-50, Report And Order, 25 Mo.P.S.C.(N.S.) 139, 177-80 (1982); *Re Empire District Electric Co.*, Case No. ER-83-42, Report And Order, 26 Mo.P.S.C.(N.S.) 58, 68-71 (1983); *Re Kansas City Power & Light Co.*, Case No. ER-83-149, ER-83-72 and EO-82-65, Report And Order, 26 Mo.P.S.C.(N.S.) 104, 147-50 (1983). The Commission stopped making such adjustments after Case No. ER-83-149 and formally abandoned the making of these rate of return adjustments in a 1989 in Report And Order respecting Southwestern Bell Telephone Company, *Re Southwestern Bell Telephone Co.*, Case Nos. TC-89-114, et al., Report And Order, 29 Mo.P.S.C.(N.S.) 607, 654-55 (1989):

> . . . **The Commission has determined that it is not appropriate to adjust the rate of return SWB will be authorized to earn for management decisions. Now the Commission has determined that where it has made adjustments to ROE in other cases, these type of adjustments can rarely be supported by sufficient evidence to warrant such a decision.** The difficulty of deciding how much value a certain management decision has in terms of ROE makes the determination almost impossible. The evidence in this case provides no real guide to the Commission on how to value the various allegations of inefficient management. The more appropriate method for making adjustments to a public utility's revenue requirement is where specific dollar adjustments can be addressed, not by adjusting the ROE.
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> . . . .
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> The focus of an analysis of management efficiency must be on the procedures and decisions made by a company which provides a quality of service which meets regulatory standards at a just and reasonable price. The measurement of any management efficiency, though, is inexact and subject to subjective criteria. SWB's analysis of its overall management efficiency is based upon net income and customer perception surveys. . . .
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> . . . .

> SWB, of course, contends it is being managed efficiently and its measurements how that efficiency. **The measurements introduced into evidence by SWB include the Management and Operations Effectiveness Report (MOER) performed by Deloitte, Haskins & Sells (DH&S) in 1987; comparison with other RBOCs; and results of customer perception surveys.** The Commission has addressed the value of comparisons with industry averages or other utilities in other decisions. RE: *Union Electric Co*., 27 MO. P.S.C. (N.S.) 183, 193 (1985); RE: *Kansas City Power & Light Co.*, 28 Mo. P.S.C. (N.S.) 228, 281 (1986). **The Commission finds industry comparisons or averages to be of little value in setting an individual company's revenue requirement.** Each company is different and each company must be examined based upon its own costs, revenues and investments. **The comparisons used by SWB do not indicate its management efficiency but only its general ranking with other RBOC's, which may or may not operate under similar circumstances. Staff's comparisons with Missouri LECs suffer from the same flaw.**
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> . . . .
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> . . . Without quantification the Commission cannot make adjustments to SWB's revenue requirement. In addition, **reliance on customers' perceptions to establish management efficiency is at best misplaced. Customer perceptions reflect quality of service and price but do not reflect costs, and they reflect the quality of a company's service but not how efficiently that service is being provided.**

29 Mo.P.S.C.(N.S.) at 654-55; Emphasis added.

Mr. Ford was first contacted by the Sierra Club to participate in this proceeding in early May 2005. (Vol. 5, Tr. 390, lns. 8-11). Mr. Ford offered not even a list of efficiency programs that he contends would address any capacity needs of KCPL. He testified that in the time he had available to examine KCPL and its needs, he was not able to determine enough about load shape to be able to specify what kind of programs should be done. (Vol. 5, Tr. 330, lns. 5-10).

Having made the arguments of lack of jurisdiction that Concerned Citizens/Sierra Club have made regarding the Stipulation And Agreement of the Signatory Parties, Concerned Citizens/Sierra Club give no indication under what authority the Commissioners or its Staff would proceed under to effectuate the Concerned Citizens/Sierra Club proposals. Evidently

Concerned Citizens/Sierra Club does not have the same concerns about the legal basis for its own proposals as it does for the proposed KCPL experimental regulatory plan.

Counsel for Concerned Citizens/Sierra Club at the evidentiary hearing on June 24, 2005 cross-examined KCPL witness Michael W. Cline, Treasurer, Great Plains Energy, Inc., the parent company of KCPL, about the "Standard & Poor's Research Update: Great Plains Energy And Unit Ratings Affirmed: Outlook Stable, April 1, 2005, Primary Credit Analyst(s): Leo Carrillo" that is a schedule to Mr. Cline's, prepared direct testimony. The cross-examination centered on the following sentences in the Standard & Poor's Research Update:

> Credit Rating: BBB/Stable/ --
>
> Rationale
>
> > . . . Although the agreement would freeze rates through 2006, it also incorporates an option to implement an interim power cost adjustment clause and the ability to file for annual rate cases for 2007 through 2009 without the risk of intervention by signatories to the agreement. . . .
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> . . . .
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> Outlook
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> > . . . While adoption of the agreement alone does not ensure rating stability, it does provide KCPL with access to rate relief during implementation of the company's large capital program, which Standard & Poor's assumes will be prudently structured, funded, and executed in a manner that limits execution risk and maintains debt leverage at a moderate level. . . .

(Ex. 38, Schedule MWC-6, pp. 1-2)

Regarding the second sentence, Counsel for Concerned Citizens/Sierra Club asked Mr. Cline what the phrase "access to rate relief" means. Mr. Cline responded that he thought it meant that there is a well-structured and communicated rate case mechanism in place as described by the Stipulation And Agreement. (Vol. 5, Tr.462, ln. 11-16). Regarding the first sentence, Counsel for Concerned Citizens/Sierra Club asked Mr. Cline what is the significance of the phrase: "ability to file for annual rate increases without the risk of intervention by

signatories." Mr. Cline responded: "I think what S&P meant was that there would not be the ability for the signatories to challenge – I don't know what the right word is I'm looking for here – the broad premise of the agreement." (*Id.* at 464, 17 – 465, ln. 5).

KCPL does not need a regulatory plan for "the ability to file for annual rate cases for 2007 through 2009" or for "access to rate relief during implementation of the company's large capital program." KCPL had that ability before KCPL even filed its Application on May 6, 2004 creating Case No. EO-2004-0577 and starting the process which resulted in the filing of the Stipulation And Agreement on March 28, 2005.

Counsel for Concerned Citizens/Sierra Club asked Mr. Cline, "So the risk of intervention by the Sierra Club and Concerned Citizens does not concern S&P?" (Vol. 5, Tr. 465, lns. 6-7). As to the matter of interventions, the Staff would note the following language in the Stipulation And Agreement at pages 30-31, 35, 38 and 42:

> Interventions. Each of the Signatory Parties shall be considered as having sought intervenor status in the [2006 / 2007 / 2008 / 2009] Rate Filing without the necessity of filing an application to intervene and KCPL consents in advance to such interventions. The Signatory Parties expect that the Commission's standard procedures and rules will be applicable to this rate filing including public notice, local public hearings and evidentiary hearings at appropriate times and places, and an opportunity for interested parties other than the Signatory Parties to seek to intervene.

Testimony Of Concerned Citizens/Sierra Club Not Does Not Meet The Legal Standard

The question of whether a witness is an expert is a matter that the Staff approaches with great care. In the instant case though, the issue that is presented to the Commission may be approached from the direction of whether the witness, expert or not, is credible. The evidentiary hearings have shown that the testimony delivered by Troy Helming at the May 24, 2005 local public hearing in Downtown Kansas City, Missouri, and on June 23, 2005 in Jefferson City regarding KCPL being able to meet its impending capacity and energy needs by wind power at

lower cost in dollars than under the KCPL Experimental Regulatory Plan is not credible and therefore does not constitute competent and substantial evidence.

Mr. Helming's testimony on June 23, 2005 and May 24, 2005 is more in the nature of the testimony that is usually presented to the Commission in what is termed a "local public hearing" where the general public is provided an opportunity appear before the Commission and express views and experiences relating to the particular utility's provision of safe and adequate service at just and reasonable rates. If witnesses at local public hearings receive probing questions from Commissioners, Regulatory Law Judge or counsel for any party that may be present, it is usually an effort to obtain a better understanding of what is being sought to be communicated. The approach generally taken is to treat the general public in a "kid glove" manner so as to not discourage the general public from testifying. When such witnesses raise their matters of concern, it is generally understood, or the Commissioners and/or RLJ direct, that the Staff, and/or the utility, follow-up and submit a report to the Commission in the context of the pending case. The testimony in the local public hearings is evidence, but it is generally not expert evidence and even if it is, the witnesses are not cross-examined as they would be in the formal evidentiary hearing.

The present situation is not the typical situation usually confronted by the Commission where there are multiple subject matter experts submitting testimony with different approaches, views and/or results, and the Commission is called upon to choose between competing expert testimony that is credible. The testimony presented by Mr. Helming is simply not believable because of the gross generalizations that he makes for purposes of performing the economic analysis that he uses to illustrate his contentions. The testimony of Mr. Helming on behalf of

Concerned Citizens/Sierra Club in opposition to the proposed 800-900 MW supercritical pulverized coal-fired Iatan 2 is simply not credible.

Among other witnesses, KCPL prefiled on April 11, 2005 the prepared direct testimony of Mr. John R. Grimwade, the purpose of whose testimony was to provide and sponsor supporting technical documentation of KCPL's integrated resource planning (IRP) process and proposed comprehensive resource plan. (Ex. 37, p. 2, lns. 10-13). He testified that with no changes to KCPL's existing generation and no additional demand side management, KCPL will have a capacity shortfall of 431 MWs in 2010 based on a 12 percent capacity margin and a projected peak load of 3,959 MWs. Thus, Mr. Grimwade identified large baseload capacity in 2010 as KCPL's primary capacity need. He explained that KCPL's modeling showed the addition of a 500 MW share of a pulverized coal-fired baseload generating unit resulted in the lowest PVRR and showed that the optimal timing of the addition would be 2010-2012. (*Id.* at 7, lns. 1-5, 10-11; p. 9, lns. 12-15). KCPL modeled load growth uncertainty and the preference for the coal addition plan did not change in either a high or low load growth scenario, but the optimal time for the coal addition was 2010 in the high load growth scenario and 2013 in the low load growth scenario. (*Id.* at 10, lns. 7-13).

Mr. Grimwade related that the addition of 100 MWs of wind generation as early as 2006, the addition of renewable generating capacity, was chosen by KCPL to (1) mitigate concerns that 20 states have implemented renewable portfolio standards (RPS) and interest in addressing CO2 and other emissions is increasing, (2) provide KCPL an opportunity to learn from having renewables in its portfolio with continue and (3) take advantage of production tax credits (PTCs) that KCPL anticipates will be renewed for renewable generation. The addition of wind generating resources was modeled and did not change the preferred resource addition strategy of

baseload coal and the optimal time for the coal addition remained the 2010-2012 timeframe. (Ex. 37, p. 7, lns. 10-18; p. 10, ln. 20 – p. 11, ln. 4).

Mr. Ned Ford, Concerned Citizens/Sierra Club's other witness, has performed no economic analysis of his own. His workpapers are reports and articles prepared by others. In response to the KCPL Data Request asking for all workpapers, supporting documentation and other information that form the basis for the opinions that Mr. Ford will present at the evidentiary hearings on this case, Concerned Citizens/Sierra Club identified and provided to KCPL six reports and articles, four of which purportedly addressed the experience of other utilities. Concerned Citizens/Sierra Club marked as Exhibit Nos. 32-35 these four reports and articles.[2] These documents do not contain any reference to KCPL and none of these documents were authored by Mr. Ford. (Vol. 5, Tr. 417, ln. 25 – Tr.418, ln. 22; Tr. 455, lns. 10-19; Tr. 456, lns. 14-25; Ex. 10). Counsel for Concerned Citizens/Sierra Club acknowledged that these articles and reports constitute hearsay. *Id.* at 450 ln. 25.

Mr. Ford indicated that the Sierra Club generally opposes the construction of new coal-fired capacity around the U.S. and has been doing so for some time. (Vol. 5, Tr. 419, lns. 11-19). In fact, he said, "I can't imagine in 2005 the Sierra Club rallying towards a coal plant proposal of any sort, but there are some that we would oppose more vigorously than others, and there could

[2] Exhibit No. 32: "Four Years Experience of the Nation's First Energy Efficiency Utility: Balancing Resource Acquisition & Market Transformation Under a Performance Contract," Blair Hamilton, Efficiency Vermont and Michael Dworkin, Vermont Public Service Board; Exhibit No. 33: "Five Years In: An Examination of the First Half-Decade of Public Benefits Energy Efficiency Policies," Martin Kushler, Dan York and Patti Witte, April 2004, Report No. U041, American Council For An Energy-Efficient Economy;; Exhibit No. 34: "Delaying Global Climate Change: Efficiency Lessons From California & Don't Be Distracted By the Hydrogen Car Haagen-Smit Symposium 4-(6-8)-04," Arthur Rosenfeld, Commissioner, California Energy Commission"; Exhibit No. 35: "Energy Policy Models and Technology Characterization: Decided Room For Improvement," John A. "Skip" Laitner, Senior Economist for Technology Policy, EPA Office of Atmospheric Programs, 2004 Emerging Technologies Summit, San Francisco, CA, October 14-15, 2004. Other reports identified and provided by Concerned Citizens/Sierra Club but which it did not mark as exhibits: Symposium On The Ocean In A High-CO2 World: Programme and Abstracts, Paris, France, May 10-12, 2004, International Council For Science, Scientific Committee On Oceanic Research; "An Integrated Analysis Of Policies That Increase Investments In Advances Energy-Efficient/Low-Carbon Technologies," Donald Hanson and John A. "Skip" Laitner.

be tradeoffs. . . . We're mounting an ever-increasing campaign about climate change, so coal is increasingly looked upon with disfavor." (*Id.* at 434, ln. 25 – 435, ln. 7).

Concerned Citizens/Sierra Club put on the record their unequivocal opposition to Iatan 2 at the September 29, 2004 on the record conference in Case No. EW-2005-0596. Counsel for Concerned Citizens/Sierra Club, Elsa Steward, stated that Concerned Citizens/Sierra Club are "opposed to the construction and operation of this plant [Iatan 2], and we feel that way for several reasons, primarily, having to do with public health and environment issues." (Transcript, Case No. EW-2004-0596, September 29, 2004, p. 32).[3] She further stated that Concerned Citizens/Sierra Club believes that a coal-fired power plant is "imprudent at this time when pollution controls are not sufficient to be even considering a coal-fired plant, when we feel that if maximum efficiencies were promoted by the company and were achieved, that it would reduce or eliminate the need for further power in the area." (*Id.* at 33). She clearly stated on September 29, 2004 that Concerned Citizens/Sierra Club "would like to go on the record as being opposed to this plant" and stated that another reason for Concerned Citizens/Sierra Club's opposition was "[w]e've also heard that the company may be, at least in part, in a merchant capacity with this new plant . . ." (*Id.* at 33-34).

Counsel for Concerned Citizens/Sierra Club, in response to questions from Commissioner Robert Clayton at the evidentiary hearing, indicated that there are two independent reasons why Concerned Citizens/Sierra Club are opposed to the KCPL Experimental Regulatory Plan/Stipulation And Agreement: (1) Concerned Citizens/Sierra Club are opposed to the building of any new coal plant because of the pollutants that it will omit and

[3] Counsel for Concerned Citizens/Sierra Club requested that the Commission take administrative/official notice of the record in Case No. EW-2004-0596. (Vol. 4, Tr. 122, ln. 22 – Tr. 123, ln. 8).

(2) KCPL's capacity need can be met through energy efficiency. (Vol. 7, Tr. 831, ln. 17 – Tr. 832, ln. 12).

Concerned Citizens/Sierra Club Has Fundamentally Misread Commission's Rules On Electric Resource Planning: 4 CSR 22.010-22.080

Mr. Ford has incorrectly testified that the analysis performed by KCPL was not in compliance with the Commission's Chapter 22 Electric Utility Resource Planning Rules (4 CSR 240-22.010 – 4 CSR 240-22.080):

> The proposed plan for Iatan includes a small amount of wind and a small amount of energy efficiency, and the concern that I'm here to raise is that not only are the amounts of wind and efficiency inadequate, they are actually not as large as is required by the code.
>
> The Revised Code Chapter 22 specifies that the utility shall evaluate a forecast that includes enough energy efficiency to defer the need for the new plant for an entire year, and the proposed amount of the efficiency is somewhere along the lines of a quarter to perhaps an eighth of that amount. So the evaluation that was done doesn't appear to have been even accurate -- adequately done, according to the statute.

(Vol. 5, Tr. 322, lns. 9-22). Concerned Citizens/Sierra Club's Prehearing Brief indicated what would be the live testimony of Mr. Ford stating as follows at page 3:

> *B. KCPL violated 4 CSR 240-22.050(2)(C) by failing to look at the amount of capacity avoidance needed to defer Iatan 2 for a whole year as an alternative for a whole year. Had KCPL conducted the requisite look, it would have seen that the construction of Iatan 2 could be avoided.*
>
> KCPL violated the terms of 4 CSR 240-22, and specifically 22.050(2)(C), which require Missouri jurisdictional electric companies to examine the impact of a sufficient block of energy efficiency programs to defer the need for a new power plant by one year. If KCPL had conducted all of the requirements of 22.050 in good faith, it would have been clear at the time of the first IRP produced under these rules that a strong energy efficiency program was cheaper and more preferable to KCPL customers than a new fossil power plant. Had KCPL followed the entire Chapter 22 as written, the findings would have embellished and strengthened this conclusion.

Mr. Ford had reviewed KCPLan 94[4] and subsequent forecast reports by KCPL, but did not know: (1) whether the KCPLan 94 was filed by KCPL in Case No. EO-94-360, (2) whether Sierra Club or Concerned Citizens had intervened in that case, (3) whether any party in Case No. EO-94-360 raised questions regarding KCPL's compliance with 4 CSR 240-22.050(2)(C), (4) whether KCPL was granted a waiver in Case No. EO-97-522 from a complete filing under Chapter 22 in 1997, (5) whether various electric utilities filed in Case No. EO-99-365 for a rescinding of Chapter 22, (6) how Case No. EO-99-365 was resolved, (7) whether the Commission issued an Order in 1999 in Case No. EO-99-544 granting KCPL a variance from filings in July 2000 and July 2003 under Chapter 22, or (8) what procedure the Commission adopted in lieu of KCPL complying with Chapter 22. (Vol. 5, Tr. 370, ln. 11 – Tr. 373, ln.4).[5] Besides the Concerned Citizens/Sierra Club's position being uninformed regarding integrated resource planning in Missouri in general, Concerned Citizens/Sierra Club's position regarding KCPL's compliance with Chapter 22 is a collateral attack in violation of Section 386.550.

Mr. Ford's testimony was directly refuted by Mr. Ryan Kind, Chief Energy Economist for the Office of the Public Counsel. The Order of Rulemaking respecting Chapter 22, published in the January 4, 1993 issue of the *Missouri Register*, notes at page 81 of that issue of the *Missouri Register* that Mr. Kind testified on behalf of Public Counsel at the September 10, 1992 public hearing on the proposed Chapter 22 rules. Counsel for Concerned Citizens/Sierra Club asked Mr. Kind whether he had asked KCPL in the workshops "how much it would take to do energy efficiency to defer the building of Iatan 2 for another year?" (Vol. 7, Tr. 795, lns.23-24)

[4] KCPLan 94 was KCPL's first formal integrated resource plan (IRP) in accordance with the requirements set forth in Chapter 22 of the Commission's rules, i.e., 4 CSR 240-22.010-22.080. (Ex. 37, Grimwade, Direct, p. 2, lns. 20-22).

[5] Mr. Grimwade's prefiled direct testimony notes that "[f]ollowing the filing of IRPs by all of Missouri's regulated public utilities, the formal IRP requirements were waived with the approval of the MPSC, and electric utilities were permitted to conduct semi-annual meetings with MPSC Staff and the Office of Public Counsel ('OPC') to discuss IRP resource requirements and plans for meeting future resource needs." (Ex. 37, p. 3, lns. 8-12).

Mr. Kind responded that he thought that Counsel for Concerned Citizens/Sierra Club was referring to a provision in Chapter 22 Electric Resource Planning that pertains to calculating avoided costs for performing demand side analysis. (Vol. 7, Tr. 797, lns. 8-11). Mr. Kind stated that he did not ask, nor should he have asked KCPL whether it could implement demand side management programs that would have an effect large enough to delay the need for Iatan for one year. (Vol. 7, Tr. 795, ln. 25 – 796, ln. 1; Tr. 797, lns. 3-8). Mr. Kind testified that KCPL has developed a portfolio of programs which is "moderately aggressive in terms of essentially starting from zero" and are appropriate for where KCPL is presently relating to such activity:

> . . . And I would have concerns with trying to implement a set of programs that's more aggressive than this when you're starting from zero because you just -- you don't have a good idea of what sort of capabilities can be developed within a utility to do a really prudent job of implementing the programs, and you also don't have a good idea of how the customers in their service territory are going to respond to the programs.

(Vol. 7, Tr. 798, lns. 6-13).

The Commission's Findings and Conclusions Respecting Merits Of Comments And Testimony, published in 1993 in its Order Of Rulemaking regarding Chapter 22, clearly indicates that Mr. Ford and Concerned Citizens/Sierra Club have not correctly read 4 CSR 240-22.050(2)(C). The rules require an analytic process, but do not dictate the ultimate decisions:

> . . . It is the commission's opinion that, having used the methods as set out in the rules, the utility is allowed substantial flexibility in making the actual strategic decisions. The commission is of the belief that the rules should be put in place to promote proper, accurate and increasingly necessary long-range planning, but not to dictate either the strategic decision itself or the decision-making process.

18 *Missouri Register* 1, January 4, 1993, pp. 84-85.

. . . .

> . . . it is the opinion of the commission that, as the result of the diverse nature of the various electric utilities and the areas which they serve, maximum flexibility in management decision-making in regard to demand-side programs is the wisest policy at this time. . . .

Id. at 85.

. . . .

> While the commission agrees that good research, marketing and evaluation techniques are essential to the appropriate design and successful development of demands-side resources, the commission does not believe that it is necessary or advisable to try to include in the rule an exhaustive list of such activities that must be considered by the utility. . . .

Id. at 91. The Order of Rulemaking shows that Mr. Ford, the Sierra Club and Concerned Citizens did not submit comments or testify respecting the promulgation of Chapter 22.

Concerned Citizens/Sierra Club's Position That KCPL's Capacity Needs May Be Met Through Energy Efficeiency Customer Programs Does Not Constitute Competent And Substantial Evidence

In Concerned Citizens/Sierra Club's June 15, 2005 Prehearing Brief at page 3, Concerned Citizens/Sierra Club state that they believe that "KCPL's statement of its growth rate is inaccurately high; but even if it is as high as KCPL states, KCPL can meet its growth rate through energy efficiency measures rather than the construction of a new coal-fired power plant." Mr. Ford testified that if one assumes KCPL's need for capacity is based on the growth rate that KCPL purports it to be, then to avoid the need for Iatan 2, KCPL would need to offset what otherwise would be an increase in capacity of 82 MWs per year for five years. He said that based on the experience of efficiency programs elsewhere, KCPL would need to employ $61 million per year in efficiency programs to otherwise avoid the annual growth in capacity that KCPL is using to justify the need for Iatan 2 in 2010:

> . . . they [i.e., KCPL] would need a rate increase of about $61 million [in efficiency programs]. I think that's 6 percent. That's really huge, and I think it's probably twice what is actually needed, maybe more than that.

Vol. 5, Tr. 346, ln. 24 – Tr. 347, ln. 2.

> . . . I figured $61 million [in efficiency programs], but this is all subject to real life experience. The program cost there would probably be closer to $30 million per year.

Id. at 373, lns. 14-17.

> . . . if you feel that the 2.2 percent growth rate is actually going to occur, you might need a program that costs about 60 million, $61 million a year. I think that's probably very high. I think the program can be done much less expensively, and that the need will not be for 82 megawatts per year, but somewhere between there and the actual experience for the last five years, which is 35 megawatts per year.

Id. at 446, lns. 16-23.

He further said that the customer programs are required for 5, 10 or 15 years:

> . . . You can't just turn on 500 megawatts worth of efficiency, but if you do it aggressively and consistently for a long time over the course of 5 or 10 or 15 years, you've avoided some new capacity additions and the savings to all ratepayers are enormous.

(Vol. 5, Tr. 332, lns. 19-23).

The Stipulation And Agreement at page 46 provides for estimated total costs of $29 million cumulatively over five years for Missouri, disaggregated as follows: $12.7 million for Efficiency Programs, $13.8 million for Demand Response Programs and $2.5 million for Affordability Programs, cumulatively over five years. Mr. Ford testified that in "my view that the programs that have been proposed are not unreasonable. They're just too small." *Id.* at 395, lns. 9-11).

Although Mr. Ford admitted that he did not know what the regulatory conditions are in Missouri or what the legal restrictions might be in Missouri, he recommended that KCPL examine the circumstances in Missouri and the surrounding area that interfere with the spontaneous development of combined heat and power. (Vol. 5, Tr. 341, lns. 9-17). Mr. Ford stated that combined heat and power "used to be called cogeneration" and "actually means using

the power to generate electricity, and then using the waste heat for some other process." (Vol. 5, Tr. 339, lns. 10-15). Without any evidence that Mr. Ford or anyone else for Concerned Citizens/Sierra Club has performed the necessary analysis regarding the opportunities for combined heat and power in KCPL's service territory or that integrated gasification combined cycle (IGCC) will ultimately prove to be a viable alternative, Concerned Citizens/Sierra Club's Prehearing Brief at page 4 boldly claims that KCPL could eliminate the need for Iatan 2 for a decade or more:

> *F. Combined heat and power is available at substantially lower cost and in sufficient quantity to eliminate the need for Iatan 2 for a decade or more*
>
> It appears that KCPL failed to consider this alternative, or if it did consider it, it dismissed it too readily. By using combined heat and power, KCPL could eliminate the need for Iatan 2 for a decade or more. During that decade, it is likely that IGCC technology will make even greater strides in improvement and affordability, as will efficiency measures, thereby postponing the need for Iatan 2 indefinitely.

Mr. Ford touted Trigen as "one of the nation's leaders in combined heat and power," and, as examples of combined heat and power, he referred to several Midwest cities, not including Kansas City, that have steam heat and chilled water systems. (Vol. 5, Tr. 339, lns. 20-22; Tr. 340, lns. 3-12). Again displaying the superficial review that he has performed, Mr. Ford stated that thought that Trigen operates in Missouri as it is an intervenor in this case, but he did not know where in Missouri or the nature of the plant that Trigen operates in Missouri. (Vol. 5, Tr. 376, lns. 2-11).

As the Commissioners are well aware, KCPL sold its Downtown Kansas City steam heat system to Trigen in 1989 and Trigen operates both a steam heat and a chilled water system in Downtown Kansas City as a competitor of KCPL. *Re Kansas City Power & Light Co. and Trigen-Kansas City District Energy Corp.*, Case Nos. HM-90-4 and HA-90-5, Report And

Order, 30 Mo.P.S.C.(N.S.) 69 (1990); *Re Trigen-Kansas City Energy Corp. and Thermal North America, Inc.*, Order Approving Unanimous Stipulation And Agreement And Disclaiming Jurisdiction Over The Chilled Water Operations Of Trigen-Missouri Energy Corporation, Case No. HM-2004-0618 (December 21, 2004).

Ms. Anita Randolph, Director of the Energy Center of the Missouri Department of Natural Resources (MDNR), testified that MDNR's decision to be a Signatory Party was based on KCPL's commitments in three areas: (1) environmental upgrades to existing power plant, (2) wind generated energy and (3) energy efficiency programs. (Vol. 7, Tr. 822, ln. 4 – Tr. 826, ln. 24) Ms. Randolph, among other things, stated that MDNR, during the workshops in Case No. EW-2004-0596, sponsored Mr. Richard Sedano from the Regulatory Assistance Project to talk about options and approaches for the recovery of costs of energy efficiency programs. Ms. Randolph identified Mr. Sedano as the former State of Vermont counterpart to the Missouri Public Counsel before he joined the Regulatory Assistance Project, which provides consulting and technical assistance. *Id.* at 828, lns. 5-22.

Mr. Ford stated that he is not proposing what efficiency programs KCPL should adopt, stating "it wasn't my intention to come here and tell KCP&L how to design their programs, but to kind of establish some conceptual benchmarks . . ." (Vol. 5, Tr. 445, lns. 14-16; Tr. 383, lns. 6-9). He would like to see a careful fit to KCPL's load among the different resources available – wind, efficiency, perhaps peaking capacity – but he is not in a position to design that program. (Vol. 5, Tr. 401, lns. 16-20). He said he could not address whether KCPL needs base, intermediate or peak load capacity or whether it is needed at certain times of the year or certain times of the day. (Vol. 5, Tr. 343, lns. 20-25). Mr. Ford is not particularly a wind power advocate having stated: "I'm not a strong advocate of wind." (Vol. 5, Tr. 343, ln. 11; Tr. 400,

lns. 6-9). He further stated: "I didn't come here to promote wind. I came here to promote efficiency, and that's my primary concern." (Vol. 5, Tr. 403, lns. 16-18). He acknowledged that there are concerns about capacity and availability factors for wind. He does not advocate wind as a peaking source in particular because wind power is very site specific and as a peaking resource depends a lot on what the weather is like when the peak occurs. Mr. Ford stated that the relevant regional reliability council (Southwest Power Pool (SPP)) says that for 100 MWs of wind, there is 7 MWs of peaking capacity on a reliable basis. He noted that wind advocates think the number is a lot closer to 40 percent than 7 percent, and he thinks that the number is somewhere in between: "I just note there is a little bit of a peak benefit." (Vol. 5, Tr. 402, lns. 1-10).

Despite the thrust of his testimony, Mr. Ford testified that he does not consider himself an expert in electric load forecasting:

> Q. Okay. Do you consider yourself an expert in the field of electric load forecasting?
>
> A. No.
>
> Q. What about integrated resource planning?
>
> A. I would hesitate to say I'm an expert. I am a very informed participant in some aspects of load planning analysis.
>
> Q. Have you ever completed an electric load forecast for a public utility or a regulatory agency?
>
> A. No.
>
> Q. Or filed an integrated resource plan for an electric utility or regulatory agency?
>
> A. No.
>
> Q. And you're not a professional engineer; is that correct?

A. No.

Q. I didn't see any specific educational training or specific professional experience listed in your vitae; is that right?

A. That's right.

Q. And have you ever worked -- you said you're self-employed, but have you ever worked for an electric utility or a regulatory agency?

A. No.

(Vol. 5, Tr. 407, ln. 14 – Tr. 408, ln. 12). Furthermore, he referred to himself as follows: "So speaking as a supposed expert representing citizens who are environmentalists in Missouri jurisdiction . . ." (Vol. 5, Tr. 324, ln.25 – Tr. 325, ln. 2).

Mr. Ford testified that he had the opinion that KCPL's plan to respond to projected need for new capacity is not the lowest cost plan before he looked at any specific information in the case on the basis that that there was a coal-fired plant proposed and there was a small or no energy efficiency component. He also testified that he had the opinion that KCPL's plan to respond to projected need for new capacity is not the least economically risky plan and will result in substantially more pollution than other plans that would cost the consumers less, before he looked at any specific information in the case. (Vol. 5, Tr. 413, ln. 21 – Tr. 415, ln. 19). He formed his opinions without any discussions with anyone at KCPL or anyone on Staff or at Public Counsel. (Vol. 5, Tr. 416, lns. 10-22).

Mr. Ford stated that he is not proposing that KCPL construct an IGCC now: "I cannot dispute KCP&L's view, for example, that integrated gasification combined cycle, the IGCC plants, are new and unproven." (Vol. 5, Tr. 328, lns. 7-9). He said that IGCC may be available in less than five years, if the technology proves itself, but "I'm not prepared to advocate a technology that I can't point to a working example of." (Vol. 5, Tr. 384, lns. 9-11; Tr. 383, lns.

13-15; Tr. 328, lns. 9-14). He agreed that there are presently no IGCC plants as large as 850 MWs. (Vol. 5, Tr. 384, lns. 12-17). Mr. Ford said that he and the Sierra Club are "interested in diverting energy from new coal capacity to more efficient technologies and to carbon reduction strategies," and that there are 30 or 40 cases like this one going on in the country now. (Vol. 5, Tr. 390, lns. 18-23). Mr. Helming stated, "I'm aware of approximately 106 new coal plants that are being proposed around the nation, and approximately 25,000 megawatts of new wind generation being proposed." (Vol. 4, Tr. 270, lns. 20-23).

KCPL entered into evidence information about a 790 MW coal-fueled generating facility in Council Bluffs, Iowa that MidAmerican Energy Company began construction on in September 2003 and is scheduled to be in commercial operation in second quarter 2007. ((Vol. 4, Tr. 270, lns. 20-23; *See* Ex. 22). KCPL entered into evidence Exhibit 24 regarding a new 800 MW supercritical pulverized coal plant being proposed by JEA (Jacksonville (Florida) Energy), the Florida Municipal Power Agency and the Reedy Creek Improvement District in north Florida with an in-service date of 2012. Exhibit 24 states that "[e]lectric industry standards in Florida suggest that state utilities have a 15 percent reserve generating capacity," the partnering utilities selected coal as the fuel source '[t]o diversify their fuel supplies, have a secure fuel supply and avoid the volatile price swings of natural gas," and "[b]y partnering together, each utility owner can have access to the lower unit cost of constructing a large power plant." KCPL in addition entered into evidence Exhibit 23 which relates that Associated Electric Cooperative, Inc. has announced that it will commence construction of a 650 MW coal-fired baseload unit in 2007 with an anticipated in-service date by 2011 in Carroll County, Missouri near Norborne. (Vol. 4, Tr. 268, ln.17 – Tr. 271, ln. 16).

The Staff would note that on December 17, 2004, the Colorado Public Utilities Commission issued Decision No. C05-0049 approving the Comprehensive Settlement Agreement in Docket Nos. 04A-214E, 04A-215E and 04A-216E respecting Public Service Company of Colorado's application for approval of its Least Cost Resource Plan, application of a regulatory plan to support the Least Cost Resource Plan and application for a certificate of public convenience and necessity to construct a 750 MW coal-fired baseload power plant known as Comanche 3. *Re Public Service Company of Colorado*, 239 P.U.R.4th 177 (2004).

Staff Response To Comments Of Byron Combs

At the May 24, 2005, public hearing held at the Jackson County Courthouse in Downtown Kansas City, Missouri, Mr. Byron Combs, among other individuals testified. Mr. Combs stated that KCPL sold 528 MWhs to other utilities between 3:00 p.m. and 4:00 p.m. on August 21, 2003 and on that date KCPL set a new peak demand of 3,610 MWs. Mr. Combs went on to state that KCPL thus has a 33% capacity (1018 MWs ÷ 3082 MWs) above its peak usage since it only needed 3,082 MWs (3,610 MWs less 528 MWs) of its 4100 MW capacity in order to meet the needs of its own customers. Commissioner Steve Gaw indicated at the Jackson County Courthouse local public hearing that he expected a response at the evidentiary hearing to the information provided by Mr. Combs. The Staff reviewed the data provided by Mr. Combs at the Jackson County Courthouse local public hearing, whose written testimony was marked as Exhibit No. 3, and which is reflected in Volume 3 of the transcript in this case.

Although seemingly Mr. Ford attempted to correct in part Mr. Combs' testimony, Mr. Ford has himself mischaracterized what will occur respecting KCPL's off-system sales of energy

from its generating units.[6] Mr. Combs and Mr. Ford both took the approach that in large part Iatan 2 will constitute excess capacity that KCPL will use to serve its retail customers and its retail customers will pay for Iatan 2, while KCPL will sell power from its lower cost units into the wholesale market from which sales only KCPL's shareholders will profit. (Sierra Club And Concerned Citizens Of Platte County's Statement Of Position On The Issues, Issue No. 15, p. 9; Vol. 6, Tr. 358, lns. 1-11; Vol. 6 is designated HC, but KCPL has indicated that this information is not HC). At the evidentiary hearing, Mr. Ford was asked whether conduct of this nature might result in an issue or adjustment in a KCPL rate case. He responded: "I would expect that it would, if the rates -- if the ratemaking were done responsibly, and I have no reason to believe otherwise, but that might not be as good to the benefit of the ratepayer as not making the expenditure in the first place." (Vol. 5, Tr. 373, ln. 21 – Tr. 375, ln. 3).

Mr. Warren Wood, Operations Director of the Utility Operations Division of the Commission, testified at the evidentiary hearing on June 23, 2005 refuting the testimony of both Mr. Combs and Mr. Ford. Mr. Wood stated that Mr. Combs did not have all of the necessary information to perform the analysis that Mr. Combs sought to perform. Mr. Wood testified that he does not agree with all of the amounts utilized by Mr. Combs in his analysis and he does not

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[6] It appears that Mr. Ford sought to correct a portion of Mr. Combs' testimony, with his following testimony:

> I think a lot of people were concerned that the company was selling a great deal of power off the grid, which would aggravate this question of selling cheap old power on the free market. You can't make a wholesale sale of power for a retail price. You sell it at something like the cost of generation. Marginal cost changes substantially through the day and through the year.
>
> But my analysis of particularly the 19A exhibit was that the company was actually fine-tuning its needs fairly closely using both purchase contracts and sales contracts. So the argument that they were preserving these sales contracts in order to justify the need for the plant does not appear to be real.

(Vol. 6, Tr. 359, ln. 17, - Tr. 360, ln. 5; Vol. 6 is designated HC, but KCPL has indicated that this information is not HC).

agree with how Mr. Combs used these amounts in his analysis. Mr. Wood determined that there were a number of purchased power contracts in effect. Mr. Wood related that as a general practice KCPL will purchase energy generated by other utilities and KCPL will sell energy generated from its higher cost units to other utilities, if KCPL can purchase energy from another utility at a cost less than the cost at which KCPL can generate the electricity itself, and if there is a ready buyer available for KCPL energy at the price set by KCPL for the energy. (Vol. 7, Tr. 625, ln. 16 – Tr. 626, ln.16). Mr. Wood further stated that when the Staff determines KCPL's revenue requirement in the context of determining whether KCPL's rates should be increased, decreased or remain the same, revenues received by KCPL in sales of KCPL energy to other utilities are included in the Staff's revenue requirement determination. Thus, economic sales and purchases by KCPL lower KCPL's revenue requirement to be collected from its own retail customers. (Vol. 7, Tr. 600, lns. 14-18, 23-25; Tr. 595, ln. 14 – Tr. 598, ln. 2). (In fact, the Stipulation And Agreement at III.B.1.j., page 22, states that off-system sales will remain part of the ratemaking process and that KCPL will not propose any adjustment that would remove any portion of KCPL's off-system sales from its revenue requirement determination in any rate case.)

Mr. Wood testified that looking over data for the last five years it appears that growth in demand appears to be from 1.4 to 2.0 percent, but there have been assertions that growth has been slower than 1.4 to 2.0 percent. Mr. Wood stated that there have been weather anomalies and economic factors, such as the loss, or the reduction in demand, of high load customers and a general economic downtrend over this period. (Vol. 7, 587, lns. 4-18; Tr. 588, ln. 15 – Tr.590, ln. 4; Tr. 592, lns. 4-18).

More specifically, Mr. Wood related that regarding the question of KCPL's need for a coal-fired plant on the schedule proposed, when KCPL has been selling the amount of energy

that it has been selling, energy should not be confused with demand: ". . . there will only be a few times when you need to have that capacity to serve that peak day and to meet that SPP obligation so we don't end up blacking out people when it gets to 105 degrees Fahrenheit." (Vol. 7, Tr. 601, lns. 6-9). There is an obligation to have the generation capacity necessary to serve peak, plus, in the SPP, a 12 percent reserve margin. (Vol. 7, Tr. 599, ln. 23 – Tr. 600, ln. 3). When the baseload capacity is not needed to meet peak demand, the energy from baseload units can be sold into the market. (Vol. 7, Tr. 601, ln.11 – Tr. 602, ln. 5).

Mr. Wood stated that KCPL has grown into its excess baseload generation and in the next couple of years will grow beyond it such that the present value revenue requirement (PVRR) for serving the new load with peaking units will exceed the PVRR of serving the new load with baseload generation. (Vol. 7, Tr. 602, ln. 5 – Tr. 603, ln. 15). He expressed the view that additional baseload for KCPL is warranted to the level that has been proposed in the Stipulation And Agreement and given the information available today is the most appropriate resource addition to serve the growing load at lowest possible rates to consumers. Mr. Wood also indicated that the projected AECI coal-fired baseload unit to be built in Carroll County near Norborne does not change the appropriateness of the size and timing of Iatan 2. (Vol. 7, Tr. 600, lns. 6-12; Tr. 604, lns. 2-6; Tr. 609, ln. 17 – Tr. 610, ln.10).

Mr. Wood said that the supercritical design of Iatan 2, which is a more accepted and understood technology now than 10 to 15 years ago, is a more efficient overall process, for example a more efficient heat rate, than a subcritical design. (Vol. 7, Tr. 611, ln. 7 – Tr. 612, ln. 12). Regarding environmental compliance over the next 10 to 15 years, he stated that it is his expectation that Iatan 2 will comply with SO_2, NO_X, particulate and mercury emission requirements, if the requirement respecting mercury is 70 percent removal rather than 90 percent

removal. All Mr. Wood could say regarding Iatan 2 and CO_2 was that Iatan 2 as a supercritical unit would produce less CO_2 than a subcritical unit. (Vol. 7, Tr. 612, ln. 13 – Tr. 615, ln. 10).

Regarding the question whether IGCC technology is available for use now for a unit the size of the proposed Iatan 2, Mr. Wood answered: "No." (Vol. 7, Tr. 617, lns. 10-19). He said that the IGCC units that are currently operating are in the high 200 MWs to low 300 MWs range; to provide for improved reliability are co-firing other fuels not just coal; have reliability or capacity factors in the 65 to 70 percent range rather than the 85 to 90 percent range which is necessary; and there are still quite a few different equipment problems. To the Staff, IGCC appears to need some maturing before it becomes the next resource. (Vol. 7, Tr. 617, ln. 20 – Tr. 620, ln. 14).

Mr. Wood stated that the time frame for building a unit such as Iatan 2 is six to seven years from seeking permitting to generating steam and if the unit is far along concerning permitting, then five years from breaking ground to generating steam. (Vol. 7, Tr. 599, lns. 18-22). Mr. Grimwade testified that a supercritical coal-fired baseload unit of 800 to 900 MWs could take six, seven, eight years starting from the very beginning without any environmental permitting or modeling done. From where KCPL is now with Iatan 2, he said it would take between four and five years to the generating of steam:

> Primarily if we proceed on the schedule we have right now and start procurement process for the bidding of equipment on the plant, and as we expect, would complete that bidding process sometime by the end of this year to early 2006, commencing construction in early 2006 we would be able to meet the online date of June 2010.

(Vol. 7, Tr. 628, ln. 22 – Tr. 629, ln. 15). Mr. Giles testified that KCPL must pursue now the bidding of Iatan 2 and the environmental enhancements and that any delay beyond August 1, 2005 will have an impact on KCPL meeting a June 2010 in-service date for Iatan 2 and have an

effect on the cost of these projects. He noted that KCPL is not the only utility that is attempting to secure equipment and labor to build a coal plant and environmental enhancements. (Vol. 4, Tr. 76, ln. 18 – Tr. 77, ln. 5).

Iatan Station Certificates Of Public Convenience And Necessity

No party raised as an issue in the List Of Issues the Iatan Station certificates of convenience and necessity, and the Staff does not believe that there is an issue respecting the Iatan Station certificates of convenience and necessity.[7] Nonetheless, the Staff will briefly relate certain details regarding these certificates of convenience and necessity. The Staff has previously noted that KCPL and SJLP were granted in Case No. 17,895 on November 14, 1973 certificates of convenience and necessity for the Iatan site for four generating units to be constructed and operated by KCPL. The Commission's Report And Order at pages 6, 10 and 11 refers to the multi-generating unit site as the Iatan Station and the certificates of public convenience and necessity were granted for the Iatan Station not just for Iatan 1:

> Iatan Station will be a multi-unit site designed for four generating units to be constructed and operated by KCPL. SJLP will participate in ownership as a tenant in common. [p.6]
>
> . . . .
>
> The Commission finds that the construction of Iatan Station and the 345 kv Iatan-Nashua transmission line are necessary and convenient for the public service, and that Applicants should be granted separate Certificates of Public Convenience and Necessity as requested by the Joint Application herein.
>
> It is, therefore,
>
> ORDERED: 1. That Kansas City Power & Light Company be, and is, hereby granted permission and approval of this Commission and a Certificate of Public Convenience and Necessity to construct, own, operate, maintain, remove, replace and otherwise control and manage Iatan Steam Electric Generating Station . . . [p.10]

[7] The Commission's May 6, 2005 Order Establishing Procedural Schedule states at page 2 that "[a]ny issue not contained in this list of issues will be viewed as uncontested and not requiring resolution by the Commission."

> ORDERED: 2. That St. Joseph Light & Power Company be, and is, hereby granted permission and approval of this Commission, and a Certificate of Public Convenience and Necessity to participate in the construction, ownership, operation, maintenance, removal, replacement control and management of Iatan Steam Electric Generating Station . . . [p.11]

The Report And Order clearly indicates that only Iatan 1 will be constructed in the immediate future and does not anticipate KCPL and SJLP needing any additional grant of authority from the Commission for the future construction of Iatan units 2, 3, or 4. The Report And Order states at pages 6 and 7 that "[l]ead time requirements are presently estimated for fossil-fuel generation at five years" (Report And Order, p. 6), Iatan 1 was scheduled for completion and commercial operation by April 1, 1979 (Report And Order, p. 7) and "KCPL would be able to commence construction of Iatan Unit #2 as late as 1976 to provide additional capacity by 1981" (Report And Order, p. 7).

The plant site is wholly outside of KCPL's certificated territory and partially outside of SJLP's certificated territory, and copies of franchises were filed with the Commission:

> The proposed site area of Iatan Station is in an unincorporated area of Platte County and is located principally within that portion of Platte County which is certificated to SJLP. However, the southeast edge of the proposed site area extends into that portion of Platte County which is certificated to Missouri Public Service Company ("MPS"). . . .
>
> KCPL has heretofore filed with the Commission in Case No. 8560 certified copies of its Franchises granted by the County Courts of Platte and Clay County, Missouri, and the City of Kansas City, Missouri. SJLP has heretofore filed with the Commission in Case No. 10,751 a certified copy of its Franchise granted by the County Court of Platte County, Missouri. The Applicants have received all required consents of all proper municipal authorities.

(Report And Order, pp. 4-5).

In *Re Kansas City Power & Light Co.*, Case No. EM-78-277, 22 Mo.P.S.C.(N.S.) 249, 255-56 (1978), among other things, the Commission granted to Empire (1) permission and approval to purchase from KCPL a 12 percent ownership interest in Iatan Station and (2) a

certificate of public convenience and necessity authorizing it to participate in the construction, ownership, operation, maintenance, removal, replacement, control and management of Iatan Station as a tenant in common with an undivided ownership interest in Iatan Station.

Iatan 2 Partnership Issues – Iatan 2 Is Oversubscribed

Section III.B.9. of the Stipulation and Agreement, at page 51, provides that KCPL will consider Aquila and Empire as "preferred potential partners in the Iatan 2 generating plant project of at least a 30% combined share of Iatan 2" and KCPL will consider MJMEUC as "a preferred potential partner in the Iatan 2 plant of at least 100 MW of Iatan 2" if they can meet certain conditions. Mr. Giles testified that it is likely that Iatan 2 will be 850 MWs. (Vol. 4, Tr. 80, ln. 23 – Tr. 81, ln. 3; Tr. 95, lns. 8-16). Thirty percent of 850 MWs is 255 MWs. Mr. Giles testified that the Letters of Intent between KCPL and Aquila, KCPL and Empire and KCPL and MJMEUC indicate the minimum number of megawatts, regardless of the size of the unit, as follows: Aquila - 140 MWs, Empire - 100 MWs and MJMEUC - 80 MWs. (Vol. 4, Tr. 80, ln. 15 – Tr. 81, ln. 17; Ex. 3). Aquila, through its acquisition of St. Joseph Light & Power Company, owns 18 percent of Iatan 1, and Empire owns 12 percent of Iatan 1. (Vol. 4, Tr. 85, lns. 17-22). Eighteen percent of 850 MWs equals 153 MWs, and 12 percent of 850 MWs equals 102 MWs.

Mr. Giles also testified that there is a Letter of Intent between KCPL and the Kansas Electric Power Cooperative, Inc. (KEPCO) for a minimum of 40 MWs, although KEPCO requested 50 MWs, and KCPL itself has always indicated that KCPL wants 500 MWs of the Iatan 2 unit. (Vol. 4, Tr. 91, lns. 7-21; Tr. 93, lns. 13-16; Tr. 94, lns. 17-20; Ex. 47). Mr. Giles related that there was interest from other entities, but KCPL did not pursue Letters of Intent with these other entities. (Vol. 4, Tr. 107, ln. 1 – Tr. 108, ln. 1).

Mr. Duncan Kincheloe, counsel for MJMEUC, related in his opening statement that Iatan 2 is very important to a number of municipal utilities that have been and currently are supplied by KCPL, whose customers, as a result of KCPL tariff changes at the wholesale level, are not experiencing as advantageous terms as previously they have enjoyed. (Vol. 4, Tr. 49, lns. 5-12). Mr. Kincheloe noted that these municipals include the cities of Independence, Marshall, Carrollton and Salisbury. (Vol. 4, Tr. 81, ln. 18 – Tr. 82, ln. 17). He also referred to a desired level of participation in Iatan 2 indicated in the Letter of Intent by MJMEUC of 245 MWs, the 100 MW minimum level of participation by MJMEUC contained in the March 8, 2005 Stipulation And Agreement and the 80 MW level of participation set by KCPL in the Letter of Intent between KCPL and MJMEUC. (Vol. 4, Tr. 78, lns. 15-21; Tr. 81, lns. 9-17; Stipulation And Agreement, p. 51; *See also*, Vol. 4, Tr. 100, ln. 13 – Tr. 101, ln. 16). Mr. Kincheloe further stated to the Commission that "[MJMEUC] would have a substantial flexibility in terms of the ability to accommodate megawatt allocations above 100 megawatts, at least up to 130 or so range, and above that would probably depend on when we would discover the availability and what terms it might be." (Vol. 4, Tr. 119, ln. 22 – Tr. 120, ln. 4).

Mr. Dean Cooper, counsel for Empire District Electric Company, related in his opening statement that Iatan 2 is very important for Empire's Missouri customers and Mr. Giles testified that Empire indicated in the letter of intent between KCPL and Empire, Empire expressed that its preferred amount of megawatts from Iatan 2 is 150 MWs. (Vol. 4, Tr. 48, lns. 3-8; Tr. 119, lns. 12-15).

Efficiency Programs And Wind Power Cannot Mitigate The Need For Iatan 2

Mr. Giles testified that wind power and efficiency programs cannot replace KCPL's need for baseload generation within the relevant five-year timeframe, given the issues with those types

of resources. KCPL looked at a 10 year resource plan and efficiency programs and wind power may give KCPL more options in the second five years than KCPL would otherwise have. (Vol. 4, Tr. 117, ln. 19 – Tr. 118, ln. 12). Regarding Concerned Citizens/Sierra Club's suggestion that KCPL delay construction of Iatan 2, Mr. Giles testified: "We're not the only utility that's attempting to secure both equipment and labor to build a coal plant, in addition to the environmental equipment we must bid and order. So as we delay, it's expected those costs will increase." (Vol. 4, Tr. 78, lns. 1-5).

Ms. Mantle, who is the Utility Engineering Supervisor of the Engineering Analysis Section of the Energy Department of the Utility Operations Division of the Commission, testified that she did not believe it is reasonable to assume that demand response and energy efficiency programs could address KCPL's capacity needs at a level to eliminate or defer KCPL's need for Iatan 2. (Vol. 7, Tr. 865, lns. 4-8; Tr. 856, lns. 10-23). Ms. Mantle indicated that on the western side of the state there are electric utilities, including municipals, other than KCPL that also need coal-fired capacity and these other electric utilities cannot be an anchor for a large coal unit. She related that there are older coal units on the western side of the state that may need to be shut down because of emission requirements in the future. She testified that KCPL in constructing Iatan 2 would provide these other electric utilities an opportunity to also acquire base load coal-fired capacity. (Vol. 7, Tr. 859, ln. 2-22; Tr. 863, ln. 14 – Tr. 864, ln. 7). She indicated that in her analysis, she did not see anything that would lead her to conclude that KCPL's assertion that Iatan 2 would produce the lowest cost PVRR to ratepayers was in any way incorrect. (Vol. 7, Tr. 863, lns. 3-8).

Mr. Grimwade testified that at an October 29, 2004 workshop meeting in Case No. EW-2004-0596, the concerns of participants in the workshops were presented to KCPL and KCPL

subsequently provided a written response in December 2004 respecting the analyses that KCPL had performed. Exhibits 38, 40, 41, and 42 are appendices to KCPL's written response to the October 29, 2004 workshop. Exhibit 38 is entitiled "Assessment Of Renewable Wind Resources As Part Of KCP&L's Supply Portfolio" and summarizes KCPL's wind power analysis. Exhibit 40 is entitled "Environmental Compliance Planning" and contains the details of KCPL's environmental considerations. Exhibit 41 is entitled "Integrated Coal Gassification Combined Cycle (IGCC) Technology Status" and contains the details of KCPL's analysis of IGCC. Exhibit 42 is entitled "Energy Efficiency And Demand Response Evaluations" and includes details of KCPL's demand response, energy efficiency and affordability analysis. (Vol. 7, Tr. 631, ln. 20 – Tr. 632, ln. 8; Tr. 633, lns. 3-12; Tr. 634, lns. 1-17; Tr. 634, ln. 24 – Tr. 635, ln.20; Vol. 5, Tr. 474, lns. 13-24; Ex. 37, p. 10, lns. 18-19; Ex. 37, p. 13, lns. 7-10; Ex. 37, p. 14, lns. 11-12; Ex. 37, p. 15, lns. 6-10; Ex. 37, p. 18, lns. 8-10; Vol. 5, 469, ln. 17 – Tr. 471, ln. 25). Regarding the October 29, 2004 workshop meeting with KCPL, Mr. Schallenberg was assigned the role to facilitate the entire workshop process, and, thus, at the October 29, 2004 workshop meeting with KCPL, he presented the concerns of each of the non-KCPL participants. (Vol. 7, Tr. 804, lns. 7-13; Vol. 6, Tr. 361, lns. 9-22).

Missouri KCPL Experimental Regulatory Plan Subject To Kansas KCPL Experimental Regulatory Plan Yet To Be Approved By Kansas Corporation Commission

As the Commissioners are aware, should the KCC approve an Experimental Regulatory Plan for KCPL, there is a section in the Stipulation And Agreement, at pages 49-50, that permits the Signatory Parties seven (7) days from KCPL's timely filing of the experimental regulatory plan approved by the KCC to indicate whether they continue to support approval of the experimental regulatory plan agreed upon in Missouri, and by then possibly approved by this Commission. If the terms of the Experimental Regulatory Plan approved by the KCC are not

comparable to the terms agreed upon by KCPL in Missouri, KCPL has agreed that it will offer to the other Signatory Parties in Missouri and accept comparable terms to those agreed upon in Kansas and approved by the KCC. Reply briefs were filed before the KCC in Docket No. 04-KCPE-1025-GIE on July 8, 2005. The Staff would note that Attachment 2 to the Staff Suggestions In Support Of Stipulation And Agreement, filed on May 10, 2005, is an identification of the differences between the Stipulation And Agreement before the KCC and the Stipulation And Agreement before this Commission.

Off-System Sales Provision Will Be Amended

At the hearing on July 12, 2005, the Staff advised the Commission that it has had discussions with KCPL about amending the off-systems sales provision in the Stipulation And Agreement. Commissioner Gaw had questions for Mr. Schallenberg specifically respecting off-system sales. Mr. Schallenberg testified that the revenues from off-system sales are a significant factor in the economics of the infrastructure improvements that are contained in the Stipulation And Agreement. He stated that it is important not only that the off-system sales revenues exist, but that they be used to reduce the cost of Iatan 2 to ratepayers by being treated above the line. (Vol. 8, Tr. 1030, ln. 15 – Tr. 1031, ln. 5; Tr. 1032, ln. 9 – Tr. 1033, ln. 8; Tr. 1035, ln. 13 – Tr. 1036, ln. 6).

Mr. Wood stated that off-system sales are important in the Staff's determination that Iatan 2 is the right capacity addition for KCPL, and given KCPL's capacity and energy needs, if KCPL could not make off-system sales, Iatan 2 would still likely be the right choice for KCPL. If KCPL could not make off-system sales, what might change is when KCPL would retire the Montrose units. (Vol. 8, Tr. 972, lns. 8-18).

Mr. Schallenberg related that in working on the proposed experimental regulatory plans of other electric utilities, it became clear that there is a liability regarding the fact that there is no termination date specified for this provision respecting off-system sales at page 22 of the Stipulation And Agreement, but at page 57 of the Stipulation And Agreement there is provision for an expiration date of June 1, 2010, except where otherwise specified. It is projected that Iatan 2 would go in-service into commercial operation by June 10, 2010. Thus, Mr. Schallenberg explained that it could be contended by KCPL that its commitment that it would treat off-system sales above the line terminates at the time Iatan 2 is declared to be in-service. (Vol. 8, Tr. 1034, ln. 14 – Tr. 1035, ln. 12).

Mr. Schallenberg testified that as a result of discussions with KCPL, the term of duration of KCPL's agreement to treat off-system sales above the line for ratemaking purposes will be tied to as long as the costs from Iatan 2 were included in rates. (Vol. 8, Tr. 1033, ln. 9 – Tr. 1034, ln. 13; Tr. 1037, lns. 11-24). Counsel for KCPL, James M. Fischer, stated that he could stipulate that Mr. Schallenberg correctly stated KCPL's understanding with the Staff, with the proviso that it is also KCPL's understanding that there will be a similar provision in the other regulatory plans. (Vol. 8, Tr. 1037, ln. 25 – Tr. 1038, ln. 5).

On July 18, 2005, a Stipulation And Agreement comprising an Empire Experimental Regulatory Plan was filed in Case No. EO-2005-0263. At page 18 of that Empire Stipulation And Agreement, in a section entitled "Off-System Sales," appears the following language, in part:

> . . . Empire agrees that all of its off-system energy and capacity sales revenue will continue to be used to establish Missouri jurisdictional rates as long as the related investments and expenses are considered in the determination of Missouri jurisdictional rates. . . . Empire agrees that it will not seek to avail itself of any legislation that may be enacted in the future that would be inconsistent with the

> ratemaking treatment for off-system sales revenues and associated expenses set forth in this paragraph.

Thus, the precondition specified by Mr. Fischer for an extended duration term for off-system sales respecting KCPL has been met in the Empire Stipulation And Agreement. (There is no experimental regulatory plan for Aquila, but a financial plan for Aquila to be a partner in Iatan 2 has been negotiated.)

The Staff would note the second sentence in the excerpt directly above. Commissioner Gaw stated that another thing that is not clear to him regarding off-system sales is the impact of any future legislation that might be passed. He noted the language in the KCPL experimental regulatory plan respecting S.B. 179, fuel adjustment clauses and riders/surcharges that KCPL, prior to June 1, 2015, will not seek to utilize any mechanism authorized in current legislation known as "S.B. 179" or other change in state law that would allow riders or surcharges or changes in rates outside of a general rate case based upon a consideration of less than all relevant factors. ((Vol. 8, Tr. 1038, lns. 8-13; Stipulation And Agreement, p. 7). He stated: "It's not clear to me whether the language in the stip contemplates that. I'll leave that, but I raise it since you all are going to be talking about language." (Vol. 8, Tr. 1038, lns. 13-16). The Staff took the import of Commissioner Gaw's question/statement as being that he expected to see similar language for off-system sales as exists at page 7 of the Stipulation And Agreement as noted above.

KCPL Financial Plan Case No. EF-2005-0498 Related To KCPL Experimental Regulatory Plan Case No. EO-2005-0329

On June 22, 2005, KCPL filed an Application for authority to issue up to $635 million principal amount of debt securities through December 31, 2009, and to enter into interest rate hedging instruments in connection with such debt securities. The proceeds of the securities will

be used by KCPL to refinance outstanding long-term debt and to execute the Experimental Regulatory Plan described in the Stipulation And Agreement. The debt securities will have maturities of one (1) year to 40 years and will be issued in multiple offerings of differing amounts with different interest rates (including variable interest rates) and other negotiated terms and conditions. Interest rates on the debt securities, represented by either (a) the coupon on the fixed rate debt securities or (b) the initial rate on any variable or remarketed debt securities, will not exceed 9 percent. Depending on cost differentials and market conditions at the time of issuance, the debt securities may be senior or subordinated and may be issued as unsecured or secured under KCPL's existing general mortgage debt indentures. The debt securities may take the form of "fall away" mortgage debt in which it is initially secured debt, but converts to unsecured debt on certain conditions. KCPL also requests authority to enter into interest rate hedging instruments in conjunction with the debt securities for which Commission authorization is being sought. KCPL notes in its Application that both the use and cost of hedging instruments is difficult to forecast.

Testimony Of KCPL Witnesses, Public Counsel Witnesses, MDNR Witnesses And Staff Witnesses Constitute Competent And Substantial Evidence For The Commission To Approve The KCPL Experimental Regulatory Plan Stipulation And Agreement Filed On March 28, 2005

Article V, Section 18, Constitution of Missouri (1945), as amended, provides that judicial review of final orders of administrative agencies, such as the Commission, shall include, in cases in which a hearing is required by law, a determination of "whether the same are supported by competent and substantial evidence upon the whole record." The prefiled direct and live testimonies of KCPL witnesses Chris B. Giles, Michael W. Cline, John R. Grimwade and Susan K. Nathan; the prefiled direct testimonies of KCPL witnesses Lori A. Wright,, William P. Herdegan and Wm. Edward Blunk; the prefiled direct and live testimony of Public Counsel

witness Russell W. Trippensee; the live testimony of Public Counsel witness Ryan Kind; the live testimony of Missouri Department of Natural Resources witnesses Anita Randolph and Kendall B. Hale; and the live testimonies of Staff witnesses Warren T. Wood, Henry E. Warren, David W. Elliott, Lena M. Mantle and Robert E. Schallenberg constitute competent and substantial evidence on the whole record that the proposed KCPL Experimental Regulatory Plan is in the public interest.

Even if KCPL, the Staff and Public Counsel had not controverted Concerned Citizens/Sierra Club's evidence, which they have, the Missouri Supreme Court in *State ex rel Rice v. Public Serv. Comm'n*, 220 S.W.2d 61, 65 (Mo. banc 1949) clearly stated that the Commission determines the weight of evidence presented to it and may disregard evidence which is not credible, even though there is no countervailing evidence to dispute or contradict it:

> Rice objects to the findings of the commission because they ignore his evidence. **He contends since there was no other evidence adduced which contradicted his figures and calculations, or even disputed them, that the commission is bound to accept them as true. Accordingly he contends his evidence is the only substantial evidence in the record. In asserting his contention he overlooks that on cross examination his evidence was discredited to such an extent that the commission held it not entitled to credence. And certainly if evidence is not credible, it does not meet the required test of being substantial.** An appellate court as a matter of law passes upon the matter of substance and not of credibility. In other words an appellate court may say that particular evidence is substantial if the triers of the facts believed it to be true. Keller v. Butcher's Supply Co., Mo.Sup., 229 S.W. 173.
>
> Whenever an investigation is conducted by the commission it is required under the statute to make a report in writing which shall state its conclusions and its decision or order. Sec. 5688, R.S.1939, Mo.R.S.A. Thus it must find and determine the facts. And in doing so **the commission determines the weight of evidence presented to it**. (Cf. Ohio Utilities Co. v. Public Utilities Comm., 108 Ohio St. 143, 140 N.E. 497.) **It may disregard evidence which in its judgment is [359 Mo. 117] not credible, even though there is no countervailing evidence to dispute or contradict it. The rule is established in this State that the triers of fact under their duty to weigh the evidence may disbelieve evidence although it is uncontradicted and unimpeached.** Wiener v. Mutual Life Ins.

> Co., 352 Mo. 673, 179 S.W.2d 39; Woehler v. City of St. Louis, 342 Mo. 237, 114 S.W.2d 985.

The Western District Court of Appeals has stated, in *State ex rel. Associated Natural Gas Co. v. Public Serv. Comm'n*, 706 S.W.2d 870, 880, 882 (Mo.App. 1985), that in evaluating expert testimony, the Commission may adopt or reject any or all of any witness' testimony:

> Not only can the Commission select its methodology in determining rates and make pragmatic adjustments called for by particular circumstances, but it also may adopt or reject any or all of any witnesses' testimony. *In re Permian Basin Area Rate Cases*, *supra*, 390 U.S. at 800, 88 S.Ct. at 1377. Evaluation of expert testimony was for the Commission. *Southwestern Bell Telephone Co.*, *supra*, 593 S.W.2d at 445-46. . . .

See State ex rel. Associated Natural Gas Co. v. Public Serv. Comm'n, 37 S.W.3d 287, 294 (Mo.App. 2000). The opinion of a qualified expert may amount to competent and substantial evidence. 37 S.W.3d at 294; 537 S.W.2d at 663 (citing 2 Am. Jur. 2d, Adm. Law § 395, p. 201 (1962)). The Western District Court of Appeals in *State ex rel. Associated Natural Gas Co. v. Public Serv. Comm'n,* 706 S.W.2d 870, 882 (Mo.App. 1985) held that "[t]he Commission as the trier of fact was free to choose between conflicting testimony. General Telephone and Telegraph Company, supra, 390 A.2d at 36."

Dr. Henry E. Warren, Regulatory Economist in the Energy Department of the Utility Operations Division of the Commission, explained that his primary assignment was to review the load forecast provided by KCPL. He attended the sessions where the load forecast was presented by KCPL, reviewed the documents that KCPL presented, including Exhibit No. 49 (KCPL Integrated Resource Planning Review, May 12, 2004) and Exhibit No. 50 (KCPL Regulatory Workshop (Team A), Load Forecasting, MPSC, August 11, 2004),[8] and along with Ms. Mantle

[8] Exhibit No. 43 was introduced and received into evidence when KCPL witness Mr. Grimwade was on the witness stand. Exhibit No. 43 is comprised of two pages, which are excerpts from a KCPL strategic planning forecast of both peak demand and energy. The first page of Exhibit No. 43 and page 15 of Exhibit No. 50 are identical except

submitted data requests to KCPL to obtain background information on the load forecast. (Ex. 48; Vol. 8, Tr. 867, ln. 4 – Tr. 868, ln. 12). He stated that he is confident that the information that he received from KCPL in regard to its load forecast is accurate, and that the load forecast performed and provided by KCPL is reasonable. (Vol. 8, Tr. 885, ln. 23 – Tr. 886, ln. 1; Tr. 916, lns. 3-7).

He testified that the Staff verified as best as possible KCPL's calculation of what load growth would be by reviewing the basic model itself and the basic inputs for reasonableness and reliability. (Vol. 8, Tr. 875, ln. 19 – Tr. 876, ln. 25). The independent information that he used for this load growth verification and for verification that building Iatan 2 is appropriate came from the regional electric reliability councils in the U.S., in particular, the expected load growth information and the reserve margin information on pages 12 and 13 of Exhibit 49. (Vol. 8, Tr. 877, lns. 1-20). Page 12 of Exhibit No. 49 shows a 2.0 percent per year projected growth in demand for the SPP region, and page 13 of Exhibit No. 49 shows the SPPN (Southwest Power Pool North), where KCPL is located, as projected as the region with the lowest reserve margin of the regions shown. Page 13 of Exhibit No. 49 shows the SPPN reserve margin falling below 15 percent in 2008 and falling below 12 percent in 2009.

Counsel for Concerned Citizens/Sierra Club had marked and received into evidence, as Exhibit No. 52, a KCPL response to a Concerned Citizens/Sierra Club data request that shows a compound average growth rate for 1999-2004 for Missouri retail Mwh (not weather normalized) of -0.55 percent; a compound average growth rate for 1994-2004 for Missouri retail Mwh (not weather normalized) of 0.8 percent; a compound average growth rate for 1999-2004 for Missouri load coincident with system peak MW of -0.39 percent; and a compound average growth rate for

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for the page numbers. The second page of Exhibit No. 43 and page 16 of Exhibit No. 50 are identical except for the page numbers.

1994-2004 for Missouri load coincident with system peak MW of 1.4 percent. (Vol. 8, Tr. 908, ln. 9 – Tr. 910, ln. 3). Dr. Warren testified that the period 2000 through 2003 is shown on page 15 of Exhibit No. 50 as including the events "Loss of GST," "Recession," "9/11" and "Sprint Layoffs Begin." (Vol. 8, Tr. 914, lns. 3-20). Mr. Grimwade identified the summer of 2004 as the coldest summer since the early 1980's. (Vol. 8, Tr. 1020, lns. 14-22). Dr. Warrren stated that the peak temperature for the summer of 2004 in the KCPL service area was less than the typical summer in the KCPL Missouri service area and that it is important to use a weather normalized peak forecast rather than using just actual observed peaks:

> Q. And there's been some discussion about what the actual peaks were for KCP&L over the last five years or so, and maybe it had been flat. If you were looking at just the observed peaks and not weather normalizing it, would that be very helpful in understanding what your needs would be for the future?
>
> A. Not necessarily. The -- the weather is extremely important, as I've mentioned previously, in determining the accuracy of the peak.
>
> Q. Exhibit 51, I think, as the Commissioner had noted, showed that the -- the compound average growth rate for peak had been about just under two percent over that period of time. Is that correct?
>
> A. Yes.
>
> Q. Is that consistent with KCP&L's projections for the future for peak growth?
>
> A. Yes, I believe -- I believe it is. The -- as I referred to in the -- in Exhibit 50 on Page 18, the -- the -- the baseline peak has shown for the 20-year period, 2004 to 2024, is shown to be 1.4 percent. And the high end is shown at 1.8 percent, so that -- that's actually a little bit beyond the high range as shown in the document, Exhibit 50.
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> Q. And if we look at the energy forecast, the five-year compound annual growth rate since 1999 has been 2.23 percent; is that correct?
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> A. That's what's shown, yes.
>
> Q. And is that generally in the ballpark of what KCP&L's projecting for the future?

> A. Yes, it is. Once again, on Page 18 of Exhibit 50, the baseline is 1.8 percent, and the high is 2.2 percent, so this would be completely consistent with that range.

(Vol. 8, Tr. 901, ln. 3 – Tr. 902, ln. 8; Tr. 900, ln. 9 – Tr. 901, ln. 2).

Mr. David W. Elliott, Utility Engineering Specialist III in the Energy Department of the Utility Operations Division of the Commission provided testimony on behalf of the Staff. (Ex. 53). Mr. Elliott testified that based on his analysis of MIDAS runs that Iatan 2 is by far the lowest PVRR that KCPL could engage to meet its additional load. He related that Iatan 2 will be dispatched very early in the dispatch curve because it is more efficient, i.e., it will get more MWs per ton of coal and thus will use less fuel than KCPL's other coal-fired units. (Vol. 8, Tr. 961, lns. 9-19). Mr. Elliott related that the Staff reviewed the analysis that KCPL performed using the MIDAS model, including discussing with KCPL about inputs and outputs to the model, and discussing with KCPL the type of supply options available to meet KCPL's need for capacity. (Vol. 8, Tr. 920, lns. 15-25). He explained that the Staff does not have the MIDAS software so it could not perform the same analysis as KCPL did, but the Staff visited KCPL's offices and reviewed certain items relating to the model, asked questions and watched the functioning of the model. On certain items KCPL made suggestions and KCPL would re-run the model. (Vol. 8, Tr. 922, lns. 4-22). He stated that "KCP&L had done a very good job of covering all the issues that we saw, and I have . . . no problem supporting what the results are. . . . I feel comfortable saying that the analysis is a good analysis." (Vol. 8, Tr. 923, lns. 5-21).

Mr. Elliott and Mr. Wood agreed that the KCPL analysis using the MIDAS model, verified by the Staff, shows that under the base case conditions, coal is the lowest cost resource alternative, with timing optimal in the 2010-2012 timeframe. Mr. Elliott testified that for the years 2010-2012 the cost for new coal-fired generation for each year is so close together that it

does not make much difference as far as dollars of cost are concerned which year from 2010-2012 coal-fired generation would be brought on line. (Vol. 8, Tr. 939, ln. 14 – Tr. 941, ln. 13; Tr. 985, ln. 20 – Tr. 986, ln.8).

Both Mr. Wood and Mr. Elliott indicated that the analysis that was performed is very dynamic. Mr. Wood noted that Iatan 2 would offer KCPL the option of retiring Montrose 1, 2 and 3 if there is no load growth or little load growth. He indicated that one of the reasons that Montrose 1, 2 and 3 might be retired is the hundreds of millions of dollars that would be necessary to incur to bring Montrose 1, 2 and 3 in compliance with emission requirements and the better heat rate of Iatan 2 over Montrose 1, 2 and 3. (Vol. 8, Tr. 985, ln. 20 – Tr. 986, ln. 8; Tr. 999, ln. 13 – Tr. 1001, ln.12; Tr. 950, ln. 4 – Tr. 953, ln. 1).

Mr. Schallenberg, Division Director of the Utility Services Division, related that the Staff decision to support the Stipulation and Agreement was a collaborative decision involving the Services Division, the Operations Division and the General Counsel's Office. He stated that in his opinion it is in the best interest of the public for the Commission to adopt the provisions of the Stipulation And Agreement. (Vol. 7, Tr. 805, ln. 12 – Tr. 806, ln. 8). He said that there was a general consensus among the Signatory Parties that having the various investments covered by the Stipulation And Agreement made for the KCPL system was good for KCPL's customers, and in the long run customers will pay less for these investments than they would under traditional regulation. (Vol. 7, Tr. 811, ln. 22 – Tr. 812, ln. 5).

Additional Amortizations To Maintain Financial Ratios

Regarding the Additional Amortizations To Maintain Financial Ratios area, Mr. Schallenberg explained that KCPL took the position that it would not make the expenditures to construct the facilities or engage in the customer programs covered by the Stipulation And

Agreement (i.e., Iatan 2, environmental upgrades to Iatan 1 and LaCygne 1, transmission and distribution and Demand Response, Efficiency and Affordability Programs), if KCPL's debt would be downgraded below investment grade, and a regulatory plan of certain parameters respecting cash flow was necessary to prevent this from occurring. Mr. Schallenberg testified that the Additional Amortizations To Maintain Financial Ratios section of the Stipulation And Agreement was the result of many attempts to address the prospect of a downgrading of KCPL debt below investment grade if there was not a regulatory plan within certain cash flow parameters. (Vol. 7, Tr. 806, ln. 22 – Tr. 807 ln. 19).

Respecting the Additional Amortizations To Maintain Financial Ratios, the Stipulation And Agreement provides for a new amortization totaling $17 million to commence with the effective date of the rates resulting from the 2006 Rate Case. The $17 million amortization also is a component of the 2007 Rate Case and the 2008 Rate Case, but it is not a component of the 2009 Rate Case. This $17 million amortization may be adjusted as specified in Paragraph III.B.1.i. Mr. Schallenberg explained the origin of the $17 million amount as follows, noting that the Staff had performed an earnings review of KCPL to establish the adequacy of current rates in the context of negotiating the Stipulation and Agreement:

> The $17 million number was a negotiated number that came -- it was derived from some financial scenarios that initially KCP&L had. And then I think on further work, KCPL showed a lower number as a starting point.
>
> At the same time, there was an earnings review being done of KCPL to establish the adequacy of current rates. And that number was drifting around the $17 million number as an amortization. So while we could never come to an agreement as a fixed amortization, we agreed to start with the $17 million number as one the parties would be agreeable to start with using the ratios to give you the right to adjust it upward or downward. [Vol. 7, Tr. 808, ln. 18 – Tr. 809, ln. 4].
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> . . . .
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> . . . the ratios would first be looked at at the time a party made a recommendation in that [2006] rate case. I would anticipate if we follow what we have now,

> KCPL will look at it when they file their direct case and the Staff will look at it when it files its first -- whether it has a direct case or whatever, whenever its first revenue requirement, it will look at what that number will be in relation to what its total cost of service recommendation is. [Vol. 7, Tr. 809, lns. 11-18].
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> . . . .
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> . . . depending on the issues the parties take, that could impact what the amortization would be in relation to that respective party. But once we knew what the Commission's decisions were on the cost of service issues, it is anticipated and expected that the fallout would be what the amortization would be for the parties. [Vol. 7, Tr. 810, lns. 4-10].

Mr. Schallenberg further testified that under the Additional Amortizations To Maintain Financial Ratios provision, assuming all other things remaining equal, rates may be higher in the short run than they otherwise would be, but rates in the future will be more than offset by rate base being reduced by the amortization. (Vol. 7, Tr. 812, ln. 13 – Tr. 813, ln. 3). Mr. Schallenberg further related that the amount of the additional amortizations will not be determined by the amount of dollars reflected in KCPL's construction accounts and will not be determined for any that is not fully operational and used for service. (Vol. 7, Tr. 818, lns. 8-15).

Conclusion

For the foregoing reasons, the Staff requests that the Commission approve the KCPL Regulatory Plan.

Respectfully submitted,
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 21st day of July 2005.

/s/ Steven Dottheim