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 STATEMENT OF POSITIONS

Comes now Staff of the Missouri Public Service Commission (Staff) in response to the Commission's May 6, 2005 Order Establishing Procedural Schedule directing that no later than June 2, 2005 the parties shall file their separate Statement Of Positions. Many of the issues in the List Of Issues are strictly legal questions, while other issues only in part involve legal questions. The Staff's response in this document should not be viewed as, nor is it intended to be, exhaustive. Nonetheless, the Staff recognizes that Statements Of Positions more expansive than "yes" or "no" responses would likely facilitate the parties' development of the case and the Commission's processing of the case and rendering of a decision. On May 4, 2005, the day after the commencement of the prehearing conference, the parties met with the Regulatory Law Judge to discuss a proposed procedural schedule. The RLJ seemed to indicate that the Commission would require posthearing briefs to be filed with the Commission. The Staff understands that the Commission will order prehearing briefs from the parties. The Staff would suggest that the prehearing briefs will afford another and a better opportunity for the parties to address the issues set out in the List Of Issues. The Staff would note that it addressed facets of various of these issues in its Suggestions In Support Of Stipulation And Agreement filed on May 10, 2005, such as questions respecting the effect of Section 393.135 RSMo 2000 on certain provisions in the Stipulation and Agreement, and the Staff will not repeat herein from that extensive document.

In response to the 22 issue areas identified in the List Of Issues filed on May 31, 2005 by the Staff on behalf of all parties, the Staff states as follows:

Issue No. 1

The Staff is seeking Commission approval of a Regulatory Plan that the Staff negotiated with KCPL and other parties that permitted KCPL to announce, without a resulting rating agency downgrade of its securities, that it will construct a baseload generating unit to meet its capacity needs for the timeframe of 2010 and beyond, and which the Staff believes will result in the provision of safe and adequate service at just and reasonable rates. KCPL does not need Commission authorization to construct Iatan 2. The Commission granted authorization in a Report And Order issued on November 14, 1973 in Case No. 17,895 of the construction of the Iatan Steam Electric Generating Station as a multi-unit site, designed for four generating units, to be constructed and operated by KCPL. To the Staff, no further Commission authorization appears to be required regarding the siting of Iatan 2. *Re In the Matter of the Application of Kansas City Power & Light Co. and St. Joseph Light & Power Co. for Certificates of Public Convenience and Necessity to Construct, Own, Operate and Maintain an Electric Generating Station in Platte County, Missouri, and Certain Related 345 kv Transmission Facilities*, Case No. 17,895, Report And Order (1973) (unreported case).

Issue No. 2

First in seeking to address Issue No. 2, a review of the procedural history of these matters would seem to be appropriate. On May 6, 2004, pursuant to 4 CSR 240-2.060 and Sections 386.250 and 393.140 RSMo 2000, KCPL filed an Application To Establish Investigatory Docket And Workshop Process Regarding Kansas City Power & Light Company (KCPL) concerning the future supply and pricing of the electric service provided by KCPL, and the Commission established Case No. EO-2004-0577. On June 3, 2004, the Commission issued an Order Establishing Case in which it granted KCPL's Application filed on May 6, 2004 and created Case No. EW-2005-0596 to address the issues raised in Case No. EO-2004-0577. On July 1, 2004, the Commission closed Case No. EO-2004-0577. On January 18, 2005, Praxair, Inc. filed a Motion To Terminate Proceeding in Case No. EW-2005-0596. On January 28, 2005, KCPL filed a response in which it recommended that the Commission re-open Case No. EO-2004-0577 in order to provide an appropriate forum for the consideration and approval of any potential stipulation and agreement. KCPL went on to state that if a non-unanimous stipulation and agreement were to be filed, then the Commission could utilize the provisions of 4 CSR 240-2.115 and provide for a hearing for any issues that needed to be resolved by the Commission. Praxair filed on February 4, 2005 a reply to KCPL's response to Praxair's Motion To Terminate proceeding. On February 18, 2005, the Commission in Case No. EW-2004-0596 issued an Order Closing Case in which it explained that the case "was docketed as an 'EW' case, meaning that it is not a contested case, there are no 'parties' as that term is normally used, there are no ex parte restrictions, and no specific Commission action was anticipated." The Commission also stated that "[i]f KCPL develops a regulatory plan (with or without consensus) for which it wants Commission approval, it can request that approval in a new case."

On March 28, 2005, KCPL filed the Stipulation and Agreement in question and Case No. EO-2005-0329 was established. The Staff would note 4 CSR 240-2.115, which KCPL referred to in

its January 28, 2005 response in Case No. EW-2004-0596. In particular, the Staff would reference 4 CSR 240-2.115(2)(D):

> A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

On April 5, 2005, the Commission issued in Case No. EO-2005-0329 an Order Adding Parties, Directing Notice, Setting Intervention Deadline, And Establishing Protective Order in which, among other things, it directed that notice be given and an opportunity be provided for intervention in the proceeding by proper parties.

Finally, the Staff would note 4 CSR 240-2.015(1) which states as follows: "A rule in this chapter may be waived by the commission for good cause."

Issue No. 3
Case No. EO-2005-0329 is a contested case as defined in Section 536.010(4) RSMo CumSupp 2004.

Issue No. 4
Without citation to any particular statute, rule, judicial decision or Commission decision, KCPL has indicated that it believes that the applicable standard for Commission approval of the Stipulation and Agreement is "in the public interest." To date, the Staff has not seen anything to suggest that "in the public interest" would not be the appropriate standard. Thus, Commission approval of the Stipulation and Agreement arguably would entail findings by the Commission that the Stipulation and Agreement is in the public interest and just and reasonable and prudent. Presumably, barring (a) any later challenge to the carrying through of the Stipulation And Agreement in one of the contemplated rate cases or another proceeding by a non-Signatory Party, (b) an occurrence of one of the provisions of the Stipulation and Agreement that permits one of the Signatory Parties to change its position or take a new position, (c) the Commission's own determination of changed circumstances, or (d) a judicial determination that the Stipulation and Agreement is unlawful, the Commission would follow the Stipulation And Agreement.

The Staff would cite the Commission to its Report And Orders in two fairly recent UtiliCorp United, Inc. (UtiliCorp (now known as Aquila, Inc.)) merger cases. One case involved St. Joseph Light & Power Company and the other case involved The Empire District Electric Company: *Re UtiliCorp United, Inc.*, Case No. EM-2000-292, 9 Mo.P.S.C.3d 454 (2000) and *Re UtiliCorp United, Inc.*, Case No. EM-2000-369, 9 Mo.P.S.C.3d 512 (2000), respectively. In those two merger cases, UtiliCorp proposed similar regulatory plans, involving the two mergers, not regulatory plans relating to the construction of a baseload coal-fired generating unit. There was no unanimous or nonunanimous stipulation and agreement regarding UtiliCorp's proposed regulatory plan. The Commission rejected the two UtiliCorp regulatory plans stating as follows in the UtiliCorp-SJLP merger case Report And Order:

> . . . the imposition of a five-year rate freeze would be contrary to the Commission's statutory obligation to provide continuous regulation of the public utilities of the state. . . . [quotation from *State ex rel. Chicago, Rock Island & Pacific Railroad Co. v. Public Serv. Comm'n*, 312 S.W.2d 791, 796 (Mo. 1958) omitted] In rejecting a proposed stipulation and agreement that would have limited the Commission's ability to entertain complaints against a Missouri utility, the Commission stated as follows:
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> > The Commission cannot agree to relinquish its statutory duties as proposed by the parties. The Commission is essentially a creation of the Legislature and, as such, is empowered by statute to carry out certain functions. Among the various statutory responsibilities incumbent on the Commission to perform are the setting of rates (Section 393.150, RSMo), the provision of safe and adequate service (Section 393.130, RSMo), the proper litigation of complaints (Section 386.400, RSMo) and other general powers (Section 393.150). The Commission cannot proceed in a manner contrary to the terms of a statute and may not follow a practice which results in nullifying the express will of the Legislature.
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> *Public Counsel v. Missouri Gas Energy* 6 Mo. P.S.C. 3d 464, 465 (1997). The views expressed by the Commission in that earlier case are still appropriate. Imposition of a five-year rate freeze would purport to deprive the Commission of the legislatively imposed duty to adjust UtiliCorp's rates to meet changing conditions. The Commission will not agree to relinquish its statutory duties.

9 Mo.P.S.C.3d at 473-74.

Issue No. 5

The Stipulation and Agreement seemingly is akin to a contract among the Signatory Parties which the Commission has the authority to approve. *Union Electric Co. v. Public Serv. Comm'n*, 136 S.W.3d 146 (Mo.App. 2004) involved experimental alternative regulation plans (EARPs) that the Staff, Public Counsel and others entered into in 1995 and 1996 that ran from July 1, 2005 to June 30, 2001. As the Western District Court of Appeals related, "The EARPs were alternative regulation plans designed to reduce the need for formal regulatory proceedings and streamline the process of dealing with excessive earnings and rate issues." 136 S.W.3d at 148. The EARP set forth negotiated guidelines to be followed by the parties, and the Commission never relinquished its role as arbiter. Disputes arose regarding the calculation of sharing credits for the third years of the first EARP. UE argued that the EARP was a contract that bound the Commission. The Court noted that the Commission approved and adopted the EARP, but the Commission was not a signatory to the EARP. The Court held as follows:

> . . . The EARP does set forth negotiated guidelines to be followed by the parties and the Commission. And the Commission did approve and adopt the EARP. However, it must be clarified that the Commission is not a signatory to the EARP and never relinquished its role as arbiter. In its July 21, 1995, Order adopting the stipulation of the parties, the Commission made a finding that "any unresolved

> issue concerning sharing will be brought to the Commission." This finding was not challenged by UE at the time. The stipulation itself clarified that nothing in the stipulation was "intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation."
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> . . . We construe the EARP, 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. The EARP contemplated extensive and continuous monitoring and embraced the recognition that not all items could be anticipated and addressed and that disputes could arise. The Commission's role is grounded in this recognition. That being said, we find that the Commission, in making the disputed adjustments, did not change or violate the terms of the EARP or its role thereunder. The terms of the EARP permitted the Commission's intervention into the areas of dispute between the parties.

Id. at 152.

The Staff would also note certain provisions of Senate Bill 179 (S.B. 179) which once signed by the Governor will become law. Subsections 386.266(8), (10) and (12) state as follows:

> Section 386.266:
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> . . . .
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> (8) In the event the commission lawfully approves an incentive or performance based plan, such plan shall be binding on the commission for the entire term of the plan. This subsection shall not be construed to authorize or prohibit any incentive or performance based plan.
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> . . . .
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> (10) Nothing contained in this section shall be construed as affecting any existing adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism currently approved and in effect.
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> (12) The provisions of this section shall take effect on January 1, 2006 . . .

The KCPL Regulatory Plan is a performance based plan so that it would be covered under S.B. 179 if adopted after January 1, 2006. But even given that S.B. 179 is not presently operative for purposes of the KCPL Regulatory Plan, Sections 386.266(8) and (10) are still relevant for they indicate that performance based plans are lawful prior to S.B. 179. The Staff would also cite the language from *State ex rel. Laclede Gas Company v. Public Serv. Comm'n*, 535 S.W.2d 561, 566-67, 567 n. 1 (Mo.App. 1976) (*Laclede Gas*) that "[w]hile the amendment to a statute must be deemed to have been intended to accomplish some purpose, that purpose can be clarification rather than a change of existing law" and that the Senate Bill in question in the *Laclede Gas* case

was "intended only to clarify and particularize existing law." 535 S.W.2d at 567. *Cf. State ex rel. Southwestern Bell Tel. Co. v. Public Serv. Comm'n*, 645 S.W.2d 44, 49-51 (Mo.App. 1982) (Commission authorized to adopt rule providing for use of data requests, even though there was no provision for data requests in Chapter 536). In particular, in the *Laclede Gas* case, the Court held respecting the Commission's authority to grant interim rates, for which there is no express statutory provision, that "the Commission has power in a proper case to grant interim rate increases within the broad discretion implied from the Missouri file and suspend statutes and from the practical requirements of utility regulation." 535 S.W.2d at 567. The Court also stated respecting whether the Commission has the authority to grant interim test or experimental rates, "The Missouri Supreme Court has long held that the Commission does have this power as a matter of necessary implication from practical necessity. [Citations omitted.]" *Id.* at 567 n. 1.

Regarding the implied powers of the Commission, the Staff would note the "necessary or proper" and implied powers language in Section 386.040 and 386.250(7):

> 386.040: A "Public Service Commission" is hereby created and established, which said public service commission shall be vested with and possessed of the powers and duties in this chapter specified, and also all powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter.
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> 386.250: The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:
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> > (7) To such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly.

Issue No. 6

Even if the Concerned Citizens of Platte County and the Sierra Club (CCPC/SC) had not made it clear in the course of Case No. EW-2004-0596 that it was inalterably opposed to the construction of Iatan 2, the Staff and other participants in that workshop docket always expressed the belief that even if there was no opposition to a KCPL Regulatory Plan, the Commission would need a contested case proceeding to consider approval of any KCPL Regulatory Plan. Thus, Staff has never asserted that anything that occurred in the workshop docket alone without standing potential challenge in the instant case constituted competent and substantial evidence. CCPC/SC chose to participate in Case No. EW-2004-0596 and the United States Department of Energy (USDOE) did not to participate in that case. There was nothing requiring that USDOE participate in that case. The references to Case No. EW-2004-0596 in the Stipulation and Agreement and the Staff's Suggestions In Support in the instant case are not asserted to be competent and substantial evidence, but exposition identifying what has occurred. The Staff submitted Suggestions In Support of the Stipulation and Agreement in this case just as it routinely does in all matters of consequence. It is not in fact, nor is it intended to be, an exhaustive document or anything other than a pleading. On April 11, 2005, KCPL filed prepared direct testimony of six expert witnesses. They will stand cross-examination on June 23-24, 2005. The Staff will have at the hearings the Staff members who participated in the negotiation

of the Stipulation and Agreement and performed the review that resulted in the Staff being a Signatory Party to the Stipulation and Agreement. They will be available to take the stand and answer questions.

Issue No. 7

The Staff believes that the Stipulation and Agreement does not result in a shifting of risk but results in a reduction of risk to both KCPL, its customers and the regulatory process, due to the work that has been performed to date and will be performed in the future, if the Stipulation and Agreement functions as the Staff believes it is intended to operate. Among other things, the Stipulation and Agreement establishes a formal review process to monitor developments and decisions and provide for the opportunity to even change directions, if necessary or advisable. A more contemporaneous and detailed review of KCPL's infrastructure decisions has occurred than would otherwise have been the case at this date.

The Staff believes that the Commission has the authority to approve the Stipulation and Agreement. *Union Electric Co. v. Public Serv. Comm'n*, 136 S.W.3d 146 (Mo.App. 2004). The prudency determinations to which the Staff has agreed are based on the state of matters as the Staff is aware of those matters due to the Staff's investigation, which involved both formal and informal discovery of KCPL in Jefferson City and Kansas City. The Staff views the Stipulation and Agreement as being dynamic in that matters relating to the appropriateness of KCPL's Resource Plan will continue to be monitored by the Staff and other Signatory Parties. Furthermore, there is an assumption that KCPL has been forthcoming and truthful in the provision of information to the Staff. The Staff does not believe that it has engaged in a shifting of risk to KCPL's ratepayers. The Staff is mindfull of the Missouri Supreme Court's decision in *State ex rel. AG Processing, Inc. v. Public Serv. Comm'n*, 120 S.W.3d 732 (Mo. banc 2003) (*AG Processing*) and the Commission's decision in *Re Union Electric Co.*, Case No. EA-79-119, 24 Mo.P.S.C.(N.S.) 72 (1980). In the *AG Processing* decision, the Court held that although the acquisition premium recoupment issue could be addressed in a subsequent ratemaking case, the Commission nonetheless was required to decide whether the acquisition premium was reasonable as part of its determination of whether the proposed merger would be detrimental to the public. In Case No. EA-79-119, the Commission stated that it is not necessary for electric utilities to obtain Commission approval to build plant within their certificated areas, but the Commission would entertain requests from utilities to approve plant construction within their certificated areas only if all necessary information and facts are presented for a learned and rational decision. 24 Mo.PSC.(N.S.) at 78. Pursuant to Section 393.130.1 RSMo CumSupp 2004, "every electrical corporation . . . shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." The Staff views the word "adequate" as addressing reliability concerns. Also, Section 386.610 states that "[t]he provisions of this chapter shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities." The Staff views the reference in Section 386.610 to "efficient facilities" as also addressing reliability. The Staff does not believe that by being a Signatory Party to the Stipulation and Agreement that it has, or will, usurp the role of KCPL's management, or that the Commission by approving the Stipulation and Agreement will be thrust into the of the role of the management of KCPL.

Issue No. 8
Section 393.135 RSMo 2000 does not prohibit the additional amortizations to maintain financial ratios provided for in Section III.B.1.I, page 18 of the Stipulation and Agreement, which permits additional amortizations in the event of revenue short falls that would cause KCPL's debt rating to fall below investment grade. This issue was addressed in part in the Staff Suggestions In Support Of Stipulation And Agreement filed in this case on May 10, 2005, and will not be repeated here. The additional amortizations represent an accelerated recovery of prior expenditures made to provide service to current customers. The additional amortizations provided for in the Stipulation and Agreement do not result in an intergenerational subsidy that constitutes undue discrimination. . The intergenerational aspect of the additional amortizations is offset by the benefit of reductions in KCPL's cost of service for interest expense and profit requirements. The loss of investment grade rating of KCPL's debt will result in increased interest costs to KCPL's present ratepayers which would be avoided by the additional amortizations. If KCPL's debt loses its investment grade rating while KCPL maintains its financial ratios, the Stipulation and Agreement provides for no increase in costs to KCPL being reflected in KCPL's rates to its customers.

The additional amortizations will be based on KCPL's current operations and will not be determined by projected future events. The existing interest expense and debt levels that will be used in the additional amortization calculations will support current electric operations as well as construction activities. The additional amortizations will not be determined by the amount of dollars reflected in KCPL's construction accounts or for any facility that is not fully operational or used for service. The additional amortizations will only be influenced by existing debt supporting construction in a similar manner as used to develop the capital structure in a KCPL rate case.

The amortizations should produce lower overall revenue requirements. While it is true that current ratepayers will initially pay higher rates, most of these same ratepayers will also pay lower rates in the future. Only the ratepayers that move from KCPL's service territory will not experience this full effect. The ratepayers that do not leave KCPL's service territory will receive the benefit of paying lower overall rates due to the additional amortizations. There is other regulatory ratemaking that results in "intergenerational subsidies" that are not deemed to be violations of Section 393.135

Issue No. 9
Section IIIB.1.o of the Stipulation and Agreement, respecting the Resource Plan modification process, does not place the Commission, the Commission Staff or the other KCPL non-signatory parties in the position of managing or being requested to manage KCPL. *Re Union Electric Co.*, Case No. EA-79-119, 24 Mo.P.S.C.(N.S.) 72 (1980); 4 CSR 240-22.010-080; *State ex rel. AG Processing, Inc. v. Public Serv. Comm'n*, 120 S.W.3d 732 (Mo. banc 2003); Senate Bill 179, Laws 2005. Also see the answer above to Issue No. 7.

Issue No. 10
It is proper and lawful for the Commission to approve the Stipulation and Agreement which itself involves terms and conditions regarding the construction of utility generation and environmental enhancements in the future. *Re Union Electric Co.*, Case No. EA-79-119, 24

Mo.P.S.C.(N.S.) 72 (1980); 4 CSR 240-22.010-080; *State ex rel. AG Processing, Inc. v. Public Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003); Senate Bill 179, Laws 2005.

Issue No. 11
Respecting the future rate cases scheduled to be filed by KCPL beginning in 2006 as contained in the Stipulation and Agreement, Commission approval of the Stipulation and Agreement would not preclude a nonsignatory party from filing, or the Commission, even on its own motion, from considering and adopting, a position, contrary to the Stipulation and Agreement. The Commission would not be barred from proceeding in this manner by the Stipulation and Agreement or by Section 386.550. *See State ex rel. Missouri Gas Energy v. Public Serv. Comm'n*, 978 S.W.2d 434 (Mo.App. 1998).

Issue No. 12
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 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.

Issue No. 13
The Commission should not suspend hearings in this case and its consideration of the Stipulation and Agreement until after KCPL has complied with the required Commission Rule Chapter 22 filing to be made by KCPL on July 5, 2006. KCPL may request that the Commission again suspend Chapter 22 as it applies to it or may request variances from specific provisions of Chapter 22 and the Commission may grant KCPL's request. The Staff believes that there is sufficient information for the Signatory Parties to have entered into the Stipulation and Agreement and for the Commission to approve the Stipulation and Agreement.

Issue No. 14
The Staff believes that S.B. 179 has no direct effect on Case No. EO-2005-0329. See the Staff's response to Issue No. 5 above respecting the inference that may be drawn concerning the present authority of the Commission and the enactment of S.B. 179 as it relates to performance based plans.

Issue No. 15
KCPL needs additional generation capacity to serve native system load in 2010, but as is typically the case respecting the addition of base load capacity, KCPL is not just sizing the Iatan 2 unit for 2010. KCPL has sized Iatan 2 so as to meet it capacity needs for a reasonable number of years beyond 2010. There are electric utilities other than KCPL that also need additional baseload capacity in 2010 and beyond, and KCPL has sized the Iatan 2 unit to take advantage of economies of scale and meet the needs of other electric utilities. Aquila, Empire and certain members of MJMEUC also need baseload generation capacity and KCPL has agreed to treat them as preferred potential partners, if they can individually demonstrate that they have a

commercially feasible financing plan for meeting their financial commitments to participate in the ownership of Iatan 2 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 Iatan 2 or complete construction on a time frame connected with the Stipulation and Agreement.

Issue No. 16
The Staff believes that the word "public" in the phrase "in the public interest" is principally KCPL's customers and that the word "interest" in the phrase "in the public interest" involves principally the provision of safe and adequate service to its regulated utility customers at just and reasonable rates. The Commission has the discretion by law to consider publics and interests other than these in determining whether to grant the requested authorization, but the Commission must principally consider the aforementioned "public" and "interest." *See Love 1979 Partners v. Public Serv. Comm'n*, 715 S.W.2d 482, 490 (Mo. banc 1986).

Issue No. 17
KCPL needs additional generation capacity by 2010 and a reasonable period of time thereafter, and KCPL does not have an appropriate alternative which does not require the construction of additional generation. There is not an alternative technology to Iatan 2 technology that would be prudent and in the public interest for KCPL to use. Pulverized coal technology for large baseload plants of 800-900 megawatts is a proven reliable technology, which KCPL has successfully employed for Iatan 1 and the recently reconstructed Hawthorn 5. IGCC is a developing technology in the utility industry, for which there are no units of comparable size to Iatan 2, and the IGCC technology has not achieved the high levels of reliability and availability which are necessary for adequate service for large baseload plants.

Issue No. 18
The Staff does not believe that KCPL has a reasonable alternative to the construction of Iatan 2 that is less costly in direct costs than Iatan 2. The Staff does not believe that the Commission is required by statute or case law to choose the alternative that is literally the least cost in direct costs, although the Staff believes that cost is the principal factor that the Commission should consider. For example, the Staff does not believe that KCPL is required to disregard "reliability," i.e., the provision of "adequate service," in determining whether to choose a technology that may be literally least cost, but not proven to be adequately reliable. The Staff believes that KCPL should consider in its analysis potential new environmental regulations for which there is a very strong likelihood of adoption by the appropriate legislative or regulatory authority and that KCPL has done so in choosing the Iatan 2 technology.

Issue No. 19
The Staff does not believe that KCPL has a reasonable alternative to the construction of Iatan 2 that has less of an environmental effect than Iatan 2. The Staff does not believe that the Commission is required by statute or case law to choose the alternative that literally has the least environmental effect to the exclusion of other considerations such as direct cost. For example, the Staff does not believe that KCPL is required to disregard "reliability," i.e., the provision of "adequate service," in determining whether to choose a technology that may have literally the least environmental effect, but is not proven to be sufficiently reliable.

Issue No. 20
The Staff does not believe that KCPL has a reasonable alternative to the construction of Iatan 2 that has less of a human health effect than Iatan 2. The Staff does not believe that the Commission is required by statute or case law to choose the alternative that literally has the least human health effect to the exclusion of other considerations. In stating the preceding, the Staff would also note that there generally in these matters considerable issues relating to measurement.

The Staff does not believe that the word "safe" is synonymous with "health" and the term "health" is used in a much more limited manner in the Public Service Commission Law than the term "safe."

The Staff would note portions of Sections 386.310.1, 393.130.1 and 393.140(5) addressing the health and safety of public utility employees, customers and the public:

> **386.310. 1. The commission shall have power**, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, **to require every person, corporation, municipal gas system and public utility to maintain and operate its line, plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and to this end** to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety and other devices or appliances, to establish uniform or other standards of equipment, and **to require the performance of any other act which the health or safety of its employees, customers or the public may demand**, including the power to minimize retail distribution electric line duplication for the sole purpose of providing for the safety of employees and the general public in those cases when, upon complaint, the commission finds that a proposed retail distribution electric line cannot be constructed in compliance with commission safety rules. The commission may waive the requirements for notice and hearing and provide for expeditious issuance of an order in any case in which the commission determines that the failure to do so would result in the likelihood of imminent threat of serious harm to life or property, provided that the commission shall include in such an order an opportunity for hearing as soon as practicable after the issuance of such order.
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> **393.130. 1.** Every gas corporation, **every electrical corporation**, every water corporation, and every sewer corporation **shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate** and in all respects just and reasonable. . . .
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> **393.140.** The commission shall:
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> . . . .
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> **(5)** Examine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. . . . **whenever the commission shall be of the**

> **opinion, after a hearing had upon its own motion or upon complaints, that the property, equipment or appliances of any such person or corporation are unsafe, insufficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters**.

Though it is continuing research prior Commission action, the Staff has located to date one transmission line case, which in part deals with safety and health. In *Re Union Electric Co.*, Case No. EA-91-56, Report And Order, 1 Mo.P.S.C.3d 189 (1991), UE filed an application for authority to construct, operate and maintain 700 feet of a proposed 161 kilovolt (kv) transmission line in Camden County. All but this 700 feet of the proposed line was within UE's existing service territory. This 700 feet was within the municipal limits of Linn Creek, and Linn Creek opposed the construction of the line on the basis that it would "directly affect the health and well being of its residents and reduce the value of property and businesses in Linn Creek." *Id*. at 190. The Commission held that "[t]he evidence presented demonstrates that the need for the proposed line is two-fold: (1) to prevent overload of existing facilities, and (2) to provide reliability of service." *Id*. Linn Creek based its opposition in part "on the potential health hazard from electric and magnetic fields (EMF) generated by the transmission line to all residents and adverse effects on the behavior of livestock and breeding." *Id*. at 191-92. Linn Creek asserted that the Commission should adopt "the prudent avoidance theory, wherein absent quantitative evidence to the contrary safety concerns may dictate that high voltage facilities be located away from populated areas." The Commission granted UE the requested certificate of convenience and necessity stating that it could not conclude that EMF poses any known danger to human health or adverse effect on domestic animals' health or behavior, but it also said that it could not rightfully conclude that EMF emanations are harmless:

> The Commission also understands Linn Creek's concerns for EMF harm and its desire for the Commission to adopt the proposed prudent avoidance theory. However, the evidence presented demonstrated that there is no scientific basis for believing that EMF from power lines causes any adverse health effects. On the basis of the evidence, the Commission cannot conclude that electric and magnetic fields pose any known danger to human health or adverse effect on domestic animals' health or behavior. Neither can the Commission rightfully conclude that EMF emanations are harmless. The Commission appreciates Linn Creek's concerns, but it is also mindful of its responsibility to render decisions supported by the evidence. As indicated above, no scientific studies, expertise or other bodies of reliable evidence have been presented to this Commission which establish a positive link between EMF and negative health and biological effects. Barring the presentation of such evidence, the Commission cannot order UE to adopt preventative measures to combat a phenomena which, on the basis of the evidence presented may be relatively benign.

1 Mo.P.S.C.3d at 192.

Issue No. 21
See answers to Issue Nos. 19 and 20.

Issue No. 22
Trigen submitted this issue to the Staff and the other parties just several hours before the List Of Issues was filed. The Staff does not believe that Trigen has provided any explanation as to why this issue proposed by Trigen is relevant to the instant proceedings. Trigen may provide an explanation in its Statement Of Positions, but the Staff has not seen anything from Trigen at the time of the Staff's filing of its Statement of Positions that would cause the Staff to believe that Trigen's offering is an appropriate issue in this case.

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 2nd day of June 2005.

/s/ Steven Dottheim