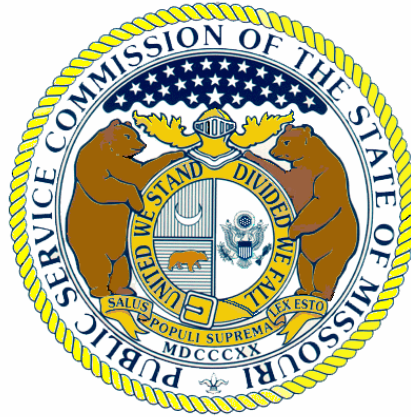


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of a Proposed Regulatory Plan)
of Kansas City Power & Light Company)

Case No. EO-2005-0329

REPORT AND ORDER

Issue Date: July 28, 2005

Effective Date: August 7, 2005

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In the Matter of a Proposed Regulatory Plan)
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REGULATORY LAW JUDGE: **Ronald D. Pridgin**

REPORT AND ORDER

Syllabus

The Commission determines that it should approve Kansas City Power & Light Company's Experimental Regulatory Plan, which includes construction of coal-fired generating plant to be known as latan 2.

Procedural History

History Leading Up to this Case

On May 6, 2004, Kansas City Power & Light Company filed its Application to Establish Investigatory Docket and Workshop Process Regarding Kansas City Power & Light Company. The Commission created Case No. EO-2004-0577 to consider that application.

KCPL requested that the Commission issue an order (a) opening an investigatory docket regarding the future supply and pricing of the electric service provided by KCPL; and (b) authorizing the use of the Commission's workshop process to address certain issues related to the future supply and pricing of electricity for KCPL and its customers, and any other issues affecting KCPL that might arise from discussion among the interested parties.

On May 25, 2004, the Commission issued an Order Directing Notice and Setting Intervention Deadline. Several parties, including the Missouri Department of Natural Resources; Aquila, Inc. d/b/a Aquila Networks, Aquila Networks – MPS and Aquila Networks – L&P; The Empire District Electric Company; the City of Kansas City, Missouri; Concerned Citizens of Platte County; Praxair, Inc.; the Missouri Industrial Energy

Consumers; and the Missouri Joint Municipal Electric Utility Commission applied to intervene.

On June 3, 2004, the Commission issued an Order Establishing Case which granted KCPL's Application to Establish Investigatory Docket and Workshop Process Regarding Kansas City Power & Light Company, and established an informal, investigatory case designated as Case No. EW-2004-0596. In the June 3 order, the intervenors in Case No. EO-2004-0577 were also made participants in Case No. EW-2004-0596.

In addition to those participants, the Missouri Energy Group; the Sierra Club; Union Electric Company, d/b/a AmerenUE; and Jackson County, Missouri, participated in the workshops conducted in Case No. EW-2004-0596. The Staff of the Missouri Public Service Commission and the Office of the Public Counsel also participated throughout the workshop process. On July 1, 2004, the Commission issued its Notice Closing Case in Case No. EO-2004-0577, which formally closed that proceeding.

The Commission held a prehearing conference in Case No. EW-2004-0596 on June 30, 2004. A series of presentations and workshops was held on June 21, June 30, July 21, July 30, August 10-11, August 19, August 24-26, September 7, September 15, September 29, and October 29, 2004. During this period, KCPL conducted numerous informal meetings with a variety of interested groups and individuals to discuss the many issues raised by this proceeding.

The workshop was organized into two teams. Team A reviewed Integrated Resource Planning–related issues, including load forecasting, generation planning, demand side management, environmental issues, and distribution and transmission technologies. A subteam within Team A reviewed affordability, efficiency, and conservation

programs. Team B reviewed the financial issues associated with KCPL's various plans, including maintaining KCPL's current investment grade rating on its securities. These Teams were led jointly by KCPL and Staff representatives.

After the workshops in Case No. EW-2004-0596 had concluded, various interested parties, including the Sierra Club and Concerned Citizens of Platte County, held discussions in an effort to resolve the issues presented in the instant case. These discussions included issues related to KCPL's capacity needs for the future, capital investments related to compliance with environmental regulations, infrastructure investments, and customer programs, as well as the likely impact of those investments and programs upon KCPL's future revenue requirements.

On February 18, 2005, the Commission issued its Order Closing Case in Case No. EW-2004-0596. In the Order Closing Case, the Commission stated:

"The Commission agrees that it is time to close this case. It appears that the general discussion has led to the specific give-and-take of settlement-style negotiations. If KCPL develops a regulatory plan (with or without consensus) for which it wants Commission approval, it can request that approval in a new case." (Order Closing Case, pp. 1-2).

History of this Case

On March 28, 2005, KCPL, Staff, Public Counsel, Missouri Department of Natural Resources, Praxair, Missouri Industrial Energy Consumers, Ford Motor Company, Aquila, Empire, and Missouri Joint Municipal Electric Utility Commission (collectively referred to as "Signatory Parties") submitted a Stipulation and Agreement. That agreement included an

Experimental Regulatory Plan. The Stipulation is attached to this Order as Attachment No. 1.

Concerned Citizens of Platte County and Sierra Club opposed the agreement. On June 23-24, 27, and July 12, the Commission held an evidentiary hearing. The parties filed proposed Findings of Fact and Conclusions of Law on July 19, and briefs on July 21.

Discussion of Issues Presented

On May 31, 2005, the Staff of the Commission filed a List of Issues. After reviewing the list and the parties' respective position statements, the Commission has determined that the List of Issues contains issues unnecessary and extraneous to this case. As a result, the Commission will not address each and every issue contained in the List of Issues.

The essential substantive issues that the Commission needs to decide are:

1. What action should the Commission take concerning the Experimental Regulatory Plan embodied in the March 28, 2005 Stipulation and Agreement?
2. Should KCPL's Experimental Regulatory Plan include the construction of a coal-fired generation unit at latan 2?

The Commission will also address additional legal and procedural issues from the List of Issues in the "Conclusions of Law" Section of this Report and Order. However, in the event that the Commission does not directly address an issue from the List of Issues, it merely indicates that the Commission finds the issue is unnecessary or extraneous.

Because not all parties have signed the Stipulation, and SC/CCPC are opposing certain aspects of the Experimental Regulatory Plan that is embodied in the Stipulation, the Commission will consider this case using the procedures set forth in 4 CSR 2.115(2) relating to Non-unanimous Stipulations and Agreements. That means that the Commission will consider the provisions of the Stipulation filed on March 28, 2005, as if they are joint recommendations of the signatory parties. The Commission will therefore review the competent and substantial evidence to determine how to rule on the issues.

Summary of KCPL's Proposed Experimental Regulatory Plan

The Stipulation, which runs through June 1, 2010, unless otherwise specified in the agreement, contains the key elements of KCPL's proposed Experimental Regulatory Plan and will be briefly summarized below:¹

RESOURCE PLAN

KCPL has committed to investing over \$1.3 billion over the course of the Experimental Regulatory Plan. This investment includes the completion or substantial progress on the following projects:

- 800-900 MW of new coal-fired generation capacity, later 2, to be regulated capacity, excepting the interest that may be owned by a municipality or joint municipal utility commission, located at the later site near Weston, Missouri, of which KCPL will own approximately 500 MWs;

¹ This summary was taken from the Direct Testimony of Chris B. Giles (Ex. No. 1) and the Commission's review of the provisions of the Stipulation.

- Environmental investments related to Iatan 1 and LaCygne 1 for accelerated compliance with environmental regulations; the Iatan 1 and LaCygne 1 environmental equipment will provide significant reductions in site emissions of sulfur dioxide (“SO₂”), nitrogen oxides, stack particulate matter and mercury, and will position the units to meet compliance requirements set forth in the Clean Air Interstate Rule and the Clean Air Mercury Rule, which were recently promulgated by the U.S. Environmental Protection Agency (“EPA”). With the addition of Iatan 2 at this site, compliance on Iatan 1 will ensure that total site emissions after completion of Iatan 2 will be less than the current site emissions from Iatan 1 and will help address the environmental concerns of persons living in the area around the Iatan site;
- Early installation of a selective catalytic reduction (“SCR”) facility at LaCygne 1, designed to help maintain attainment of the 8-Hour Ozone standard within the metropolitan Kansas City region. Installation of this SCR before the 2007 ozone season is considered a significant component of the region’s proposed ozone mitigation plan by Mid-America Regional Council, regional EPA officials, Kansas Department of Health & Environment and Missouri Department of Natural Resources. With respect to any of the expenditures anticipated for environmental compliance, KCPL will continue to assess the environmental laws to ensure that its expenditures will comply with existing or expected environmental regulations.
- 100 MW of new wind generation facilities to be installed in 2006. KCPL will install an additional 100 MW of new wind generation facilities in 2008 if a

detailed evaluation (made with input from Signatory Parties to the Stipulation) supports such an action. KCPL's detailed evaluation will include information obtained from a tall tower wind assessment performed for KCPL at two Missouri sites. The detailed evaluation will use the KCPL tall tower wind assessment information (and other Missouri-specific information, if available) to analyze the cost effectiveness of wind generation in Missouri before installing the second 100 MW of wind generation in any state other than Missouri. The Signatory Parties agree that KCPL will perform an assessment of wind energy resources at Missouri sites determined in concert with Missouri Department of Natural Resources and other interested Signatory Parties. KCPL will obtain access to two (2) Missouri wind assessment locations and will contract to install wind measuring equipment and evaluate data collected at levels between 50 meters up to and including 100 meters above ground level for the ultimate purpose of producing site-specific measurements that can be used to quantify the wind resources in Missouri. The two Missouri tall tower installations will be operating by December 31, 2005. The initial report analyzing the first 12 months of tall tower data will be completed by March 31, 2007. The final report analyzing the first 18 to 21 months of data will be completed by December 31, 2007.

- Implementing a number of customer programs that include demand response, efficiency and affordability programs throughout the period of the Experimental Regulatory Plan. The initially budgeted expenditures for the five (5) year period for Missouri are \$13.8 million for Demand Response

Programs, \$2.5 million for Affordability Programs, and \$12.7 million for Efficiency Programs.

- Investing \$42.4 million over the period of the Experimental Regulatory Plan into the transmission and distribution infrastructure to ensure a highly reliable transmission and distribution system.

CUSTOMER SERVICE AND RELIABILITY

KCPL has committed to maintaining good customer service and reliability. KCPL has agreed to provide the Staff and Public Counsel monthly data submitted quarterly (within forty-five (45) days of end of the period) on the following quality of service measures:

Call Center Data

Total Calls Offered to the Call Center

Call Center Staffing including Call Center Management Personnel

Average Speed of Answer

Abandoned Call Rate

Reliability Indicators

Customer Average Interruption Duration Index ("CAIDI")

System Average Interruption Duration Index ("SAIDI")

System Average Interruption Frequency Index ("SAIFI")

Momentary Average Interruption Frequency Index ("MAIFI")

CAIDI, SAIDI, and SAIFI will be reported on both a weather adjusted and unadjusted basis.

RATE MORATORIUM AND FUTURE RATE CASES

The signatories agree that, absent a “significant change” as defined in the Stipulation, they will not seek to change rates through December 31, 2006. KCPL will file rate schedules on February 1, 2006, effective January 1, 2007.

Over the course of the Experimental Regulatory Plan, four rate case filings are contemplated. The first, described as the 2006 Rate Case, and the last, to be filed on October 1, 2009, ("2009 Rate Case") are mandatory. The other two rate cases are optional.²

The 2006 Rate Case will include prudent expenditures made related to 100 megawatts of wind generation, and those additions to transmission and distribution infrastructure, as set out in the Experimental Regulatory Plan, which are in service prior to the agreed true-up date of the rates approved in the rate case. The 2006 Rate Case will also include an amortization expense of \$17 million on a Missouri jurisdictional basis, but which can be increased or decreased as specified by the Stipulation.

The 2006 Rate Case will also include an amortization related to the Demand Response, Efficiency and Affordability Programs, as set out in the Stipulation. KCPL has agreed that the 2006 Rate Case will also include the filing of a Class Cost of Service Study. No later than February 1, 2006, KCPL will submit to the Signatory Parties a Missouri jurisdictional revenue requirement cost of service study and a Missouri jurisdictional customer class cost of service study covering the twelve months ending December 31, 2005.

² The Commission reserves its statutory right under Section 393.150 RSMo to suspend or reject any tariffs KCPL may file during the course of this stipulation, or at any other time.

If KCPL chooses to file the second rate case, then it will file rate schedules on February 1, 2007, effective January 1, 2008. The 2007 Rate Case will include prudent expenditures for the installation of an SCR facility at LaCygne 1, and the additions to transmission and distribution infrastructure as set out in the Stipulation that are in service prior to the agreed upon true-up date. The 2007 Rate Case will include an amortization expense expected to be \$17 million on a Missouri jurisdictional basis, as may be adjusted upward or downward. The 2007 Rate Case will also include the amortization related to the Demand Response, Efficiency and Affordability Programs, as more fully described in the Stipulation.

If KCPL chooses to file the third rate case, then it will file rate schedules on February 1, 2008, effective January 1, 2009. The 2008 Rate Case will include prudent expenditures for the installation of an SCR facility, a Flue Gas Desulphurization ("FGD") unit and a Baghouse at Iatan 1; 100 MWs of additional wind generation, if warranted; and the additions to transmission and distribution infrastructure as set out in the Stipulation that are in service prior to the agreed upon true-up date. The 2008 Rate Case will include an amortization expense expected to be \$17 million on a Missouri jurisdiction basis, as may be adjusted upward or downward. The 2008 Rate Case will also include the amortization related to the Demand Response, Efficiency and Affordability Programs, as more fully described in the Stipulation.

COST CONTROL SYSTEM

KCPL has agreed to develop and have a cost control system in place that identifies and explains any cost overruns above the definitive estimate during the construction period of the Iatan 2 project, the wind generation projects and the environmental investments.

RIDERS AND SURCHARGES

KCPL has agreed that before June 1, 2015, it will not seek to use any mechanism authorized in SB 179, enacted this year, 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.

INTERIM ENERGY CHARGE

KCPL can propose an Interim Energy Charge (“IEC”) in a general rate case filed before June 1, 2015, within the following parameters:

1. The rates and terms for such an IEC shall be established in a rate case along with a determination of the amount of fuel and purchased power costs to be included in the calculation of base rates.
2. The rate or terms for such an IEC shall not be subject to change outside of a general rate case where all relevant factors are considered.
3. The IEC rate “ceiling” may be based on both historical data and forecast data for fuel and purchased power costs, forecasted retail sales, mix of generating units, purchased power, and other factors including plant availability, anticipated outages, both planned and unplanned, and other factors affecting the costs of providing energy to retail customers.
4. The duration of any such IEC shall be established for a specified period of time, not to exceed two years.
5. A refund mechanism shall be established which will allow any over-collections of fuel and purchased power amounts to be returned to ratepayers with interest following a review and true-up of variable fuel and purchased power costs at

the conclusion of each IEC. Any uncontested amount of over-collection shall be refunded to ratepayers no later than 60 days following the filing of the IEC true-up recommendation of the Staff.

6. During any IEC period, KCPL shall provide to the Staff, Public Counsel and other interested Signatory Parties monthly reports that include any requested energy and fuel and purchase power cost data.

CURRENT AND ADDITIONAL AMORTIZATIONS

The Signatory Parties agreed that it is desirable to maintain KCPL's debt at an investment grade rating during the period of the construction expenditures contained in the Stipulation. KCPL understands it has the responsibility to act prudently and reasonably in an effort to achieve the goal of maintaining its debt at investment grade levels. KCPL further understands that it is incumbent upon it to act prudently and reasonably so that its investment grade debt rating will not be at risk. The non-KCPL Signatory Parties committed to work with KCPL to ensure that based on prudent and reasonable actions, KCPL has a reasonable opportunity to maintain its bonds at an investment grade rating during the construction period ending June 1, 2010.

As part of this commitment, the non-KCPL Signatory Parties agreed to support the "Additional Amortizations to Maintain Financial Ratios," as defined in the Stipulation and related appendices, in KCPL general rate cases filed prior to June 1, 2010. The "Additional Amortization to Maintain Financial Ratios" will only be an element in any KCPL rate case when the Missouri jurisdictional revenue requirement in that case fails to satisfy the financial ratios shown in Appendix E of the Stipulation through the application of the process illustrated in Appendix F of the Stipulation.

The Signatory Parties agree to support an additional amortization amount added to KCPL's cost of service in a rate case when the projected cash flows resulting from KCPL's Missouri jurisdictional operations, as determined by the Commission, fail to meet or exceed the Missouri jurisdictional portion of the lower end of the top third of the BBB range shown in Appendix E, for the Funds from Operations Interest Coverage ratio and the Funds from Operations as a Percentage of Average Total Debt ratio. The Signatory Parties agree to adopt an amortization level necessary to meet the Missouri jurisdictional portion of these financial ratios under the conditions indicated above.

IMPUTATION OF REVENUES RELATED TO SPECIAL CONTRACTS

KCPL has agreed that for ratemaking determinations, customers using special contracts will be treated as if they were paying the full generally applicable tariff rate for service from KCPL, and other provisions in special contracts will not affect rate base for regulatory purposes.

SO₂ EMISSION ALLOWANCE PROGRAM

The Experimental Regulatory Plan sets out procedures that KCPL will follow to manage its allowance inventory to benefit KCPL and its customers. The plan also has procedures that KCPL will follow to provide the Staff and Public Counsel with information relevant to the Commission's oversight of such activities.

In particular, the proceeds and costs of all transactions identified in the SO₂ Emissions Allowance Management Policy ("SEAMP") will be recorded in Account 254 for ratemaking purposes. The regulatory liability will be amortized over the same time period

used to depreciate environmental assets (emission control equipment and other emission control investments).

ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION RATE REDUCTION

KCPL agreed to a 1.25% or 125 basis point reduction in the equity portion of the Allowance For Funds Used During Construction (AFUDC) rate applicable to latan 2. KCPL shall use this 125 basis point reduction in the AFUDC rate from the effective date of the Order Approving Stipulation and Agreement in this proceeding, and in all subsequent calculations of AFUDC on latan 2 until the in-service date of latan 2.

However, during the hearing, KCPL agreed to substitute the AFUDC Rate Reduction provision from a similar Kansas Stipulation and Agreement. KCPL agrees to a 2.50% or 250 basis point reduction in the equity portion of the AFUDC rate applicable to latan 2 from the effective date of the rates determined in the first rate case (anticipated to be January 1, 2007) and in all subsequent calculation of AFUDC on latan 2 until the in-service date of latan 2.³

OFF-SYSTEM SALES

Under the terms of the Stipulation, KCPL agrees that off-system energy and capacity sales revenues and related costs will continue to be treated “above the line” for ratemaking purposes. KCPL will not propose any adjustment that would remove any portion of its off-system sales from its revenue requirement determination in any rate case. KCPL agrees

³ On July 26, the Signatory Parties filed a Response to Order Directing Filing. That response memorialized KCPL’s agreement to a 250 basis point reduction in the equity portion of AFUDC, and amended Section III.B.1.g. of the Stipulation and Agreement.

that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process. During the hearing, KCPL also stipulated that it would agree to this ratemaking treatment for off-system sales as long as the latan 2 costs were included in KCPL's rate base. (Tr. 1037-38).⁴

TRANSMISSION-RELATED REVENUES

KCPL agrees that transmission related revenues and related costs will continue to be treated “above the line” for ratemaking purposes. KCPL specifically agrees not to propose any adjustment that would remove any portion of its transmission related revenues from its revenue requirement determination in any rate case. It further agrees that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process.

PARTNERSHIP ISSUES

According to the Stipulation, KCPL will consider Empire and Aquila preferred potential partners in the latan 2 plant with at least a 30% combined share, so long as they can each demonstrate that they have a commercially feasible plan for meeting the necessary financial commitments by the later of August 1, 2005, or such date that KCPL shall issue its request(s) for proposal(s) related to latan 2. Such a financing plan must not adversely affect KCPL’s ability to finance its share of the latan 2 plant or to complete construction on the timeframe established in the Stipulation.

⁴ Also in their July 26 Response to Order Directing Filing, the Signatory Parties memorialized KCPL’s agreement that all of its off-system sales would be used to establish Missouri jurisdictional rates as long as the related investments and expenses are considered in determining those rates, and amended Section III.B.1.j. of the Stipulation and Agreement.

KCPL will also consider MJMEUC as a preferred potential partner in the Iatan 2 plant with at least 100 MW of the plant's capacity, so long as it can demonstrate that it has a commercially feasible plan for meeting the necessary financial commitments by the later of August 1, 2005, or such date that KCPL shall issue its request(s) for proposal(s) related to Iatan 2. Such a financing plan must not adversely affect KCPL's ability to finance its share of the Iatan 2 plant or to complete construction on the timeframe established in the Stipulation.

AGREEMENT CONDITIONED ON APPROVAL BY KANSAS CORPORATION COMMISSION

The Stipulation is conditioned upon the Kansas Corporation Commission's approval of a Regulatory Plan that is substantially similar to the terms of the Missouri Experimental Regulatory Plan. KCPL will timely file with the Commission the Experimental Regulatory Plan that the KCC approves. Within seven (7) days after KCPL files the KCC approved Experimental Regulatory Plan, the Signatory Parties will indicate their disposition respecting the terms of the Experimental Regulatory Plan. KCPL agrees that it will offer to the Signatory Parties and accept comparable terms to those terms that the KCC approves.

RELIANCE ON INFORMATION PROVIDED BY KCPL

The Stipulation, at Section III.B.10.c, page 53, addresses the effect of the Commission finding that (1) KCPL failed to provide the Signatory Parties with material and relevant information in its possession, or which should have been available to KCPL through reasonable investigation, or (2) KCPL misrepresented facts relevant to the Stipulation.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission has considered the parties' positions and arguments. Failure to specifically address a piece of evidence, position, or argument does not mean that the Commission failed to consider it, but instead means that the omitted material was not dispositive of this decision.

In making its Findings of Fact and Conclusions of Law, the Commission is mindful that it is required, after a hearing, to "make a report in writing in respect thereto, which shall state the conclusion of the commission, together with its decision, order or requirement in the premises."⁵ Because Section 386.420 does not explain what constitutes adequate findings of fact, Missouri courts have turned to Section 536.090, which applies to "every decision and order in a contested case," to fill in the gaps of Section 386.420.⁶ Section 536.090 provides, in pertinent part:

Every decision and order in a contested case shall be in writing, and . . . the decision . . . shall include or be accompanied by findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order.

Missouri courts have not adopted a bright-line standard for determining the adequacy of findings of fact.⁷ Nonetheless, the following formulation is often cited:

⁵ Section 386.420.2, RSMo 2000. All further statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

⁶ *St. ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n*, 103 S.W.3d 813, 816 (Mo. App., W.D. 2003); *St. ex rel. Noranda Aluminum, Inc. v. Pub. Serv. Comm'n*, 24 S.W.3d 243, 245 (Mo. App., W.D. 2000).

⁷ *Glasnapp v. State Banking Bd.*, 545 S.W.2d 382, 387 (Mo. App. 1976).

The most reasonable and practical standard is to require that the findings of fact be sufficiently definite and certain or specific under the circumstances of the particular case to enable the court to review the decision intelligently and ascertain if the facts afford a reasonable basis for the order without resorting to the evidence.⁸

Findings of fact are inadequate when they "leave the reviewing court to speculate as to what part of the evidence the [Commission] believed and found to be true and what part it rejected."⁹ Findings of fact are also inadequate that "provide no insight into how controlling issues were resolved" or that are "completely conclusory."¹⁰ With these points in mind, the Commission renders the following Findings of Fact.

The Proposed Regulatory Plan is in the public interest

Based upon the competent and substantial evidence on the whole record, the Commission finds that the Experimental Regulatory Plan embodied in the Stipulation is in the public interest. The Commission also finds that KCPL's Experimental Regulatory Plan should include the construction of a coal-fired baseload plant at Iatan 2.

The Commission agrees with Public Counsel witness Trippensee that the Stipulation strikes a reasonable and appropriate balance between the interests of customers and shareholders (Ex. 39, p. 24). Staff witness Wood confirmed Mr. Trippensee's analysis. Testifying about Iatan 2, Mr. Wood testified: "I believe it's needed and it is the most appropriate resource addition given all the information available today to serve the growing load and provide for the lowest possible rates to customers." (Tr. 609). Staff witness

⁸ *Id.* (quoting 2 Am.Jur.2d Administrative Law § 455, at 268).

⁹ *St. ex rel. Int'l. Telecharge, Inc. v. Pub. Serv. Comm'n*, 806 S.W.2d 680, 684 (Mo. App., W.D. 1991) (quoting *St. ex rel. Am. Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 701 S.W.2d 745, 754 (Mo. App., W.D. 1985)).

¹⁰ *St. ex rel. Monsanto Co. v. Pub. Serv. Comm'n*, 716 S.W.2d 791, 795 (Mo. banc 1986) (relying on *St. ex rel. Rice v. Pub. Serv. Comm'n*, 359 Mo. 109, 220 S.W.2d 61 (1949)).

Schallenberg was the primary facilitator for the negotiations of the Stipulation, and testified that he was involved in development of all of the provisions of the Stipulation. (Tr. 805). He testified that the Stipulation is in the public interest, and he recommended that the Commission approve its provisions. (Tr. 806, 816).

Based upon the testimony of KCPL witness John Grimwade (Ex. 37, p. 7), and Staff witnesses Mantle (Tr. 856), Wood (Tr. 602-04), Warren (Tr. 874, 916) and Elliott (Tr. 920, 923, 940-41, 961), the Commission finds and concludes that there is a reasonably projected need for additional baseload capacity in the year 2010. Mr. Grimwade's testimony demonstrated that with no changes to existing generation and no additional demand side management, based on a 12% capacity margin and a projected peak load of 3,959 MW, KCPL will have a capacity shortfall of 431 MW in 2010. (Ex. No. 37, p. 7). His analysis demonstrates that under base case assumptions that the Commission finds to be reasonable, the addition of a 500 MW share of a pulverized coal-fired generating unit resulted in the lowest Present Value of Revenue Requirements, and that the optimal timing of this addition would be during the 2010 to 2012 time frame. (Ex. No. 37, pp. 8-10).

Without repeating evidence summarized above, the Commission finds that Staff supported KCPL's position (as did all other Signatory Parties) that there is a need for coal-fired capacity on the KCPL system. Mr. Wood testified that KCPL's 500 MW share of Unit 2 is appropriate to meet this need for its baseload generation (Tr. 600), particularly given the increase in the price of natural gas and the need for low-cost coal generation (Tr. 602-03). Based upon the Staff's review of KCPL's needs, additional baseload as proposed in the Stipulation is warranted. (Tr. 604).

Mr. Wood also explained the inaccuracies in the analysis provided at the Kansas City local public hearing by Witness Byron Combs. (Tr. 593). Mr. Combs claimed that KCPL does not need to build Unit 2 for baseload, but instead that KCPL wants to build it to make off-system sales. (Kansas City Public Hearing Exhibit No. 3). As correctly analyzed, the U.S. Energy Information Administration and FERC data supported Mr. Wood's conclusion that during the times Mr. Combs analyzed, KCPL was a net purchaser of power at times. Mr. Wood further concluded: "In looking at their current position, growth rates and where they are anticipated to be in the time frame this unit (Unit 2) could be built, a unit of this size appears to be appropriate. In fact between now and when that unit would come on, there will likely be some short-term provisions that need to be made in order to have the capacity to serve the obligations required by SPP in that time frame." (Tr. 600). Further, Mr. Wood testified that "(i)n the end, those revenues brought in through (the) off-system sales provide for an offset in operating expenses and can end up resulting in lower rates to customers." (Tr. 600).

Mr. Wood's testimony was consistent with Mr. Grimwade's testimony. Mr. Grimwade summarized KCPL's position in Exhibit No. 43, excerpts from a strategic planning forecast of both peak demand and energy.¹¹ This exhibit shows that for the next five years KCPL expects 2.4% peak load growth, with an overall growth rate from 2004 to 2014 of 1.9%. (Tr. 638-39). KCPL also assessed the energy needs of its customers for 2004-2014, and concluded that its customers' overall energy demand would grow at an annual rate of 2.1%.

¹¹ Exhibit No. 43 is comprised of two pages. The first page of Exhibit No. 43 and page 15 of Exhibit No. 50 are identical except 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.

(Tr. 639-40). Mr. Grimwade stated that this analysis was based upon a 25-year history of company experience, and was weather normalized. *Id.*

Wind generation and energy efficiency are an important part of a comprehensive and balanced resource plan. But the Commission finds and concludes that wind generation alone, energy efficiency alone, or a combination of both, cannot meet KCPL's customers' needs for additional baseload capacity during the term of the Experimental Regulatory Plan.

Sierra Club's witness Troy Helming advocated wind. Yet during the hearing, he admitted that KCPL should not build the 1600 megawatt wind farm that he once believed it should build. (Ex. 6, Tr. 255-56). Mr. Helming stated that wind is intermittent and that as a generation source, wind has its own set of interconnection, transmission overload and aesthetics issues. (Tr. 257-62). What is more, Sierra Club's other witness, Ned Ford, does not approve of wind as a peaking source, much less a baseload source. (Tr. 400-402). The Commission finds and concludes that Concerned Citizens of Platte County's and Sierra's Club's evidence concerning wind generation is contradictory and unconvincing.

Concerning energy efficiency, Staff witness Mantle, who was Staff's facilitator for demand management in KCPL's workshop process, testified that, in her opinion, demand response and energy efficiency programs could not reduce the load growth to the point that Iatan 2 would not be needed in 2010. (Tr. 850, 856). Sierra Club witness Ford testified that KCPL could avoid building Iatan 2 simply by implementing energy efficiency programs. (Tr. 326-28). But Mr. Ford concluded as much without attending the KCPL workshops (Tr. 408), without looking at KCPL's confidential information regarding load forecasting and integrated resource plans (Tr. 411), without talking to KCPL personnel (Tr. 416), or without

discussing with the signatory parties the reasons that they entered into the Stipulation and Agreement. (Tr. 411). Thus the Commission finds that Mr. Ford's testimony is less credible than Ms. Mantle's.

While Concerned Citizens of Platte County and Sierra Club argued that KCPL should pursue IGCC (integrated gasification combined cycle) technology, the Commission finds and concludes that the competent and substantial evidence respecting IGCC technology does not support a large-scale project comparable to Iatan 2. Sierra Club's witness Ford agreed with KCPL's view that IGCC plants "are new and unproven." (Tr. 328). He did not propose that KCPL construct such a plant. (Tr. 328, 383). Sierra Club's witness Helming testified that he was not familiar with the technology that KCPL proposed to use at Iatan 2 and could not express any opinion on the technology that should be employed there. "I'm a wind guy, not a thermal plant guy." (Tr. 263). He noted that the largest IGCC plant in operation today was the 250 MW plant operated by Tampa Electric. (Tr. 277).

Mr. Hale from MDNR testified that IGCC units are only being proposed in the neighborhood of 300 MWs, are "considerably more expensive at this time to build," and have reliability and availability issues that prevent them from serving as baseload units. (Tr. 709). KCPL Exhibit No. 41 summarizes the state of IGCC technology and concludes that when IGCC emissions are compared with those of a super-critical pulverized coal plant, such as planned for Iatan 2, the results are comparable. See Ex. No. 41 at B7. Considering the significant cost and reliability risks associated with developing IGCC technology on a large scale basis, the Commission finds and concludes that the use of the super-critical pulverized coal technology at Iatan 2 is the appropriate choice at this time.

As Mr. Grimwade noted, IGCC, while promising for future development, has not progressed to the point it would be a viable option for consideration for addressing near term baseload requirements. (Ex. No. 37, p. 14). The Commission therefore finds Mr. Helming's recommendation that KCPL should build between 1200 MW to 1600 MWs of IGCC units is not reasonable or persuasive.

As Mr. Grimwade's testimony pointed out, the addition of a coal-fired plant was particularly favorable for the KCPL system, assuming high gas price assumptions (Ex. 37, p.9). With the recent dramatic rise in natural gas prices, the Commission finds and concludes that heavy reliance on additional natural gas-fired combustion turbines or natural gas combined cycle units would not appear to be an optimal strategy at this time.

The Proposed Regulatory Plan should result in lower rates

The Commission finds that the proposed Experimental Regulatory Plan provides a framework that should lead to reasonable rates during the expected 5-year duration of the construction period for the projects included in the Experimental Regulatory Plan. The Commission also agrees with Mr. Schallenberg and Mr. Trippensee that the Stipulation contains provisions that facilitate lower rates for customers in the future that would not exist absent this Stipulation (Ex. 39, pp. 5-8; Tr. 811-812).

The method the signatory parties used to get those lower future rates is additional amortization. KCPL witness Giles testified that the amortization will result in an offset to rate base, which will result in lower rates. (Ex. 1, p. 17). Public Counsel witness Trippensee explained how an increase in amortization expense, rather than an increase in earnings, would result in lower rates:

The reason for the higher rates would be the income taxes associated with receiving a dollar of earnings. Simply put, utilities pay

income taxes only on their earnings. Therefore, to receive a \$1.00 of earnings, a utility must receive approximately \$1.62 of revenue from the customer. The amortization procedure included in this Agreement anticipates that amortization expense (the accelerated recovery of past capital investments of the company) will be offset in the income tax calculation by the depreciation expense associated with the new investment. This will reduce or eliminate the 62 cents that must be recovered from the customer to provide a \$1.00 of cash flow to the Company during the construction phase. (Ex. 39, p.11)

Specifically, the Commission finds and concludes that this Stipulation provides for lower capitalized facilities costs during the period of construction, and therefore will result in a lower future rate base upon which customers must pay a return of and on. In particular, the Commission finds that the use of additional amortizations as proposed by the Signatory Parties to maintain the investment grade ratings of KCPL during the term of the Experimental Regulatory Plan is in the public interest, and will result in lower rates to consumers over the long term. In addition, KCPL's agreement to reduce its AFUDC rate on Iatan 2 by 250 basis points will reduce the overall cost of construction of Iatan 2, and will therefore promote the public interest.

The Commission finds that the treatment of off-system sales is an important part of its conclusion that the Proposed Regulatory Plan is in the public interest. The signatory parties' recommendation states as follows:

"KCPL agrees that off-system energy and capacity sales revenues and related costs will continue to be treated above the line for ratemaking purposes. KCPL specifically agrees not to propose any adjustment that would remove any portion of its off-system sales from its revenue requirement in any rate case, and KCPL agrees that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process. KCPL 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.” (Signatory Parties’ Response to Order Directing Filing, July 25, 2005) (amending Section III.B.1.j. of the Stipulation and Agreement)

Based upon the testimony of KCPL witnesses Giles and Cline, the Commission finds and concludes that the Stipulation should also positively affect KCPL’s credit ratings (Ex. 1, pp. 16-18; Ex. 36, pp. 2-5). Thus, KCPL should have lower debt costs that it will pass on to consumers in the form of lower future rates. The Commission also concludes, based upon the testimony of KCPL witnesses Giles and Cline, Public Counsel witness Trippensee, and Staff witness Schallenberg, that it is reasonable and appropriate to adopt regulatory policies, including the use of the additional amortization provision contained in the Stipulation, that are designed to give KCPL the opportunity to maintain its investment grade ratings during the term of the Experimental Regulatory Plan, based on the conditions set out in the Experimental Regulatory Plan regarding KCPL's necessary conduct.

Other Findings of Fact

Based upon the competent and substantial evidence in the whole record, the Commission finds and concludes that KCPL's Experimental Regulatory Plan should include the construction of latan 2, as proposed by the Stipulation. The Commission further finds and concludes that competent and substantial evidence supports the Signatory Parties' position that "under the unique circumstances respecting KCPL, the capital investment package described in Section III.B.4 and the customer programs described in Section III.B.5 constitute major elements of a reasonable and adequate resource plan at the time the Signatory Parties entered into this Agreement." (Stipulation, pp. 6-7).

The Commission further finds and concludes that the competent and substantial evidence in the whole record supports the approval of the additional provisions of the Stipulation, including the following specific approvals: (1) KCPL is authorized to manage its SO₂ emission allowance inventory, including the sales of such allowances, as detailed in Section III.B.1.d (Stipulation, pp. 8-10); (2) KCPL is authorized to establish a regulatory asset or liability on KCPL's books related to FAS 87 pension expense, as detailed in Section III.B.1.e (Stipulation, pp. 10-15); (3) KCPL is authorized to reduce its AFUDC rate in the equity portion of the AFUDC rate by 250 basis points applicable to latan 2, as detailed in Section III.B.1.g and modified by agreement of the Signatory Parties; (4) KCPL is authorized to record additional amortization expense in the amount of \$10.3 million on an annual Missouri jurisdictional basis beginning with the effective date of the Stipulation until the effective date of the tariffs resulting from Rate Filing #1, as detailed in Section III.B.3.a of the Stipulation (Stipulation, p. 18); (5) KCPL is authorized to begin recording depreciation expense for the Wolf Creek Nuclear Generating Station based upon a 60-year life span, and KCPL is authorized to use depreciation rates for the various nuclear plant accounts, as detailed in Section III.B.1.n (Stipulation, p. 24); (6) KCPL is authorized to depreciate wind assets over a 20-year life and use depreciation rates for wind assets, as detailed in Section III.B.3.k (Stipulation, p. 23); and (7) KCPL is authorized to accumulate the Demand Response, Efficiency and Affordability Program costs in regulatory asset accounts as the costs are incurred, and amortize those costs as detailed in Section III.B.5 (Stipulation, pp. 46-49).

CONCLUSIONS OF LAW

1. Based upon the competent and substantial evidence in the whole record, the Commission finds and concludes that the Proposed Regulatory Plan promotes safe and adequate service since it establishes a framework for substantial investments into the infrastructure necessary for KCPL to provide safe and adequate service in the future.

2. The Commission finds and concludes that the Experimental Regulatory Plan does not make or grant any undue or unreasonable preference, advantage, prejudice or disadvantage in KCPL's provision of service now, or in the future, because the Commission is not engaging in any setting of rates now, and in the future, the Commission will be called upon to establish just, reasonable, and non-discriminatory rates only within the context of ratemaking proceedings.

3. The Commission finds and concludes that the Proposed Regulatory Plan is in the public interest and is firmly supported by the competent and substantial evidence on the whole record, and that the Stipulation embodied in that Proposed Regulatory Plan is lawful in that it promotes “safe and adequate” service and facilities, in a “just and reasonable” manner. See Section 393.130.1. Such a determination meets the requirements of law that call for Commission decisions to be lawful, to be supported by competent and substantial evidence upon the whole record, and not be arbitrary, capricious or unreasonable. See Section 386.510 (“lawful” and “reasonable” requirements). Given the wide latitude that the Commission possesses in authorizing experimental regulatory plans, the Commission finds and concludes that the approval of the Stipulation does not constitute an abuse of discretion.

4. The Commission finds and concludes that the Signatory Parties have properly invoked the jurisdiction of the Commission. KCPL’s request, joined by the Signatory

Parties, that the Commission approve the Stipulation has properly invoked the basic jurisdiction of the Commission. Under Section 386.250(1), the Commission's authority extends to the manufacture, sale or distribution of electricity, and to "corporations owning, leasing, operating or controlling the same." Section 386.250(7) provides for the broad exercise of this jurisdiction "to such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly." See Section 386.040. The provisions of the Public Service Commission Law "shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities." Section 386.610.

The Experimental Regulatory Plan addresses a multitude of resource adequacy issues. Given KCPL's obligation to "furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable" under Section 393.130.1, KCPL and the other signatory parties have invoked the Commission's jurisdiction plainly.

The Commission's exercise of jurisdiction is also consistent with its general powers under Section 393.140. Section 393.140(3) gives the Commission authority to investigate "on its own motion" "plants and methods employed in manufacturing, delivering and supplying electricity." Furthermore, Section 393.140(5) gives the Commission the ability to "prescribe the safe, efficient and adequate property, equipment and appliances thereof." Because the Commission has the power on its own motion to engage in such regulatory oversight, it follows that Commissioners may examine a Stipulation dealing with all these issues and approve it in a formal proceeding initiated by the filing of the Stipulation.

Furthermore, the authority of this Commission to approve an experimental rate plan is well within its powers.¹² Indeed, the Court of Appeals has characterized the Union Electric experimental alternative regulation plan “not as an abdication of the Commission’s responsibility to regulate, but as embodiment of it. It was an attempt to streamline the rate monitoring process and provided a means to resolve issues in lieu of the formal complaint process.”¹³ Like the experimental plans approved by the Commission for Union Electric in 1995 and 1997, this Stipulation contemplates “extensive and continuous monitoring and embrace[s] the recognition that not all items [can] be anticipated and addressed”¹⁴ Other jurisdictional and ratemaking principles remain completely intact in this Stipulation.

Commission Rule 4 CSR 240-2.115 allows parties to file a stipulation and agreement to resolve a contested case. Nothing in statutes, case law or Commission rule prohibits parties from submitting a stipulation arising from other proceedings. To conclude that a pre-existing contested case is a prerequisite to a resolution of serious and well-known issues would be contrary to the regulation’s purpose itself of promoting settlements,¹⁵ as well as contrary to Missouri law which permits settlements in other contexts shortly after the filing of an action.¹⁶ Numerous proceedings before the Commission have been initiated by

¹² See *Union Electric Co. v. PSC*, 136 S.W.3d 146, 149, 152 (Mo. App. W.D. 2004).

¹³ *Id.* at 152.

¹⁴ *Id.* See also *State ex rel. Laclede Gas Co. v. PSC*, 535 S.W.2d at 567, n.1 (noting the Missouri Supreme Court “has long held” that the Commission has the power to grant interim test or experimental rates “as a matter of necessary implication from practical necessity”).

¹⁵ Section 536.060, RSMo.

¹⁶ See Section 416.061.4 (consent judgments or decrees brought by Attorney General).

the filing of a stipulation and agreement, or other motion to open an investigatory docket rather than a formal Application.¹⁷

The Commission has the power to waive any of its rules of practice and procedure for good cause under 4 CSR 240-2.015. The parties' unprecedented efforts to timely address the multitude of complex issues respecting KCPL's resource needs in in Case No. EW-2004-0596, and the agreement upon the comprehensive framework embodied in the Stipulation, are good cause. To the extent that the Commission's rules require formal application, the Commission waives those rules.

5. The Stipulation Creates Obligations for the Signatories, not the Commission. The Stipulation is a contract among the Signatory Parties, who will be obligated to carry out its terms if approved by the Commission.¹⁸ However, the Commission's approval will not make it a party to the contract.¹⁹ The Stipulation expressly provides that it "does not constitute a contract with the Commission," whose regulatory powers remain fully intact.²⁰ It is, therefore, consistent with Missouri law.²¹

Approval of the Stipulation, however, does include Commission approval of the following items: (1) KCPL is authorized to manage its SO₂ emission allowance inventory,

¹⁷ See e.g., *In re Stipulation and Agreement Reducing the Annual Missouri Retail Electric Revenues of Kansas City Power & Light Company*, Order Denying Intervention And Approving Stipulation And Agreement, Case No. ER-99-313, 8 Mo.P.S.C.3d 113 (1999); *In re Customer Class Cost of Service and Comprehensive Rate Design Investigation of Kansas City Power & Light Company*, Order Approving Stipulation and Agreement, Case No. EO-94-199, 5 Mo.P.S.C.3d 76 (1996); *In re Commission Inquiry Into Retail Electric Competition*, Order Establishing Task Force, Case No. EW-97-245, 6 Mo.P.S.C.3d 302 (1997).

¹⁸ See Stipulation, Section III.B.10.f at 53.

¹⁹ *Id.*, Section III.B.10.g at 53-54.

²⁰ *Id.*

²¹ See *State ex rel. Chicago, Rock Island & Pacific R.R. v. PSC*, 312 S.W.2d 791, 796 (Mo. 1958); *Union Elec. Co. v. PSC*, 136 S.W.2d 146, 152 (Mo. App. W.D. 2004).

including the sales of such allowances, as detailed in Section III.B.1.d (Stipulation, pp. 8-10); (2) KCPL is authorized to establish a regulatory asset or liability on its books related to FAS 87 pension expense, as detailed in Section III.B.1.e (Stipulation, pp. 10-15); (3) KCPL is authorized to reduce its AFUDC rate in the equity portion of the AFUDC rate by 250 basis points applicable to latan 2, as detailed in Section III.B.1.g and modified by agreement of the Signatory Parties; (4) KCPL is authorized to record additional amortization expense in the amount of \$10.3 million on an annual Missouri jurisdictional basis beginning with the effective date of the Agreement until the effective date of the tariffs resulting from Rate Filing #1, as detailed in Section III.B.3.a of the Stipulation (Stipulation, p. 18); (5) KCPL is authorized to begin recording depreciation expense for the Wolf Creek Nuclear Generating Station based upon a 60-year life span, and KCPL is authorized to use depreciation rates for the various nuclear plant accounts, as detailed in Section III.B.1.n (Stipulation, p. 24); (6) KCPL is authorized to depreciate wind assets over a 20 year life and use depreciation rates for wind assets, as detailed in Section III.B.3.k (Stipulation, p. 23); and (7) KCPL is authorized to accumulate the Demand Response, Efficiency and Affordability Program costs in regulatory asset accounts as the costs are incurred, and amortize those costs as detailed in Section III.B.5 (Stipulation, pp. 46-49).

6. The Commission finds and concludes that the Experimental Regulatory Plan does not violate the “fully operational and used for service” standard of Section 393.135 with regard to any of the infrastructure contemplated in the Experimental Regulatory Plan. A strict set of In-Service Criteria is contained in Appendix H to the Stipulation, which applies to all of KCPL's units. KCPL, Staff and Public Counsel have further agreed to develop in-

service criteria for emissions equipment to be constructed on KCPL's coal units.²² The provisions relating to current and additional amortizations are based on KCPL's current operations, not future projected events.²³ Such amortizations will be managed to maintain KCPL's financial integrity, in a manner similar to tax normalization and accelerated depreciation that the courts have been found to be proper ratemaking tools.²⁴ When the amortizations are considered in future rate cases, any party may request that an amortization be directed toward specific plant accounts or that changes be made in depreciation rates based upon future depreciation studies.²⁵

The Commission approved a similar \$3.5 million amortization in *In re Customer Class Cost of Service and Comprehensive Rate Design Investigation of Kansas City Power & Light Company*, Order Approving Stipulation and Agreement, Case No. EO-94-199, 5 Mo.P.S.C.3d 76 (1996), and subsequently extended in *In re Stipulation and Agreement Reducing the Annual Missouri Retail Electric Revenues of Kansas City Power & Light Company*, Order Denying Intervention And Approving Stipulation And Agreement, Case No. ER-99-313, 8 Mo.P.S.C.3d 113 (1999). The Commission finds and concludes that

²² See Stipulation, Section III.B.1.i at 23.

²³ *Id.*, Section III.B.1.i at 19-21.

²⁴ *State ex rel. Utility Consumers Council of Missouri, Inc. v. PSC*, 606 S.W.2d 222, 224-26 (Mo. App. W.D. 1980)(approving Commission's use of the normalization of taxes which provided utility with substantial tax benefits of accelerated depreciation).

²⁵ See Stipulation, Section III.B.3.a(iv) at 32.

continued use of such amortizations, as discussed in the Stipulation, is reasonable, lawful, and otherwise in the public interest.

7. The Commission finds and concludes that the Stipulation contains nothing which commits the Commission, a non-signatory party or even a Signatory Party to a preapproval of rates. Indeed, the Signatory Parties retain the right to monitor the prudence of KCPL's actions in carrying out the investments called for by the Experimental Regulatory Plan, and to challenge any conduct they believe is imprudent.

The Signatory Parties agree that the elements of the Stipulation that call for a coal-fired plant, wind generation, new environmental controls, and the Demand Response, Efficiency and Affordability programs are "a reasonable and adequate resource plan."²⁶ However, the manner in which KCPL implements each of these investments is subject to scrutiny during the construction process by Staff, Public Counsel and others.²⁷ The Stipulation does not limit any Signatory Party's ability to challenge KCPL when it proposes to recover its costs in future rate cases.²⁸ However, the Signatory Parties have agreed not to argue that the proposed investments were not necessary or timely, or that alternative technologies or fuels should have been used, so long as KCPL implements the Resource Plan and the continuous monitoring of the Resource Plan in accordance with the Stipulation's provisions.²⁹ The Commission's approval of these elements of the

²⁶ See Stipulation, Section III.B.1.a at 6-7.

²⁷ *Id.*, Section III.B.1.o at 24-25; III.B.4-.5 at 44-49.

²⁸ *Id.*, Section III.B.3.a(iii) at 31.

²⁹ *Id.*

Experimental Regulatory Plan would be consistent with its finding in *In re Missouri-American Water Co.*³⁰

8. The Commission finds and concludes that the approval of the Stipulation will not inject it into managing KCPL. The standard frequently cited in Missouri case law is that the Commission has no authority to take over the general management of any utility or to dictate the manner in which the company shall conduct its business.³¹ The Stipulation, in contrast, calls for the Commission to approve an Experimental Regulatory Plan. By approving the Stipulation, the Commission is permitting KCPL's management to carry out its resource and financial plans, and to use its best judgment in implementing them within the bounds of reasonable and lawful oversight.

As such, it is similar to the Commission's action in finding that a water utility's plan to build a new treatment plant was "a reasonable alternative" when it granted that utility a certificate of convenience and necessity for that purpose, and when it approved the utility's financial plan to support that construction as "reasonable and not detrimental to the public interest."³²

³⁰ Case No. WA-97-46 (Mo. P.S.C. 1997)("[T]he Commission will make no finding regarding the prudence of the actual costs incurred and the management of construction of the proposed project. However, based on the extensive evidence presented, the Commission finds that the proposed project, consisting of the facilities for a new groundwater source of supply and treatment at a remote site, is a reasonable alternative." (slip opinion, pp. 10-11; see also *In re Missouri-American Water Co.*, Case No. WR-2000-281, 9 Mo.P.S.C.3d 254, 280 (Mo. P.S.C. 2000).

³¹ See *State ex rel. Laclede Gas Co. v. PSC*, 600 S.W.2d 222, 228 (Mo. 1980); *State ex rel. PSC v. Bonacker*, 906 S.W.2d 896, 899 (Mo. App. S.D. 1995).

³² *In re Missouri-American Water Co.*, Case No. WA-97-46 (Mo. P.S.C. 1997) (slip op. at 10-11)("The Commission will approve the financial transaction and form of the lease agreement but defer to a future rate proceeding any finding regarding the prudence of the transaction, its costs and the specific contents of the lease agreement."). Accord, *Union Elec. Co. v. PSC*, 136 S.W.3d 146, 149-52 (Mo. App. W.D. 2004)(Commission approval of experimental regulatory plan).

9. The Commission finds and concludes that KCPL has not violated Commission Rule 4 CSR 240-22.050(2)(C).

In their Prehearing Brief, SC/CCPC made the following allegation:

KCPL violated 4 CSR 240-22.050(2)(C) by failing to look at the amount of capacity avoidance needed to defer latan 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 latan 2 could be avoided. (SC/CCPC Prehearing Brief, p. 3)

After having reviewed the legal arguments on this issue, the Commission concludes that this allegation is in error.³³ SC/CCPC has failed to fully understand the purpose and application of 4 CSR 240-22.050(2). According to Public Counsel witness Ryan Kind, the purpose of this regulation pertains to the calculation of the public utility's "avoided cost," and not an affirmative requirement to propose a plan to defer the construction of latan 2 by one year, as contended by SC/CCPC. (Tr. 797).

A review of the purpose statement of 4 CSR 240-22.050 confirms this conclusion:

PURPOSE: This rule specifies the methods by which end-use measures and demand-side programs shall be developed and screened for cost-effectiveness. . .

In addition, subsection (2)(C) specifically states: "Avoided costs shall be calculated as the difference in costs associated with a specified decrement in load large enough to delay the on-line date of the new capacity additions by at least one (1) year." (*Emphasis added*). SC/CCPC misunderstand this regulation.

³³ In its May 6, 2005 *Order Establishing Procedural Schedule*, the Commission stated that any issue not contained in the List of Issues that Staff was required to file would be viewed as uncontested and not requiring the Commission's resolution. The Commission notes that Staff did not list a potential Chapter 22 violation as an issue in its May 31 List of Issues. More telling, the Commission notes that Concerned Citizens of Platte County and Sierra Club also did not mention an alleged Chapter 22 violation in its June 2 Statement of Position, and only mentioned it for the first time in its June 15 prehearing brief. The Commission will, nonetheless, review CCPC/SC's argument *gratis*.

During cross-examination of the SC/CCPC witness Ned Ford, it also became apparent that he was totally unaware that KCPL and other utilities had obtained a variance from compliance respecting the formal provisions of Chapter 22, including 4 CSR 240-22.050(2)(C).³⁴ As a result, the Commission concludes that KCPL was not required to comply with the formal rules of Chapter 22 during the term of the variance granted in Case Nos. EO-97-522 and EO-99-544.³⁵

For the reasons stated herein, the Commission finds and concludes that SC/CCPC's assertion that KCPL has violated 4 CSR 240-22.050(2)(C) is incorrect.

10. The Commission finds and concludes that the Commission has conducted a full, fair and meaningful hearing to consider the evidence and arguments of all parties, including SC/CCPC. The Commission finds and concludes that all parties have been afforded due process of law, and the Commission has fully and carefully considered the competent and substantial evidence in the whole record. The Commission has put no limitations on the evidentiary proceedings in the instant case. In fact, the Commission is considering this case on a schedule which SC/CCPC agreed to, and when the SC/CCPC requested additional time to prepare for the evidentiary hearings, the Commission granted the request of SC/CCPC. The Commission also accorded each party an opportunity to submit a post-hearing brief, as well as a pre-hearing brief.

³⁴ (Tr. 372, 426-27), (Ex. No. 30, Order Approving Joint Agreement, *In re Application of Kansas City Power & Light Company's Electric Resource Plan, pursuant to 4 CSR 240-22, and its request for extension of time to file ERP*, Case No. EO-97-522 (July 18, 1997)); and (Ex. No. 31, Order Granting Joint Motion For Variance, *In re Application of St. Joseph Light & Power Company, The Empire District Electric Company, AmerenUE, Kansas City Power & Light Company, and Utilicorp United Inc. d/b/a Missouri Public Service Company for a Variance from the Provisions of 4 CSR 240-22*, Case No. EO-99-544 (May 20, 1999)).

³⁵ In addition, Section 386.550 RSMo prevents CCPC/SC from collaterally attacking those orders.

11. Based upon the competent and substantial evidence on the whole record, the Commission finds and concludes that the Stipulation filed on March 28, 2005, is in the public interest, and that the Commission should approve it. The Commission finds and concludes that the Stipulation's Experimental Regulatory Plan is a comprehensive framework that appropriately addresses the need for a cost-based but diverse resource adequacy program. Combining the best elements of proven and latest technology, coal-fired generation, environmental controls, renewable wind energy, and affordability, demand response and efficiency programs, the Experimental Regulatory Plan offers a reasonable proposal for safe and adequate service well into the future.

From a financial perspective, the Commission finds and concludes that the Stipulation adheres to traditional ratemaking principles. It calls for a maximum of four separate rate cases (Stipulation, Section III.B.3 at 29-44), a Class Cost of Service Study (Stipulation, Section III.B.3.a(vii) at 33), and continuous monitoring of KCPL's Resource Plan and of the construction process respecting latan 2 and the latan 1 and LaCygne 1 environmental enhancements. (Stipulation, Section III.B.1.q at 28).

The Signatory Parties have acknowledged that financial ratios play a role in a utility's ability to maintain its bonds at an investment grade rating. (Stipulation, Section III.B.1.i at 18-22). The Stipulation provides that KCPL must take prudent and reasonable steps to maintain its investment grade rating and must continue to manage costs, improve productivity and preserve service quality during the Experimental Regulatory Plan. (*Id.* at 19). Moreover, the Signatory Parties have agreed to support adding amortization amounts to KCPL's cost of service in rate cases when the projected cash flows resulting from KCPL's Missouri jurisdictional operations, as determined by the Commission, fail to meet or

exceed that portion of the lower end of the top third of the BBB range shown in Appendix E; for reasons other than a failure to adhere to the conditions set out in the Stipulation regarding KCPL's necessary conduct. (*Id.* at 20). The Commission finds and concludes that these agreements are in the public interest and should be approved.

CONCLUSION

Based upon the competent and substantial evidence in the record in this case, the Commission finds and concludes that the KCPL Experimental Regulatory Plan encompassed in the Stipulation is in the public interest and is hereby approved.

IT IS THEREFORE ORDERED:

1. That the Proposed Experimental Regulatory Plan embodied in the Stipulation and Agreement filed in this case on March 28, 2005, as amended on July 26, 2005, is approved.
2. That the signatory parties shall abide by all of the terms and requirements in the March 28, 2005 Stipulation and Agreement.
3. That this case shall remain open for the Signatory Parties to report to the Commission after the Kansas Corporation Commission issues its decision regarding Kansas City Power & Light Company's Experimental Regulatory Plan.
4. That all pending motions are denied as moot.

5. That this Report and Order shall become effective on August 7, 2005.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton and Appling, CC., concur;
Gaw, C., concurs, with concurring opinion to follow;
all certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri, on
this 28th day of July, 2005.