

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

In the Matter of the Application of Kansas City )  
Power & Light Company for Approval to Make )  
Certain Changes in its Charges for Electric ) **Case No. ER-2010-0355**  
Service to Implement its Regulatory Plan. )

In the Matter of the Application of KCP&L )  
Greater Missouri Operations Company for ) **Case No. ER-2010-0356**  
Approval to Make Certain Changes in its Charges )  
for Electric Service. )

**MOTION TO CLARIFY REPORT AND ORDER**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and, for its motion to clarify the Commission’s March 16, 2011, *Report and Order Directing KCPL and GMO to Apply to the IRS to Revise the Memorandum of Understanding Regarding the Advanced Coal Tax Credits for Iatan*, states:

1. In the *Report and Order* the Commission directs Kansas City Power & Light Company (“KCPL”) and KCP&L Greater Missouri Operations Company (“GMO”) to apply to the Internal Revenue Service by April 5, 2011, to amend the existing memorandum of understanding with the IRS regarding the Section 48A tax credits<sup>1</sup> for Iatan 2 (“2010 MOU”) so that GMO gets \$26,500,000 of them.<sup>2</sup>

2. On page 10 of its *Report and Order* the Commission states that, based on GMO’s ownership share it should get \$26,562,500 of the credits; therefore, Staff requests the Commission to clarify its order to direct that GMO gets \$26,562,500 of the credits, rather than \$26,500,000.

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<sup>1</sup> 26 U.S.C. § 48A.

<sup>2</sup> *Report and Order*, p. 11, ordered paragraph 2.

3. In the decision section of its *Report and Order*, at page 10, the Commission states, “Because a normalization violation would eliminate the value of tax credits for both KCPL and GMO, causing harm to both of the companies and their customers, the Commission will not impute the tax credit to GMO unless the MOU [2010 MOU] cannot be amended.”

4. The 2010 MOU, which has a last signature date of August 19, 2010, includes the following provision:

\*\* [REDACTED] \*\* (Emphasis added.)

5. KCPL applied to the IRS for the 2010 MOU in March of 2010, and did not receive notification the IRS approved it until September 9, 2010;<sup>3</sup> therefore, as Ms. Hardesty testified when being questioned by Commissioner Davis, it took about six months from when KCPL applied to the IRS to amend its original memorandum of understanding with the IRS regarding Section 48A coal tax credits for Iatan 2 before that memorandum was amended and supplanted by the 2010 MOU.

6. The Commission processing File No. ER-2010-0355 for an effective date of new tariff sheets of May 4, 2011 and File No. ER-2010-0356 for an effective date of new tariff sheets of June 4, 2011.

7. Assuming KCPL and GMO apply to amend the 2010 MOU even as early as March 26, 2011, it is unlikely the 2010 MOU will be amended for six months, i.e., before August 31, 2011, and after the Commission’s targeted effective dates of new tariff sheets for both KCPL (May 4, 2011) and GMO (June 4, 2011).

8. In ordered paragraph 3 on page 11 of its *Report and Order* the Commission

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<sup>3</sup> Tr. Vol. 36, p. 3922, 3928.

states:

3. If the application to amend the Memorandum of Understanding is denied, or if less than \$26,500,000 in Section 48A tax credits is allocated to KCP&L Greater Missouri Operations Company, then the Commission shall impute a proportion-ate amount of credits as a reduction to KCP&L Greater Missouri Operations Company's cost of service.

9. Staff requests the Commission clarify whether it will impute transfer of \$26,562,500 of Section 48A tax credits from KCPL to GMO for purposes of setting rates in these cases if KCPL and GMO apply to the IRS to amend the 2010 MOU for GMO to get \$26,562,500 of the Section 48A tax credits, but the IRS has not denied, or granted the application, in whole or in part, (1) by the time the Commission issues its *Report and Order* in File No. ER-2010-0355 (expected about April 4, 2011) or (2) by the time the Commission issues its *Report and Order* in File No. ER-2010-356 (expected on or about May 4, 2011).

10. During the evidentiary hearing the following exchange occurred between Commissioner Davis and counsel for KCPL and GMO regarding KCPL and GMO returning to the IRS for further reallocation of the Section 48A tax credits:

MR. ZOBRIST: We don't think we'd be successful, but if the Commission orders us to do so, we will obey your order.

COMMISSIONER DAVIS: Okay. Well, when one -- one wonders if we don't send someone with you how zealously you will advocate for that.<sup>4</sup>

Further, in his surrebuttal testimony, Staff witness Harrison testified regarding Staff involvement in KCPL and GMO seeking further reallocation of the Iatan 2 Section 48A tax credits:

Q. Would Staff need to be involved in the process of addressing this matter with the IRS?

A. Staff believes it would be necessary to monitor the progress of this process and, especially, would want to review the draft communications to the IRS

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<sup>4</sup> Tr. Vol. 36, p. 3902.

concerning KCPL's application to reallocate the Iatan 2 tax credits on behalf of GMO. In the past, where there have been tax code issues with utilities resulting from the ratemaking process, Staff has requested to see draft requests for IRS letter rulings to ensure that the language is fair and accurate regarding the particular tax matter in question.<sup>5</sup>

Staff requests the Commission to clarify whether KCPL and GMO are to provide their application to the IRS for reallocation of the Iatan 2 Section 48A tax credits for review by Staff before the application is made, and for Staff to otherwise be involved in that process.

**WHEREFORE**, Staff moves the Commission to clarify its March 16, 2011, *Report and Order Directing KCPL and GMO to Apply to the IRS to Revise the Memorandum of Understanding Regarding the Advanced Coal Tax Credits for Iatan*, to (1) direct that GMO gets \$26,562,500 of the Iatan 2 Section 48A tax credits, rather than \$26,500,000; (2) state whether it will impute transfer of \$26,562,500 of Section 48A tax credits from KCPL to GMO for purposes of setting rates in these cases if KCPL and GMO apply to the IRS to amend the 2010 MOU for GMO to get \$26,562,500 of the Section 48A tax credits, but the IRS has not denied, or granted the application, in whole or in part, (a) by the time the Commission issues its *Report and Order* in File No. ER-2010-0355 (expected about April 4, 2011) or (b) by the time the Commission issues its *Report and Order* in File No. ER-2010-356 (expected on or about May 4, 2011); and (3) state whether KCPL and GMO are to provide their application to the IRS for reallocation of the Iatan 2 Section 48A tax credits for review by Staff before that application is made, and for Staff to otherwise be involved in that process.

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<sup>5</sup> Ex. KCP&L—223, Surrebuttal Testimony of Paul R. Harrison, p. 20; Ex. GMO—222, Surrebuttal Testimony of Paul R. Harrison, p. 22.

Respectfully submitted,

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 18<sup>th</sup> day of March, 2011.

/s/ Nathan Williams