BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for the Issuance Of an Accounting Authority Order relating to their Electrical Operations and for a Contingent Waiver Of the Notice Requirement of 4 CSR 240-4.020(2)	))))))	**File No. EU-2014-0077**

INITIAL POST-HEARING BRIEF OF MIDWEST ENERGY CONSUMERS' GROUP, MISSOURI INDUSTRIAL ENERGY CONSUMERS, AND OFFICE OF PUBLIC COUNSEL

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COME NOW the Midwest Energy Consumers' Group ("MECG"), the Missouri Industrial Energy Consumers ("MIEC"),[1] and The Office of Public Counsel (collectively referred to herein as "Consumers"), and hereby submit their Initial Post-Hearing Brief.

In this brief, Consumers address requests by Kansas City Power & Light Company ("KCPL") and KCP&L – Greater Missouri Operations Company ("GMO") (collectively referred to as "the Companies") that the Commission issue an Accounting Authority Order ("AAO") or implement a tracker for the Companies' increases in transmission costs. As detailed in this brief and their evidence, the Consumers oppose the Companies' request. Given that implementation of a tracker or an AAO would be illegal, unjust and unreasonable, the Consumers have not suggested any conditions that should accompany the Commission's implementation of a tracker or AAO. Rather, the Consumers believe that the use of an extraordinary ratemaking tool like a tracker or AAO for recurring costs constitutes poor ratemaking policy, is contrary to the method in which rates are established, violates the doctrine against retroactive ratemaking, and is decidedly anti-consumer, especially given the fact that KCPL and GMO are both earning in

[1] Bayer CropScience, Boehringer Ingelheim, Corn Products and Ford Motor Company.

excess of their authorized return on equity. For these reasons, the Commission should simply reject the Companies' request. In the event that the Commission ignores the numerous arguments against the Companies' request, the Consumers believe that the Commission should implement each and every one of the Staff's conditions.

I. Background and Introduction

A. Recent Rate Increases

It is well established that the last seven years have been marked by a continuous string of KCPL and GMO rate cases. Specifically, in the last seven years, customers of KCPL have seen their rates increase by 57.64%. While GMO-MPS ratepayers in suburban Kansas City have seen rates increase by 38.5% in seven years, GMO ratepayers in St. Joseph have seen rates increase by a staggering 65.1% in that same period of time.[2]

In those seven years, KCPL and GMO requests have not been limited to rate increases. Rather, KCPL and GMO have also made several requests designed to enhance corporate earnings and ensure even larger future rate increases. For instance, in conjunction with its 2007 rate increase, GMO sought and received approval to implement a fuel adjustment clause. The practical effect of this decision is to allow GMO to collect additional revenues over and above the rate increases referenced above.

B. Recent Commission Decision on Transmission Costs

Relevant to the immediate inquiry, KCPL and GMO both sought approval for a transmission tracker in their last rate cases. In that consolidated case, the Commission was decidedly against the Companies' request to implement a transmission tracker.[3] In its Report

[2] MECG Exhibit 3.

[3] Of the current Commission, Chairman Kenney and Commissioner Stoll voted against the Companies' request to implement a transmission tracker in the Commission's January 9, 2013 *Report and Order*, Case No. ER-2012-0174/0175.

and Order, the Commission noted the extraordinary nature of the Companies' transmission cost request. Specifically, the Commission pointed out that the use of extraordinary ratemaking tools "threaten just and reasonable rates." As such, the Commission held that such ratemaking tools should be limited solely to "extraordinary items." Finding that transmission costs do not meet the Commission's definition of "extraordinary," the Commission held that the Companies failed to meet their burden. Thus, "the Commission conclude[d] that denying a tracker [wa]s consistent with the law and [that such denial] d[id] not threaten safe and adequate service at just and reasonable rates, so the Commission [did] not order a transmission tracker."[4]

The following quote, while lengthy, provides excellent guidance for the Commission in its consideration of the immediate request.

> The Applicants ask the Commission to order deferred recording (a "tracker") for transmission costs. . . . Whether a utility may defer an item is the subject of General Instruction No. 7 [of the Uniform System of Accounts]. General Instruction No. 7 provides that the Commission's order is only necessary for an item that is less:
>
> > . . . than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary.
>
> "Extraordinary" describes matters subject to deferral, and does not apply to transmission cost increases, as discussed below. . . To protect just and reasonable rates, the Commission allows deferral for:
>
> > Extraordinary items . . . Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not be expected to recur in the foreseeable future.
>
> That language examines an event's:

[4] Case Nos. ER-2012-0174 and 0175, *Report and Order*, issued January 9, 2013, at pages 29-32.

> • Time (during current period);
> • Effect (significant);
> • Rarity (unusual, infrequent, not foreseeably recurring, activities abnormal and significantly different from the ordinary and typical).
>
> Applicants have not proved that the transmission cost increases meet that standard. The projected transmission cost increases are not "extraordinary" within the legal definition because they are not rare or current.
>
> "Rare" does not describe costs increases in the utility business generally. Specifically, Applicants' evidence shows the following as to transmission. Transmission is an ordinary and typical, not an abnormal and significantly different, part of Applicants' activities. Also, Applicants showed that paying more for transmission than in the previous year is a foreseeably recurring event, not an unusual and infrequent event. Thus, "items related to the effects of" transmission cost increases are not rare and, therefore, are not extraordinary.
>
> Because Applicants have not shown that the projected transmission increases are current and will be rare, Applicants have not carried their burden of proving that the projected transmission increases are extraordinary. . . . For those reasons, the Commission concludes that denying a tracker is consistent with the law and does not threaten safe and adequate service at just and reasonable rates, so that Commission will not order a transmission tracker.[5]

Following the Commission's Report and Order, KCPL and GMO argued on rehearing that the Commission's decision was erroneous. This time, joined by newly appointed Commissioner Bill Kenney, the Commission unanimously rejected KCPL and GMO's arguments and again held that it would not approve the implementation of a transmission tracker.[6] Thus, KCPL and GMO's tracker request has already been addressed and denied twice in the last year.

C. Companies' Immediate Request and Implications

Despite the clarity of the Commission's Order (that cost deferral should be limited only to "extraordinary" items and that transmission cost increases are not extraordinary), KCPL and

[5] *Report and Order*, Case Nos. ER-2012-0174 and 0175, issued January 9, 2013, pages 28-32 (citations omitted).
[6] *Order Denying Rehearing of Report and Order* and *Rehearing of Order Approving Compliance Tariffs*, Case Nos. ER-2012-0174 and 0175, issued January 30, 2013.

GMO are again asking, for the third time in less than a year, that the Commission implement either a transmission tracker or an AAO for transmission costs.

In this brief, the Consumers demonstrate that the Commission has steadfastly held to the standard that deferral of costs should be limited solely to extraordinary events. To date, Commission deferrals have been limited to instances in which an Act of God (storms, floods, tornadoes, etc.) or Government (recently implemented statutes, regulations, or accounting standards) have imposed costs that are not already treated in rates. As the Commission has previously held, transmission costs do not meet this standard. Rather, "transmission is an ordinary and typical, not an abnormal and significantly different, part of [the Companies'] activities. Also, [the Companies] showed that paying more for transmission than in the previous year is a foreseeably recurring event, not an unusual and infrequent event."[7]

The practical effect then of the Companies' request would be to broaden the scope of the Commission's cost deferral standard to include recurring costs that are already being treated and recovered in the utility's rates. The implication of a decision to broaden the scope for future cost deferrals would be to invite utilities to seek a deferral any time that they experience an increase in a particular cost. Rate cases, which consider all relevant factors, including offsetting decreasing costs, would give way to a patchwork of deferral requests for increasing costs. Meanwhile, given the lack of rate cases, the utilities would be allowed to protect the inflated profits that result from those costs that are decreasing.

Contrary to the positions advanced by the Companies, the Commission has already addressed requests to extend deferral of recurring costs that are already considered in rates. Indirectly, the Commission has rejected the notion of such a deferral by the Commission's steadfast adherence to the "extraordinary" standard for considering cost deferrals. More directly,

[7] *Report and Order*, Case Nos. ER-2012-0174 and 0175, issued January 9, 2013, page 32.

the Commission has rejected repeated requests to defer such recurring costs. For instance, in Case No. GO-2002-175, Aquila, Inc. (now known as GMO) sought permission from the Commission for authority to defer certain uncollectibles expenses. In its Report and Order, the Commission flatly rejected Aquila's attempt to extend the scope of the Commission's deferral authority to include recurring costs.

> Uncollectible expenses are a normal ongoing cost of doing business. Both MPS and SJLP have a level of uncollectible expenses built into their respective rate structures. Uncollectible expenses are routinely considered in evaluation of Aquila's ordinary business operations during a general rate case. The Uniform System of Accounts provides for uncollectible expenses to be placed in Account 904. . . . The test that the Commission has used, and continues to use here, for determining whether or not to grant an AAO is whether the expense to be deferred is extraordinary and not recurring. . . . Aquila's uncollectible expenses resulting from the winter of 2000-2001 were not "extraordinary, unusual, unique, and non-recurring," and the Commission will deny Aquila's application for an accounting authority order.[8]

Ultimately, the Consumers urge the Commission to continue to recognize the logic of these previous decisions. As these decisions and the Uniform System of Accounts indicate, deferrals should be limited exclusively to extraordinary, non-recurring events. As the following section indicates, recurring costs should continue to be reflected in base rates and considered in rate cases. The extension of the AAO mechanism would violate: (1) three decades of Commission orders; (2) the framework of the Uniform System of Accounts; and (3) the doctrine against retroactive ratemaking.

[8] *Report and Order*, Case No. GO-2002-175, issued November 14, 2002 at pp. 4, 6, and 8. *See also*, *Report and Order*, Case No. GU-2007-0480, issued December 17, 2008 (denying an AAO for manufactured gas plant remediation costs on the basis that such costs are recurring); *Determination on the Pleadings and Order Denying Application*, Case No. EU-2005-0041, issued October 7, 2004 (Commission denied an Accounting Authority Order for increased fuel costs).

II. Recurring Costs Are Recovered In Rates Through The Rate Case Process

A. Ratemaking Process

The logic of the Commission's steadfast adherence to its "extraordinary" standard for the consideration of potential deferral of costs is understood through a basic understanding of the ratemaking process, where recurring costs are considered. Given this, the Commission has treated extraordinary, non-recurring costs in an extraordinary fashion; specifically through the Commission's AAO process. As the Commission has recognized, any attempt to muddy this distinction and apply the AAO process to recurring costs would: (1) reflect poor ratemaking policy; (2) violate the Uniform System of Account's rule that current costs be recorded in the current period; (3) conflict with the doctrine against retroactive ratemaking; and (4) inflate current utility earnings and increase future rates.

As the Commission recognized in its Sibley decision, the ratemaking process is focused on recurring costs. The consideration of costs from a previous period violates the traditional method of setting rates.

> The deferral of costs from one period to another period for the development of a revenue requirement violates the traditional method of setting rates. Rates are usually established based upon a historical test year which focuses on four factors: (1) the rate of return the utility has an opportunity to earn; (2) the rate base upon which a return may be earned; (3) the depreciation costs of plant and equipment; and (4) allowable operating expenses. ***Allowable operating expenses are those which recur in the normal operations of a company***.[9]

The fact that recurring operating expenses are treated in the context of the rate case process is repeatedly reflected in the evidence of this case.

> The rate case process is used to set rates for recurring expenses, revenues and investment. In the rate case process, all "relevant factors" are considered. Thus, if a utility has an increase in a recurring expense, like transmission costs, it should file a rate case. In such a case, the increasing recurring expense (e.g.,

[9] Application of Missouri Public Service Company, *Report and Order*, Case Nos. EO-91-358 and EO-91-360, 1 Mo. PSC 3d 200, 205 (emphasis added) ("Sibley").

> transmission costs) is not looked at in isolation. Rather, all expenses, revenues and investment are looked at simultaneously. The Company is not simply allowed to increase rates because of a single cost item. Instead, the Company is only allowed to increase rates if the overall level of expenses, revenues and investment dictates a change.[10]

Given that the ratemaking process is focused on "recurring" costs, the Commission developed an alternative mechanism for the recovery of "non-recurring" costs. In such instances, the Commission has permitted the utility to defer such non-recurring costs for recovery in a future case through the use of an Accounting Authority Order.

> Under historical test year ratemaking, costs are rarely considered from earlier than the test year to determine what is a reasonable revenue requirement for the future. Deferral of costs from one period to a subsequent rate case causes this consideration and should be allowed only on a limited basis.
>
> This limited basis is when events occur during a period which are extraordinary, unusual and unique, and not recurring. These types of events generate costs which require special consideration. These types of costs have traditionally been associated with extraordinary losses due to storm damage or outages, conversions or cancellations. . . . The USOA recognizes that only extraordinary items should be deferred. The definition cited earlier [General Instruction 7] states the intent of the USOA that net income shall reflect all items of profit and loss during the period and exceptions are only for those items which are of significant effect, not expected to recur frequently, and which are not considered in the evaluation of normal business operations.[11]

B. Retroactive Ratemaking

Complicating the Commission's ability to defer costs from one period for consideration in a future case is the constitutionally-based prohibition against retroactive ratemaking. In the UCCM decision, the Supreme Court considered the legality of the fuel adjustment clause where not expressly authorized by statute. Addressing a fuel adjustment surcharge mechanism, the Missouri Supreme Court cited Missouri statutes (setting rates "to be charged") that prohibit retroactive ratemaking:

[10] MECG Exhibit 4, Meyer Rebuttal, pages 11-12.
[11] Sibley at page 205.

> The utilities take the risk that rates filed by them will be inadequate, or excessive, each time they seek rate approval. To permit them to collect additional amounts simply because they had additional past expenses not covered by either clause is ***retroactive rate making, i.e., the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established***. Past expenses are used as a basis for determining what rate is reasonable to be charged in the future in order to avoid further excess profits or future losses, but under the prospective language of the statutes, §§ 393.270(3) and 393.140(5), they cannot be used to set future rates to recover for past losses due to imperfect matching of rates with expenses.[12]

Thus, under the prohibition against retroactive ratemaking, the Commission is prohibited from considering past costs due to "imperfect matching of rates with expenses."

Given the broad nature of the UCCM prohibition against retroactive ratemaking, it would appear that any deferral of costs for future consideration would be prohibited. In an appeal from the Commission's Sibley decision, the Missouri Court of Appeals accepted the Commission's limited exception to the doctrine against retroactive ratemaking for "extraordinary" costs. In that case, the Court of Appeals considered whether the Commission's deferral of costs associated with the rebuilding of the Sibley generating station was "legal and reasonable."[13]

> The Commission's decision to grant authority to defer the costs associated with the Sibley reconstruction and coal conversion projects by recording the costs in Account No. 186 was the result of the Commission's determination that the construction projects were unusual and nonrecurring, and therefore, extraordinary. The Commission determined the projects to be unusual because of their size and substantial cost. The Commission expressed that deferral of costs just to support the current financial status distorts the balancing process utilized by the Commission to establish just and reasonable rates. Because rates are set to recover continuing operating expenses plus a reasonable return on investment, ***only an extraordinary event should be permitted to adjust the balance to permit costs to be deferred for consideration in a later period***.[14]

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[12] State ex rel. Utility Consumers Council of Missouri v. Public Service Commission, 585 S.W.2d 41, 59 (Mo. banc 1979) (emphasis added, citations omitted) ("UCCM").
[13] State ex rel. Office of the Public Counsel v. Public Service Commission, 858 S.W.2d 806, 807 (Mo. App. 1993).
[14] *Id.* at page 811 (emphasis added). *But see* discussion below, noting that the Missouri Supreme Court, citing UCCM, recently expressed some reservation of this type of single-issue and retroactive ratemaking.

From the foregoing case law, several things become apparent. First, the ratemaking process is focused on the recurring costs of the utility. Second, the Commission is prohibited from engaging in retroactive ratemaking (the setting of rates which permit a utility to recover past losses collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established). Third, the Court of Appeals, but not yet the Missouri Supreme Court, has accepted the concept of deferring extraordinary costs. Specifically, the Commission's use of Accounting Authority Orders to allow for deferral and future recovery of costs has been accepted only in the event of an extraordinary item ("only an extraordinary event should be permitted to adjust the balance to permit costs to be deferred for consideration in a later period.").

As the following section indicates, given the Court's limited approval for deferral of extraordinary costs, the Commission has steadfastly adhered to its extraordinary standard.

III. An AAO Should Issue Only Where A Utility Expense Is: (1) Unusual; (2) Non-recurring; (3) Material, And Where The Utility Is Not Already Overearning During The Current Period, Or Where The AAO Deferral Would Cause Overearnings

As noted above, in State ex rel. Office of Public Counsel v. Public Service Commission,[15] the Court of Appeals addressed the purpose of deferring costs. Specifically, the Court of Appeals approved the limited use of cost deferral for extraordinary costs.

> Deferral of costs just to support the current financial status distorts the balancing process utilized by the Commission to establish just and reasonable rates. Because rates are set to recover continuing operating expenses plus a reasonable return on investment, only an extraordinary event should be permitted to adjust the balance to permit costs to be deferred for consideration in a later period.[16]

[15] 858 S.W.2d 806 (Mo. App. 1993)
[16] *Id.* at page 811.

The Court affirmed the deferral there because it agreed with this Commission that the costs at issue therein were extraordinary, meaning unusual and not recurring.[17] Therefore, the unusual and non-recurring requirement can be found both in this Commission's decisions as well as that of the Court of Appeals. In a decision issued just two months ago, the Commission reaffirmed its use of the extraordinary standard.

> An AAO is a mechanism to "defer" an item, which means to record an item to a period outside of a test year for consideration in a later rate action. Items eligible for deferral include an "extraordinary item", an item that pertains to an event that is extraordinary, unusual and infrequent, and not recurring.[18]

Interestingly, in a recent case, intervenor Ameren Missouri provided the following discussion of the Commission's limitation of AAOs to extraordinary events:

> The Commission did not develop the regulatory principles governing AAOs in a vacuum. Instead, decisions in past AAO cases show that the Commission was guided by, and wisely has chosen to closely follow, the accounting rules and principles that it has adopted under the authority conferred by § 393.140(4). The accounting rules and principles relevant to this case are those prescribed in 4 CSR 240-20.030, which directs electric utilities whose operations are subject to the Commission's regulatory jurisdiction to use the Uniform System of Accounts approved for major electric utilities by the Federal Energy Regulatory Commission ("USOA").
>
> One of the most comprehensive discussions of how the Commission approaches utility requests for AAOs can be found in the Commission's 1991 Report and Order in consolidated Case Nos. EO-91-358 and EO-91-360 (the "Sibley Order")… .
>
> The Sibley Order contains several conclusions regarding AAOs that are relevant and applicable…. First, the Commission concluded that its authority to grant AAOs is rooted in the provisions of the USOA. Second, the Commission concluded that although the USOA generally requires a utility to offset costs incurred in one period against revenues from the same period, in certain circumstances the USOA provides a means for a utility to deviate from that general rule and to defer certain items affecting net income from one period to a different period. Third, the Commission found that because the deferral of items

[17] *Id.*

[18] In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for the Issuance Of an Accounting Authority Order Relating to its Electrical Operations, Case No. EU-2012-0027, issued November 26, 2013, at page 3 (footnotes omitted).

> to a future period serves to improve financial results for the period in which the items otherwise would have been booked, the USOA **only** allows deferrals of items that are extraordinary, unusual and unique, and non-recurring. Finally, the Sibley Order concludes that although the USOA allows for the deferral of certain extraordinary items without Commission approval — i.e., those whose effect on a utility's net income is greater than five percent — a utility may still seek specific Commission authority to defer such items if the utility believes it would be prudent to do so.[19]

As explained above in the quotes from Ameren Missouri's recent brief, this Commission recognizes the USOA.[20] Specifically, the USOA General Instruction 7 provides that "[i]t is the intent that net income **shall reflect all items of profit and loss during the period[.]**" That is normal accounting. As Staff Counsel eloquently explained in his opening statement, this case concerns an exception to normal accounting.[21] General Instruction 7 also provides for when unusual, or abnormal, accounting would apply. Expenses and credits, called "items," can be accounted for outside of the norm when they are "extraordinary." "Extraordinary" items are "[t]hose items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence[.]"[22]

Thus, this Commission's regulation adopting the USOA, as well as its decisions and the Court of Appeals' decision, allow the unusual accounting in the form of deferral **only** when the expense sought to be deferred is extraordinary (meaning unusual and non-recurring) and material. Indeed, KCPL and GMO previously acknowledged these standards in their AAO applications for deferral of Missouri River flood costs. Specifically, KCPL and GMO argued

[19] The above-quoted language is taken directly from Ameren Missouri's May 30, 2012 brief in Case No. EU-2012-0027, with footnotes omitted and emphasis added. *See* MECG Ex. 6 (admission under consideration).
[20] The Uniform System of Accounts was adopted under the authority contained in Section 393.140(4) and is codified at 4 CSR 240-20.030.
[21] Tr. 52-58.
[22] General Instruction 7.

that such costs should be deferred on the basis that they were "extraordinary, unusual, and significant."[23]

In addition to the above standard for allowing a deferral, the Commission should consider the following. The Missouri Supreme Court decision in UCCM is clear that this Commission's duty is to set just and reasonable rates by consideration of all relevant factors. That is required by sections 393.130, 393.140, 393.150 and 393.270. It would appear clearly unjust and unreasonable, and thus illegal, for this Commission to allow a utility to defer expenses that it is already fully recovering during the current periods **and** at the same time it is earning more profit than its authorized return on equity contemplated.

Moreover, as discussed above, UCCM recognizes that both retroactive and single-issue ratemaking are illegal, absent a statute expressly authorizing that action (such as section 386.266 for a fuel adjustment surcharge). The Missouri Supreme Court recently questioned the legality of tracking any particular cost of service between rate cases, and surcharging customers for differences from a base level of that cost. In Office of Public Counsel v. Missouri Public Service Commission, the Court cited the UCCM decision and noted that it was rendering no decision on the "authority of the PSC" to incorporate the PGA cost tracking mechanism as part of its regulation of gas utilities.[24] Although the Missouri Supreme Court appears willing to address that issue, the issue had not been briefed in that case. Here, even if the Companies were to meet the standard for deferral set by this Commission in its adoption of the USOA and its decisions, the question still remains whether such deferral amounts to illegal single-issue or retroactive ratemaking.

[23] *See* MECG Exhibit 3, Meyer Direct, page 5 (citing to KCPL and GMO Application in Case No. EU-2012-0130).
[24] Case. No. SC92964 (July 30, 2013, modified September 10, 2013), Slip Op. at 3, n. 3.

In conclusion, to comply with the USOA and this Commission's decisions on deferral, a utility must establish that the subject expenses are extraordinary, unusual and non-recurring, and are also material. As explained below, the facts clearly show that the Companies do not meet that standard.

IV. The Subject Transmission Charges Are Usual And Recurring

Witnesses Oligschlaeger, Meyer and Addo all testified that the subject transmission charges are usual and recurring, and thus do not qualify for an AAO.[25] What their testimony establishes is that: (1) the Companies have been members of the SPP for a long time and have always incurred transmission costs; (2) transmission costs are a usual part of the Companies' business; (3) the Companies know ahead of time what the transmission cost increases are likely to be and can plan for them by filing rate cases, so the increases in these costs are expected. This testimony, for the most part, states the obvious, namely that electric utilities incur transmission costs, and those costs like most costs change, but the changes can be forecasted and rate cases can thus be filed at the appropriate time.

By contrast, the Companies presented the testimony of witness Ives. He opined that the Companies meet the above standard, but his explanation in support of that opinion was contradictory and equivocal. First, he admitted that the Companies have "always incurred transmission costs" and expect "to continue to incur transmission costs in the foreseeable future[.]"[26] He also acknowledged that "[h]istorically, transmission costs have fluctuated"[27] and that KCPL belonged to the SPP since the late 90s or early 00s and GMO since 2008.[28] Mr. Ives then attempted to argue that the increases in these costs are material to the Companies' cost of

[25] Staff Exhibit 2, Oligschlaeger Rebuttal, page 3 (costs are "ordinary and ongoing"); MECG / MIEC Exhibit 4, Meyer Rebuttal, page 6; OPC Exhibit 1, Addo Rebuttal, page 14.
[26] KCPL Exhibit 5; Ives Surrebuttal, page 4.
[27] *Id.*
[28] Tr. 185.

service and thus atypical.[29] Chairman Kenney asked Mr. Ives to identify any reasons, other than the size of the increases in costs, why Mr. Ives believed the subject costs were extraordinary. Mr. Ives merely identified the regional nature of transmission costs, and then equivocated: "[s]o extraordinary I don't know, but certainly [a] very different operating environment."[30] Simply, Ives' testimony is equivocal at best ("extraordinary I don't know") and, in any event, he does not correctly apply the above standard. He assumes that a "material" increase in a cost is an extraordinary cost, whether or not the expense is unusual or recurring. His application of the standard ignores two of the three prongs of the standard.

What the evidence shows is that nothing has changed since the Commission recently addressed this issue for the Companies and concluded that the subject increases in transmission costs were not extraordinary:

> Applicants have not proved that the transmission cost increases meet that standard. The projected transmission cost increases are not "extraordinary" within the legal definition because they are not rare or current. "Rare" does not describe cost increases in the utility business generally. Specifically, Applicants' evidence shows the following as to transmission. Transmission is an ordinary and typical, not an abnormal and significantly different, part of Applicants' activities. Also, Applicants showed that paying more for transmission than in the previous year is a foreseeably recurring event, not an unusual and infrequent event. Thus, "items related to the effects of" transmission cost increases are not rare and, therefore, are not extraordinary.[31]

As the vast preponderance of the evidence shows, the subject transmission costs do not meet the standard for issuance of an AAO because the costs are not extraordinary. They are neither unusual nor non-recurring.

[29] KCPL Exhibit 5, Ives Surrebuttal, page 4.
[30] Tr. 214.
[31] *Report and Order*, Case Nos. ER-2012-0174 and 0175, at page 31.

V. Even If The Subject Expenses Were Extraordinary, An AAO Is Not Warranted In This Matter

As explained above, expenses should not be deferred for periods where the Companies are already overearning, or where the deferral would cause overearning. Sections 393.130, 393.140, 393.150 and 393.270 clearly require this Commission to adopt rates that are just and reasonable. Here, based upon reported "actual return[s] on equity" for GMO, Meyer's testimony showed that GMO, and likely KCP&L, were overearning during 2013.[32]

Ives took issue with Meyer's use of the "Actual Returns on Equity" as reported in surveillance monitoring reports because Meyer did not make "normal regulatory adjustments." But Ives' testimony fails to indicate what those adjustments would have shown.[33] The adverse inference to reasonably draw from such a failure is that those adjustments would not help the Companies' cause. In any event, should it matter why the Companies were overearning, say because of weather? If they are and were overearning under existing rates, with inclusion of the subject transmission expenses, why should those expenses be deferred so that the Companies can report even higher overearnings? The Companies bear the burden of proof in this matter.[34] Even without the compelling Meyer testimony regarding overearning without deferral of the subject cost increases, the Companies have not demonstrated that without the subject deferrals they are or were unable to earn their authorized returns on equity during the deferral periods.

And Meyer's testimony is not the only testimony supporting Consumers on this issue. When asked the understandable question by Staff Counsel why the Companies did not file a rate case instead of the subject case, Ives responded that a rate case involves an all relevant factors consideration ("[y]ou need to look at the totality of your operating conditions and

[32] MECG / MIEC Exhibit 4; Meyer Rebuttal, page 13; MECG / MIEC Exhibit 5.
[33] KCPL Exhibit 5, Ives Surrebuttal, page 10.
[34] Section 393.150.

environment").[35] He acknowledged that after such a consideration, the Companies decided to file this case rather than a rate case.[36] That statement belies Ives' equivocal prefiled testimony that "[i]t is the Company's opinion that if it put a case together today, the Company would likely demonstrate it currently has a revenue deficiency."[37] Why didn't the Companies file a rate case, particularly since they had a good idea of the timing of the increased transmission costs? One reasonable conclusion is that an all-relevant-factors determination, required in a rate case, would show that no (or only a de minimis) rate increase was authorized, or possibly that a rate decrease was required. That conclusion is consistent with Meyer's testimony that, even without deferral of the increased transmission costs, the Companies' actual returns on equity are higher than authorized by this Commission.[38] The point here is that the current rate already allows the Companies to recover all of their costs of service, and already earn more than their authorized profit. Removing expenses and deferring them to a later time increases an already overearning utility's earnings. That action would make the current rates unjust and unreasonable since they were based upon the assumption that the utility would report its current expenses in the current periods. Unjust and unreasonable rates are illegal.

VI. Conclusion

As demonstrated above, AAOs are limited, by statute, regulation and case law, to deferral of extraordinary expenses. As demonstrated above, the subject transmission expenses clearly are not extraordinary. Rather, they are usual and recurring. Moreover, as explained above, it would

[35] Tr. 167.
[36] *Id.*
[37] Ives Surrebuttal, Exhibit 5, p. 11, ll. 8-9.
[38] Meyer testimony, Tr. p. 308, ll. 1-12 ("What I take from [Ives' statement that after analysis, no rate case was filed] is he's done an analysis of their current operations and I think his surveillance data proves [overearnings] and that he would be putting his excess earnings at risk.)

be unjust, unreasonable and illegal to allow deferral of these costs when the Companies are already overearning.

For over 30 years the Commission has steadfastly adhered to the notion that AAOs should be limited to extraordinary items. This standard is logical. Given that current rates reflect consideration of all recurring, non-extraordinary costs, AAOs must be limited to extraordinary costs that are not already reflected in rates. For this reason, AAOs have typically been limited to Acts of God (floods, tornadoes, storms, etc.) or Acts of Government (implementation of rules / statutes, enactment of new accounting standards, etc.) that impose new costs not already considered in rates.

The Commission's adherence to this standard is also consistent with Missouri case law. Specifically, the Supreme Court's discussion on retroactive ratemaking precludes the Commission from engaging in retroactive ratemaking ("the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established."[39]). In a subsequent case, the Court of Appeals held that the deferral of costs was allowed only when applied to extraordinary events ("Because rates are set to recover continuing operating expenses plus a reasonable return on investment, only an extraordinary event should be permitted to adjust the balance to permit costs to be deferred for consideration in a later period."[40]). Therefore, the use of deferral accounting is limited solely to extraordinary events.

For all of the foregoing reasons, the Consumers respectfully request that the Commission deny the Companies' request for deferral accounting for its recurring, non-extraordinary transmission costs.

[39] UCCM, *supra*, at 59.
[40] Public Counsel, *supra*, at 807.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been transmitted electronically to all counsel of record this 25th day of February, 2014.

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