BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light	)	
Company's Request for Authority to	)	File No. ER-2016-0285
Implement a General Rate Increase for	)	
Electric Service	)	

PUBLIC COUNSEL'S POST-HEARING BRIEF

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COMES NOW the Office of the Public Counsel ("OPC" or "Public Counsel") and offers its Post-Hearing Brief to the Missouri Public Service Commission ("Commission") as follows:

Introduction

Rates from Kansas City Power & Light Company's ("KCPL") last rate case became effective September 29, 2015. For the twelve month period following the effective date of its new rates, KCPL earned above its authorized return on equity (Ex. 216, Lyons Surrebuttal, p. 20). As shown in the quarterly FAC surveillance reports, KCPL's earned return on equity was 9.88% (Ex. 217, Majors Rebuttal, p. 4).[1] This earnings information would not have been available at the time the company filed its request for a $ 90.1 million rate increase on July 1, 2016 – approximately nine months after its last rate increase – however, it demonstrates the unreasonableness of KCPL's requested increase.

All rates charged by public utilities must be just and reasonable, authorized by law, and supported by competent and substantial evidence. § 393.150 RSMo; *Utility Consumers Council of Missouri v. P.S.C.,* 585 S.W.2d 41 (Mo. 1979). It is the Commission's task to consider all relevant factors and determine the rates that are just and reasonable in order to protect ratepayers and promote the public interest. Protecting ratepayers requires the Commission to consider the *impact* that its rate decisions has upon ratepayers. *Office of the Public Counsel v. P.S.C*, 938

[1] In Case No. ER-2014-0370 the Commission authorized a return on equity of 9.5% for KCPL.

S.W.2d 339 (Mo. Ct. App. 1997). Accordingly, among the most critical considerations a commission makes when approving rate increases is the impact the increase will have upon ratepayers.

This case is not driven by a large generating unit being put into service after expensive environmental upgrades were complete, like in the last rate case. Instead, the focus of this case has been driven by the company's attempt to radically shift risk onto customers by encouraging the Commission to depart from sound regulatory principles and past Commission standards. For return on equity, the company again offers the testimony of Mr. Hevert who suggests the ROE should *increase* to 9.9% when all other parties believe a *decrease* is warranted. The company asks the Commission to depart from its longstanding practice of using its holding company's consolidated capital structure, followed since 2006, when setting rates. The company seeks to increase customer's rates by approximately $ 10 million because it wishes to include terminal net salvage estimates in depreciation rates. Including the estimates in depreciation rates would change Commission practice accepted since 2005 and shift risk to customers who would pay increased rates *now* for estimated costs that may never actually materialize. The company is pursuing a particularly egregious MEEIA adjustment as a way to collect an additional $ 6.6 million from ratepayers when the company has already been well compensated. In addition to the foregoing issues remaining to be decided by the Commission in its direct case, the company had requested a variety of special cost-trackers and expenses based on projections that it is no longer seeking under the terms of a *Non-unanimous Partial Stipulation and Agreement* filed after the evidentiary hearing began in this case and approved by the Commission on March 8, 2017.[2] All of the foregoing requests by the company should be rejected as unjust and unreasonable as will be explained in this brief.

[2] Public Counsel is a signatory to that agreement.

Even without the present requested increase, customers are already struggling to keep up with KCPL's numerous rate increases. From 2007 to 2015 the increase in average weekly wages for Missouri counties in the KCPL service area is about one-fourth of the increase in electric rates for KCPL customers (Ex. 200, p. 8). This margin would only be made worse if KCPL is granted its requested 10.77% increase. These increases are a burden for customers. At one local public hearing a customer testified: "people are not keeping up with increased rates; and, quite frankly, it's getting to a stage where people are going to have to take more serious measures, such as dropping electrical services and living without electricity." (Tr. Vol. 4, p. 20). KCPL's customers do not have an endless supply of money to continue budgeting towards their utility bill. **

** (Ex. 310 HC, Marke Rebuttal, 5). At another public hearing a customer framed the impact of the rate increase with a question: "[w]hat is a senior citizen, an individual with disabilities, or a single mother to do when they have to choose between utilities and food?" (Tr. Vol. 5, p. 17). *Any* increase will have a significant impact on KCPL's customers ability to pay their bills and purchase other necessities, including food.

When *any* increase will have such significant impacts on people, efforts to increase rates above what is necessary to provide safe and adequate service and attempts to shift risk to customers – as KCPL is attempting to do in this case with the issues discussed below – are unjust, unreasonable, and should be denied as being contrary to the public interest.

Cost of Capital (Issue II)

Return on Common Equity ("ROE") – what return on common equity should be used for determining rate of return?

Staff witness Mr. Woolridge recommends a *decrease* to 8.65% (based on a range of 7.9%

to 8.75%). MECG witness Mr. Gorman recommends a *decrease* to 9.20%. Only the Company's witness recommends an increase. Public Counsel recommends the Commission *decrease* the authorized ROE. An appropriate ROE for KCPL will fall in the range of 7.9% to 8.75%.

Public Counsel witness Hyneman offered testimony disputing KCPL witnesses' belief that the regulatory environment in Missouri is a reason for the Commission to authorize a higher ROE (Ex. 303, Hyneman Rebuttal, pp. 2-6). In reality, the In Standard & Poor's ("S&P") January 2014 "Utility Regulatory Assessments For U.S. Investor Owned Utilities Report" ("S&P 2014 Report"), S&P ranked the Missouri regulatory environment as "Strong/ Adequate." (Ex. 303, Hyneman Rebuttal, p. 4). From a utility bondholder perspective S&P ranked the Missouri regulatory environment at its second highest possible rating. *Id*. Furthermore, the industry standard source for statistics in rate cases and regulatory matters in general is the Regulatory Research Associates ("RRA") (Ex. 303, Hyneman Rebuttal, p. 5). Based on information from the RRA, Mr. Hyneman concludes that from an investor perspective and from a historical perspective, Missouri regulation has been relatively balanced, ranking the regulatory environment of Missouri in the middle of all state Commissions (Ex. 303, Hyneman Rebuttal, p. 5). Based on this information, the Commission should reject any theories offered by KCPL that the regulatory environment in Missouri justifies a higher authorized ROE.

<u>Capital structure – what capital structure should be used for determining rate of return</u>?

Public Counsel recommends Great Plains Energy's ("GPE") actual consolidated capital structure at September 30, 2016 as adjusted to remove the amounts associated with the asset referred to as "Goodwill" (Ex. 302, Hyneman Direct p. 17). GPE's capital structure consists of 48.5% debt and 51.5% equity. *Id*. The Commission has consistently ordered the use of GPE's consolidated capital structure in KCPL rate cases since the company's 2006 rate case, ER-2006-

0314. This practice was continued in KCPL's most recent rate case in which the Commission recognized it has historically used the GPE capital structure to set rates for KCPL as has the Kansas Corporation Commission when setting rates for KCPL's Kansas operations (Report and Order, Case No. ER-2014-0370, p. 20, *Iss'd* Sept. 2, 2015).

Fuel Adjustment Clause ("FAC")(Issue III)

Should the Commission authorize KCPL to continue to have an FAC?

In this case, Public Counsel recommends the Commission order an FAC for KCPL. An FAC incorporating the terms outlined by OPC witnesses in this case would continue to give KCPL the significant benefit of this single-issue cost recovery mechanism while making improvements to benefit of ratepayers. Specifically, the FAC recommended by OPC limits the costs and revenues included in KCPL's FAC to direct fuel and purchased power costs, including transportation and off-system sales revenues. Limiting the costs and revenues included in the FAC simplifies the FAC and increases transparency. By removing non-fuel and non-purchased power costs, it eliminates the disincentive for KCPL to not implement efficiencies in these cost areas (Ex. 306, Mantle Rebuttal p. 2). It reduces the likelihood of errors and increases the ability to conduct a comprehensive prudence review (Ex. 306, Mantle Rebuttal p. 2). Lastly, it offers a more meaningful incentive for KCPL to manage, to the extent it is able, the fuel and purchased power costs and off-system sales revenues through recovery of FAC costs included in base rates and 90% of the FAC costs above what is included in base rates (Ex. 306, Mantle Rebuttal p. 2). Likewise, OPC's proposed FAC would return 90% of all cost savings to the customers and allow KCPL to retain 10% of its savings.

Overall, the FAC proposed by Public Counsel would minimize the complexity of KCPL's FAC while providing KCPL with a reduction in risk regarding recovery of its fuel and

purchased power expenses. To be clear, under Public Counsel's recommendation the majority of current FAC costs are included; only the non-fuel and non-purchased power costs now included in KCPL's FAC would be impacted (Ex. 305, Mantle Direct p. 22). A large majority of the costs in KCPL's current FAC and the FAC proposed by KCPL[3] in this case are fuel commodity, the transportation of that commodity, and purchased-power costs. Those costs are also included in OPC's proposal meaning the difference in cost recovery between KCPL's requested FAC and OPC's proposal is slight (Ex. 305, Mantle Direct p. 23).

Public Counsel's proposal of removing non-fuel and non-purchased power costs from KCPL's FAC is not micro-managing the utility, far from it. Importantly, the non-fuel and non-purchased power costs removed from the FAC would continue to be included in the revenue requirement for KCPL. Excluding these costs from the FAC would restore the traditional ratemaking incentives to KCPL in regards to these costs (Ex. 305, Mantle Direct p. 24). This would provide an incentive for KCPL to find efficiencies in these non-fuel and non-purchased power areas since efficiencies that would reduce these costs could provide a benefit to shareholders. In contrast, including these costs in the FAC removes KCPL's incentive to take actions to decrease these non-fuel and non-purchased power costs. This means that OPC's recommended FAC would reduce disincentives for cost efficiencies for these costs (Ex. 305, Mantle Direct p. 23). KCPL witness Blunk agreed during the hearing that including costs in fixed rates is a very clear incentive for the utility to minimize costs. Tr. Vol. 8, p. 466. Allowing KCPL the opportunity for positive regulatory lag by not including non-fuel and non-purchased

[3] While Public Counsel has not had the opportunity to review the position taken in briefs, it expects KCPL to abandon certain positions from its direct testimony based on the *Non-unanimous Partial Stipulation and Agreement* approved by the Commission on March 8, 2017.

power costs in the FAC, along with OPC's recommended sharing incentive, could actually result in greater earnings for KCPL (Tr. Vol. 8, p. 516; Ex. 305 Mantle Direct p. 22).

Likewise, including non-fuel and non-purchased power revenues in an FAC may create apathy regarding increasing these revenues since KCPL would see very little benefit to increasing revenues (Ex. 305, Mantle Direct p. 23).

Even under the OPC proposal, the FAC continues to be a significant shift in the balance of cost recovery risk from the company to its customers. This shift is not without certain customer protections. First, a utility seeking an FAC must periodically come before the Commission and prove its case. Section 386.266 RSMo, requires that the establishment, continuation, or modification of an FAC only occur in a general rate case and only upon approval by the Commission. These provisions allow the Commission and parties in each rate case, just as Public Counsel has done in this case, as allowed by Commission rule 4 CSR 240-20.090(2)(E), to make recommendations after examining all aspects of an FAC proposed by the electric utility including how the utility has managed its obligations.

Section 386.266 RSMo gives the Commission discretion to *allow* an electric utility to establish an FAC. "The statute does not *require* that the Commission approve a fuel adjustment clause. Instead, it specifically gives the Commission authority to accept, reject or modify a proposed fuel adjustment clause after giving an opportunity for a full hearing in a general rate case" (emphasis added)(Report and Order, Case No. ER-2007-0004, p.63, *Iss'd* May 17, 2007). It is clear the statute does not *entitle* the company to have an FAC. As the Commission has concluded in the past, "a fuel adjustment clause is a privilege, not a right, which can be taken away if the company does not act prudently." (Report and Order, Case No. ER-2008-0093, pp. 45-46, *Iss'd* July 30, 2008). It follows, then, that the Commission can make modifications to an

FAC. When it furthers the public interest the Commission *should* make modifications. Public Counsel believes its recommended modifications protect ratepayers and further the public interest. The continual improvement for the FAC structure based upon information and circumstances should be embraced and encouraged by the Commission. At least in part, this concept was endorsed by the Commission in Union Electric Company d/b/a Ameren Missouri's ("Ameren Missouri") recent rate case, ER-2014-0258, when discussing OPC's position in that case that the company had not met the minimum filing requirements the Commission specifically noted:

> The minimum filings Ameren Missouri made in this case are substantially similar to the filings it made in past rate cases and have never been challenged in the past. That does not mean those minimum filing requirements cannot be improved in the future.

(Report and Order, Case No. ER-2014-0258, *Iss'd* April 29, 2015). Exercising the provision of the Commission's rule to propose alternatives to the company's FAC proposal is not micromanaging the utility. The ability to consider and adopt changes is a significant way the Commission can protect ratepayers.

KCPL's Requested FAC

Since filing its direct case, and after the hearing in this case began, KCPL entered into a *Non-unanimous Partial Stipulation*. As a result, Public Counsel understands KCPL is now essentially requesting to continue its existing FAC. The Commission, in its role to guard the public interest, should not endorse the status quo in this case. The provision in the Non-unanimous Partial Stipulation applies only to KCPL. It does not apply to the other signatory

parties. Based on the circumstances in this case it is clear OPC's modifications to the FAC are warranted.

The Company's apparent attitude and misunderstanding of the purpose for an FAC makes evident the need for further Commission guidance on costs to be included, additional reporting to be implemented, and a modification of the incentive mechanism. OPC witness Mantle summarized the concern about KCPL's approach to an FAC:

> OPC is greatly alarmed that KCPL views the FAC, not as a cost recovery mechanism, but as a determinant in how it meets its customers' energy needs and as a policy statement of costs the Commission deems important. When a utility views the FAC as anything other than cost recovery of prudently incurred fuel and purchased power costs and changes its fuel procurement practices, not to improve efficiencies and cost-effectives but based on recovering the most money from its customers, the Commission should seriously consider whether or not the utility is deserving of the privilege of an FAC.
>
> Rate adjustment mechanisms such as the FAC allow the utility to charge its customers more, without consideration of all costs and savings, between rate cases. Nowhere in Section 386.266 RSMo does it say the FAC is to be used as a fuel management tool or to dictate procurement practices. In fact, the statute makes it clear that an electric utility with an FAC is expected to continue to manage its fuel prudently and the Commission may include features designed to provide incentives to *improve* the efficiencies and cost-effectiveness of its fuel and purchased-power procurement activities. In light of the statute allowing incentives to improve efficiencies and cost effectiveness, threats by KCPL to

minimize or discontinue fuel procurement activities if the costs of these activities are not included in the FAC are very alarming.

(Ex. 307, Mantle Surrebuttal pp. 1-2). This attitude is shown in KCPL's response to Public Counsel data request where KCPL explained how it viewed certain Commission decisions regarding the FAC:

> When the costs to implement efficiency or cost-effectiveness measures in the Company's fuel and purchased power procurement activities are excluded from base rates and the FAC, it is the Company's view the Commission taken a policy position that the excluded efficiency or cost-effectiveness measures are not justified and are not to be employed.

(Ex. 322). During the hearing, KCPL witness Blunk discussed the data request responses and confirmed Public Counsel's concern that KCPL views the FAC as something other than expedited cost recovery when he discussed a hypothetical Commission order:

> And with that, the context of this is, if we had a fuel clause and if one of those items was excluded from the fuel clause, the company is left with interpreting and understanding what a hypothetical order would say. So, again, it's a hypothetical order. We get an order that says, Take your -- Trona. It's not allowed in the fuel clause. What do we do?
>
> Well, one, we don't include it in the fuel clause, that's for sure. But between reading between the lines of the order, unless it says something else, we're left with the question of, is there a policy position where the commission in its hypothetical scenario is saying that Trona is bad, and, therefore, we shouldn't use it? So we're trying to look at what do we do and how do we interpret that?

(Tr. Vol. 8, pp. 460-61). Excluding a cost in the FAC should not be taken as a Commission policy position that efficiency or cost-effectiveness measures are to be minimized, not justified or should not be employed. The Commission has recognized an FAC as a mechanism established in a general rate case that allows periodic rate adjustments, outside a general rate proceeding, to reflect increases and decreases in an electric utility's prudently incurred fuel and purchased power costs (Commission Rule 4 CSR 240-20.090(1)(C)). The FAC should not be used as a fuel management tool or to dictate procurement practices.

Public Counsel's concern that KCPL may view the FAC as a fuel management tool or to inappropriately dictate procurement practices, is exacerbated by KCPL witness Rush's apparent belief that the Commission has consistently rejected the concept that including costs in the FAC removes the incentive to take action to decrease non-fuel and non-purchased power costs (Ex. 143, Rush Rebuttal p. 27). When Public Counsel sought to find out the basis of Mr. Rush's belief the response was simply that the Commission had approved FACs that included non-fuel costs in the past (Ex. 324). Certainly, it requires a considerable stretch of the imagination to believe that by approving FACs in the past the Commission was rejecting the idea that including costs in an FAC removes the incentive to reduce or manage those costs – especially when the Commission included incentive mechanisms in those same FACs. OPC witness Hyneman offered testimony strongly disagreeing with Mr. Rush, stating "[t]he Commission has repeatedly asserted that trackers such as a FAC remove utility management cost control incentives. I have never seen any instance where the Commission has stated that this is not true." (Ex. 304, Hyneman Surrebuttal p. 25). In fact, in KCPL's last rate case, the Commission recognized the FAC's impact on the utility's incentive to control costs, stating: "[t]he Commission finds that allowing KCPL to have 100% recovery of its costs in an FAC would act as a disincentive for KCPL to control those

costs." (Report and Order, Case No. ER-2014-0370, p. 31, *Iss'd* Sept. 2, 2015). The Commission included a sharing mechanism to provide the company an incentive to control costs. *Id*. The company's inability to recognize that including costs in an FAC reduces the company's incentive to control those costs is another reason the Commission should adopt the modifications proposed by Public Counsel.

KCPL's apparent philosophy regarding the FAC and its inability to recognize the impact on cost-control incentives involved are troubling. However, those are far from the only concerning aspects of KCPL management's treatment of the FAC privilege. The Commission should also be concerned about the company's ability to administer an FAC appropriately.

For example, in the company's direct filing it included FAC tariff sheets sponsored by Mr. Rush that propose to permit KCPL to recover "fuel handling costs" in subaccounts 501500 – 501509 in the FAC (Ex. 142, TMR-3, p. 13 of 21). However, this request and the information provided to the Commission and parties by the company are inadequate for several reasons. First, the supporting testimony regarding what costs would be included in KCPL's FAC and why they should be included is non-existent or inadequate. There is no testimony providing complete explanations of all the costs KCPL is requesting be included in its FAC required by Commission Rule 4 CSR 240-3.161(3)(H). There is no testimony providing complete explanations of all the revenues KCPL is requesting be included in its FAC required by Commission Rule 4 CSR 240-3.161(3)(I). Nor did the company provide any testimony including a complete explanation of any rate volatility mitigation features in the proposed FAC as required by Commission Rule 4 CSR 240-3.161(3)(K). These requirements are not meant to be meaningless paperwork. The Commission has stated that it is the Commission that should make the determination as to what costs or revenues should flow through the FAC (Report and Order, ER-2014-0370, p. 39, *Iss'd*

Sept. 2, 2015) In order to make that determination the Commission needs to know what costs KCPL seeks to recover from ratepayers in this special cost recovery mechanism.

Second, when the company did provide additional information about the costs it was seeking to recover in the FAC in response to OPC data requests, the information provided was limited to the description of the resource codes created and used by KCPL for recording costs in FERC accounts (Ex. 306, Mantle Rebuttal pp. 14-15). The data provided did not match the company's proposed tariffs. Examining the company's response to OPC data request 1314, the Commission should note that KCPL was proposing to include costs in account 501510 in its FAC (Ex. 236). However, the tariff sheets provided by KCPL did not include that account having only referenced subaccounts 501500 – 501509 (Ex. 142, TMR-3, p. 13 of 21).[4] During the hearing, KCPL's witness who provided KCPL's limited explanation of costs and sponsored the tariff sheets, testified that he was not even certain what account 501510 was (Tr. Vol. 8, p. 528). The same witness also testified that he "review[s] every data request that is submitted by parties in a case to verify its accuracy." (Tr. Vol. 10, p. 549).

Another example of KCPL's tariff administration relates to account 501505. Even though the tariff sheets propose to permit KCPL to recover costs in an account range including 501505, the company's response to OPC data request 1314 does not indicate any costs recorded in account 501505 (Ex. 236). Public Counsel is left to wonder what future costs the company will attempt to recover through the FAC through this "reserved" and unexplained account number. By requesting costs in a range of accounts without providing a description of what costs are included in each account, the Company has not provided the Commission with the information necessary for it to know what costs it is being asked to authorize KCPL to collect from

[4] Mr. Rush testified during the hearing that he "oversaw the preparation of the tariffs and reviewed them and went through that." (Tr. Vol. 8, p. 527).

customers outside of a rate case and without consideration of all relevant factors. The inconsistency between the proposed tariffs and the data request response indicates that KCPL is unable to appropriately monitor and manage the broad variety of non-fuel and non-purchased power costs it currently includes or has proposed to include in its FAC.

Public Counsel also believes that KCPL did not provide the Commission or the parties with an appropriate FAC base calculation. In its FAC base calculation in this case KCPL did not report purchased power as the power purchased above its generation to meet its native load as defined by the Commission in its *Report and Order* in KCPL's last case that established KCPL's FAC and as is required by FERC Order 668 (Ex. 306, Mantle Rebuttal p. 12). Instead, KCPL reported a normalized total payment to SPP as purchased power. *Id*. The base calculation for the current FAC shows purchased power as defined by the Commission – the power purchased above its generation to meet its native load but KCPL did not do so in its direct filing in this case making it impossible to compare the current base to KCPL's proposed base. *Id.* This, coupled with the confused testimony KCPL witnesses Blunk and Rush regarding exactly what was meant by the term "purchased power," should cause considerable pause to the Commission as to what exactly KCPL means when it uses the term "purchased power" (*See* Tr. Vol. 8, p. 454; Tr. Vol. 8, p 514).

<u>Has KCPL met the criteria for the Commission to authorize it to continue to have an FAC</u>?

No. There are at least four FAC minimum filing requirements KCPL did not meet:

1) Complete explanations of all the costs KCPL is requesting be included in its FAC (4 CSR 240-3.161(3)(H));

2) Complete explanations of all the revenues KCPL is requesting be included in its FAC (4 CSR 240-3.161(3)(I));

3) Complete explanation of any rate volatility mitigation features in the proposed FAC (4 CSR 240-3.161(3)(K)); and

4) Heat rate testing (4 CSR 240-3.161(3)(Q)).

Complete explanations of the costs and revenues the electric utility is proposing to include in its FAC are required by Commission Rules 4 CSR 240-3.161(H) and (I). The Commission addressed the need for complete explanations in its Order of Rulemaking for Commission Rule 4 CSR 240-3.161 when it stated:

> By using "complete" the commission means that which includes every explanation and detail to allow a decision-maker to evaluate the response fully and on its face, without forcing it to resort to asking for additional explanations, clarification or documentation to reach a decision. "Complete" means "not lacking in any respect," which is a reasonable standard for filings. Moreover, <u>the purpose of the rule is to alert requesting parties of the documentation and information necessary for the staff to review and for the commission to approve a [FAC]</u> within the allotted time for a general rate case. If incomplete information is provided the entities reviewing the documentation would be required to request further detail in order to evaluate the proposed [FAC]. (emphasis added.)

(Ex. 306, Mantle Rebuttal pp. 15-16). As explained above, the Commission determines what is included in an FAC, not the utility. Staff and other parties may make recommendations to the Commission in the rate case regarding what costs and revenues should be included in an FAC. If the utility gives an unclear explanation of the costs and revenues to be included, the parties have inadequate information on which to make their recommendations and the Commission makes decisions with incomplete information.

Equally problematic is the lack of complete explanation of any rate volatility features in the company's proposed FAC (Ex. 306, Mantle Rebuttal pp.16-18). This explanation is important because even though KCPL does not have complete control over its fuel costs, it does have ways that it can and does mitigate the volatility of fuel costs and costs to its customers. *Id*. Without an FAC, KCPL has a great incentive to take every action available to it to mitigate the volatility of fuel costs and fuel cost risks. Without an FAC, KCPL assumes all the risk of changing fuel costs. Whatever it can do to remove volatility or reduce costs, impacts its earnings. However, *with* an FAC that incentive mostly disappears (Ex. 306, Mantle Rebuttal pp.16-18). *With* an FAC customers take on the risk of changing fuel costs and customers receive most of the benefits of reduced fuel costs. *Id*. A complete explanation of the actions KCPL is taking to mitigate fuel costs, and therefore FAC rates, provides information to the Commission and parties to the case regarding whether or not additional incentives (perhaps a larger sharing percentage as OPC is recommending) should be provided to incent KCPL to take action to reduce this risk to the customers.

Should the Commission direct the parties to determine baseline heat rates for each of the utility's nuclear and non-nuclear generators, steam and combustion turbines and heat recovery steam generators?

Yes. OPC witness John Robinett has provided rebuttal testimony in this case regarding KCPL's failure to meet the heat rate testing minimum filing requirement (4 CSR 240-3.161(3)(Q)) at the time KCPL filed this case and the importance of the FAC heat rate testing minimum filing requirement (Ex. 314, Robinett Rebuttal). Heat rate is a measure of generating station thermal efficiency, generally expressed in Btu per net kilowatt-hour. It is computed by dividing the total Btu content of fuel burned for electric generation by the resulting net kilowatt-hour generation (Ex. 314, Robinett Rebuttal p. 10). These baselines heat rates are an important

resource that will provide information to parties regarding KCPL's maintenance of its generation fleet once it is granted an FAC. While over their lives generating facilities will become less efficient, sharp changes in the efficiencies may indicate a change in philosophy in maintaining a generating facility and should draw inquiry of causes. This information is a filing requirement so that the parties can evaluate changes in efficiency output to aid in determining whether the utility has prudently operated its generating units. (Ex. 314, Robinett Rebuttal pp.11-12). These first heat rate tests after the Commission approves the establishment of an FAC and the results should be used as a baseline to reference and examine the changes in the efficiencies of the plants over time. *Id*.

Equally troubling is Staff's reluctance to analyze KCPL's heat rates. Although Staff witness J Luebbert stated he compared the heat rate test to the previous results (Tr. Vol. 10 p. 587) later in the hearing he stated KCPL did not provide heat rates in the previous case (TR. Vol. 10 p. 588). He also stated in response to a Public Counsel data request that Staff did no analysis of the heat rates (Ex. 314, Robinett Rebuttal, Schedule JAR-R-1). Instead Staff just confirmed that, with the additional information provided through data requests, KCPL met the requirement of the Commission's minimum filing rule regarding the provision of heat rates and no analysis was needed. Just as concerning is Staff's position that baseline heat rates should not be set because the rule does not require it (Tr. Vol. 10 p. 590).

Beyond the company's failure to meet minimum filing requirements, problems with information provided regarding the tariff sheets, and absence of testimony supporting all costs and revenues, the Commission should be concerned about KCPL management's ability to administer and comply with tariff sheets that are approved. KCPL employees perform the FAC record keeping and reporting for both KCPL and its affiliate Kansas City Power & Light Greater

Missouri Operations ("GMO")(Ex. 305, Mantle Direct p. 21). GMO's FAC, to comply with Commission order in ER-2012-0175, was to include only transmission costs necessary to receive purchased power to serve native load and make off-system sales. No transmission costs associated with the Crossroads Generating facility were to be included in GMO's base rates or in its FAC (Ex 305, Mantle Direct, p. 20). However, it was later discovered that GMO had been collecting transmission costs related to Crossroads through its FAC for a period of time in conflict with the Commission order. *Id*. GMO took steps to return the $4.6 million improperly collected; however the error, and the magnitude of the error, should be considered when evaluating the administrative capabilities of KCPL management as it relates to the FAC for KCPL.

<u>If the Commission authorizes KCPL to have a FAC, should KCPL be allowed to add cost and revenue types to its FAC between rate cases</u>?

No. Section 386.266 RSMo only grants the Commission the authority to modify an FAC. KCPL FAC tariff sheets 50.4 and 50.5 would allow KCPL to insert account changes between general rate cases. KCPL's current FAC tariff appears to allow modification to the FAC components between general rate cases even though the FAC statute, section 386.266.4 RSMo, specifically states that an FAC may be "approved, modified, or rejected only within the context of full hearing in a general rate proceeding." This is not something that should be permitted to continue. In addition to the statute, Commission Rule 4 CSR 240-20.090 provides:

> (2) Application to Establish, Continue or Modify a RAM. Pursuant to the provisions of this rule, 4 CSR 240-2.060 and section 386.266, RSMo, only an electric utility in a general rate proceeding may file an application with the commission to establish, continue or modify a RAM by filing tariff schedules. Any party in a general rate proceeding in which a RAM is effective or proposed

> may seek to continue, modify or oppose the RAM. The commission shall approve, modify or reject such applications to establish a RAM only after providing the opportunity for a full hearing in a general rate proceeding.

In its order in KCPL's last rate case the Commission rejected KCPL's effort to include all costs and revenues relating to net fuel and purchased power costs, whether or not they are currently being incurred, stated that "allowing a new cost or revenue to flow through an FAC is a modification to that FAC, which under Section 386.266, RSMo, only the Commission has the authority to modify." (Report and Order, Case No. ER-2014-0370, p. 39, *Iss'd* Sept. 2, 2015). For the same reasons, the Commission should not permit tariff provisions which would allow it to add costs or revenues to its FAC in between rate cases. Even if the Commission disagrees with OPC's conclusions on the law, it should reject the company's proposed tariff sheet language because it is unnecessarily complicated and lacks transparency (Ex. 318, Riley Surrebuttal, pp. 4-5).

Even though KCPL, through the Non-Unanimous Partial Stipulation and Agreement filed on February 10, 2017, may be requesting different FAC terms than it did in its direct filing, these concerns about KCPL management's attitude and understanding of the purpose for an FAC remain. Public Counsel asks the Commission to approve its proposed FAC and provide guidance on costs to be included, additional reporting to be implemented, and the modification of the incentive mechanism.

<u>Public Counsel's FAC proposal</u>

In the first rate case in which the Commission allowed an FAC under Section 386.266 RSMo the Commission explained "[A] reasonable fuel adjustment clause should be straightforward and simple to administer, retain some incentive for company efficiency, and be

readily auditable and verifiable through expedited regulatory review." (Report and Order, Case No. ER-2007-0004 p. 37, *Iss'd* May 17, 2007). Public proposal makes improvements to meet those goals and fulfill the Commission's initial intent.

What costs and revenues should flow through KCPL's FAC?

OPC is recommending only the following prudently incurred costs be included in KCPL's FAC:

1. Delivered fuel commodity costs including:
   a. Inventory adjustments to the commodities;
   b. Adjustments to cost due to quality of the commodity; and
   c. Taxes on fuel commodities;
2. The cost of transporting the commodity to the generation plants;
3. The cost of power purchased to meet its native load; and
4. Transmission cost directly incurred by KCPL for purchased power and off-system sales.

These costs would be offset by revenues from:

1. Off-system sales revenue net of the cost of generation or purchased power to make those sales; and
2. Net insurance recoveries, subrogation recoveries and settlement proceeds related to costs and revenues included in the FAC.

(Ex. 307, Mantle Surrebuttal p. 6).

For KCPL FAC "fuel" costs, the Commission should only allow the delivered fuel commodity costs, including inventory adjustments to the commodity, commodity quality adjustments, taxes assessed on the purchase of the commodity, and the cost of transporting the fuel from the fuel source to the generation plants (Ex. 318, Riley Surrebuttal pp. 7-8). This recommendation is consistent with the FERC Account 151, Fuel Stock, which is part of the FERC's Uniform Systems off Accounts ("USOA"). *Id.* Public Counsel notes that FERC allows utilities under its jurisdiction to have an FAC. Within the FERC FAC there are detailed and clear parameters as to what constitutes fuel costs eligible to be recovered in the FAC (Ex. 318, Riley Surrebuttal p. 10). For fuel costs, those parameters mirror OPC's recommendations in this

case. FERC's requirements state that only fossil fuel expenses that may be appropriately charged to FERC Uniform System of Accounts ("USOA") account 151, *Fuel Stock* are eligible to be included in the FERC FAC. It also allows nuclear fuel charges to USOA account 518, Nuclear Fuel to be charged to its FAC:

> (6) The cost of fossil fuel shall include no items other than those listed in Account 151 of the Commission's Uniform System of Accounts for Public Utilities and Licensees. The cost of nuclear fuel shall be that as shown in Account 518, except that if Account 518 also contains any expense for fossil fuel which has already been included in the cost of fossil fuel, it shall be deducted from this account. (Paragraph C of Account 518 includes the cost of other fuels used for ancillary steam facilities.)

(18 CFR § 35.14(a)(6); Ex. 318, Riley Surrebuttal p. 11). At a basic level, FERC simply states that fuel costs shall be the cost of fossil and nuclear fuel consumed in the utility's own plants and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants (Ex. 318, Riley Surrebuttal p. 11). Public Counsel witness Riley explained FERC Account 151 in detail:

> FERC Account 151 is a current asset account charged with the cost of fossil fuel that is purchased by the utility. As the fuel Account 151 cost is consumed in the generation of electricity, the cost of this fuel is charged to the appropriate expense account. This would include Account 501 for coal, Account 547 for natural gas and oil.
>
> FERC Account 151 includes the invoice cost of the fuel purchased, transportation charges, taxes, commissions, insurance directly related to the fuel purchased, O&M, and depreciation expenses directly related to assets used to transport fuel from the fuel source to the generation station.

FERC strictly applies the Account 151 standard for cost allowed in an FAC. It is easy to see how the FERC criteria for fuel to be included in an FAC for all its jurisdictional electric utilities throughout the United States is very similar to what OPC is recommending for FACs in Missouri.

> **151 Fuel stock**
> This account shall include the book cost of fuel on hand. Items 1. Invoice price of fuel less any cash or other discounts. 2. Freight, switching, demurrage and other transportation charges, not including, however, any charges for unloading from the shipping medium. 3. Excise taxes, purchasing agents' commissions, insurance and other expenses directly assignable to cost of fuel. 4. Operating, maintenance and depreciation expenses and ad valorem taxes on utility-owned transportation equipment used to transport fuel from the point of acquisition to the unloading point. 5. Lease or rental costs of transportation equipment used to transport fuel from the point of acquisition to the unloading point. (Please refer to Schedule JSR-R-4)

(Ex. 318, Riley Surrebuttal pp. 11-12). KCPL's broader definition of FAC eligible fuel costs includes not only eligible fuel costs, but also general, indirect "fuel-related" expenses that are would not be eligible in the FERC FAC and should be excluded from the KCPL FAC (Ex. 318, Riley Surrebuttal p. 10). Public Counsel notes that the Commission recently issued an order approving the Unanimous Stipulation and Agreement in ER-2016-0179 which will limit fuel costs to be recovered through Ameren Missouri's FAC to the fuel costs listed in the account definition of FERC Account 151 and costs for nuclear fuel recorded in FERC Account 518 (Order Approving Unanimous Stipulation and Agreement, Case No. ER-2016-0179, Iss'd Mar. 8, 2017 and effective Mar. 18, 2017).

As a part of its evaluation of an FAC application, in KCPL's recent rate case, the Commission explained:

> Section 386.266.1, RSMo, allows an electric utility to make periodic rate adjustments only to "reflect increases and decreases in its prudently incurred fuel

and purchased-power costs, including transportation". This limits the costs that can be flowed through an FAC for recovery. Transportation costs have been determined to include transmission costs, but limited only to those connected to purchased power costs.

(Report and Order, Case No. ER-2014-0370, p. 33-34, *Iss'd* Sept. 2, 2015). Broadly speaking, those costs represent the kinds of costs which are eligible to be included in an FAC – fuel and purchased power costs and the costs of transportation. Above, Public Counsel described how the FAC should include only direct fuel costs or those otherwise includable in FERC Account 151 Fuel Stock and Account 518 Nuclear Fuel. However, there are additional components that OPC recommends be included in the FAC.

In 2013, the Western District Court of Appeals concluded "the legislature intended the word "transportation" in Section 386.266.1 RSMo to encompass "transmission.""[5] Beginning with the Ameren Missouri rate case, ER-2014-0258, the Commission has limited the recovery of transmission costs in FACs for Ameren Missouri, the Empire District Electric Company, GMO, and KCPL. Specifically, the Commission has concluded that it is appropriate to include certain transmission costs in the FAC limited to: "1) costs to transmit electric power it did not generate to its own load (true purchased power); and 2) costs to transmit excess electric power it is selling to third parties to locations outside of SPP (off-system sales)."(Report and Order, Case No. ER-2014-0370, p. 35, *Iss'd* Sept. 2, 2015). This summer, the Western District Court upheld the Commission's decision in KCPL's last rate case, ER-2014-0370, affirming the Commission's decision to allow only transmission costs for "true" purchased power and off-system sales in the FAC.[6] Public Counsel's definition of purchased power that should be eligible to be included in

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[5] Union Electric Company v. PSC, 422 S. W. 3d 358, 367 (Mo. App. 2013).

[6] *In the Matter of KCP&L's Request for Authority to Implement a General Rate Increase, et. al., v. Mo. Pub. Serv.*

an FAC is the same as the Commission's past decisions. It is the power purchased to meet the requirements of KCPL's customers above the amount of its own generation in every hour (Ex. 307, Mantle Surrebuttal p. 9).

In addition, Public Counsel is recommending the inclusion of off-system sales net the cost to make the sales. This is also sometimes referred to as the off-system sales margin (Ex. 307, Mantle Surrebuttal p. 10). Public Counsel is not recommending other Southwest Power Pool ("SPP") revenues be included in KCPL's FAC because these revenues are indirect off-system sales revenues and are reflected in the revenue requirement of KCPL but should not be included in the FAC. *Id*.

As it relates to transmission, the Commission should include only transmission costs related to "true" purchased power and off-system sales. As explained above, the Commission has concluded this approach is appropriate in every case since ER-2014-0258. However, the implementation of those decisions have actually included costs that Public Counsel does not consider to be transmission costs for "true" purchased power and off-system sales. Essentially, SPP base plan project costs should not be included in the FAC because, according to KCPL's response to OPC data request 8009, those costs are not directly linked to KCPL's ability to purchase power for its native load or make off-system sales (Ex. 305, Mantle Direct p. 10). Since these projects are not directly linked, and it is the Commission's decision that only costs directly linked to true purchased power and off-system sales should be included in the FAC, there should be no SPP Base Plan funding included in KCPL's FAC.

<u>What is the appropriate sharing mechanism of the difference between actual and base fuel costs in KCPL's FAC</u>?

Public Counsel proposes a 90/10 sharing mechanism, meaning 90% of the change in

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Comm'n, WD79125 Consolidated with WD79143 and WD79189 (Opinion Affirming Commission's Report and Order issued on Sept. 6, 2016 and corrected on Sept. 13, 2016).

costs should be billed to the customer. Section 386.266.1, RSMo, states, "The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities." First, Public Counsel acknowledges that the Commission has regularly approved a 95/5 sharing mechanism for FACs in the past. In KCPL's last rate case, the Commission established a 95/5 sharing mechanism, explaining:

> …customers would be responsible for, or receive the benefit of, 95% of any deviation in fuel and purchased power costs would provide KCPL a sufficient opportunity to earn a fair return on equity while protecting KCPL's customers by providing the company an incentive to control costs. KCPL's FAC shall include an incentive clause providing that 95% of any deviation in fuel and purchased power costs from the base level shall be passed to customers and 5% shall be retained by KCPL.

(Report and order, Case No. ER-2014-0370, p. 31, *Iss'd* Sept. 2, 2015). Simply because the Commission has only approved 95/5 sharing mechanisms in the past does not necessarily mean it should not implement a better mechanism. The Commission should consider that a 95/5 sharing mechanism for KCPL may not be reasonable given the utility's particular circumstances. When the Commission decided a 95/5 sharing mechanism was appropriate for Ameren Missouri, at that time doing business as AmerenUE, in ER-2008-0318, it stated that one of the justifications for 95/5 sharing mechanism was that "individual employees have a financial incentive to minimize the company's fuel costs." (Report and Order, Case No. ER-2008-0318, p. 73, *Iss'd* Jan. 27, 2009). During the hearing in this case, KCPL witness Blunk told the Chairman that he had no salary incentive for purchasing fuel at the lowest possible price (Tr. Vol. 8, p. 479). The

Commission should also consider that KCPL has an amount of control over managing its fuel cost that customer simply do not have. Upon questions from the Chairman, KCPL witness Blunk testified about how the company can manage its fuel costs:

> **CHAIRMAN HALL:** Okay. I understand how -- well, I understand the arguments as to why hedging could lower the ultimate price paid for fuel. Beyond hedging, what do you do to try to get to the lowest possible price?
>
> **THE WITNESS [Mr. Blunk]:** Well, there are a couple of things involved. One of it is preparation, and it's got to be opportunity. We don't control what happens in the market, but I'll give you an example.
>
> Right now we have started plans for a rail contract that expires in December 2018. And I know it sounds like it's a long ways away, but as we're doing that, we have changed the quantity of coal we have on hand so we have greater flexibility when we approach the end of that contract to try and create some leverage with the railroads -- try and create an opportunity where maybe we can set something up where they have greater incentive to lower the price for us. Other things we do is we look at what do we think is going to happen in the market. Sometimes you can identify that maybe there is a trend in a market or certain cycles in a market. I hate to say we time the market. We're looking at more of the fundamentals and saying we recognize that the producers have a lot of surplus capacity. So somewhere they've got to come up -- that's what we're trying to do.

(Tr. Vol. 8, pp. 479-80). Customers have no ability to take any of those actions. The Company also exerts a level of control at SPP having a representative as a voting member of the SPP Balance and Authority Operating Committee (Tr. Vol. 8, p. 439). This, too, could be a way for the company to exercise control over certain SPP costs in a way customers cannot.

In this case, Public Counsel proposes a 90/10 sharing mechanism, meaning 90% of the change in costs should be billed to the customer. An incentive mechanism that requires changes in KCPL's fuel adjustment rates ("FARs") to account for 90% of the difference between the actual prudently incurred costs net of off-system sales and the net FAC costs included in its base rates. The other 10% would be absorbed or retained by KCPL (Ex. 305, Mantle Direct p. 5).

Importantly, a 90/10 sharing mechanism does not mean the company will only recover 90% of its fuel costs. In reality, the figure will be much higher – even when fuel costs are increasing. Of course, this depends in part on the accuracy of the FAC base. For example, if the base is accurate and costs increase 10%, then KCPL will recover 99.1% of its actual fuel costs (Ex. 305, Mantle Direct p. 25). If the costs increase 20%, then KCPL will still collect 98.3% of its fuel costs. *Id*. Under either scenario, KCPL receives a significant benefit with an FAC.

The benefits of a 90/10 sharing mechanism when fuel costs are *decreasing* could even permit the company to recover more than its actual fuel costs creating an incentive for KCPL to reduce costs. If the base is accurate and costs decrease 10%, then KCPL will recover 101.1% of its actual fuel costs with Public Counsel's 90/10 proposal (Ex. 305, Mantle Direct p. 25). If the costs decrease 20%, then KCPL will collect 102.5% of its actual fuel costs. *Id*. The difference between the actual fuel recovery for both the 95/5 mechanism and the 90/10 mechanism, assuming the base is accurate, is illustrated in the table below:

Comparison of
Percent of FAC Costs Recovered

Actual Costs as percent of Base Fuel Costs	Incentive Mechanism	
	90/10	95/5
120%	98.3%	99.2%
110%	99.1%	99.5%
100%	100%	100%
90%	101.1%	100.6%
80%	102.5%	101.3%

(Ex. 305, Mantle Direct p. 26). What this table shows is that with the current incentive mechanism which KCPL proposes to continue, KCPL recovers essentially all of its FAC costs even if fuel costs increase 20%. A 95/5 sharing mechanism provides little to no incentive for KCPL to take any actions to keep the FAC costs within 20% of what is included in base rates (Ex. 305, Mantle Direct p. 26). It should not be surprising, then, that KCPL witness Blunk testified that the sharing mechanism would not change the company's procurement activities (Tr. Vol. 8, p. 481).

As the Commission explained in the past rate case, the sharing mechanism is meant to provide the company an incentive to control costs (Report and order, Case No. ER-2014-0370, p. 31, *Iss'd* Sept. 2, 2015). Public Counsel's proposed 90/10 sharing mechanism, as demonstrated by the table above, would actually provide some modest impact thereby providing more of an incentive for KCPL to manage, to the extent it is able, the fuel and purchased power costs and off-system sales revenues (Ex. 305, Mantle Direct p. 27). This small step would be an improvement to the FAC sharing mechanism.

<u>What FAC-related reporting requirements should the Commission impose</u>?

Primarily, OPC is requesting the Commission direct to KCPL provide in its monthly FAC submission a list of all the costs and revenues included in its FAC, by subaccount, for that month and for the preceding 12 months. This will provide OPC and the other parties with information

regarding changes in these costs. Currently, many of the costs are aggregated which provides little detail regarding each of the costs and revenues included in the FAC (Ex. 305, Mantle Direct p. 27). The aggregated information makes it difficult to determine what is causing changes in the FAC rates. *Id*. During the hearing, the Chairman asked for line item by line item of the costs included in the FAC (Tr. Vol 8, pg. 483). Multiple parties provided exhibits attempting to provide the information after taking several days to compile the information. If Public Counsel's recommendation were adopted, this information would be more readily available in the future.

Furthermore, Staff is requesting the Commission to order KCPL to continue to provide it with certain information. OPC proposes that these recommendations be modified to provide availability for review, information, and notices to OPC. Therefore OPC recommends incorporating additional changes to the Staff's reporting requirements of KCPL as underlined below:

1. As part of the information KCPL submits when it files a tariff modification to change its Fuel and Purchased Power Adjustment rate, include KCPL's calculation of the interest included in the proposed rate <u>in electronic format with formulas intact</u>;

2. Maintain at KCPL's corporate headquarters or at some other mutually agreed-upon place and make available within a mutually-agreed-upon time for review <u>by Staff and OPC</u>, a copy of each and every coal, coal transportation, natural gas, fuel oil, and nuclear fuel contract KCPL has that is in or was in effect for the previous four years;

3. Within 30 days of the effective date of each and every coal, coal transportation, natural gas, fuel oil, and nuclear fuel contract KCPL enters into, KCPL provide both notice to the Staff <u>and OPC</u> of the contract and opportunity to review the contract at KCPL's corporate headquarters or at some other mutually-agreed-upon place;

4. Provide a copy of each and every KCPL hedging policy that is in effect at the time the tariff changes ordered by the Commission in this rate case go into effect for Staff <u>and OPC</u> to retain;

5. Within 30 days of any change in a KCPL hedging policy, provide a copy of the changed hedging policy for Staff <u>and OPC</u> to retain;

6. Provide a copy of KCPL's internal policy for participating in the SPP's Integrated Market to Staff and OPC;

7. Maintain at KCPL's corporate headquarters or at some other mutually agreed-upon place and make available within a mutually agreed-upon time for review by Staff and OPC, a copy of each and every bilateral energy or demand sales/purchase contract;

8. If KCPL revises any internal policy for participating in the SPP, within 30 days of that revision, provide a copy of the revised policy with the revisions identified for Staff and OPC to retain;

9. The monthly as-burned fuel report supplied by KCPL required by 4 CSR 240-3.190(1)(B) shall explicitly designate fixed and variable components of the average cost per unit burned, including commodity, transportation, emissions, tax, fuel blend, and any additional fixed or variable costs associated with the average cost per unit reported;

10. KCPL's monthly FAC report shall include the FAC costs and revenues by subaccount for that month and the twelve months ending that month; and

11. Purchased power costs and off-system sales revenues provided in all FAC filings and report submissions shall be in accordance with FERC order 668 and the Commission's definition of purchased power costs and off-system sales revenue.

(Ex. 306, Mantle Rebuttal pp. 22-23).

To aid the Commission and the parties in review of future FAC filings and report submissions, OPC recommends the Commission order KCPL to provide in all its FAC filings and report submissions, purchased power costs and off-system sales revenues in compliance with the Commission's definition of true purchased power and off-system sales and FERC order 668. The Federal Energy Regulatory Commission has issued rulings to provide uniformity in electric utility financial reporting. One of the more focused rulings is commonly known as FERC Order 668 (Ex. 317, Riley Rebuttal pp. 1-2). The Commission has also promulgated rules to direct electric utilities to follow the FERC uniform system of accounts (Commission Rule 4 CSR 240-20.030). Uniform accounting requirements are very important to establish accurate information that can be reviewed and evaluated from one rate case to the next (Ex. 317, Riley Rebuttal p. 5).

KCPL is required by the Commission to comply with the FERC USOA. Correct reporting is especially important due to the Commission's review of components of a Company's FAC. The OPC does not believe that KCPL's testimony schedules accurately reflect the requirements of FERC Order 668 and the USOA because the Company witnesses in their testimony and workpapers have proposed upward adjustments, within its FAC Base calculations, to both Purchased Power costs and Off-System Sales revenues (Ex. 317, Riley Rebuttal p. 3). Public Counsel is aware that the company transactions are already recorded on the Company books correctly but KCPL did not provide that format in its testimony or workpapers in FAC filings and report submissions. *Id* at 4. Requiring the company to follow this is a reasonable request and will enable the parties to evaluate what KCPL's estimates of its normalized true purchased power and net system sales are as defined in the Commission in the company's last rate case.

What is the appropriate base factor?

The appropriate base factor should be calculated using the revenue requirement cost and revenues in this case for the costs and revenues the Commission determines should be in the FAC. Until the Commission determines the disputed issues, an exact base factor cannot be provided.

Depreciation (Issue XVII)

Should the Commission allow terminal net salvage in the calculation of KCPL's depreciation rates?

No. The Company is asking the Commission to change its accepted practice on depreciation in order to include costs of terminal net salvage related to future retirements that may occur many years from now (Ex. 315, Robinett Surrebuttal p. 4). The accepted practice in Missouri is to calculate net salvage using historical data experienced, and not the future

estimated costs of retirement or dismantlement costs. This has been the practice of the Commission since at least 2005 when the Commission ordered this approach in the *Third Report and Order* in Case No. GR-99-315[7] involving Laclede Gas Company and the *Report and Order* from Case No. ER-2004-0570 involving the Empire District Electric Company (Ex. 315, Robinett Surrebuttal p. 4). For a period of about five years the cost of removal portion of net salvage was recorded as an operating expense rather than included in the depreciation rate and depreciation expense. *Id*. The Report and Orders from Case Nos. GR-99-315 and ER-2004-0570 placed net salvage back into the depreciation rate calculation. However, in neither case did the Commission permit terminal net salvage to be included to be based on future unknown costs. The Commission explained its rationale for excluding future estimate net salvage in depreciation rates in Case No. GR-99-315, stating:

> Under the accrual method, the depreciation rate for a particular asset or group of assets is calculated as follows:
>
> $$\textit{Depreciation Rate} = \frac{100\% - \%\ \textit{Net Salvage}}{\textit{Average Service Life (years)}}$$
>
> In this formula, net salvage equals the gross salvage value of the asset minus the cost of removing the asset from service. The net salvage percentage is determined by dividing the net salvage experienced for a period of time by the original cost of the property retired during that same period of time. The Commission finds that many natural gas assets will have a negative net salvage value and corresponding negative net salvage value percentage, since the cost of removing the asset from service frequently exceeds its gross salvage value. The

[7] The *Third Report and Order* in Case No. GR-99-315 was issued on January 11, 2005.

Commission finds that many natural gas assets will have a negative net salvage value and corresponding negative net salvage value percentage, since the cost of removing the asset from service frequently exceeds its gross salvage value.

The accrual method has been used by Laclede and the Commission to determine Laclede's depreciation rates since at least the early 1950s. It is undisputed that using the accrual method for this purpose is supported by the overwhelming weight of authority on such matters. In both evidentiary hearings, Laclede and AmerenUE provided evidence showing the widespread support among depreciation professionals and authoritative texts for the traditional, or accrual, method of treating net salvage

(Third Report and Order, Case No. GR-99-315, p. 8, Iss'd Jan. 11, 2005 (internal citations omitted)). Similarly, in its *Report and Order* from Case No. ER-2004-0570 the Commission stated:

Under the traditional accrual method favored by Empire, the depreciation rate for a particular asset or group of assets is calculated as follows:

$$\text{Depreciation Rate} = \frac{100\% - \%\text{ Net Salvage}}{\text{Average Service Life (years)}}$$

In this formula, net salvage equals the gross salvage value of the asset minus the cost of removing the asset from service. The net salvage percentage is determined by dividing the net salvage experienced for a period of time by the original cost of the property retired during that same period of time.

(Report and Order, Case No. ER-2004-0570, p.52, *Iss'd* Mar. 10, 2005)(internal citation omitted). In that case, the Commission further described how terminal net salvage was to be treated:

> Second, with respect to Terminal Net Salvage of Production Plant Accounts, this Commission generally has not allowed the accrual of this item. The reason is that generating plants are rarely retired and any allowance for this item would necessarily be purely speculative. It is true that all depreciation is founded upon estimates, but all estimates are not unduly speculative. Just as utility companies plan rate cases around the projected in-service dates of new plants, so Empire can plan around the retirement of its generating plants so that the Net Salvage expense is incurred in a Test Year. Another alternative is the device of the Accounting Authority Order. As already discussed in connection with the Production Account Service Life issue, there is no evidence that the retirement of any of Empire's plants is imminent and the estimated retirement dates considered in this proceeding are not persuasive. For these reasons, the Commission will not allow the accrual of any amount for Terminal Net Salvage of Production Plants.

(Report and Order, Case No. ER-2004-0570, p.53, *Iss'd* Mar. 10, 2005). These two orders follow the long-time Commission practice of only including known and measurable expenses in rates (Ex. 315, Robinett Surrebuttal p. 12). Importantly, no party has offered testimony that the company should not eventually have net salvage included in depreciation rate calculations. In fact, during the hearing KCPL tended to focus on using its new method in a purported attempt to address purported intergenerational inequities. However, though the parties may agree that eventually net salvage will be included in depreciation rates when and how is contested. KCPL prefers to include estimated terminal net salvage in order to collect more money from ratepayers now – with no mechanism to return the money to ratepayers if the estimates are wrong. Public

Counsel and Staff recommend the Commission continue its practice to include the terminal net salvage in depreciation rates based on known historical experience as opposed to future estimates. Whatever the company's ultimate motive may be for requesting a change to the Commission's depreciation practices, the Company has not provided sufficient support for increasing depreciation rates for unknown and not measurable future costs and so this proposal by the company should be rejected.

What depreciation rates should the Commission order KCPL to use?

The Commission should order KCPL to continue to use the current ordered depreciation rate ordered in Case No. ER-2014-0370. Although the company witness presented testimony that he was updating certain aspects of the depreciation study, in response to OPC data request 8059 KCPL admitted "[t]he data files used for the depreciation study are same as those provided in Case No. ER-2014-0370." (Ex. 314, Robinett Rebuttal p. 5). Because KCPL's proposed updates to the depreciation study and are not supported by updated historical data, OPC recommends that the Commission order KCPL to continue using the current approved depreciation rates from ER-2014-0370 (Ex. 314, Robinett Rebuttal p. 19).

Revenues (Issue XX)

Should KCPL be permitted to make an adjustment to annualize kWh sales in this rate case as a result of KCPL's Missouri Energy Efficiency Investment Act ("MEEIA") Cycle 1 demand-side programs?

No. Such an adjustment would result in double recovery of assumed lost revenues. (Marke Rebuttal p. 28). There can be no denying that KCPL's MEEIA Cycle 1 cost recovery mechanism is purposefully different than the Cycle 2 cost recovery mechanism. However, KCPL seeks to blur the clear lines between the two different cost recovery mechanisms in order to collect an additional $ 6.6 million from its ratepayers (Tr. Vol. 13, p. 1638).

During the hearing, KCPL witness Rush misrepresented the Cycle 1 cost recovery TD-NSB component by incorrectly conflating its design and purpose with the new throughput disincentive component in Cycle 2. He testified in response to a question by his counsel to describe the three elements that make up the cost recovery mechanism for Cycle 1:

> The second is what we call the throughput disincentive net shared benefit. Now, the throughput disincentive net shared benefit is designed to recover the lost margins that occur over the Cycle 1 period. That's all it's designed for.
>
> It's essentially saying the company knows it's going to have these losses when we reduce sales, and we're going to calculate a method to do it. In Cycle 1 we called it a throughput disincentive net shared benefit. In Cycle 2 we just call it a throughput disincentive because we changed the method. Same purpose, but the actual method of calculation is different.

(Tr.Vol. 13, pp. 1646-47). This is simply false.

The stipulation and agreement enabling KCPL's MEEIA Cycle 1 defined the TD-NSB share as "The TD-NSB Share is the sum of the net shared benefits over the MEEIA Plan period multiplied by 26.36%." (Non-Unanimous Stipulation and Agreement Resolving Kansas City Power & Light Company's MEEIA Filing, Case No. EO-2014-0095, p. 4). The stipulation and agreement enabling KCPL to implement a MEEIA Cycle 2 did not include a TD-NSB component, but instead used a "throughput disincentive" component defined as "[t]he kWh savings will be reflected in the TD by multiplying the kWh savings for each program for the respective month times the incremental rate for the
respective class." (Non-unanimous Stipulation and Agreement Resolving MEEIA Filings, Case No. EO-2015-0240, p. 10).

Staff witness Rogers, who has participated in every MEEIA application in the state of Missouri, testified "[t]here's a different recovery mechanism for Cycle 1 and Cycle 2, very different." (Tr. Vol. 13, p. 1670). Contrary to Mr. Rush's false representation, the mechanism in cycle 1 allows the utility to "recover its throughput disincentive for *all energy savings lost for the life of the measure*[.]" (Tr. Vol. 13, pp. 1670-71)(emphasis added). That is not the case for throughput component of Cycle 2 (Tr. Vol. 13, p. 1671). Mr. Rogers explained the difference between the throughput cost recovery compent in Cycle 1 and Cycle 2:

> There was a change between Cycle 1 and Cycle 2. In Cycle 1, as I stated, the company was compensated through the throughput disincentive for the lost margin revenues over the life of the measures. For Cycle 2 there was a change to allow the utility to recover the throughput disincentives basically as they occur.

(Tr. Vol. 13, p. 1672). Contrary to the misrepresentations of KCPL, the Cycle 2 stipulation and agreement allows *only* for the annualization of Cycle 2 energy savings because the Cycle 2 throughput disincentive component is allowing the utility to recover only contemporaneously incurred throughput disincentive (Tr. Vol. 13, p. 1672). The Cycle 1 throughput disincentive component was not designed for contemporaneous recovery so it is inappropriate to apply the annualization of energy savings to Cycle 1.

These differences are extremely important. If these two distinct cost recovery components are incorrectly described, then it may give the illusion that the company is not able to collect everything it is due. To be clear, KCPL will recover its entire Cycle 1 throughput disincentive (Ex. 225, Rogers Surrebuttal p. 7).

KCPL attempts to utilize the revenue annualization method for recovery of lost revenues associated with the MEEIA Cycle 2 Stipulation and apply it to MEEIA Cycle 1 programs. The

Commission should reject the company's inappropriate attempt to double recover its MEEIA Cycle 1 lost revenues.

Rate Design/Class Cost of Service (Issue XXI)

How should any increase ordered in this case be applied to each class?

The Company's proposal to apply any increase equally to the classes is not unreasonable. In this case, four class cost of service studies were submitted with each utilizing a different methodology and producing different outcomes (Ex. 311, Marke Rebuttal p. 2). OPC witness Marke produced a table summarizing the different class cost of service studies and the relative rate of return produced by each class. The table is included below:

Table 1: Breakdown in Class Cost of Service Studies – relative rate of return

	Method	Total	RES	SGS	MGS	LGS	LPS	Lighting
KCPL	Avg & Peak	1.00	0.72	1.48	1.26	1.30	0.88	1.70
Staff	BIP	1.00	1.02	1.25	1.24	1.03	0.65	1.32
MIEC	Avg & Excess (4NCP)	1.00	0.45	1.38	1.30	1.58	1.46	1.70
DOE	4 CP	1.00	0.50	1.34	1.25	1.54	1.27	3.85

(Ex. 311, Marke Rebuttal p. 2). Based on the foregoing, the Company's proposal to apply any increase equally to the classes is not unreasonable. However, if the Commission elects to bring classes closer to producing the system average rate of return by incorporating a revenue neutral shift, OPC's recommendation would be aligned with the Staff's proposal to shift to Large Power Services (Ex. 311, Marke Rebuttal p. 2).

Should KCPL be permitted to increase the fixed customer charge on residential customers?

No. The Commission should maintain the current residential customer charge of $11.88. If an increase in rates is ordered, OPC advocates the increase be administered through the energy charge that places more control of the bill in low-income and fixed income households and does

not penalize efficient, conservative and environmentally responsible ratepayers (Ex. 311, Marke Rebuttal p. 3). In the company's last rate case, ER-2014-0370, the Commission, citing the incremental cost to serve a customer, increased the residential customer charge from $ 9 to the $11.88. Cost causation is certainly an important consideration for rate design however it is not the only principle the Commission should consider. Rate design should also take into account "equity, efficiency, gradualism, and the avoidance of 'rate shock'". (Ex. 801, Hyman Rebuttal p. 6). An additional consideration the Commission has recognized is customer control over their bills. In Case No. ER-2014-0258, the Commission rejected Ameren Missouri's request to increase its customer charge explaining:

> Residential customers should have as much control over the amount of their bills as possible so that they can reduce their monthly expenses by using less power, either for economic reasons or because of a general desire to conserve energy. Leaving the monthly charge where it is gives the customer more control.

(Report and Order, Case No. ER-2014-0258, pp. 76-77). Given that KCPL's customer charge was increased by $2.88 effective September 2015 the Commission should reject any increase to the residential customer charge in this case. Doing so will further the goals of customer control over their bills and a customer's efficiency incentive.

Should KCPL be required to implement the block rate structure proposed by the Division of Energy ("DE") for residential customers?

Yes. OPC supports DE's proposal. The proposed inclining block rate would have the desirable effect of sending an efficiency-inducing price signal to higher usage ratepayers with an added benefit of reducing bills for low-usage ratepayers including low-income households (Ex. 311, Marke Rebuttal p. 4). Based on Company specific data low income households use approximately ** ** less annual average energy than their

non-low-income counterparts. *Id*. The highly confidential table below shows a residential market profile of KCPL's residential customers. **

**

(Ex. 310HC, Marke Rebuttal p. 5). The company specific data showing that low-income customers use less energy influenced OPC to support the DE proposal. The block rate structure proposed by DE can benefit low-income customers while at the same time encouraging conservation by sending an efficiency-inducing price signal to higher usage ratepayers.

Clean Charge Network (Issue XXII)

Is the Clean Charge Network a regulated public utility service?

No. Electric vehicle charging service is not a regulated service. Stated differently is government intervention appropriate or necessary in the electric vehicle charging market? The Commission's jurisdiction, supervision, powers and duties extend to "the manufacture, sale or distribution of … electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and … electric plants, and to persons or corporations owning, leasing, operating or controlling the same[.]" Section 386.250(1). The charging stations are not "electric plant" as defined in Section 386.020(14)

RSMo used for furnishing electricity for light, heat, or power. Instead charging stations are used to charge electric vehicle batteries.

In addressing the question of its jurisdiction, the Commission must consider whether the proposed charging service should be provided by a regulated natural monopoly. Under Chapters 386 and 393, the PSC regulates natural monopolies. The purpose of the public service commission law is also "to protect the consumer against the natural monopoly of a public utility, as provider of a public necessity. . . ." *State ex rel. Util. Consumers Council, Inc. v. Pub. Serv. Com.*, 585 S.W.2d 41 (Mo. 1979). "This court also said that the Public Service Law recognized 'certain generally accepted economic principles and conditions, to wit, that a public utility . . . is in its nature a monopoly; that competition is inadequate to protect the public, and, if it exists, is likely to become an economic waste; that state regulation takes the place of and stands for competition.'" *Id*. at 48.

In *State ex rel. Gulf Transport Co. v. Public Service Com.,* 658 S.W.2d 448 (Mo. Ct. App. WD 1983), the Court discussed the Commission's power and purpose in the context of regulating "natural monopolies". The Court explained:

> When the entire statutory framework creating and authorizing the P.S.C. is examined, it becomes apparent there exists a fundamental difference between the economic structure of the motor carrier industry and that of traditional public utilities such as electrical power, communications, water, and natural gas. The industries in this latter group have generally been classified as theoretical "natural monopolies". Unlike these so-called "natural monopolies", the motor carrier industry is characterized by comparatively low fixed cost and capital investment requirements which serve as high entry barriers to new competition in natural

> monopoly industries. The absence of these barriers to entry in the motor carrier industry reduces significantly the possibility of monopoly pricing because attempts to engage in such pricing attract new competition. Competition benefits the carrier-using public, because it forces prices closer to cost, and creates incentives to provide the service desired by consumers.

State ex rel. Gulf Transport Co. v. Public Service Com., 658 S.W.2d 448, 456 (Mo. Ct. App. WD 1983). In the case of electric vehicle charging services, the Commission need not regulate the service because it is not a "natural monopoly". There is not the high fixed cost and capital investment requirements which serve as high entry barriers to new competition in natural monopoly electric utility industry. This is a service where competitive market forces will best serve the public.

For electric vehicle charging stations, government intervention is not warranted and if pursued will actually inhibit electric vehicle promotion by *creating* barriers to entry. Permitting KCPL to place the charging stations in rate base will effectively create a regulatory barrier for new market entries, unfairly punish existing competition, and shift risk of cost recovery from utility shareholders to ratepayers (Ex. 310, Marke Rebuttal p. 36). Importantly, permitting the regulated utility to enter the market for the competitive charging service will have a detrimental impact on other market participants whose investors will bear the risks of operating in a market without the insulation of captive utility ratepayer to cover costs (Ex. 310, Marke Rebuttal p. 36). Because the electric vehicle charging service is not a natural monopoly the Commission should not intervene to regulate. Further, because it is not a regulated service, the capital and operations and maintenance expenses associated with KCPL's electric vehicle charging station network should not be recovered from ratepayers.

Customer Experience (Issue XXVII)

Is KCPL's strategy with respect to customer service, customer experience and community involvement in the interest of its customers?

No. KCPL management may have a focus on meeting some customer needs such as reliability of electric service but the company ignores other significant customer needs such as affordability and privacy. Public Counsel learned that the Company has and continues to conduct surveys of its customers that ask pointed political questions with no utility purpose (See Ex. 330 and Ex. 331). The pointed political questions are inappropriate and should not be asked.

Public Counsel's first preference is that the Commission order the company to stop asking the personal political questions not used or necessary for regulated utility purposes. Pursuant to Sections 386.250(1) and 393.140(1) RSMo, this Commission is charged with the supervision and regulation of public utilities engaged in the manufacture and sale of electricity at retail and is authorized by Section 386.250(6) to promulgate rules which prescribe the conditions of rendering public utility service. Section 393.130.1 RSMo, also gives the Commission the ability to determine what is safe and adequate service. When a utility subjects its customers to inappropriate questions not meant to benefit the regulated utility the Commission should act to protect the captive ratepayers.

In the alternative, Public Counsel believes the Commission should order an investigation into the company's compliance with the Commission's asymmetrical pricing standards for affiliate transactions. During the hearing, KCPL's witness testified that the company does not necessarily use the information for its own utility purposes (Tr. Vol. 12, p. 1471). Some of the questions are even designed for other non-utility purposes. Once the information is collected the company shares the information with certain public officials at no cost (Tr. Vol. 12, p. 1471). In addition, KCPL shares the information with its political action group (Tr. Vol. 12, p. 1496).

KCPL's witness testified he was not sure whether or not the cost of the surveys was charged to ratepayers, but he guessed that the bulk of the cost would be charged to ratepayers (Tr. Vol. 12, p. 1473).

As competition is to non-regulated companies, the Commission is, or should be to regulated utilities. The Commission fulfills its role as a substitute for competition in many ways. One important way it fulfills its role is through its affiliate transaction rules. Through its enforcement of its affiliate transaction rules pricing standards the Commission requires utilities to seek a price (utility revenue) at least equal to the fair market price of providing utility services or the use of utility assets. As stated in the rule's purpose:

> This rule is intended to prevent regulated utilities from subsidizing their nonregulated operations. In order to accomplish this objective, the rule sets forth financial standards, evidentiary standards and recordkeeping requirements applicable to any Missouri Public Service Commission (commission) regulated electrical corporation whenever such corporation participates in transactions with any affiliated entity.

(Commission Rule 4 CSR 240-20.015). Further the rule defines affiliate transaction as any transaction:

> … for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated electrical corporation and an affiliated entity, and **shall include all transactions carried out between any unregulated business operation of a regulated electrical corporation and the regulated business operations of a electrical corporation**.

(Commission Rule 4 CSR 240-20.015(1)(B)). The affiliate pricing standards section of Commission Rule 4 CSR 240-20.015(2) states, in part:

> (2) Standards.
>
> (A) A regulated electrical corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated electrical corporation shall be deemed to provide a financial advantage to an affiliated entity if—
>
> …
>
> 2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of—
>
> A. The fair market price; or
>
> B. The fully distributed cost to the regulated electrical corporation.

Based on the testimony of the company's witness during the hearing it appears that the regulated entity is providing information to an unregulated operation or affiliate (the political action group) (Tr. Vol. 12, p. 1496). Furthermore, the information is provided to certain other persons or groups at no cost (Tr. Vol. 12, p. 1471). However, there is no direct evidence in the record regarding the financial aspects of the transaction occurring. KCPL's witness was unsure about whether the surveys are paid for by regulated customers (Tr. Vol. 12, p. 1473). Even though the circumstances indicate that the utilities actions may seem to implicate the affiliate pricing stands, there is not sufficient evidence in the record to show a violation of the pricing standards. Because much of this additional information was revealed during the hearing, Public Counsel believes the situation warrants further investigation to examine the details surrounding these transactions in order to ensure the customers are being treated fairly and compensated appropriately if the utility is permitted to continue asking personal and political survey questions.

Conclusion

When evaluating the issues presented for determination in this case, Public Counsel urges the Commission to consider carefully the impact that *any* increase will have on the customers subject to another successive rate increase. When the economic circumstances of customers have

not kept pace with their utility bill increases, the Commission should take care to permit only those actions necessary to provide safe and adequate utility service. Requests by the company that will increase rates above what is necessary to provide safe and adequate service or shift undue risk onto customers should be denied as being contrary to the public interest.

WHEREFORE Public Counsel submits its *Post-Hearing Brief* for the Commission's consideration.

Respectfully,
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 22nd day of March 2017:

/s/ Tim Opitz