

MISSOURI PUBLIC SERVICE COMMISSION

REBUTTAL TESTIMONY

OF

KEITH MAJORS

Schedules KM-r1 through KM-r25

**EVERGY MISSOURI WEST, INC.,
d/b/a Evergy Missouri West**

CASE NO. ER-2024-0189

*Jefferson City, Missouri
October 15, 2025*

DATA REQUEST– Set MPSC_20081020

Case: ER-2009-0090

Date of Response: 11/07/2008

Information Provided By: John Weisensee

Requested by: Hyneman Chuck

Question No. : 0177

Please provide a description of the current status of the firm transportation from the Crossroads facility to Aquila's service territory. Please provide a list and description of all transportation costs (including amounts and FERC account numbers) related to this facility that were included in Aquila's direct filing and all costs that are anticipated will be included throughout the pendency of this case.

Response:

Firm transmission can be achieved by either; 1) linking a firm path across Entergy (EES) and a firm path across Associated Electric (AECI), or 2) linking a firm path across EES with a firm path across the Southwest Power Pool (SPP).

Efforts to acquire annual firm transmission rights (EES + SPP). In early 2007, Aquila (now KCPL GMO) submitted four 75MW annual firm transmission requests on both the EES and SPP systems. The requested term was 20 years with a spring 2009 start date. EES completed their facility study in July 2008. The SPP requests are still under study in the 2007 aggregate study #1 (2007-AG1). Although SPP has posted preliminary results for 2007-AG1, final results are not expected until December 2008.

Results of the EES study indicate that facility upgrades will be required to accommodate the requests. \$53.5 million were identified; however \$47.7 million of this amount is covered through the EES Base Plan Funding mechanism. Since the 20-year point-to-point transmission charges exceed the remaining \$5.8 million in upgrades, GMO will only incur point-to-point charges. Therefore, no up-front facility upgrade charges are required. EES has indicated a March 2009 start date with the use of Conditional Firm Service.

Preliminary results of SPP's 2007-AG1 indicate \$13.4 million in facility upgrades. Similar to EES, the 20-year point-to-point charge exceeds the revenue requirement for the upgrades; therefore no up-front facility upgrade charges are required. The preliminary study indicates firm service with redispatch starting in June 2010.

Efforts to acquire monthly firm transmission rights (EES + AECI). GMO has sought monthly firm transmission for 2009 from EES and AECI. This same monthly firm path has been successfully acquired for the past three years. Both EES and AECI confirmed

the summer 2009 requests. The EES service was later displaced by the EES annual firm transmission request discussed above.

Additionally, due to the latest results of SPP's 2007-AG1, GMO recently requested firm monthly service along the EES/AECI path for the summer of 2010 and 2011. We expect to receive study results from EES by spring 2009.

Please refer to adjustment number CS-57 Fixed Transmission Expense (MPS Only) for detail of the amounts and FERC accounts related to transmission expense associated with Crossroads Energy Center included in GMO's direct filing.



Evergy Missouri West
Case Name: 2024 Evergy MO West Rate Case
Case Number: ER-2024-0189

Requestor Majors Keith -
Response Provided September 25, 2025

Question:0475
CONFIDENTIAL

Reference the Crossroads meeting on July 28, 2025. Please confirm that the firm transmission agreements can be “rolled over” for five years or “extended” for one year. Requested by: Keith Majors (keith.majors@psc.mo.gov)

RESPONSE: (do not edit or delete this line or anything above this)

Confidentiality: PUBLIC

Statement: This response is Public. No Confidential Statement is needed.

Response:

Yes, the current firm transmission agreements can be rolled over for five years or extended for one year. After an initial term of greater than or equal to 5 years on a long-term firm point to point transmission request, a transmission customer has several options for renewal. If a renewal request is made greater than or equal to 1 year prior to the expiration of the existing term, the transmission service is automatically granted to the transmission customer under roll over rights. This type of request carries the highest priority for renewal. If the term of the renewal request is greater than or equal to 5 years, the transmission customer will retain rollover rights at the expiration of the renewal request. These rollover rights can be maintained into perpetuity as long as the greater than or equal to 1 year prior to expiration notice renewal occurs on a renewal request that is greater than or equal to 5 years. However, if a renewal request term is less than 5 years, the roll over priority is lost and each subsequent renewal request or extension is treated by MISO as a new request and could result in loss of transmission service on that transmission path.

Information provided by:
JP Meitner, Market Operations

Attachment(s):



Missouri Verification:

I have read the Information Request and answer thereto and find answer to be true, accurate, full and complete, and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request(s).

Signature /s/ *Brad Lutz*
Director Regulatory Affairs

Case No. ER-2024-0189

SCHEDULE KM-r3

through

SCHEDULE KM-r11

HAVE BEEN DEEMED

CONFIDENTIAL

IN ENTIRETY

AQUILA, INC.
AQUILA NETWORKS-MISSOURI (ELECTRIC)
CASE NO. ER-2005-0436
MISSOURI PUBLIC SERVICE COMMISSION
DATA REQUEST NO. MPSC-0413

DATE OF REQUEST: September 16, 2005

DATE RECEIVED: September 16, 2005

DATE DUE: September 26, 2005

REQUESTOR: Cary Featherstone

REQUEST:

Does Aquila intend on having any capacity agreement(s) relating to the Calpine's generating facilities including the Aries Combined Cycle generating facility to meet MPS or L&P's system load requirements? If so, when and provide the capacity agreement(s). Does Aquila intend on trying to include the Cross Roads capacity agreement in this rate case. If so, when would this agreement be put in the Company's case. Provide all supporting documentation including studies, analyses, etc used to determine that this capacity agreement is justified.

RESPONSE:

Aquila's July 25, 2005 RFP drew proposals from Calpine (Aries) and Aquila Marketing Services (Crossroads) as well as others. Initial analysis determined that neither the Calpine bid nor the Crossroads bid were favorable. All bidders will have the option to provide revised bids before a final winners list is determined. File **MPSC0413.ZIP** containing **806 2006 RFP Bid Summary1.XLS** shows results of preliminary analysis and screening. Refinements to the analysis are pending.

ATTACHMENT: MPSC0413.ZIP

ANSWERED BY: Jerry Boehm

DATE ANSWERED: 9/26/05

2006 Resource Proposals

Bidder	Project	Proposal	Transaction Type	Transaction Source	Transaction Terms	ISD	Term	Delivery Point	\$/KW/Mo	HR + \$/MWH	Transmission \$/kW-mc	Comments
Sunflower Electric Coop	Unit Contingent	50 MW or 100 MW	PPA	S4 and S5	Full Peaking Flexibility	Jun-06	jun-sep	SEC	2.90	13.5 HR+15.00	1.3 + 0.18	
AMS	Energy Contingent	75-300MW in block of 75	PPA	Crossroads	Full Peaking Flexibility	Jul-06	jun-aug	MPS	2.95	12.2HR+1.15	1.25 + 1.50 + (5.00/MWH)	Entergy Losses?
Calpine	Peaking	200 MW	PPA	Aries	150 Min - 6hr run	Flex	Annual	MPS	2.85	10.75 HR + 0.00	0.00	Startup Gas
Calpine	Intermediate	201 MW	PPA	Aries	151 Min - 6hr run	Flex	Annual	MPS	4.75	7.53 to 8.0 HR + 3.00	0.00	Start Charge 101 and above \$10,001+ Startup Gas
MidAmerican Energy	Option 1 - Empty Capacity	100 MW	PPA	MEC System	Flexible?	2006	Annual	MPS	2.50	Market	0.00	
MidAmerican Energy	Option 2 - Indexed energy	100 MW	PPA	MEC System	0,50,100 Min run 8 hr	2006	Annual	MPS	4.25	Day ahead LMP PJM NW	0.00	
MidAmerican Energy	Option 3 - Fixed Price energy	100 MW	PPA	MEC System	On Peak/Wrap	2006	Annual	MPS	4.25	\$67.25/34.00	0.00	
Constellation Energy	Annual Tolling	200	PPA	Holland	Firm Energy 12 Hr Min	2006	Annual	MPS	3.10	7.5HR + 3.00	?	
Constellation Energy	Summer Tolling	200	PPA	Holland	Firm Energy 12 Hr Min	2006	Jun-Sep	Bus bar	5.45	7.5HR + 3.01	?	
Union Partners	Peaking	200 in Blocks of 50	PPA	UPP	Flexible?	2006	Jun-Sep	Bus bar	0.75	12 HR +0.00	1.25 + 1.5 + (5.00/MWH)	Entergy Losses?
Union Partners	Intermediate	200 in Blocks of 50	PPA	UPP	Min 150 take + 10 Run	2006	Jun-Sep	Bus bar	2.50	8 HR + 4.00	1.25 + 1.5 + (5.00/MWH)	Entergy Losses?
MJMEUC	Unit Contingent	50 MW	PPA	AEC	On Peak	2006	Jun-Aug	Bus bar	4.00	\$150/MWH Base 2.00 Diesel	AEC	4 Hr Min 2Hr Start Notice
MJMEUC	Unit Contingent	50 MW	PPA	AEC	On Peak	2006	Jun-Aug	Bus bar	3.00	Market	AEC	4 Hr Min 2Hr Start Notice

Case No. ER-2024-0189

SCHEDULE KM-r13

HAS BEEN DEEMED

CONFIDENTIAL

IN ITS ENTIRETY

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 30th day of
January, 2013.

In the Matter of	)	
Kansas City Power & Light Company's	)	File No. ER-2012-0174
Request for Authority to Implement	)	Tracking No. YE-2013-0325
a General Rate Increase for Electric Service	)	

and

In the Matter of	)	
KCP&L Greater Missouri Operations Company's	)	File No. ER-2012-0175
Request for Authority to Implement	)	Tracking No. YE-2013-0326
General Rate Increase for Electric Service	)	

**ORDER DENYING REHEARING OF REPORT AND ORDER AND
REHEARING OF ORDER APPROVING COMPLIANCE TARIFFS**

Issue Date: January 30, 2013

Effective Date: January 30, 2013

The Missouri Public Service Commission is denying each application for rehearing ("application") related to the *Report and Order*¹ and each application related to the *Order Granting Expedited Treatment, Overruling Objection, and Approving Compliance Tariffs* ("compliance tariff order").² On January 18, the parties filed applications related to the *Report and Order* as follows.

File Nos. ER-2012-0174 and ER-2012-0175
Kansas City Power & Light Company ("KCPL") and KCP&L Greater Missouri Operations Company ("GMO") ³
Southern Union Company d/b/a Missouri Gas Energy
Midwest Energy Consumers Group ("MECG")

¹ Issued on January 9. All dates are in 2013.

² Issued on January 23.

³ Styled *Application for Rehearing and/or Motion for Clarification of KCP&L and GMO*.

File No. ER-2012-0174	File No. ER-2012-0175
Midwest Energy Consumers Group, Missouri	AARP
Industrial Energy Consumers, and Praxair, Inc.	Consumers Council Of Missouri

Responses to the application of KCPL and GMO were filed by Dogwood Energy, LLC in File No. ER-2012-0175, and by Union Electric Company d/b/a Ameren Missouri (“Ameren”) in both actions, on January 28; and by MECG in both actions on January 29. On January 25, MECG filed an application related to the compliance tariff order in both actions. The Commission grants an application for rehearing if “in its judgment sufficient reason therefor be made to appear.”⁴ Under that standard, and on consideration of the applications and responses, the Commission will deny the applications for rehearing.

THE COMMISSION ORDERS THAT:

1. Each application for rehearing is denied.
2. This order is effective immediately on issuance.

BY THE COMMISSION

(S E A L)



Shelley Brueggemann
Acting Secretary

Gunn, Chm., Jarrett, R. Kenney, Stoll,
and W. Kenney, CC., concur.

Jordan, Senior Regulatory Law Judge

⁴ Section 386.500.1, RSMo 2000.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 29th day
of June, 2011.

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

ORDER DENYING APPLICATIONS FOR REHEARING

Issue Date: June 29, 2011

Effective Date: June 29, 2011

On May 4, 2011, the Commission issued its Report and Order. Timely applications for rehearing were filed by KCP&L Greater Missouri Operations Company (GMO), Ag Processing Inc., a cooperative (Ag Processing), the Office of the Public Counsel, and Dogwood Energy, LLC. After receiving additional responses and arguments, the Commission held a brief on-the-record question and answer session on May 26, 2011, in order to better understand the requests for rehearing and clarification regarding the latan allocation issue. The Commission issued an Order of Clarification and Modification on May 27, 2011, in which it denied most of the applications for rehearing, granted, in part, requests for reconsideration, and modified its Report and Order. Ag Processing and GMO filed applications for rehearing of the May 27, 2011 order.

On June 2, 2011, the Commission issued an Order Suspending Tariff Sheets and Directing Filing. Following that order, GMO filed an application for rehearing and motion for clarification. The Commission additionally issued an Order Further Suspend-

ing Tariff Sheets on June 10, 2011. And, on June 15, 2011, the Commission approved all the rate tariffs in this proceeding except the “phase-in” tariffs in its Order Approving Tariff Sheets and Setting Procedural Conference. Public Counsel and Ag Processing also filed applications for rehearing of that order.

Section 386.500.1, RSMo 2000, provides that the Commission shall grant an application for rehearing if “in its judgment sufficient reason therefor be made to appear.” The Commission finds that in its judgment sufficient reason has not been established to grant any of the pending applications for rehearing. Therefore, all pending applications for rehearing, reconsideration, or clarification are denied.

THE COMMISSION ORDERS THAT:

1. All pending applications for rehearing, reconsideration, or clarification are denied.
2. This order shall become effective upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Clayton, Davis,
Jarrett, and Kenney, CC., concur.

Dippell, Deputy Chief Regulatory Law Judge

Case No. ER-2024-0189

SCHEDULE KM-r16

HAS BEEN DEEMED

CONFIDENTIAL

IN ITS ENTIRETY

**AQUILA INC.
AQUILA NETWORKS-MISSOURI (ELECTRIC)
CASE NO. ER-2007-0004
MISSOURI PUBLIC SERVICE COMMISSION
DATA REQUEST NO. MPSC-0220**

DATE OF REQUEST: November 21, 2006

DATE RECEIVED: November 21 2006

DATE DUE: December 1, 2006

REQUESTOR: Cary Featherstone

REQUEST:

1. Please provide all evaluations sheets prepared concerning the responses to the request for proposals for capacity for 2006 and 2008 periods. 2a. Identify how Aquila is planning to meet any short fall in capacity, i.e., besides the 315 megawatts of South Harper capacity, how is Aquila planning on meeting short fall of approximately 200 megawatts of capacity for 2006, 2007 and beyond? Identify the pricing of the capacity short fall providing all related documentation supporting this cost element. b). Provide all documentation supporting such evaluations including any and all recommendations concerning capacity requirements for 2006, 2007 and 2008 periods. 3. Make arrangements to provide access to the Aquila's model results and inputs for capacity planning. (Case ER-2005-0436 DR 427)

RESPONSE:

1. See DR MPSC-0193.
2. a) 2006 was met with short term PPAs. 2007 and following years were expected to be met with the Aries purchase. Now plan is use unidentified short term PPAs to bridge to a CT build.
b) See DR MPSC-0193.
3. Contact Gary Clemens to arrange a time.

ATTACHMENT(S): None

ANSWERED BY: Davis Rooney

DATE ANSWERED: December 20, 2006

Case No. ER-2024-0189

SCHEDULE KM-r18

and

SCHEDULE KM-r19

HAVE BEEN DEEMED

CONFIDENTIAL

IN ENTIRETY

DATA REQUEST– Set MPSC_20080924

Case: ER-2009-0090

Date of Response: 10/14/2008

Information Provided By: Tim Rush

Requested by: Hyneman Chuck

Question No. : 0128

Please provide a list of all employees who were involved in GPE's initial decision to sell Aquila's Crossroads Energy Center and their role in the decision. Please provide a list of all employees who were involved in GPE's subsequent decision not to sell Crossroads, but include this facility in Aquila's rate base in this proceeding and their role in this decision. Please provide the approximate date the decision to sell the assets was made, and the approximate date the decision to rate base the assets was made.

Response:

There was not a decision to sell Crossroads.

There was a point at which a fair value disclosure was required by the SEC. Based on the uncertainty regarding the achievability of the other alternatives (in particular the uncertainty of the availability of long-term transmission to areas beyond the Entergy interconnection points), a decision was made to disclose a value based on dismantling the plant and selling the turbine generators and equipment for salvage.

John Grimwade, Terry Bassham, Todd Kobayashi were involved in the disclosure decision.

Burton Crawford provided the high level value analysis that included the salvage value analysis as one valuation alternative.

There was not a subsequent decision not to sell Crossroads.

There was a review made of Aquila's recommendation to use Crossroads for capacity in its Missouri regulated operation. As a result of this review, GPE concurred with Aquila's recommendation. The decision to concur with Aquila's recommendation to use Crossroads for long-term Missouri capacity was made on or about May 14, 2008. GPE's review included Chris Giles, Tim Rush, Todd Kobayashi, Steve Easley, Terry Bassham.

In The Supreme Court of the United States

MISSOURI, ex. rel. KCP&L GREATER
MISSOURI OPERATIONS COMPANY

Petitioner,

v.

MISSOURI PUBLIC SERVICE
COMMISSION, et al.

Respondents.

**On Petition for a Writ of Certiorari to the
Court of Appeals of Missouri, Western District**

BRIEF IN OPPOSITION

JENNIFER HEINTZ
*COUNSEL FOR THE PUBLIC SERVICE
COMMISSION OF MISSOURI*
PUBLIC SERVICE
COMMISSION OF MISSOURI
200 MADISON STREET
P.O. Box 360
JEFFERSON CITY, MO 65102-0360
573-751-8701
573-522-4016 (FAX)
JENNIFER.HEINTZ@PSC.MO.GOV

FEBRUARY 3, 2014

SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

This case involves tariffs that have been superseded and there is a pending appeal on the subsequent tariffs presenting the same question that has not been finally adjudicated by the state court. In addition, the Respondent Public Service Commission of the State of Missouri engaged only in setting just and reasonable intrastate retail rates for a vertically integrated utility subject to state regulation and did not make any finding in contravention of any order issued by the Federal Energy Regulatory Commission or make any finding that is properly within the jurisdiction of the federal agency.

Thus, the appropriate questions presented are:

1. Does this Court have jurisdiction over tariffs that are no longer in force and where a case involving superseding tariffs involving the same question is still pending in state court?
2. Does this Court have jurisdiction over challenged tariffs that do not implicate the Filed Rate Doctrine or the Supremacy Clause of the United States Constitution?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
OBJECTION TO JURISDICTION	1
STATEMENT OF THE CASE.....	1
SUMMARY OF ARGUMENT	6
REASONS FOR DENYING THE WRIT.....	7
I. THE ISSUE PRESENTED IN THE PETITION IS NOT RIPE FOR REVIEW BECAUSE THE TARIFFS AT ISSUE ARE ALREADY SUPERSEDED AND AN APPEAL ON THE REVISED TARIFFS IS PENDING IN A LOWER COURT.....	7
II. THE GMO PETITION PRESENTS NO EXCEPTION TO THE MOOTNESS DOCTRINE AND FAILS TO PRESENT A JUSTICIABLE ISSUE.....	11
III. THE FEDERAL CASES CITED AS CONFLICTS ALL INVOLVE INTERSTATE UTILITIES SUBJECT TO FERC REGULATION, WHEREAS THE GMO MATTER IS ENTIRELY INTRASTATE.	13
A. <i>Nantahala Power and Light Co. v.</i> <i>Thornburg</i> Is Not Controlling.	14

TABLE OF CONTENTS – Continued

	Page
B. <i>Mississippi Power & Light Co. v. Mississippi ex rel. Moore</i> Is Not Controlling.	18
C. <i>Entergy Louisiana, Inc. v. Louisiana Pub. Serv. Comm’n</i> Is Not Controlling. ...	23
IV. THE PETITIONER MAKES A WEAK SHOWING OF A STATE COURT CONFLICT, CITING A RHODE ISLAND DECISION THAT IS IRRELEVANT AND WHOLLY DISTINGUISHABLE FROM THE MATTER AT HAND	27
A. <i>Narragansett Elec. Co. v. Burke</i> Is Distinguishable.....	28
B. The Commission’s Decision in This Case Is Similar to the Pennsylvania Public Utilities Commission in <i>Pike Cnty. Light & Power Co.-Elec. Div. v. Pa. Pub. Util. Comm’n</i>	30
V. THE FACTS OF THIS CASE ARE UNIQUE AND OF LITTLE VALUE AS PRECEDENT.....	33
CONCLUSION.....	36

TABLE OF AUTHORITIES

	Page
CASES	
<i>Abbott Labs. v. Gardner</i> , 387 U.S. 136, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967)	8
<i>Allen v. Wright</i> , 468 U.S. 737, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984)	6
<i>Anderson v. Green</i> , 513 U.S. 557, 115 S.Ct. 1059, 130 L.Ed.2d 1050 (1995) (per curiam)	8
<i>Armstrong v. Elmore</i> , 990 S.W.2d 62 (Mo. Ct. App. W.D. 1999).....	12
<i>Entergy Louisiana, Inc. v. Louisiana Pub. Serv. Comm’n</i> , 539 U.S. 39, 123 S.Ct. 2050, 156 L.Ed.2d 34 (2003)	23, 24, 25, 26
<i>Iowa League of Cities v. E.P.A.</i> , 711 F.3d 844 (8th Cir. 2013)	8
<i>Mississippi Power & Light Co. v. Mississippi ex rel. Moore</i> , 487 U.S. 354, 108 S.Ct. 2428, 101 L.Ed.2d 322 (1988)	passim
<i>Nantahala Power and Light Co. v. Thornburg</i> , 476 U.S. 953, 106 S.Ct. 2349, 90 L.Ed.2d 943 (1986)	passim
<i>Narragansett Elec. Co. v. Burke</i> , 381 A.2d 1358 (R.I. 1977)	28, 29

TABLE OF AUTHORITIES—Continued

	Page
<i>Nat'l Park Hospitality Ass'n v. Dep't of Interior</i> , 538 U.S. 803, 123 S.Ct. 2026, 155 L.Ed.2d 1017 (2003)	8
<i>Nat'l Treasury Emp. Union v. U.S.</i> , 101 F.3d 1423 (D.C. Cir. 1996)	6
<i>Ohio Forestry Ass'n, Inc. v. Sierra Club</i> , 523 U.S. 726, 118 S.Ct. 1665, 140 L.Ed.2d 921 (1998).	9
<i>Pike Cnty. Light & Power Co.-Elec. Div. v. Pa. Pub. Util. Comm'n</i> , 465 A.2d 735 (Pa. Commw. Ct. 1983)	7, 30, 31, 32
<i>Pub. Serv. Comm'n v. Mo. Gas Energy</i> , 388 S.W.3d 221 (Mo. Ct. App. W.D. 2012).....	9
<i>Pub. Water Supply Dist. No. 10 of Cass Cnty v. City of Peculiar</i> , 345 F.3d 570 (8th Cir. 2003)	9
<i>Reg'l Rail Reorganization Acts Cases</i> , 419 U.S. 102, 95 S.Ct. 335, 42 L.Ed.2d 320 (1974)	8
<i>Reno v. Catholic Soc. Servs., Inc.</i> , 509 U.S. 43, 113 S.Ct. 2485 L.Ed.2d 38 (1993)	8
<i>State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n</i> , 311 S.W.3d 361 (Mo. Ct. App. W.D. 2011)	9, 11
<i>State ex rel. Chastain v. City of Kansas City</i> , 968 S.W.2d 232 (Mo. Ct. App. W.D. 1998).....	12

TABLE OF AUTHORITIES—Continued

	Page
<i>State ex rel. KCP&L Greater Mo. Operations</i> <i>Co. v. Pub. Serv. Comm’n</i> , 408 S.W.3d 153 (Mo. Ct. App. W.D. 2013).	passim
<i>State ex rel. Union Elec. Co. v. Pub. Serv.</i> <i>Comm’n</i> , 765 S.W.2d 618 (Mo. Ct. App. W.D. 1988)..	14, 28
<i>State ex. rel. City of West Plains v. Pub. Serv.</i> <i>Comm’n</i> , 310 S.W. 2d 925 (Mo.banc 1958)	28
<i>U.S. Bancorp Mortgage Co. v. Bonner Mill</i> <i>P’ship</i> , 513 U.S. 18, 115 S.Ct. 386, 130 L.Ed.2d 233 (1994)	8

CONSTITUTIONAL PROVISIONS

U.S. CONST. ART. III	8
U.S. CONST. ART. VI, CL. 2	14

STATUTES

16 U.S.C. § 824.....	14, 33
Mo. Rev. Stat § 386.250 (2000).....	13
Mo. Rev. Stat. § 386.020 (2000) (2013)	13
Mo. Rev. Stat. § 393.130.1 (2000) (2013)	14

ADMINISTRATIVE LAW

FERC Order 888	35, 36
----------------------	--------

OBJECTION TO JURISDICTION

The Court should decline to exercise jurisdiction under 28 U.S.C. 1257(a). This case does not present a justiciable issue. The final judgment rendered in this case is no longer effective because the tariffs challenged in that final judgment have been superseded by later-filed tariffs and are no longer in effect. The subsequent tariffs raise an issue identical to the issue presented here and those tariffs have been appealed by Petitioner KCP&L Greater Missouri Operations Co. That appeal has not been adjudicated to a final judgment in the state court and review by this Court is premature.



STATEMENT OF THE CASE

Petitioner KCP&L Greater Missouri Operations Co. (GMO or the utility) is a public utility serving retail electric customers in western Missouri. (Pet. App. 2a). The Respondent Public Service Commission of the State of Missouri (Commission) is responsible for the regulation of investor-owned utilities within Missouri, including GMO. (Pet. App. 2a). Respondent Dogwood Energy, LLC (Dogwood) is a supplier of wholesale electricity and a retail electric customer of GMO. (Pet. App. 3a).

GMO is a vertically-integrated intrastate utility in Missouri which also owns a generation asset in Mississippi. GMO came to own this Mississippi generation facility because its predecessor engaged in unregulated merchant generation activities. (Pet. App. 70a). Before its acquisition by Great Plains

Energy, Inc. in 2008, GMO was Aquila, Inc. (Pet. App. 2a). Aquila Merchant, an unregulated affiliate of Aquila, Inc., purchased eighteen 75 megawatt (MW) combustion turbines. (Pet. App. 9a). Four of these turbines were installed at the Crossroads Energy Center (Crossroads) in Clarksdale, Mississippi. (Pet. App. 9a). Following the acquisition of Aquila Inc.'s regulated electric operations by Great Plains Energy, Inc. and the change of the utility's name, the Crossroads assets were transferred to the regulated books of GMO in 2008. (Pet. App. 10a). Crossroads is a peaking facility and is not used to supply baseload power.¹ (Res. App. 114a) Crossroads is used only in the summer and has never been used to supply power to Missouri customers in the winter. (Pet. App. 174a). Although power from Crossroads is only used intermittently during one part of the year, GMO must pay for continuous access to transmission. (Pet. App. 63a). GMO generates most of the rest of the power it requires to serve its load in Peculiar, Missouri. (Pet. App. 9a).

On June 4, 2010 GMO filed new tariffs with the Commission. (Pet. App. 39a-40a). The proposed tariffs were designed to increase retail rates for GMO customers. (Pet. App. 6a). The total rate increase requested amounted to \$97.9 million per year. (Pet. App. 23a). This rate increase request was GMO's first since its acquisition of Aquila's assets. (Pet. App. 2a). GMO voluntarily extended the proposed effective date of the tariffs to allow for full rate case

¹ A peaking facility is used only to provide additional power during spikes in demand that exceed a utility's normal (or baseload) demand for electricity.

proceedings. (Pet. App. 40a). Dogwood was granted intervention and was permitted to participate in the rate case before the Commission. (Pet. App. 40a).

As part of its rate increase request, GMO sought inclusion of the Crossroads facility in its rate base.² (Pet. App. 53a). GMO sought to include power from Crossroads in its plan to serve customers in Missouri. (Pet. 53a). GMO also requested rate recovery of transmission costs associated with the transmission of power from the Crossroads facility in Mississippi to GMO ratepayers in Missouri. (Pet. App. 10a). Part of that transmission path requires transmission through lines belonging to Entergy Services, Inc. (Entergy). (Pet. App. 15a). Entergy has a transmission service tariff on file with the Federal Energy Regulatory Commission (FERC). (Pet. App. 15a).

After hearing, the Commission issued a report and order resolving the contested issues in the case and allowing GMO to file tariffs designed to grant the utility a retail rate increase amounting to \$54.9 million annually. (Pet. App. 5a). The Commission permitted GMO to include Crossroads in its rate base and to use power from Crossroads to serve ratepayers in Missouri. (Pet. App. 67a; Pet. App. 73a). The Commission denied GMO's request to include the costs of transmission from Crossroads to Missouri in rates. (Pet. App. 15a). The Commission's report and order does not call a federal tariff into

² "Rate base" refers to the assets of a regulated utility upon which the utility is entitled to earn a return on its investment in assets used to serve the public.

question and makes no finding about the justness and reasonableness of Entergy's transmission tariff. (Pet. App. 16a).

GMO filed an application for rehearing from the Commission's 2011 report and order. (Pet. App. 153a). The Commission denied the application for rehearing. (Res. App. 2a). GMO sought a writ of review in the Circuit Court of Cole County, Missouri (circuit court). (Pet. App. 92a-93a). The circuit court affirmed the Commission's report and order. (Pet. App. 94a-95a). GMO then filed a notice of appeal to the Missouri Court of Appeals for the Western District (Western District). That appeal was assigned Western District case number WD75038.

While its appeal was pending at the Missouri Court of Appeals, GMO initiated a new rate case at the Commission. (Pet. App. 6a). The new rate case (ER-2012-0175) raised two of the same Crossroads issues as the pending appeal. (Pet. App. 7a). In light of the superseding tariffs, the Western District declined to address the issue of the proper valuation of Crossroads because the issue had been mooted by the subsequent rate case. (Pet. App. 10a). The Western District opted to decide the issue of transmission costs associated with Crossroads. (Pet. App. 10a). The Western District affirmed the Commission's decision to disallow recovery of transmission costs associated with Crossroads in rates. (Pet. App. 20a).

GMO sought rehearing of the WD75038 opinion or transfer to the Supreme Court of Missouri from the Western District. (Pet. App. 120a). The Western District denied rehearing and transfer. (Pet. App.

98a). GMO then sought transfer to the Supreme Court of Missouri. (Pet. App. 100a). The Supreme Court of Missouri denied transfer. (Pet. App. 96a). GMO then filed a petition for writ of certiorari in this Court.

While the appeal of the 2011 rate case was still pending, the Commission issued a report and order to resolve the issues in GMO's second-filed rate case (ER-2012-0175). (Pet. App. 171a). The Commission once again disallowed the recovery of transmission costs associated with Crossroads in GMO's rates. (Pet. App. 175a). GMO again filed an application for rehearing with the Commission, based in part on the disallowance of transmission costs associated with Crossroads. (Res. App. 29a-45a). The Commission denied the application for rehearing of ER-2012-0175). GMO filed a notice of appeal of ER-2012-0175. The Western District has assigned case number WD76167 to GMO's appeal. WD76167 has been briefed, argued, and submitted to the Western District, but the Western District has not yet issued an opinion.

The 2011 tariffs and the report and order upon which those tariffs are based have been superseded by the tariffs which went into effect in 2013. The 2011 tariffs are no longer in effect and rates are not collected under the 2011 tariffs. The state-level judicial review process of the 2013 report and order and resulting tariffs is not yet complete.



SUMMARY OF ARGUMENT

Before any review of the substance of the case, the Court must determine whether the case is justiciable. *Allen v. Wright*, 468 U.S. 737, 792, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984). Among the justiciability doctrines arising out of Article III are ripeness and mootness. *Nat'l Treasury Emp. Union v. U.S.*, 101 F.3d 1423, 1427 (D.C. Cir. 1996). Both ripeness and mootness doctrines are applicable to this case. The petition for writ of certiorari should be denied because the issues presented in the petition are not ripe for review in light of the fact an appeal in state court involving the exact same issue is still pending. The petition for writ of certiorari should be denied because the issue presented in this appeal is moot because the Commission order and 2011 tariffs that are challenged in the petition have been superseded by later-filed and approved tariffs which became effective in 2013. The issue presented in this petition has not evaded appellate review because this same issue is part of the appeal of the 2013 rates.

GMO relies on three cases from this Court in support of its petition for writ of certiorari. The cases relied on, however, do not support GMO's petition. GMO also relies on several cases from state courts in support of its petition from writ of certiorari. The state cases relied on also do not support GMO's petition. All of the federal and state cases relied on involve a state-regulated utility's relationship with a federally-regulated wholesale affiliate. That factual situation is not present in this case and that differing

factual situation in this case compels a different result than the results reached in the state and federal cases upon which GMO relies. This case is more analogous to the *Pike County* case that GMO attempts to distinguish than it is similar to the other cases upon which GMO relies.

The facts of this case are unique, and they do not lend themselves to comparisons of other cases. This case does not involve the relationship of a state-regulated utility with a federally-regulated affiliate. The case turns on an unusual situation where a state-regulated utility uses a distant generation source to supply its intrastate needs. This is not a situation that is likely to recur often, as can be seen from the very different fact patterns presented in the cases cited by GMO.



REASONS FOR DENYING THE WRIT

I. THE ISSUE PRESENTED IN THE PETITION IS NOT RIPE FOR REVIEW BECAUSE THE TARIFFS AT ISSUE ARE ALREADY SUPERSEDED AND AN APPEAL ON THE REVISED TARIFFS IS PENDING IN A LOWER COURT.

“Ripeness is a justiciability doctrine designed ‘to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been finalized

and its effects felt in a concrete way by the challenging parties.” *Nat’l Park Hospitality Ass’n v. Dep’t of Interior*, 538 U.S. 803, 807-08, 123 S.Ct. 2026, 155 L.Ed.2d 1017 (2003), quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-149, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967). The ripeness doctrine is grounded in the case or controversy requirement of Article III as well as prudential considerations for refraining from the exercise of jurisdiction in a particular case. *Id.* at 808, quoting *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57n.18, 113 S.Ct. 2485, 125 L.Ed.2d 38 (1993). Ripeness is a matter of timing, and the current situation controls, rather than the situation that prevailed at the time of the lower court decision that is under review. *Anderson v. Green*, 513 U.S. 557, 559, 115 S.Ct. 1059, 130 L.Ed.2d 1050 (1995) (per curiam), quoting *Reg’l Rail Reorganization Acts Cases*, 419 U.S. 102, 140, 95 S.Ct. 335, 42 L.Ed.2d 320 (1974). When a non-justiciable case is before the court, an important question is “whether the party seeking relief from the judgment below caused the [nonjusticiability] by voluntary action.” *Id.* at 560, quoting *U.S. Bancorp Mortgage Co. v. Bonner Mill P’ship*, 513 U.S. 18, 25, 115 S.Ct. 386, 130 L.Ed.2d 233 (1994).

In cases involving administrative action, the ripeness determination turns on two considerations: “(1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration.” *Nat’l Park Hospitality Ass’n.*, 538 U.S. at 808, citing *Abbott Labs.*, 387 U.S. at 149. The question of fitness rests mainly on whether additional factual development would aid the case. *Iowa League of Cities v. E.P.A.*, 711 F.3d 844, 867

(8th Cir. 2013), quoting *Pub. Water Supply Dist. No. 10 of Cass Cnty v. City of Peculiar*, 345 F.3d 570, 573 (8th Cir. 2003)(internal quotation omitted). Cases that involve purely legal questions are generally more suitable for resolution. *Id.* The hardship determination requires consideration of several factors, including whether the agency action under review “command[s] anyone to do anything or to refrain from doing anything; [whether it] . . . grant[s], withhold[s], or modifies] any formal legal license, power, or authority; [whether it] . . . subject[s] anyone to any civil or criminal liability; [and whether it] . . . create[s] . . . legal right[s] or obligations.” *Ohio Forestry Ass’n, Inc. v. Sierra Club*, 523 U.S. 726, 733, 118 S.Ct. 1665, 140 L.Ed.2d 921 (1998).

Under Missouri law, tariffs that have been superseded by later-filed tariffs are not subject to consideration on judicial review. *Pub. Serv. Comm’n v. Mo. Gas Energy*, 388 S.W.3d 221, 230 (Mo. Ct. App. W.D. 2012), quoting *State ex rel. Praxair, Inc. v. Pub. Serv. Comm’n*, 328 S.W.3d 329, 334 (Mo. Ct. App. W.D. 2010). Superseded tariffs are not subject to correction after the fact. *Id.* Under the filed rate doctrine, a utility may charge only the rates that are currently on file with the appropriate regulatory agency. *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n*, 311 S.W.3d 361, 365 (Mo. Ct. App. W.D. 2011) (citation omitted).

GMO’s petition for writ of certiorari does not satisfy the criteria for ripeness. The Court should refrain from exercising its jurisdiction in this case because the 2011 tariffs that GMO is challenging

have been superseded by later-filed tariffs that became effective in 2013. GMO itself caused the current situation that renders the tariffs they are challenging in this petition unripe for review. GMO initiated a new rate case that caused the Commission to approve later-filed tariffs and put new rates into effect for GMO. The tariffs that GMO is challenging in this petition no longer govern GMO's rates and terms of service. The judicial review of the new tariffs is incomplete. GMO has an appeal of the Commission's 2013 rate order still pending in the Western District Court of Appeals.

Neither of the ripeness factors that apply to review to administrative actions weigh in favor of granting certiorari in this case. The Commission's decision to disallow transmission costs associated with transmitting power from Crossroads in Mississippi to ratepayers in Missouri is highly fact-specific and involves many factors related to the unique situation that GMO faces in providing generation for its customers and the acquisition of Crossroads as part of its purchase of the failed utility Aquila. The fact-specific nature of the Commission's decision in the underlying case indicates that the case is not fit for decision in light of the fact that the challenged tariffs no longer have an impact on the rates that GMO is charging. The outcome of GMO's appeal of the 2013 on tariffs is unknown. Whatever the outcome in the Western District, it is possible that the Supreme Court of Missouri will once again be asked to take up the question, and it is unknown whether the Supreme Court of Missouri will accept transfer of the case from the Western District.

There is no hardship to GMO if the Court declines to grant certiorari. The tariffs that GMO is challenging in this case are no longer in effect. GMO charges its customers based on the tariffs that became effective in 2013, not the 2011 tariffs that are at issue here. No matter the outcome of this case, the 2013 tariffs are the only ones that presently govern GMO's rates and terms of service. The appellate process challenging the Commission report and order that led to the implementation of the 2013 tariff is still ongoing. If GMO is dissatisfied with the outcome of that appeal, it will again have the opportunity to petition the Court for certiorari.

Because this case is not ripe for review, the Court should deny the petition for writ of certiorari on this point.

II. THE GMO PETITION PRESENTS NO EXCEPTION TO THE MOOTNESS DOCTRINE AND FAILS TO PRESENT A JUSTICIABLE ISSUE.

A public utility may only charge ratepayers in accordance with the rates set out in the tariffs currently on file with the appropriate regulator. *State ex rel. AG Processing, Inc.*, 311 S.W.3d at 365. "When tariffs are superseded by subsequent tariffs that are filed and approved, the superseded tariffs are generally considered moot and therefore not subject to consideration because superseded tariffs cannot be corrected retroactively." *State ex rel. Praxair, Inc.*, 328 S.W.3d at 334 (internal quotation omitted). It is not uncommon for new tariffs to be filed before an appeal of the prior tariffs is complete. *State ex rel. KCP&L Greater Mo. Operations Co. v.*

Pub. Serv. Comm'n, 408 S.W.3d 153, 160 (Mo. Ct. App. W.D. 2013).

Moot cases do not present justiciable issues. *Armstrong v. Elmore*, 990 S.W.2d 62, 64 (Mo. Ct. App. W.D. 1999). If a case is moot, no practical relief is available and a ruling from the court would have no practical effect. *Id.* “When an event occurs that makes granting effectual relief by the court impossible, the case is moot and generally should be dismissed.” *Id.*, citing *State ex rel. Chastain v. City of Kansas City*, 968 S.W.2d 232, 237 (Mo. Ct. App. W.D. 1998). Appellate courts do not render advisory opinions nor decide non-existent issues.” *Armstrong*, 909 S.W.2d at 64, citing *Mo. Cable Television Ass’n v. Pub. Serv. Comm’n*, 917 S.W.2d 650, 652 (Mo. Ct. App. W.D. 1996). Appellate courts may consider matters outside the record in determining whether or not a case is moot. *State ex rel. Reed v. Reardon*, 41 S.W.3d 470, 473 (Mo.banc 2001).

Appellate courts will exercise discretion to make an exception to the mootness doctrine “when it is demonstrated that the case in question presents an issue that[:] is of general public interest; (2) will recur; and (3) will evade appellate review in future live controversies.” *Id.*, quoting *Praxair, Inc.*, 328 S.W.3d at 334-35. The Western District has held that public utility rates are “inherently” a matter of public interest. *Praxair, Inc.*, 328 S.W.3d at 335. (emphasis in original) The issue of the exclusion of transmission costs associated with Crossroads arose in the rate case that led to the rates that went into effect in 2011. *KCP&L Greater Mo. Operations Co.*, 408

S.W.3d at 161. That issue recurred in the rate case that led to the rates that went into effect in 2013.

GMO's petition for writ of certiorari does not meet the criteria for invoking an exception to the mootness doctrine, despite the public interest in utility rates and the recurring nature of the Crossroads transmission issue. This issue does not fall within an exception to the mootness doctrine because this issue has not evaded review in a later appeal. The Western District considered and decided the issue in the appeal of the 2011 rate case. *Id.* at 161-66. The Western District is again considering the issue in the appeal of the 2013 rate case. That case has been argued and submitted to the Western District. Consideration of this extra-record fact is proper in this Court's determination on the mootness question.

Because this case does not satisfy the exceptions to the mootness doctrine, the Court should deny the petition for writ of certiorari on this point.

**III. THE FEDERAL CASES CITED AS
CONFLICTS ALL INVOLVE INTERSTATE
UTILITIES SUBJECT TO FERC
REGULATION, WHEREAS THE GMO
MATTER IS ENTIRELY INTRASTATE.**

GMO is an "electrical corporation" within the meaning of Mo. Rev. Stat. § 386.020(15) (2000) (2013) and a "public utility" within the meaning of Mo. Rev. Stat. § 386.020(43) (2000) (2013). GMO is subject to regulation by the Commission under Section 386.250 (2000). The Commission has the duty to determine GMO's "just and reasonable" rates. Mo. Rev. Stat.

§ 393.130.1 (2000) (2013). In setting rates, the Commission must balance the interests of the ratepayers with the interests of the utility's shareholders. *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, 765 S.W.2d 618, 625 (Mo. Ct. App. W.D. 1988). Intrastate retail electric rates are solely within the jurisdiction of state regulatory commissions. 16 U.S.C. § 824(a). FERC does not generally have jurisdiction over electrical generation facilities. 16 U.S.C. § 824(b)(1).

A. *Nantahala Power and Light Co. v. Thornburg* Is Not Controlling.

The FERC regulates only matters that are not regulated by the states. 16 U.S.C. § 824(a). The federal preemption and filed rate doctrines arose as a means to govern the relationship between the federal authority and state commissions. *KCP&L Greater Mo. Operations Co.*, 408 S.W.3d at 164. The doctrines arose out of the Supremacy Clause in ARTICLE VI, CL. 2 of the Federal Constitution. *Id.*

In *Nantahala Power and Light Co. v. Thornburg*, this Court held “that the [North Carolina Utilities Commission’s] allocation of entitlement and purchased power is pre-empted by federal law.” 476 U.S. 953, 955, 106 S.Ct. 2349, 90 L.Ed.2d 943 (1986). *Nantahala Power and Light Co.* involved an allocation of electricity between two affiliated utilities. *Id.* at 954. Nantahala Power and Light Co. (Nantahala) and Tapoco were each a wholly-owned subsidiary of Aluminum Company of America (Alcoa). *Id.* at 954-55. Each utility owned a hydroelectric power plant. *Id.* at 955. The majority of the power from these power plants was put onto the

grid of the Tennessee Valley Authority (TVA). *Id.* In exchange, the utilities jointly got a fixed supply of low cost “entitlement power” from TVA. *Nantahala Power and Light Co.*, 476 U.S. at 955. Nantahala³ also bought higher-cost power from TVA. *Id.*

Nantahala, Tapoco, and TVA formed an apportionment agreement to impute the allocation of low-cost entitlement power from TVA to Nantahala and Tapoco. *Id.* The agreement provided that Tapoco would receive 80% of the entitlement power and Nantahala would receive 20% of the power. *Id.* at 956. The apportionment agreement was filed with FERC as “an appendix to a proposed wholesale rate schedule.” *Id.* Nantahala’s wholesale power sales were set by FERC, but its intrastate retail rates were set by the North Carolina Utilities Commission (NCUC). *Id.*

During a wholesale rate proceeding, FERC determined that the allocation agreement was unfair. *Id.* at 958. FERC determined that a 22.5% allocation of low-cost power to Nantahala would result in “just and reasonable” wholesale rate. *Nantahala Power and Light Co.*, 476 U.S. at 958. Nantahala was required to file revised rates and to refund excess amounts collected under the prior allocation. *Id.*

In a subsequent retail rate proceeding, the NCUC determined that Nantahala’s retail rates should be calculated using the assumptions that Nantahala and Tapoco should be treated as a single

³ Tapoco sold all of its power to the parent company Alcoa and did not serve retail customers.

entity for rate-making purposes and that Nantahala received a 24.5% allocation of low-cost power from TVA. *Id.* at 960-61. The decision by the NCUC “employed an allocation of entitlement power that nowhere takes into account FERC’s allocation of that same power.” *Id.* at 961. The North Carolina Supreme Court affirmed the NCUC’s decision, finding that it did not violate the Supremacy Clause or the Commerce Clause. *Id.*

This Court reversed. *Nantahala Power and Light Co.*, 476 U.S. at 973. With respect to the filed rate doctrine, the Court found the following:

FERC clearly has jurisdiction over the rates to be charged Nantahala’s interstate wholesale customers. [citations omitted]. Once FERC sets such a rate, a State may not conclude in setting retail rates that the FERC-approved wholesale rates are unreasonable. A State must rather give effect to Congress’ desire to give FERC plenary authority over interstate wholesale rates, and to ensure that the States do not interfere with this authority. . . . Here FERC’s decision directly affects Nantahala’s wholesale rates by determining the amount of low-cost power that it may obtain, and FERC required Nantahala’s wholesale rate to be filed in accordance with that allocation. FERC’s allocation of entitlement power is therefore presumptively entitled to more than the negligible weight given it by NCUC.

Id. at 966-67.

The Court also held that the NCUC's decision left Nantahala subject to "trapped" costs. *Id.* at 971-72. This conclusion arose from the fact that: "[Nantahala] must, under NCUC's order, pretend that it is paying less for the power it receives from TVA, under agreements not subject to NCUC's jurisdiction, than is in fact the case." *Id.* at 971. The Court found that the NCUC was obligated to abide by the FERC-mandated allocation of the low-cost entitlement power in setting retail rates. *Id.* at 972.

GMO's reliance on *Nantahala* is misplaced. FERC has not ordered GMO to take power from Crossroads. FERC could not make such an order because GMO is regulated by the Commission and GMO's intrastate retail rates are within the Commission's exclusive jurisdiction. FERC does not have jurisdiction over the Crossroads generation facility or sales of power from that facility. This is not a case where GMO has a wholesale rate established by the FERC that is in conflict with a retail rate established by the Commission. GMO is not buying wholesale power from Crossroads. This is also not a situation where GMO is buying power from a wholesale supplier at one price and selling it to retail ratepayers at a lower price because of a Commission rate-setting order that conflicts with a FERC rate-setting order. The only federal tariff involved in this case is the Entergy transmission tariff, which is on file with the FERC. The Commission made no finding with respect to the lawfulness or reasonableness of Entergy's federal transmission tariff. This case involves the highly unusual situation of a state-regulated utility using its own rate-based generation assets in a distant state (Mississippi) to meet its

retail needs in the state where its rates are set (Missouri). It would have been within the Commission's discretion to disallow the inclusion of Crossroads in GMO's regulated rate base and to disallow the use of power from Crossroads entirely.

The Western District recognized the distinctive nature of this case in finding that *Nantahala* is distinguishable:

Here, there is no FERC-required allocation of power between affiliates that the [Commission] is disturbing and, likewise, no dueling allocation percentages advocated by the [Commission] in contradiction to a FERC allocation percentage. In short, the [Commission's] 2011 Report and Order does not conflict with any FERC orders and, as such, the *Nantahala* case is inapposite to the present appeal.

KCP&L Greater Missouri Operations Co., 408 S.W.3d at 165.

B. *Mississippi Power & Light Co. v. Mississippi ex rel. Moore* Is Not Controlling.

The appellant utility in *Mississippi Power & Light Co. v. Mississippi ex rel. Moore* engaged in both wholesale sales of electricity regulated by the FERC and in retail sales of electricity regulated by the Mississippi Public Service Commission. 487 U.S. 354, 357, 108 S.Ct. 2428, 101 L.Ed.2d 322 (1988). The utility Mississippi Power & Light (MP&L) was one of four companies wholly-owned by common holding company Middle South Utilities (MSU). *Id.* The four companies “operate as an integrated power

pool, with all energy in the entire system being distributed by a single dispatch center located in Pine Bluff, Arkansas.” *Id.* Wholesale transactions between the four interconnected operating companies were completed under a series of system agreements filed with FERC. *Id.*

MSU organized another subsidiary, Middle South Energy, Inc. (MSE) to finance, own and operate new nuclear power facilities that were initially intended to provide baseload power for the four operating utilities, including MP&L. *Id.* at 357-58. MP&L was responsible for the construction of two nuclear facilities in accordance with the plan to provide new baseload capacity for the four operating companies. *Mississippi Power & Light*, 487 U.S. at 358. MSE and MP&L sought a certificate of convenience and necessity from the Mississippi Public Service Commission to authorize construction of nuclear power plants assigned to MP&L. *Id.* The state commission granted the certificate, recognizing that MP&L was part of an integrated system and the new facilities would help meet baseload needs for the whole system. *Id.*

The capacity additions planned by the system turned out to be unnecessary because of lower-than-forecast demand. *Id.* at 359. Other factors, including regulatory delay, inflation, and additional construction requirements caused the construction of the second nuclear facility to be called off, although construction of the first facility was completed under the assumption that the low cost of producing nuclear power would make the plant less expensive than the use of other fuel sources. *Id.* Cost of

completing the project was six times greater than projected. *Mississippi Power & Light Co.*, 487 U.S. at 359. As a result, the wholesale cost of power from the nuclear facility was much higher than the cost of power produced in other facilities in the system. *Id.* at 360.

MSU filed a new agreement with the FERC to allocate the high-cost power from the nuclear facility. *Id.* Under that agreement, MP&L was required to buy 31.63% of the nuclear facility's capacity. *Id.* The agreement was submitted to FERC to determine whether it was just and reasonable. *Id.* at 360-61. FERC determined that MP&L's just and reasonable capacity allocation percentage was 33%. *Mississippi Power & Light Co.*, 487 U.S. at 363. FERC did not explicitly address the prudence of building the nuclear facility and making it part of the grid. *Id.* FERC rejected the argument that its decision deprived state commissions of their authority to make determinations about the prudence of the construction of new facilities. *Id.* at 364.

While the FERC proceedings were ongoing, MP&L filed a request to increase its retail rates with the Mississippi Public Service Commission. *Id.* at 365. The state commission initially denied any rate relief related to the costs of the nuclear facility. *Id.* at 365. The state commission eventually allowed an increase in retail rates associated with costs from the nuclear facility because the state commission determined that the utility would become insolvent if such relief was denied. *Mississippi Power & Light Co.*, 487 U.S. at 365. The state commission's rate relief order did not make any findings as to the

prudence of the initial investment in the nuclear facility. *Id.* at 366. On appeal of that order to the state supreme court, the appellants argued that the Mississippi Public Service Commission had unlawfully granted a retail rate increase without considering the prudence of the investment in the nuclear facility. *Id.*

This Court framed the pertinent question as “whether the FERC proceedings have pre-empted such prudence inquiry by the State Commission.” *Id.* at 357. The Court reversed the Mississippi Supreme Court, finding that the state commission could not review MP&L’s managerial prudence with respect to costs incurred as a result of an allocation mandated by FERC. *Id.* at 369. After applying its decision in *Nantahala*, the Court concluded: “States may not alter FERC-ordered allocations of power by substituting their own determinations of what would be just and fair. FERC-mandated allocations of power are binding on the States and States must treat those allocations as fair and reasonable when determining retail rates.” *Mississippi Power & Light Co.*, 487 U.S. at 371. The Court also concluded that a state commission may not prevent a utility recovering “as a reasonable operating expense costs incurred as the result of paying a FERC-determined wholesale rate for a FERC-mandated allocation of power.” *Id.* at 373.

GMO’s reliance on *Mississippi Power & Light* is misplaced. In this case, FERC has not made any allocation of power between affiliated utilities. GMO has not been ordered to buy power from Crossroads, nor has GMO been ordered to purchase wholesale

power from an unaffiliated wholesaler. FERC has not weighed in on the prudence of GMO's use of Crossroads to serve retail customers, nor could it do so because GMO's intrastate utility service and its retail rates are wholly within the Commission's jurisdiction. The disallowance of transmission costs associated with the use of Crossroads does not put GMO at risk of insolvency. (Pet. App. 20a). The assertion that GMO stands to lose \$100 million is pure puffery, since it is based on a speculative 30-year projection, whereas these tariffs were obsoleted after only 2 years.⁴ Crossroads was not constructed for the purpose of serving customers in Missouri. (Pet. App. 54a-55a). Crossroads was installed so that GMO's predecessor Aquila could participate in unregulated energy markets. (Pet. App. 53a-54a). Crossroads is used for serving Missouri customers only in the wake of the collapse of that market and the failure of Aquila's unregulated operations. (Pet. App. 54a-55a). The Commission allowed this use of Crossroads, but determined that it was not just and reasonable for Missouri ratepayers to pay for

⁴ The result of the underlying case at the Commission was to allow GMO a revenue increase of nearly \$55 million per year. GMO's assertion that the Commission's decision will cost \$100 million over thirty years is based on a number of assumptions that find no support in the record, such as that the current rate structure will be used for that period of time, that Crossroads will be in use that far into the future, that lower fuel costs that currently make Crossroads a cost-effective option will persist over time, that GMO will not acquire any new sources of generation in that time, and so on. The weakness of those assumptions is highlighted by the fact that the 2011 rates at issue in this case were in effect only until January of 2013.

transmission costs under the peculiar facts of this case. (Pet. App. 63a).

The Western District also distinguished *Mississippi Power & Light Co.* because the facts of that case are inapposite to the facts presented in GMO's appeal:

Again, the facts of this case and *Mississippi Power* are distinguishable, as FERC has not ordered KCP&L-GMO to purchase power from Crossroads to meet its energy-supply needs in Missouri; furthermore, no FERC-approved cost allocations between affiliated energy companies have been subjected to reevaluation in this state ratemaking proceeding. Thus, *Mississippi Power* is equally inapposite to this appeal.

KCP&L Greater Missouri Operations Co., 408 S.W.3d at 165. (emphasis in original)

C. *Entergy Louisiana, Inc. v. Louisiana Pub. Serv. Comm'n* Is Not Controlling.

The issue of federal preemption in the area of FERC-approved cost allocation methods among affiliated utilities came before the Court again with respect to allocations among the various Entergy utilities, the successors to the affiliated utilities in *Mississippi Power & Light. Entergy Louisiana, Inc. v. Louisiana Pub. Serv. Comm'n*, 539 U.S. 39, 42-8, 123 S.Ct. 2050, 156 L.Ed.2d 34 (2003). In *Entergy Louisiana, Inc.*, Entergy Louisiana, Inc. (ELI) served customers in Louisiana and shared capacity with affiliated utilities operating in Arkansas, Mississippi, and Texas. *Id.* at 42. The affiliated utilities operated

under a capacity sharing agreement that allowed “short” companies to access additional capacity when they produced less power than needed and for “long” companies to sell their excess capacity when they produced more power than needed. *Id.* The costs associated with the benefit of having excess capacity available to the entire system were shared among all of the utilities. *Id.* The utilities had a system sharing agreement on file with FERC. *Id.*

The determination of whether a particular utility was “long” or “short” was made on a monthly basis. *Id.* The short companies were obligated to pay the long companies for the capacity they used in a given month. *Entergy Louisiana, Inc.*, 539 U.S. at 42. Because the calculations were made monthly, the service schedule operated as an automatic adjustment clause under § 205(f) of the Federal Power Act. *Id.*

As a result of over-capacity on the entire system in the 1980s, the utilities began the Extended Reserve Shutdown (ERS) program. *Id.* at 43. Under the ERS program, certain generating units were deemed unnecessary for capacity needs and were inactivated. *Id.* Because the operating units could be brought back into service, those units were still considered as available capacity for calculating the monthly cost equalization payments. *Id.* Counting those units had the effect of making ELI, usually a short utility, even more so. *Entergy Louisiana, Inc.*, 539 U.S. at 44.

Proceedings were initiated at the FERC to review the practice of counting the ERS units as available. *Id.* The Louisiana Public Service

Commission intervened at the FERC, arguing that the ERS units should not be counted in calculating the monthly equalization payments and refunds should be made to ELI as a result of overpayments made under the faulty calculations. *Id.* FERC determined that the ERS units should not have been counted for calculating the cost equalization payments but that refunds were not warranted because the cost allocations were not “unjust, unreasonable, or unduly discriminatory.” *Id.*

In an annual retail rate filing by ELI before the Louisiana Public Service Commission, the Louisiana Public Service Commission considered the question of whether the payments for the ERS units should be included in ELI’s revenue requirement or not. *Id.* at 45. The Louisiana Public Service Commission determined that it was pre-empted from determining whether the FERC tariff had been violated. *Entergy Louisiana, Inc.*, 539 U.S. at 45. The Louisiana Public Service Commission restricted its review to costs incurred after the date of the FERC order finding that the inclusion of the ERS units in the cost allocation violated the utilities’ system operating agreement. *Id.* The Louisiana Public Service Commission determined that it was not pre-empted from examining whether the operating companies’ subsequent system operations agreement and its method of cost allocation was imprudent. *Id.* at 46. The Louisiana Public Service Commission found that the utilities’ treatment of the ERS units was imprudent and disallowed their recovery in retail rates. *Id.* “In other words, though ELI made the [equalization payments] to its “long” corporate

siblings, it would not be allowed to recoup those costs in its retail rates.” *Id.*

The Supreme Court granted certiorari to determine “whether a FERC tariff that delegates discretion to the regulated entity to determine the precise cost allocation [] pre-empts an order that adjudges those costs imprudent.” *Entergy Louisiana, Inc.*, 539 U.S. at 42. The Court applied *Nantahala* and *Mississippi Power & Light* to the facts and determined that the Louisiana Public Service Commission’s order “impermissibly ‘traps’ costs that have been allocated in a FERC tariff.” *Id.* at 49. The Court found that the filed rate doctrine applied even to FERC tariffs that allowed the cost allocations to automatically adjust on a monthly basis, even though the specific cost allocations were not mandated by the FERC. *Id.* at 49-50. The Court also held that the fact that FERC had not ruled on the precise prudence issue presented to the state commission did not preclude pre-emption where the FERC had approved the underlying tariff. *Id.* at 50.

GMO’s reliance on *Entergy Louisiana, Inc.* is misplaced. The underlying tariffs in that case were FERC tariffs that allowed for an automatic adjustment clause based on an approved formula. GMO does not have tariffs relevant to its Missouri retail rates on file with the FERC. GMO is not required by any FERC order or federal tariff to take power from Crossroads. GMO does not buy wholesale power from Crossroads. FERC has not approved any cost allocation between GMO and an affiliated company. FERC has not considered any aspect of GMO’s Missouri retail rates because it does not have

jurisdiction to set retail rates for GMO. The only federal tariffs that are even tangentially related to this case are the Entergy transmission tariffs. The justness and reasonableness of those Entergy transmission tariffs was never at issue in the Commission proceeding. The issue that was presented to the Commission was whether, in light of the particular facts in this case, it was just and reasonable for GMO to collect transmission costs associated with using its distant asset to serve Missouri customers. That question is within the Commission's discretion to set just and reasonable retail rates.

None of the three Supreme Court cases relied upon by GMO compel a different result than the one reached by the Commission and affirmed by the Western District. The petition for writ of certiorari should be denied on this point.

IV. THE PETITIONER MAKES A WEAK SHOWING OF A STATE COURT CONFLICT, CITING A RHODE ISLAND DECISION THAT IS IRRELEVANT AND WHOLLY DISTINGUISHABLE FROM THE MATTER AT HAND

The Commission has the authority under Missouri law to determine the treatment of a utility's operating expenses:

[T]he statutory power and authority which the commission has to pass on the reasonableness and lawfulness of rates and to determine and pass upon the question of what rates are necessary to permit a utility

to earn a fair and reasonable return [internal citations omitted] necessarily includes the power and authority to determine what items are properly includable in a utility's operating expenses and decide what treatment should be accorded such expense items.

State ex. rel. City of West Plains v. Pub. Serv. Comm'n, 310 S.W. 2d 925, 928 (Mo.banc 1958). The Commission has broad discretion to set rates, and the Commission has the duty to balance the interests of the utility with the interests of the utility's shareholders. *Union Elec. Co.*, 765 S.W.2d at 625.

A. *Narragansett Elec. Co. v. Burke* Is Distinguishable.

In *Narragansett Elec. Co. v. Burke* a state-regulated utility (Narragansett) bought wholesale electricity from an affiliated interstate wholesale supplier (NEPCO). 381 A.2d 1358, 1360 (R.I. 1977). NEPCO's rates were regulated by the Federal Power Commission (FPC). *Id.* NEPCO raised its rates. *Id.* The state public utilities commission (PUC) found that it could determine what amount of the NEPCO rate increase could be passed on to Narragansett's retail ratepayers. *Id.* at 1361. Specifically, the PUC examined four issues with respect to NEPCO's rates: 1) cost of common equity; 2) capital structure; 3) cash working capital; and 4) treatment of costs associated with NEPCO's abandonment of a project to build additional generation. *Id.* The Rhode Island Supreme Court agreed with Narragansett that the state PUC was pre-empted from investigating NEPCO's

interstate wholesale rates. *Narragansett Elec. Co.*, 381 A.2d at 1361.

The Rhode Island Supreme Court determined that the state PUC had to recognize the rates paid to NEPCO as an operating expense of Narragansett, although the operating expense must be reasonable: “When the operating expense being investigated by the PUC is one incurred through a contract of the utility company with an affiliate, the burden is on the utility to establish the reasonableness of that expense. If unpersuaded, the PUC may disallow all or part of the requested rate change.” Under the filed rate doctrine, the PUC was required to treat NEPCO’s rate as a reasonable operating expense. *Id.* at 1363.

The PUC was not, however, required to automatically adjust Narragansett’s rates in response to the increase in its interstate wholesale rates. *Id.* Rather, the matter was remanded to the state PUC. *Id.* The state PUC could look at the utility’s overall rate structure to determine whether the increase in wholesale electricity rates was offset by cost reductions in other areas, as long as the NEPCO rate was treated as an actual operating expense. *Id.*

The *Narragansett* case does not compel a different result than the one reached by the Commission and affirmed by the Western District. As in all of the Supreme Court cases that GMO relies on, *Narragansett* involves a relationship between a state-regulated utility and a federally-regulated interstate wholesale affiliate. That relationship is not present in this case. Crossroads is not a federally-

regulated wholesale energy supplier with interstate rates regulated by the FERC. Crossroads is part of GMO's state-regulated rate base and it is a generation asset used by a state-regulated utility to provide service in its state-regulated service area.

The Commission recognized that the transmission costs associated with getting power from Crossroads in Mississippi to ratepayers in Missouri is an operating expense that GMO incurs to provide service using Crossroads for generation. (Pet. App. 63a). GMO's preference was to use Crossroads. (Pet. App. 62a). The Commission agreed that GMO could use Crossroads as a source of peak power. (Pet. App. 62a). To use that power, GMO must move it through transmission lines owned by Entergy, and it must pay Entergy's federally-approved rate to do so. But the Commission took no issue with Entergy's federally-approved rate. (Pet. App. 63a-64a). Instead, the Commission allowed GMO to use power from its preferred generation source, but required GMO's shareholders, rather than its ratepayers, to bear that cost. (Pet. App. 62a-64a). The Commission engaged in no examination of the justness or reasonableness of Entergy's transmission rates. Its exercise of discretion was related entirely to the justness and reasonableness of GMO's retail rates. GMO's retail rates are entirely within the Commission's authority.

B. The Commission's Decision in This Case Is Similar to the Pennsylvania Public Utilities Commission in *Pike Cnty. Light & Power Co.-Elec. Div. v. Pa. Pub. Util. Comm'n*.

The facts of this case are more analogous to the facts of *Pike Cnty. Light & Power Co.-Elec. Div. v.*

Pa. Pub. Util. Comm'n, 465 A.2d 735 (Pa. Commw. Ct. 1983). In *Pike County*, the state PUC found that the state-regulated utility's reliance on a federally-regulated affiliate as a source of wholesale purchased power was an abuse of the utility management's discretion. 465 A.2d at 271. As a result of this determination, the state PUC reduced the utility's requested retail rate increase from \$438,500 to \$361,000. *Id.*

The *Pike County* court acknowledged that any attempt by the state PUC to regulate the relationship between the state-regulated utility and its federally-regulated affiliate would be pre-empted by federal law. 465 A.2d at 273. The court found, however, that the PUC's action was not pre-empted because it did not attempt to regulate the affiliate's wholesale rates or find those rates unjust or unreasonable. *Id.* Instead, the state PUC examined only the state-regulated utility's cost of service and comparisons with "alternative costs of purchased power." *Id.* While the state had no jurisdiction to examine the cost of service for the federally-regulated utility, the FERC likewise had no jurisdiction to examine the costs of service for the state-regulated utility. *Id.* at 274. The court found:

The regulatory functions of the FERC and the PUC thus do not overlap, and there is nothing in the federal legislation which preempts the PUC's authority to determine the reasonableness of a utility company's claimed expenses. In fact, we read the Federal Power Act to expressly preserve that important state authority.

Pike Cnty. Light & Power Co., 465 A.2d at 275.

As in *Pike County*, the Commission in this case has done nothing to disturb any finding made by the FERC. The only federal rates at issue here are the federally-approved transmission rates charged by Entergy. The Commission has made no finding that those rates are in any way unjust or unreasonable. The Commission has instead found that directly passing those costs on to Missouri consumers would be unjust and unreasonable in the specific situation presented by this case, where GMO is using a distant generation source that is included in its state-regulated rate base to serve customers in Missouri instead of serving Missouri customers using a generation source that would not incur the transmission costs incurred by its use of its Crossroads facility. While the transmission costs do represent an operating expense for GMO, the Commission, not the FERC, has the jurisdiction to determine how GMO's operating expenses are to be treated for state rate-making purposes. In this case, GMO's relationship with the federally-regulated utility is even more attenuated than in *Pike County* because GMO and Entergy are not affiliated in any way.

The state law cases relied on by GMO do not support its petition for writ of certiorari. GMO's effort to distinguish *Pike County* is unsuccessful, as in each case a state commission examined only the state-regulated utility's rates and concluded what ratemaking treatment should be afforded the utility's relevant operating expenses. The petition for writ of certiorari should be denied on this point.

V. THE FACTS OF THIS CASE ARE UNIQUE AND OF LITTLE VALUE AS PRECEDENT.

It is true, as GMO asserts, that FERC Order 888 requires transmission owners to “unbundle” their services so that transmission service is available to other producers. (Pet. Br. 29). It is also true that the FERC has jurisdiction over interstate transmission rates. 16 U.S.C. § 824(b)(1). State commissions do not have jurisdiction over interstate transmission rates. *Id.* It is even true, as GMO asserts, that many utilities have given up traditional vertical integration where generation, distribution, and transmission assets were all owned by a single utility for a restructured environment where these three functions are performed by different utilities. (Pet. Br. 29). As a result, there has been a shift in the direction of FERC regulation for wholesalers and transmission owners.

But contrary to GMO’s assertion, this case will not disturb the current balance of state-federal jurisdiction and it will not serve as precedent for cases that more directly challenge that balance. This case does not implicate the open access requirements of FERC Order 888. GMO is not the relevant transmission owner. Crossroads is not a wholesale supplier. Neither GMO nor Crossroads has an open access tariff with the FERC that is being disturbed by the Commission. GMO is a vertically-integrated intrastate utility which also has a generation asset located in Mississippi that is used to serve customers in Missouri and is part of the Missouri utility’s rate base. The unusual factual underpinnings of this case were closely examined by the Western District when

it examined the Commission's decision to allow GMO to place Crossroads in its rate base and to use it as a generation source but disallowed the cost of transmission:

What the PSC did decide was that it would be unjust and unreasonable to allow KCP&L-GMO to both reap the benefit of energy producing cost savings at Crossroads (due in part to short-term pricing disparities and utilization of regionally lower-priced natural gas used in energy production) and to recover the otherwise unnecessary transmission costs of the energy from Mississippi to Missouri. In fact, Staff went so far as to argue that the otherwise unnecessary cost of energy transmission justified, in part, removing Crossroads from KCP&L-GMO's cost of service entirely (as Crossroads was not the only energy production option available to KCP&L-GMO to service the two relevant rate districts in Missouri). The [Commission] rejected Staff's recommendation regarding Crossroads and, instead, included Crossroads in KCP&L-GMO's rate base but disallowed the cost of energy transmission (from Mississippi to Missouri) from chargeable rate expenses.

In effect, the [Commission] relented and granted KCP&L-GMO its requested option of using a distant energy producing facility so that it could take advantage of revenue opportunities, but required KCP&L-GMO to bear the burden of getting that energy to

Missouri since other Missouri energy production options in the relevant Missouri rate districts bore no transmission expense whatsoever. The [Commission] did not conclude that Entergy's transmission service rate was unreasonable; instead the [Commission] concluded that it was unreasonable for KCP&L-GMO to pass through otherwise unnecessary transmission costs to ratepayers when KCP&L-GMO is the one that wanted to conduct energy speculation operations in a transmission constricted location hundreds of miles away. It was not the amount of Crossroads transmission costs that the [Commission] disallowed; it was the concept of requiring ratepayers to pay for any Crossroads transmission costs in the first place.

KCP&L-Greater Missouri Operations Co., 408 S.W.3d at 164-65. (emphasis in original)

The factual situation in this case is unrelated to the many cases involving a state-regulated utility's relationship with a federally-related affiliate. That relationship is not present in this case. The Commission has not undertaken to regulate in any area that is in FERC's exclusive jurisdiction. The Commission has not found any FERC-approved rate to be unjust or unreasonable. The Commission has only performed its duty of determining a just and reasonable rate for GMO. In setting that rate, the Commission was required to, and did, balance the interests of the utility in earning a fair rate of return

on its investments with the interests of GMO's customers in paying a fair and appropriate price for electricity. The balance reached by the Commission in this case is a fair one, and one that does not infringe on any matter within FERC's sole jurisdiction. GMO's rates are instead a matter within the exclusive jurisdiction of the Commission.

Because the Commission correctly confined itself to its appropriate sphere of rate-setting in the unusual factual situation presented here, the petition for writ of certiorari should be denied on this point.



CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully Submitted,

JENNIFER HEINTZ
COUNSEL FOR THE PUBLIC SERVICE
COMMISSION OF MISSOURI
 PUBLIC SERVICE
 COMMISSION OF MISSOURI
 200 MADISON STREET
 P.O. Box 360
 JEFFERSON CITY, MO 65102-0360
 573-751-8701
 573-522-4016 (FAX)
 JENNIFER.HEINTZ@PSC.MO.GOV

February 3, 2014

APPENDIX

Appendix A. Order Denying Applications for Rehearing	1a
Appendix B. Application for Rehearing and/or Motion for Clarification of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company	4a
Appendix C. Report and Order	47a

APPENDIX A
ORDER DENYING APPLICATIONS FOR
REHEARING

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission
Held at its Office in Jefferson City on the
29th Day of June, 2011

File No. ER-2010-0356

Issued Date: June 29, 2011
Effective Date: June 29, 2011

IN THE MATTER OF THE APPLICATION OF
KCP&L GREATER MISSOURI OPERATIONS
COMPANY FOR APPROVAL TO MAKE
CERTAIN CHANGES IN ITS CHARGES FOR
ELECTRIC SERVICES

On May 4, 2011, the Commission issued its Report and Order. Timely applications for rehearing were filed by KCP&L Greater Missouri Operations Company (GMO), Ag Processing Inc., a cooperative (Ag Processing), the Office of the Public Counsel, and Dogwood Energy, LLC. After receiving additional responses and arguments, the Commission held a brief on-the-record question and answer session on May 26, 2011, in order to better understand the requests for rehearing and clarification regarding the

Iatan allocation issue. The Commission issued an Order of Clarification and Modification on May 27, 2011, in which it denied most of the applications for rehearing, granted, in part, requests for reconsideration, and modified its Report and Order. Ag Processing and GMO filed applications for rehearing of the May 27, 2011 order.

On June 2, 2011, the Commission issued an Order Suspending Tariff Sheets and Directing Filing. Following that order, GMO filed an application for rehearing and motion for clarification. The Commission additionally issued an Order Further Suspending Tariff Sheets on June 10, 2011. And, on June 15, 2011, the Commission approved all the rate tariffs in this proceeding except the “phase-in” tariffs in its Order Approving Tariff Sheets and Setting Procedural Conference. Public Counsel and Ag Processing also filed applications for rehearing of that order.

Section 386.500.1, RSMo 2000, provides that the Commission shall grant an application for rehearing if “in its judgment sufficient reason therefor be made to appear.” The Commission finds that in its judgment sufficient reason has not been established to grant any of the pending applications for rehearing. Therefore, all pending applications for rehearing, reconsideration, or clarification are denied.

THE COMMISSION ORDERS THAT:

1. All pending applications for rehearing, reconsideration, or clarification are denied.

2. This order shall become effective upon issuance.

BY THE COMMISSION

/s/ Steven C. Reed
Secretary

APPENDIX B

**APPLICATION FOR REHEARING AND/OR
MOTION FOR CLARIFICATION OF KANSAS CITY
POWER & LIGHT COMPANY AND KCP&L
GREATER MISSOURI OPERATIONS COMPANY**

Filed January 18, 2013

Kansas City Power & Light Company (“KCP&L”) and KCP&L Greater Missouri Operations Company (“GMO”) (collectively the “Companies”), pursuant to Section 386.500.¹ and 4 CSR 240-2.160, apply for rehearing and move for clarification of the Commission’s Report and Order (“Report and Order”) issued January 9, 2012. In support of this Application and Motion, the Companies state as follows:

I. Legal Principles that Govern Applications for Rehearing.

1. All decisions of the Commission must be lawful, with statutory authority to support its actions, as well as reasonable. *State ex rel. Ag Processing, Inc. v. PSC*, 120 S.W.3d 732, 734-35 (Mo. banc 2003). An order’s reasonableness depends on whether it is supported by substantial and competent evidence on the record as a whole. *State ex rel. Alma Tel. Co. v. PSC*, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001). An order must not be arbitrary, capricious, or unreasonable, and the Commission must not abuse its discretion. *Id.*

¹ All references are to the Missouri Revised Statutes (2000), as amended.

2. In a contested case, the Commission is required to make findings of fact and conclusions of law pursuant to Section 536.090. *Deaconess Manor v. PSC*, 994 S.W.2d 602, 612 (Mo. App. W.D. 1999). For judicial review to have any meaning, it is a minimum requirement that the evidence, along with the explanation thereof by the Commission, make sense to the reviewing court. *State ex rel. Capital Cities Water Co. v. PSC*, 850 S.W.2d 903, 914 (Mo. App. W.D. 1993). In order for a Commission decision to be lawful, the Commission must include appropriate findings of fact and conclusions of law that are sufficient to permit a reviewing court to determine if it is based upon competent and substantial evidence. *State ex rel. Monsanto Co. v. PSC*, 716 S.W.2d 791, 795 (Mo. banc 1986); *State ex rel. Noranda Aluminum, Inc. v. PSC*, 24 S.W.3d 243, 246 (Mo. App. W.D. 2000); *State ex rel. A.P. Green Refractories v. PSC*, 752 S.W.2d 835, 838 (Mo. App. W.D. 1988); *State ex rel. Fischer v. PSC*, 645 S.W.2d 39, 42-43 (Mo. App. W.D. 1982), *cert. denied*, 464 U.S. 819 (1983).

3. In *State ex rel. GS Technologies Operating Co. v. PSC*, 116 S.W.3d 680, 691-92 (Mo. App. W.D. 2003), the Court of Appeals described the requirements for adequate findings of fact when it stated:

While the Commission does not need to address all of the evidence presented, the reviewing court must not be “left ‘to speculate as to what part of the evidence the court found true or was rejected.’” . . . In particular, the findings of

fact must be sufficiently specific to perform the following functions:

[F]indings of fact must constitute a factual resolution of the matters in contest before the commission; must advise the parties and the circuit court of the factual basis upon which the commission reached its conclusion and order; must provide a basis for the circuit court to perform its limited function in reviewing administrative agency decisions; [and] must show how the controlling issues have been decided[.]

[*St. Louis County v. State Tax Comm'n*, 515 S.W.2d 446, 448 (Mo. 1974), citing *Iron County v. State Tax Comm'n*, 480 S.W.2d 65 (Mo. 1972)].

4. The Commission cannot simply recite facts on which it bases a “conclusory finding,” and must rather “fulfill its duty of crafting findings of fact which set out the basic facts from which it reached its ultimate conclusion” in a contested case. *Noranda*, 24 S.W.3d at 246.

5. A review of the evidentiary record in this case demonstrates that the Report and Order failed to comply with these principles in certain respects and that rehearing should be granted as to the issues discussed below.

II. Issues on Which Rehearing and/or Clarification is Sought.

A. Return on Equity.

6. The Report and Order failed to abide by these standards when it set the Companies' return on common equity ("ROE") at 9.7%. The Commission provided no justification for setting the ROE well below the national average of ROEs ordered by other state utility commissions, and ignored the submissions provided by the Companies demonstrating that ROEs set or authorized by utility commissions from California to South Carolina were higher than the 9.70% ROE set in this case.

7. The Commission's Findings of Fact are inadequate. They consist of only 14 paragraphs covering slightly more than three pages. Although they purport to be factual findings, they are grossly inadequate in that they fail to cite even one piece of evidence to support any of the 14 paragraphs. There are no citations to the record. There are no citations to exhibits admitted into evidence. The Report and Order stands in stark contrast to orders issued in other major cases by the Commission. *See, e.g.*, Report and Order, *In re Union Elec. Co.*, ER-2012-0166 (Dec. 12, 2012); Report and Order, *In re Kansas City Power & Light Co.*, No. ER-2010-0355 (Apr. 12, 2011); Report and Order, *In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co. and Aquila, Inc.*, No. EM-2007-0374 (July 1, 2008); Report and Order, *In re Kansas City Power & Light Co.*, No. ER-2007-0291 (Dec. 6, 2007).

8. Consequently, the Commission Report and Order has “made no basic findings from the evidence adduced at the hearing,” and must be set aside as inadequate. *St. Louis County Water Co. v. State Highway Comm’n*, 386 S.W.2d 119, 124 (Mo. 1964). *See AT&T Communications of the Southwest, Inc. v. PSC*, 62 S.W.3d, 545, 548 (Mo. App. W.D. 2001); *State ex rel. Noranda Aluminum, Inc. v. PSC*, 24 S.W.3d 243, 246 (Mo. App. W.D. 2000).

9. Anyone who reviews the Commission’s Report and Order is either compelled to take each and every finding of fact at face value and assume that some place in the record there is evidence to support it, or is left to speculate what witness or what piece of documentary evidence supports the finding. This is insufficient as a matter of law. As the Court of Appeals has declared: “The only means by which we could review the Commission’s conclusion would be to comb through the record looking for evidence that supported it and presuppose that the Commission accepted this evidence as true. This is unacceptable.” *State ex rel. Noranda Aluminum, Inc. v. PSC*, 24 S.W.3d at 246.

10. Even if one were “to comb through the record” to look for supporting evidence, the effort would prove fruitless. For example, in Finding of Fact 11 the Commission concluded that the average ROE for the first nine months of 2012 was 9.97. *See* Report and Order ¶ 11 at 18. There is nothing to support that finding.

11. To the contrary, the record shows that the only evidence regarding the national averages of other state commission ROE awards for the first nine

months of 2012 is 10.22%. *See* Hadaway GMO Surrebuttal Testimony, Sch. SCH-14 at 5. Moreover, the Third Quarter 2012 average ROE for vertically-integrated electric utilities like the Companies was 9.90%, with the last four quarters reported there averaging 10.14%. *Id.*

12. The Commission also made findings of what the “best projections of nominal GDPs [Gross Domestic Product] are,” setting forth percentages for the years 2012 (3.9%), 2013 (4.1%), 2014-15 (5.1%), and 2018-23 (4.7%) in Finding of Fact 12. It cites no evidentiary source in the record for these findings.

13. A review of the record does not reveal where the Commission found these numbers in the record. Staff’s analysis, which was ultimately rejected by the Commission, “found a relatively wide dispersion in projected EPS [Earnings Per Share] growth” of 3.0% to 8.0%, and ultimately settled on a growth rate range of 5.0% to 5.5%. *See* Staff KCP&L Ex. 202, Staff Cost of Service Report at 40-41. Mr. Kahal, the expert of the Federal Executive Agencies (FEA), used a growth rate range of 4.5% to 5.5%. *See* USDOE Ex. 550, Kahal Direct at 23. Public Counsel’s expert Mr. Gorman used a growth rate of 5.14% for his Constant Growth DCF model, 4.85% for his Sustainable Growth DCF model, and a long-term growth rate of 4.9% for the final stage of his Multi-Stage Growth DCF model. *See* OPC Ex. 300, Gorman Direct at 19, 21, 25. None of these figures supports the findings made by the Commission which are apparently based on sources not in the record.

14. The Commission explicitly rejected the 5.7% growth rate recommended by the Companies’ expert

Dr. Hadaway. In rejecting that figure, the Commission committed error by failing to accurately describe how it was calculated. Although the findings supplied on this issue by the Commission are located in the Conclusions of Law section of the Report and Order on page 21, they are actually phrased as factual findings, not legal conclusions, and are in error.

15. The Commission found that the Companies “use a 5.7% GDP projected from 1971-1980 data, which is not helpful to the 30 most recent lower growth years, and does not reflect investor expectations.” *See* Report and Order at 21. However, this is an erroneous finding because the record is clear that Dr. Hadaway did not recommend a 5.7% growth rate based solely on 1971-80 data.

16. To the contrary, Dr. Hadaway explained both in his pre-filed testimony, as well as in live testimony at the evidentiary hearing that the 5.7% growth rate recommendation was based upon 60 years of data ranging from 1951 through 2011. *See* KCPL-20, Hadaway Rebuttal at 13, 23 & Sch. SCH-11. Contrary to the Commission’s findings, Dr. Hadaway gave greater weight to more recent years, especially the past decade, as opposed to the 1970s, which the Commission mistakenly concluded he did. Dr. Hadaway testified:

However, to account for recent data having a greater influence on current expectations, I applied a weighted averaging process that gives about five times as much weight to the most recent 10 years as compared to the earliest 10 years. Giving more weight to the

more recent, low inflation years also lowers the overall forecast. [*Id.* at 23.]

17. Dr. Hadaway concluded that his updated forecast for a future growth rate of 5.7% was lower than the overall long-run average of over 60 years of data (1951-2011), which yielded a growth rate of 6.6%. *Id.* The Commission's finding that Dr. Hadaway arrived at a projected 5.7% GDP growth rate "from 1971-1980 data" is clearly erroneous.

18. At the evidentiary hearing, under cross-examination Dr. Hadaway explained that the most recent ten-year average of growth rates, which reflects the most recent very low growth period, including negative growth rate in 2008 and zero growth in 2009, was "given six times as much weight" as the other ten-year averages which included periods of much higher growth rate. *See* Tr. 399. Consequently, the low growth rate for the most recent ten-year period (2000-2011) is in "every one of those averages, it's in there six times." *Id.* at 448.

19. The Commission's order is also unreasonable in that it ignored the Fourth Quarter 2012 ROEs approved by other state utility commissions around the United States. With the exception of Kansas, state utility commissions authorized ROEs from a low of 9.80% to 10.40% for vertically-integrated utilities. *See* Exhibit A, Regulatory Research Associates, *Regulatory Focus*, "Major Rate Case Decisions— Calendar 2012" (Jan. 17, 2013). The average ROE for vertically-integrated utilities was reported as 10.16% for the Fourth Quarter. *Id.*

20. With the upswing in the economy and improvement in growth, other state commissions recognized the positive news and took appropriate action in setting ROEs. Contrary to what the Commission apparently believes, the average ROE for all utilities increased from 9.78% (the Third Quarter 2012 figure quoted by the Commission at pages 18 and 23 of the Report and Order) to 10.05% in the Fourth Quarter. *See* Exhibit A. The Commission's ROE decision for the Companies is, therefore, 35 points below the national average.

21. For vertically-integrated utilities like the Companies, the average ROE also increased, from a Third Quarter average of 9.90% to a Fourth Quarter average of 10.16%. *Id.* The disparity here is even more glaring, with Commission's ROE decision being an unreasonable 46 points below the national average.

22. The Commission erroneously found that the adjustment made by Dr. Hadaway to the Companies' proxy group "omitted three of the companies with the lowest RoE. . . ." *See* Report and Order at 20. The record shows that of the four companies removed by Dr. Hadaway in his second proxy group, only two had earnings growth estimates that were low (Edison International and Cleco).

23. Vectren and Ameren had relatively high earnings growth potential and were not among the three lowest ROE companies in the proxy group. *Compare* KCPL-19, Hadaway Direct, Sch. SCH-5 at 1 *with* KCPL-20, Hadaway Rebuttal, Sch. SCH-12 at 1. Low-ranking utilities like IDACORP (parent of Idaho Power Company) and Xcel Energy were not removed.

Id. The Commission’s finding that the changes Dr. Hadaway made to his proxy group caused a “skewing” of “his results”— that is, distorting them from their true value or slanting them²— is not supported by the record. *See* Report and Order at 21, n. 51.

24. Despite these criticisms, the Commission uses Dr. Hadaway’s ROE of 9.8% from his second proxy group Constant Growth DCF model to support its award of a 9.7% ROE. *Id.* at 21-22. However, it failed to note that Dr. Hadaway’s other DCF recommendations from his second proxy group analysis yielded average and mean ROEs of 10.1% and 10.0%, respectively, under the Constant Growth DFC model using long-term GDP growth rates. *See* KCPL-20, Hadaway Rebuttal, Sch. SCH-12 at 1.³

25. Given the well-established requirement that the Commission should authorize a return on common equity that is commensurate with returns on other investments of corresponding risks, its decision to award a 9.7% ROE to the Companies is unjust, unreasonable, arbitrary, not supported by substantial and competent evidence of record, and not supported by adequate findings of fact and conclusions of law. *See Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *Bluefield Water Works & Improvement Company v.*

² The *Merriam-Webster Dictionary* defines “skew” as “to distort especially from a true value or symmetrical form.”

³ Both the average and median Low Near-Term Growth DCF model (2-Stage growth) supported a 9.9% ROE. *See* KCPL Ex. 20, *Hadaway Rebuttal*, Sch. SCH-12 at 1.

Public Service Commission of West Virginia, 262 U.S. 679, 670 (1923).

26. In order to put itself back in the mainstream of where the Companies' allowed return on common equity should be, the Commission must grant rehearing and authorize the Companies to earn an ROE of at least 9.8%. This figure falls within the ranges recommended both by Mr. Kahal, on behalf of the Federal Executive Agencies, and Dr. Hadaway on behalf of the Companies. *See* Report and Order at 19-20.

B. Transmission Tracker.

27. It is clear from the Report and Order that the Commission wants the Companies to be able to defer or track transmission costs above those in base rates. The Commission believes that the Companies can already track transmission cost increases under the Uniform System of Accounts ("USoA"). *See* Report and Order at 29. Moreover, the Commission, in its Findings of Fact on this issue, accurately noted that the Southwest Power Pool's ("SPP") regional transmission upgrade projects and administrative fees represent an approximately 14% increase per year and these transmission costs will continue to increase at an accelerating pace. *See* Report and Order at 28-29. The Companies appreciate the Commission's analysis of this important issue but do not agree, as explained below, with the Commission's belief that it cannot grant "any practical relief" to the Companies regarding these accelerating costs. In order to effectuate its desire that the transmission costs be deferred under the USoA, the Commission must provide the essential language that the

Companies need to defer these costs under the USoA. As explained below, the Commission must specifically find that the Companies are authorized by the Commission to record as a regulatory asset (Account 182.3) or regulatory liability (Account 254) the excess, or shortfall, amount of transmission expense compared to what is currently included in base rates, respectively, to be addressed in the Companies' next general rate proceeding.

28. The Companies move for clarification of that portion of the Report and Order concerning the Transmission Tracker, or alternatively, a rehearing on the grounds that the Report and Order is unlawful and unreasonable, and lacks sufficient findings of fact to support the Report and Order. *See* Report and Order at 28-32. In particular, the Report and Order is unreasonable and not based upon competent and substantial evidence in its finding that "Applicants have not carried their burden of proving that the Commission should order deferred recording ("a tracker") for transmission costs. The issue is moot because Applicants can already determine how to record that costs by themselves, as they do with almost every cost every day, under the *Uniform System of Accounts*." *See* Report and Order at 28.

29. There is no competent and substantial evidence on the record that supports the finding and conclusion that the Companies' already have the authority under the USoA to determine how to record and defer the transmission costs by themselves if they are more than 5% of net income without a further order from the Commission. *See* Report and

Order at 31-32. In fact, there is no testimony in the entire record in which any party proposed or suggested that the Companies already have the discretion to determine whether to defer transmission costs for review and possible recovery in the Companies' next rate cases without a specific order from the Commission. As a result, this portion of the Order is unlawful and unreasonable.

30. The Report and Order specifically finds that the Companies' request for a transmission tracker "is moot because the Commission can grant no practical relief. No practical relief is possible because Applicants can already 'track' transmission cost increases under the plain language of the only authority that any party cites for a tracker." *See* Report and Order at 29. The Report and Order goes on to interpret the USoA as indicating that no Commission order is needed to defer the transmission costs, assuming they are more than 5% of income, when it states: "If the projected transmission increases prove to be more than five percent of income, they will be subject to deferral without the Commission's order." *See* Report and Order at 32.

31. In interpreting the USoA, the Commission erroneously links General Instruction No. 7⁴ with the

⁴ The Companies are not aware that General Instruction No. 7 was introduced into the record of this proceeding. There is no competent and substantial evidence to support the Commission's reliance upon General Instruction No. 7. As explained herein, the Commission has misinterpreted the application of General Instruction No. 7, and the Commission should grant rehearing on this aspect of the Report and Order.

appropriate USoA authority cited for establishment of regulatory assets and regulatory liabilities, the account definitions of accounts 182.3 and 254, respectively, which are provided in the USoA and provided in Appendix C to the Commission's Report and Order. The Commission errs when it states at page 29 of the Report and Order that "Whether a utility may defer an item is the subject of General Instruction No. 7." This statement is inconsistent with the USoA. The correct application of General Instruction No. 7 is that it provides for relocation on a Company's income statement of items considered extraordinary. Nowhere in General Instruction No. 7 does it provide for the deferral of income statement activity to the Balance Sheet. Deferral to the Balance Sheet is addressed only, and appropriately, in the USoA under the descriptions of Accounts 182.3 and 254. The USoA does not link General Instruction No. 7 and the descriptions of Accounts 182.3 and 254. Because of its inaccurate linkage of these sections of the USoA, the Commission errs in deciding that "If the projected transmission increases prove to be more than five percent of income, they will be subject to deferral without the Commission's order."

32. The Commission errs in determining that General Instruction No. 7 provides that a Commission order is only necessary for an item that is less than 5% of income because it misapplies General Instruction No. 7 of the USoA. *See* Report and Order at 29-30. The correct application of General Instruction No. 7 is that a Company may reflect items meeting the criteria of General Instruction No. 7 and which are greater than 5% of net income in the extraordinary item section of their

income statement, specifically to Accounts 434 and 435. Thus, General Instruction No. 7 only addresses the appropriate income statement classification of extraordinary items. The restriction in General Instruction No. 7 that Commission approval must be obtained to treat an item of less than 5% as extraordinary is equally misinterpreted by the Commission. This restriction does not suggest that state regulatory Commission approval is appropriate. Rather, it requires Companies to obtain FERC Commission approval before classifying an item of less than 5%, as an extraordinary income statement classification change and reflect the item in Accounts 434 and 435.

33. Historically, public utilities have sought prior approval from the Commission to establish various trackers or accounting authority orders. This is the case because General Instruction No. 7 of the USoA is not authoritative to deferral of charges that would normally be recorded in expense under the USoA, as erroneously asserted by the Commission. Accounts 182.3 and 254 are the only authority under the USoA to record the deferrals. The plain language of the definition of Account 182.3 in the USoA and provided in Appendix C of the Report and Order is crystal clear on what is necessary to defer amounts to Account 182.3:

This account shall include the amounts of regulatory-created assets, not includible in other accounts, resulting from the ratemaking actions of regulatory agencies.

34. It is notable that for Accounts 182.3 and 254, there is no reference to General Instruction No. 7 and

there is no reference to any such 5% threshold. That is because neither General Instruction No. 7 nor the 5% threshold apply to deferral to Accounts 182.3 and 254. The one and only criteria for deferral to Accounts 182.3 and 254 is that deferrals result from the ratemaking actions of regulatory agencies. This is precisely why, historically, public utilities have sought prior approval from the Commission to establish various trackers or accounting authority orders and why, in this case, the Companies initially sought approval of an Accounting Authority Order (“AAO”) related to the recent Missouri River flood, as well as a Renewable Energy Standards Tracker and Property Tax Tracker in addition to the Transmission Expense Tracker. *See* KCPL-29, Ives Direct at 12-21; GMO123, Ives Direct at 11-20. *See also Re Kansas City Power & Light Company*, Case No. EU2012-0130 (AAO related to interruptions coal supplied to some of its power plants caused by the 2011 Missouri River flooding); *Re Union Electric Company*, File No. EU-2012 0027; *Re Empire District Electric Company*, File No. EU-2011-0387; *Re Union Electric Company*, Case No. EU-2008-0141; *Re Aquila, Inc.*, Case No. EU-2008-0233; *Re Kansas City Power & Light Company*, Case No. EU-2006-0560.

35. Although, as noted above, the Commission has misinterpreted and misapplied General Instruction No. 7 and the guidance provided in the USoA for Accounts 182.3 and 254, the Companies believe that the Commission understood that the Companies have the ability to defer transmission costs under the USoA and is authorizing in its Report and Order the Companies to defer transmission costs to a regulatory asset for deferral and determination

of recovery in a future rate case. Under the appropriate application of the USoA for Accounts 182.3 and 254 though, the Companies require evidence of ratemaking actions of regulatory agencies to be able to record the deferrals intended by the Commission in its Report and Order. Therefore, the Companies hereby seek clarification of this portion of the Report and Order, and request that the Commission specifically find that the Companies are authorized by the Commission to record as a regulatory asset (Account 182.3) or regulatory liability (Account 254) the excess, or shortfall, amount of transmission expense compared to what is currently included in base rates, respectively, to be addressed in the Companies' next general rate proceeding.

36. The Companies believe that this finding and conclusion by the Commission will be essential for the Companies' outside external auditors to permit the Companies to defer such excess, or shortfall, in transmission costs to a regulatory asset or liability, respectively. Otherwise, the Companies will not have the discretion to defer such costs to a regulatory asset or liability without a Commission order. This result would be inconsistent and contrary to the apparent intent of the Report and Order to give the Companies the discretion to book and defer such transmission expenses to a regulatory asset or liability, and allow the Commission to consider recovery of these transmission expenses in a future rate proceeding.

37. In the alternative, the Companies seek rehearing of the Commission's decision to deny a

transmission tracker. For all of the reasons stated in the Companies' testimony, a transmission tracker is an appropriate regulatory tool and would promote the public interest. The Companies request a rehearing on this issue and request that the Commission authorize the use of a transmission tracker mechanism to ensure appropriate recovery of transmission costs as a result of charges from SPP and other providers of transmission service.

38. The record demonstrates that these actual charges from transmission providers are appropriate candidates for a tracker mechanism because they are material, expected to change significantly in the near future, and are primarily outside the control of KCP&L and GMO. Transmission costs can change significantly from year-to-year, and such costs are a material cost of service component. Historically, transmission costs have fluctuated due to load variations, both native and off-system. However, the Companies are currently experiencing increasing costs for SPP's regional transmission upgrade projects and increasing SPP administrative fees. The Companies expect these costs to continue to increase. *See* KCPL-29, Ives Direct at 13-17; GMO-123, Ives Direct at 11-15.

39. The Companies should be authorized to use a transmission expense tracker due to the historical growth in and current high level of the Companies' transmission expenses, the uncertainty in the levels of its future transmission expenses, and because the Companies have less control over the level of transmission expenses the SPP assigns to it than the Company has over most of its other expenses. The

Commission's Order related to the denial of the Transmission Tracker is neither lawful nor supported by competent and substantial evidence. In addition, the Commission's Order does not include appropriate findings of fact and conclusions of law that are sufficient to permit a reviewing court to determine if it is based upon competent and substantial evidence. For these reasons, the Companies request a rehearing on the transmission tracker issue if the Commission does not clarify its order, as requested herein.

40. Typically, trackers have been utilized for expenses that are material, expected to change significantly in the near future, and are primarily outside the control of the public utility. Many varied trackers have been established over the years (*e.g.* pension, Iatan O&Ms, Off-system Sales, vegetation management expense, storm trackers, etc.). AAOs have been utilized to capture costs associated with extraordinary occurrences, but not necessarily related to specific environmental events such as an ice storm, tornado, or flood. Some examples of the different AAOs given to utilities over the years have included ice storms (Nos. EU-2002-1053 and EU-2008-0233), environmental work at power plants (Nos. EO-90-114 and EO-91-38), and additional expenses for special projects (No. EO-91-247). However, from a practical standpoint, both trackers and AAOs have the effect of giving the utility the ability to defer expenses from the current period to a future period with a determination of recovery in a future rate case. The Companies request that the Commission either clarify its order and specifically find that the Companies are authorized by the

Commission to record as a regulatory asset (Account 182.3) or regulatory liability (Account 254) the excess, or shortfall, amount of transmission expense compared to what is currently included in base rates, respectively, to be addressed in the Companies' next general rate proceedings, or alternatively grant a rehearing on the Transmission Tracker issue.

C. Winter, Space Heat, and All-Electric Issue.

41. The Companies also seek rehearing of a portion of the Commission's Report and Order related to the Winter, Space Heat, and All-Electric issue. *See* Report and Order at 33-40, *as modified*, Order of Clarification (Jan. 11, 2013).

42. On January 11, 2013, Staff filed its Motion For Clarification in which it announced that since the Commission varied from the terms of the Non-Unanimous Stipulation and Agreement Regarding Class Cost of Service / Rate Design, "Staff reverted to its initial position of recommending increases to the first block of the KCPL winter all electric LGS rate schedule." *See* Staff Motion at 2. In its Motion, "Staff seeks clarification that the Commission intended to order, and did order (1) Staff's recommended increases to the first block of the KCPL winter all electric SGS and MGS rate schedules, and (2) Staff's recommended increase to the first block of the KCPL winter all electric LGS schedule." *Id.*

On January 11, 2013, the Commission issued its *Order of Clarification* which stated at page 3:

Staff's motion asks the Commission to rule on Staff's proposal to increase certain rates. The part at issue addresses the winter first

energy block of the all-electric rate schedules for Small General Service (“SGS”), Medium General Service (“MGS”), and Large General Service (“LGS”). No ruling on that proposal appears in the Report and Order. In its brief, Staff sought a ruling on SGS and MGS, and referred to the rate design statement on LGS. But in Staff’s motion, Staff correctly notes that the rate design statement is not binding, so Staff refers to its earlier position on LGS. The Commission intended to grant that proposal on page 39 of the Report and Order. The discussion on that page shows where it addressed the RESB and RESC shows that to be true. Therefore the Commission corrects the Report and Order nunc pro tunc.

44. For the reasons stated herein, the Companies seek rehearing on the decision to adopt Staff’s motion and Staff’s rate design proposal as it relates to the winter first energy block of the all-electric rate schedules for Small General Service (“SGS”), Medium General Service (“MGS”), and Large General Service (“LGS”). Staff’s motion for clarification should have been denied. Instead, the Commission should have held that the rate increases for the SGS, MGS, and LGS classes should be spread on an equal percentage basis, as recommended by KCP&L’s testimony. *See* KCPL-41, Rush Direct at 9; KCPL-42, Rush Rebuttal at 5; KCPL-43, Rush Surrebuttal at 6-10).

45. This position was also embodied in the recommendations contained in the Non- Unanimous Stipulation and Agreement Regarding Class Cost of Service / Rate Design at page 2: “The overall increase granted by the commission should be applied as an equal percentage increase to the base rate revenues of each class after adjusting to the inter-class adjustments described in paragraph 1.”

46. As explained by KCP&L witness Tim M. Rush, if major changes in rate design occur, then there is a likelihood that customers will switch between classes, and this “rate switching” phenomena can affect the Company’s ability to recover its revenue requirement. *See* KCPL-42, Rush Rebuttal at 5. As Mr. Rush testified: “Any significant change to the Small, Medium, Large, and Large Power classes will put the company at risk to rate switching.” *Id.* at 5. In his Surrebuttal Testimony, Mr. Rush explained this problem as follows:

Staff’s proposal does not explore the disruption of the relationship between the Large General Service and the Large Power rate groups, leading to the potential rate switching impact of its proposal. Mr. Scheperle does not address my concern in his Rebuttal. In fact, in response to the Industrials’ proposal, on page 19 of Mr. Scheperle’s Rebuttal, he expresses the exact, rate switching concern I offer in respect to the Staff proposal. Rate switching is a very real risk to the Company and its ability to realize the authorized rate

increase amount. [KCPL-43, Rush Surrebuttal at 9].

47. The Company's testimony regarding the "rate switching" phenomena was not refuted by any party in this proceeding, including Staff. However, it was not addressed by the Report and Order or the *Order Of Clarification*, and the Commission's decision fails to consider this important concern that will result from the adoption of the Staff's proposal to increase the first winter energy block of the all-electric rate schedules from SGS, MGS, and LGS. Consequently, the Report and Order is not based on competent and substantial evidence, makes inadequate findings of fact, and is unreasonable. The Commission should therefore grant rehearing on this portion of the rate design issue.

D. Revenue Shift Among Rate Schedules.

48. The Companies request that the Commission rehear and reconsider the following conclusion found on page 38 of the Report and Order:

The Commission concludes that the shifts that OPC proposes for KCPL best furthers the policy of moving rates toward recovery. That is because it represents a middle ground between the undesirable results of the status quo (leaving disparities in recovery unaltered) and eliminating all disparities immediately (causing rate shock). The Commission concludes that OPC's proposal will best support safe and adequate service at just and reasonable

rates, so the Commission will order the shifts that OPC proposes for KCPL.

49. KCP&L requests a rehearing related to the adoption of OPC's proposal to make revenue shifts among the rate schedules, as this conclusion is not based upon competent and substantial evidence and is an abuse of the Commission's discretion. The competent and substantial evidence on record as a whole supported the proposal of the Company, Staff, and other signatories to the KCP&L Class Cost of Service Stipulation and Agreement ("KCP&L CCOS Stipulation") to increase residential rates slightly more than other rate schedules.

50. The signatories to the KCP&L CCOS Stipulation agreed that the Commission should increase residential true-up revenues by 1.00% in addition to any other increase implemented by the Commission with a corresponding equal-percentage revenue neutral decrease in the true-up revenues for all other non-lighting rate classes. This shift is consistent with the CCOS studies which demonstrated that the residential class was not paying its appropriate share of the Company's costs of service. *See* KCPL-38, Normand Direct, Sch. PMN-2; Staff-211 Staff Rate Design and Class Cost of Service Report at 3; USDOE-501, Goins Direct, Sch. DWG-1. In fact, all of the class cost of service studies in the record showed that residential rates as a whole were not recovering their cost of service. However, the Commission ignored or disregarded this competent and substantial evidence when it granted OPC's proposed revenue shift among the

various rate schedules. The Commission should therefore grant rehearing of this issue. *Id.*

51. By adopting the OPC's position regarding revenue shifts among the classes, the Company is concerned that there will be "rate switching" by various customers. As explained by Mr. Rush in his Rebuttal Testimony, "Any significant change to the Small, Medium, Large, and Large Power classes will put the company at risk to rate switching . . . [I]f major shifts between classes occurred, it would be necessary to take rate switching into account as part of the final rate design definition." *See* KCPL-42, Rush Rebuttal at 5.⁵ The Commission's Report and Order adopted OPC's proposed revenue shifts, but it failed to take into account the rate switching that will occur. Therefore, the Commission should grant a rehearing on this issue.

⁵ Rate switching concerns have also been addressed in rate design stipulations and agreements in previous KCP&L rate cases. *See e.g.*, Non-Unanimous Stipulation And Agreement As To Class CCOS and Rate Design, Case No. ER-2010-0355, paragraph 5, p. 2:5. Any potential revenue shortfall associated with potential migration of customers resulting from the LGS / LP rate design methodology provided in paragraph 4, currently quantified as \$395,000 shall be assigned to the LGS and LP classes on the basis of relative energy usage by those classes) *i.e.*) based on the LGS class allocator being (annual LGS class kWh usage) / (annual LGS class kWh usage + annual LP class kWh usage); and the LP class allocator being: (annual LP class kWh usage) / (annual LGS class kWh usage + annual LP class kWh usage), using true-up amounts for the annual class kWh usages of the LGS and LP classes.

E. Crossroads Energy Center.

a. The Commission's Decisions Regarding the Valuation of Crossroads and the Disallowance of Crossroads Transmission Costs Are Not Based Upon Appropriate Findings of Fact and Conclusions of Law.

52. The Commission's Report and Order failed to make sufficient findings of fact and conclusions of law related to the valuation of the Crossroads Energy Center ("Crossroads") as well as to the disallowance of transmission costs associated with the delivery of power from Crossroads. Very little of what the Commission said in its Report and Order on these issues actually constituted findings of fact or conclusions of law.

53. Other than its Accumulated Deferred Income Tax ("ADIT") calculation, the Commission arrived at the same erroneous Crossroads conclusions as it did in GMO's last rate case, No. ER-2010-0356 (which the Commission referred to as the "previous rulings"). Although the Commission did correct the ADIT errors from that case and properly calculated the ADIT associated with Crossroads based upon the regulatory value that it found, the Commission failed to change its previous rulings on Crossroads' valuation and electric transmission costs.

54. In so doing, the Commission "incorporates, as if fully set forth its findings of fact and conclusions of law from the previous rulings and recapitulates only the most salient facts relevant to Crossroads' valuation only as necessary to show how the movants

for change have failed to meet their burden of proof.” *See* Report and Order at 52. However, no party incorporated the evidence from the last case into this case, nor did any party present evidence on which the Commission could decide *in this case* that the value of Crossroads is something other than the Company’s proposed net original cost. Consequently, it is not surprising that the Commission rejects GMO’s positions on valuation and transmission costs in only eight pages which contain no citations to the record.

55. Because the Commission’s factual findings and conclusions of law on the Crossroads issues fail to cite even one piece of evidence, they are clearly inadequate. *St. Louis County Water Co. v. State Highway Comm’n*, 386 S.W.2d 119, 124 (Mo. 1964). Furthermore, because the Commission merely relied upon its previous rulings, it clearly did not consider additional evidence presented only in this case. As such, its Report and Order is not based on competent and substantial evidence on the record as a whole.

56. As the previous rulings on valuation and transmission costs were unlawful and unreasonable for the reasons GMO stated in its May 13, 2011 Motion for Clarification and/or Reconsideration and Application for Rehearing in its last rate case, No. ER-2010-0356, so too are the Commission’s present rulings unlawful and unreasonable. Rehearing thus should be granted as to the valuation and disallowance of transmission costs from Crossroads, discussed below.

b. The Commission's Valuation Is Unreasonable and Contrary to the Record.

57. The Commission determined that the fair market value of Crossroads as of August 31, 2012 is \$62.6 million. *See* Report and Order ¶ 7 at 55, 57. In making that determination, the Commission rejected GMO's inclusion of Crossroads in rate base at its "net original cost" as defined by the USoA. However, the Commission failed to analyze, and did not consider, GMO testimony regarding its valuation disclosure to the Securities and Exchange Commission ("SEC") and regarding the independent third-party appraisal of Crossroads. Furthermore, the Commission's use of the Goose Creek and Raccoon Creek units in making its valuation determination is not appropriate because those units and the circumstances surrounding their sale are not comparable to Crossroads. Indeed, the Missouri Court of Appeals, as well as the Commission itself, have previously found that "their purchase price is not a good measure of the market price" for other units. *State ex rel. Public Counsel v. PSC*, 274 S.W.3d 569, 579 (Mo. App. W.D. 2009), *quoting In re Union Elec. Co.*, Case No. ER-2007-0002, Report and Order at 62 (May 22, 2007) ("AmerenUE Report and Order"). As a result, the Report and Order is unreasonable, arbitrary, capricious, and not supported by adequate findings of fact and conclusions of law.

(i) The Commission Unreasonably Rejected GMO's Valuation Evidence.

58. Contrary to the Report and Order's statement at 55-56 that GMO relied on a valuation

that pre-dates the Commission's adoption of FERC's USoA, the Company included Crossroads at its net book value, or its "net original cost" as defined by the USoA. *See* GMO125, Ives Surrebuttal at 26. As of March 31, 2012, GMO valued Crossroads at approximately \$82.7 million. *See* GMO-111, Crawford Rebuttal at 1. No party rebutted the Company's testimony that net original cost has been calculated using generally accepted accounting principles. *See* GMO-125, Ives Surrebuttal at 26. Nor did any party dispute the fair market valuation that the independent, third-party accounting firm PricewaterhouseCoopers determined was actually higher than the net original cost used by the Company in its filing in this case. *See* Tr. 937; GMO-111, Crawford Rebuttal at 2; GMO-125, Ives Surrebuttal at 37.

59. The evidence is undisputed that GMO transferred Crossroads to its regulated books at the fair market value of \$117 million, as the fair market value of Crossroads was less than the fully distributed cost described in the Rebuttal Testimony of Mr. Crawford. *See* GMO111, Crawford Rebuttal at 5, 7. GMO has routinely sought to include Crossroads in its rate cases at this fair market value (less depreciation in the present case). *See* GMO-111, Crawford Rebuttal at 1-5, 7, Sch. BLC2010-9(HC); GMO-125, Ives Surrebuttal at 29-30. GMO's valuation evidence thus is consistent with the USoA. Finding otherwise is contrary to the substantial and competent evidence on the record. Consequently, the Report and Order is unreasonable, arbitrary, capricious, and not supported by adequate findings of fact and conclusions of law.

60. Furthermore, the Commission entirely disregarded the valuation of Crossroads at the time it was offered in response to the March 2007 Request For Proposals (“RFP”) for supply resources put out by GMO. *See* GMO-111, Crawford Rebuttal at 3. There is no dispute in this case that Aquila’s regulated operations acquired Crossroads from Aquila Merchant using an RFP process. *See* Tr. 913-914; Staff-271, Featherstone Rebuttal at 22; GMO-125, Ives Surrebuttal at 29. Crossroads was offered at its net book value, but also included projected transmission costs of \$11 million. *See* Tr. at 913-14. Even with the \$11 million in included transmission costs, which is more than double the actual transmission costs (*id.*), Crossroads was the lowest cost of several options considered. *See* GMO-111, Crawford Rebuttal at 3; Sch. BLC2010-9(HC); Tr. 913. Therefore, the Affiliate Transactions Rule, 4 CSR 240-20.015(3), dictates that the fair value of Crossroads at the time was the net book value, or its “net original cost” as defined by the USoA. This is exactly the basis for the value the Company requests in this rate case (less depreciation since that time).

61. The net original cost and the RFP response are the only evidence of what a willing buyer would pay a willing seller for the Crossroads facility. The Commission disregards this competent and substantial evidence on the record as a whole in following its previous unreasonable valuation methodology adopted in GMO’s last rate case.

(ii) The Commission Unreasonably Relied on Statements to the SEC.

62. The Commission also makes much of Great Plains Energy Incorporated's ("GPE") preliminary, unilateral valuation filed in its S-4 Joint Proxy Statement⁶ with the SEC regarding the "fair value" of Crossroads, yet completely disregards GMO's evidence as to why its valuation of the facility is higher than the preliminary salvage value included in the Joint Proxy Statement. *See* Report and Order ¶ 4 at 54-55.

63. The Joint Proxy Statement is not relevant to the valuation analysis. The evidence was undisputed that the Joint Proxy Statement value was preliminary and was not an agreement between a buyer and seller about the value. *See* GMO-125, Ives Surrebuttal at 31-38. While Staff provided a good deal of testimony about the Joint Proxy Statement, Staff never asserted that the preliminary proxy value was the correct value. *See* Tr. 943.

64. The text of the Joint Proxy Statement noted the preliminary and unilateral nature of the value stated. It clearly referred to GPE's "estimates" and disclosed that the value was a "preliminary internal analysis" that was "significantly affected by assumptions regarding the current market." *See* Staff-258, Cost of Service Report at 78-79.

⁶ Form S-4, referred to as a joint proxy statement/prospectus, must be submitted to the SEC in the event of a merger or an acquisition between two companies. GPE and Aquila filed their Form S-4 with the SEC on May 8, 2007. It will be referred to as the "Joint Proxy Statement" herein.

65. Furthermore, while GPE disclosed to the SEC that the fair market salvage value of the combustion turbines alone was \$51.6 million, it reported the net book value of the entire facility at \$118.9 million. *Id.* at 78. Reading the Joint Proxy Statement in its entirety, it is clear that the \$51.6 million allocation was preliminary, subject to change, could differ materially from the final purchase price allocation on the date the merger is completed, and did not represent the net book value of the entire facility.

66. Yet the Commission relied on these salvage value statements in determining that the sale of two “comparable assets” in Illinois supports its valuation. *See* Report and Order ¶ 4 at 55. Because the Commission failed to analyze and rejected the Company’s evidence that GPE’s preliminary statements to the SEC were not probative on the valuation issue, and instead relied upon these statements, its valuation of Crossroads is unreasonable, arbitrary, capricious, and not supported by adequate findings of fact and conclusions of law.

(iii) The Commission Unreasonably Calculated Valuation Using the “Forced Sale” of Two Dissimilar Combustion Turbines.

67. The “comparable assets” upon which the Commission calculated the Crossroads value are the Goose Creek and Raccoon Creek combustion turbines in Illinois. *See* Report and Order ¶ 5 at 55. “Using the same valuation as in the previous rulings,” the Commission calculated the value of Crossroads using

the average installed dollar per kilowatt basis that AmerenUE,⁷ another public utility, paid for those combustion turbines. *See* Report and Order 52, ¶ 7 at 55.

68. In its previous rulings adopted here, the Commission determined that Goose Creek and Raccoon Creek transactions were a “good indicator of the fair market value” and showed “the depressed market” for gas turbines at that time, without any evidence that the different years and different location in which those transactions occurred are sufficiently similar to warrant their comparison. *See* Case No. ER-2010-0356 Report and Order ¶ 270 at 94, ¶ 275 at 96.

69. However, the Goose Creek and Raccoon Creek transaction was “essentially a forced sale.” *State ex rel. Public Counsel v. PSC*, 274 S.W.3d 569, 579 (Mo. App. W.D. 2009). Because of the circumstances surrounding their sale, “their purchase price is not a good measure of the market price” for other units. *Id.*, *quoting* AmerenUE Report and Order at 62. Nevertheless, the Commission now unreasonably and arbitrarily relies on the average installed dollar per kilowatt basis that AmerenUE paid for those units in arriving at its valuation for Crossroads.

70. Such reliance is further unreasonable, as the record demonstrates that Goose Creek and Raccoon

⁷ AmerenUE, now doing business under the name Ameren Missouri, is Union Electric Company, a regulated Missouri public utility. *See State ex rel. Public Counsel v. PSC*, 274 S.W.3d 569, 572 & n.1 (Mo. App. W.D. 2009).

Creek are not “comparable assets” because the cost to operate the facilities in the provision of retail electric service to GMO customers would be markedly different.⁸ GMO, unlike AmerenUE, would need annual revenue of \$9.7 million to transmit the electricity if it were to purchase those facilities, which is nearly double the \$5.2 million revenue requirement to transmit power from Crossroads. *See* GMO-111, Crawford Rebuttal at 7. Similarly, gas transportation is significantly higher for those facilities. *See* GMO-103, Blunk Rebuttal at 3; GMO-111, Crawford Rebuttal at 7. This analysis makes clear that, for GMO, Crossroads was the lowest cost option. *See* GMO-111, Crawford Rebuttal at 7.

71. Contrary to the substantial and competent evidence on the record, and diverging from the findings by the Court of Appeals, the Commission calculated the value of Crossroads using the average installed dollar per kilowatt basis that AmerenUE paid for Goose Creek and Raccoon Creek. As a result, the Report and Order is unreasonable, arbitrary, capricious, and not supported by adequate findings of fact and conclusions of law.

c. The Commission Unreasonably and Unlawfully Disallows Crossroads Transmission Costs.

72. In a brief two-page discussion, the Commission denied GMO cost recovery for

⁸ Even Staff concedes that “there is a material difference in the comparison of GMO’s acquisition of Crossroads with AmerenUE’s acquisition of Goose Creek and Raccoon Creek.” *See* Staff Initial Brief at 54.

transmitting power from Crossroads to its MPS rate district. *See* Report and Order at 59. In making that determination, the Commission failed to make appropriate findings of fact and conclusions of law, failed to analyze and consider GMO's evidence regarding its least cost analysis of Crossroads, and unreasonably removed from the lowest-cost Crossroads option the one element of cost that was higher than its other elements.

73. The section of the Report and Order entitled "Transmission Cost" set forth at pages 58-59 does not include appropriate findings of fact and citations to the record, and thus failed to meet the statutory requirements of Sections 386.420 and 536.090. *See Noranda*, 24 S.W.3d at 243. The Commission's statements were completely conclusory, and provided no reasonable explanation for why the transmission costs were disallowed from recovery when the Crossroads plant itself was found to be prudent and was included in rate base.

74. Furthermore, the Commission's decision to eliminate the transmission cost component from retail rates is unlawful. In excluding from rates the cost of transmission required to bring energy from Crossroads to GMO's service territory, the Commission improperly ordered the elimination of the tariff rate approved by FERC, thus "trapping" such costs in violation of the Filed Rate Doctrine and the Supremacy Clause of the U.S. Constitution.

(i) The Commission Failed to Analyze the Undisputed Evidence that the Cost of Transmission is Outweighed By Savings in Fuel Costs.

75. The Commission disregarded the evidence of transmission costs as part of the overall cost analysis of the Crossroads plant, contrary to its finding that it was the most prudent resource alternative. Furthermore, in simply adopting its findings in the previous rulings, the Commission failed to consider new, additional evidence included in this case that was not part of GMO's last general rate case.

76. At hearing, Staff's witness acknowledged that a utility would be prudent to utilize a power plant outside of its service area if this presented the lowest cost to ratepayers. *See* Tr. 956-57. That is exactly why GMO chose the Crossroads option. Nevertheless, the Commission found that "[t]he high cost of transmission is not outweighed by lower fuel costs in Mississippi," and disallowed transmission costs. *See* Report and Order ¶ 3 at 58. This finding is contrary to the evidence.

77. It was undisputed that producing electricity through the use of natural gas is significantly less expensive in Mississippi because of its proximity to natural gas fields. *See* Tr. 316. As a result of this proximity, fuel transportation costs are much lower than they would be for a facility located in Missouri. *See* Tr. 318. By using a plant in Mississippi, GMO captures significant cost savings compared with producing electricity within its Missouri territory, for example at the South Harper facility. *See* GMO-102, Blunk Direct at 29-30. Company witness Wm.

Edward Blunk explained his calculations in pre-filed testimony and at hearing. *See* Tr. 319-321. He summarized his findings as follows:

Q: So based on the calculations you've done in your testimony, does it save the ratepayers money on transportation costs to use the Crossroads facility in Mississippi?

A: Yes.

Q: And is that savings sufficient to justify the transmission costs?

A: Yes. You save more off the—you save more off the natural gas transportation than what the electric transmission is going to cost. [*See* Tr. 321:13-22.]

The evidence clearly showed that GMO is prudently incurring electric transmission costs because the overall Crossroads option results in savings to customers. *Id.* No party provided an alternative analysis and no witness rebutted the gas transportation costs to which Mr. Blunk testified. Consequently, it is undisputed that these transmission costs are more than offset by the gas transportation cost savings. The Commission's finding otherwise is contrary to the evidence on the record and is, therefore, unreasonable.

(ii) The Commission Unreasonably and Illogically Removed One Cost Element from the Least-Cost Option.

78. In making its determination to disallow transmission costs, the Commission ignored that fact that transmission costs were factored into the

analysis when considering capacity options in 2007 and that when all costs are considered, Crossroads was the lowest total cost option. *See* GMO-111, Crawford Rebuttal at 3; Sch. BLC2010-9(HC); Tr. 913.

79. When Crossroads was offered in response to the March 2007 RFP, its book value included projected transmission costs of \$11 million. *See* Tr. at 913-14. Even with the \$11 million in transmission costs, which is more than double the actual transmission costs, Crossroads was the lowest cost option. *See* GMO-111, Crawford Rebuttal at 3; Sch. BLC2010 9(HC); Tr. 913-14.

80. The Commission cannot accept the Company's total cost option analysis of Crossroads as prudent, and then arbitrarily remove a single element of that analysis. Such decision-making is not reasonable, and is not supported by substantial and competent evidence on the record as a whole because electric transmission costs were an essential element of the Company's overall cost analysis of Crossroads, which the Commission found to be prudent. The Commission determined that Crossroads was prudent because it was the lowest-cost option, but then removed a cost component that led to that finding. In so doing, the Commission has impeached its own prudence determination. Accordingly, the Report and Order is unreasonable.

(iii) The Commission's Disallowance of FERC-approved Transmission Costs Violated the Filed Rate Doctrine and the Supremacy Clause of the U.S. Constitution Because it Unlawfully "Traps" Such Costs and Prevents Them From Being Recovered by the Company.

81. By allowing recovery of the value of Crossroads, the Commission found that GMO acted prudently when it put Crossroads in its generation fleet. However, the Commission then improperly excluded from GMO's rates the transmission component of the cost of service to utilize Crossroads power, even though Crossroads was overall (including the transmission cost component) the least cost solution to meet GMO's resource needs. By excluding Crossroads transmission costs from rates, the Commission denied recovery of costs that are the subject of a FERC-approved tariff in violation of the Filed Rate Doctrine.

82. The Filed Rate Doctrine developed as an outgrowth of federal preemption and the U.S. Constitution's Supremacy Clause. It "holds that interstate power rates fixed by the FERC must be given binding effect by state utility commissions determining intrastate rates." *See Associated Natural Gas Co. v. PSC*, 954 S.W.2d 520, 530 (Mo. App. W.D. 1997). Consequently, "a state utility commission setting retail prices must allow, as reasonable operating expenses, costs incurred as a result of paying a FERC-determined wholesale price." *Nantahala Power and Light Co. v. Thornburg*,

476 U.S. 953, 965 (1986). Missouri courts have explicitly recognized and honored these concepts of federalism and the Filed Rate Doctrine. *See Associated Natural Gas Co. v. PSC*, 954 S.W.2d 520, 531 (Mo. App. W.D. 1997).

83. Ironically, in this proceeding the Commission has done exactly what it previously declared it lacks authority to do. *See* Order Consolidating Cases, Finding Jurisdiction to Proceed, and Directing the Parties to File a Proposed Procedural Schedule, *In re Missouri Gas Energy's Purchased Gas Adjustment Tariff Revisions*, Case No. GR-2001-382, 2002 WL 31492304 *2 (Sept. 10, 2002). It has decided that the FERC-approved interstate transmission rate that GMO is paying for power from Crossroads is too high, and has, in effect, ordered the FERC tariff to be reduced to zero by denying recovery of the costs that the Company incurs regarding such service. By determining that it was not just and reasonable for GMO customers to pay the cost of purchased power from Crossroads, the Commission has explicitly infringed on the authority of FERC under the Federal Power Act, violated the Filed Rate Doctrine, and run afoul of the Supremacy Clause. *See* Report and Order at 59.

84. In finding that it is not barred from determining the prudence of buying power from Crossroads, the Commission misinterprets a key holding of the United States Supreme Court in *Nantahala Power and Light Co. v. Thornburg*, 476 U.S. 953 (1986), which prohibited the “trapping” of the FERC-determined costs where a state commission denied a utility recovery of FERC-

determined costs, in violation of the Filed Rate Doctrine. *Id.* at 970.

85. The Commission erroneously concluded that it may disallow FERC-approved transmission costs from language in *Nantahala* that a state commission may deem a quantity of power from a particular source “unreasonably excessive if lower cost power is available elsewhere.” The Commission reads this language as stating that “FERC’s rate-setting for a facility requires neither the purchase of power, nor approval of that purchase, from that facility.” *See* Report and Order at 59. Such conclusion misses the point that Crossroads *was* the lowest cost alternative, and is identical to the erroneous “oversimplification” that caused the Supreme Court to reverse the decision of the North Carolina Supreme Court in *Nantahala*. 476 U.S. at 967.

86. Given the Commission’s conclusion that Crossroads should be included in rate base, no other alternative offered lower costs for Missouri ratepayers. This finding is important because it distinguishes GMO’s case from other cases where state bodies inquired about lower cost alternatives. *See Nantahala Power and Light Co. v. Thornburg*, 476 U.S. 953, 972-73 (1986); *Kentucky West Virginia Gas Co. v. Pennsylvania Pub. Util. Comm’n.*, 837 F.2d 600, 607-609 (3d Cir. 1988); *Appalachian Power Co. v. Public Serv. Comm’n.*, 812 F.2d 898, 903 (4th Cir. 1987). That a state commission may inquire about lower cost alternatives in no way supports the Commission’s decision to disallow FERC-approved transmission costs that are part and parcel of the *lowest* cost alternative for Missouri ratepayers.

87. The Commission could not lawfully lower the costs of the Crossroads option by disallowing FERC transmission costs that were included in GMO's analysis, as the evidence showed. Compelling GMO to absorb the cost of electricity transmitted under a federal tariff violates both the U.S. Constitution's Supremacy Clause and the Filed Rate Doctrine.

88. The Commission's refusal to allow the Company to recover electric transmission costs from Crossroads, which was placed in rate base as the most prudent option available, is unlawful, unreasonable, arbitrary, and capricious, and runs afoul of federal jurisdiction. As a result, the Report and Order is unjust, unlawful, unreasonable, arbitrary, capricious, not supported by substantial and competent evidence of record, and not supported by adequate findings of fact and conclusions of law.

WHEREFORE, Kansas City Power and Light Company and KCP&L Greater Missouri Operations Company respectfully request that the Commission clarify its Report and Order, as requested herein, and grant rehearing of its Report and Order, as more fully described herein.

Respectfully submitted,

/s/ Karl Zobrist

Karl Zobrist MBN 28325
Lisa A. Gilbreath MBN 62271
SNR Denton US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111

Res. App. 46a

816.460.2400 (phone)
816.531.7545 (fax)
karl.zobrist@snrdenton.com
lisa.gilbreath@snrdenton.com

James M. Fischer MBN 27543
Fischer & Dority, PC
101 Madison, Suite 400
Jefferson City, MO 65101
(573) 636-6758 (phone)
(573) 636-0383 (fax)
jfisherpc@aol.com

Roger W. Steiner MBN 39586
Corporate Counsel
Kansas City Power
& Light Company
1200 Main Street
Kansas City, MO 64105
(816) 556-2314 (phone)
Roger.Steiner@kcpl.com

Attorneys for Kansas City
Power & Light Company
and KCP&L Greater Missouri
Operations

**APPENDIX C
REPORT AND ORDER**

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

At a Session of the Public Service Commission
Held at Its Office in Jefferson City
on the 9th Day of January, 2013

File Nos. ER-2010-0174 (Kansas City Power),
ER-2012-0175 (KCP&L)

Tracking Nos. YE-2012-0404 (Kansas City Power),
YE-2012-0405 (KCP&L)

Issued Date: January 9, 2013
Effective Date: January 9, 2013

**IN THE MATTER OF THE APPLICATION OF
KANSAS CITY POWER & LIGHT COMPANY'S
REQUEST FOR AUTHORITY TO IMPLEMENT
A GENERAL RATE INCREASE FOR
ELECTRICAL SERVICE**

and

**IN THE MATTER OF KCP&L GREATER
MISSOURI OPERATIONS REQUEST FOR
AUTHORITY TO IMPLEMENT A GENERAL
RATE INCREASE FOR ELECTRICAL SERVICE**

The Missouri Public Service Commission is
rejecting the pending tariff sheets and ordering

Kansas City Power & Light Company (“KCPL”) and KCP&L Greater Missouri Operations Company (“GMO”) (together, “Applicants”) to file new tariff sheets in compliance with this order.

The Commission is authorizing return on equity as follows:

<i>Applicant</i>	<i>%</i>
KCPL	9.70
GMO	9.70

The Commission estimates that Applicants are authorized to increase the revenue they collect from Missouri customers by approximately the following amounts.¹

<i>Area</i>	<i>Amount</i>
KCPL	
All	\$64 million
GMO	
MPS area	\$28 million
L&P area	\$21 million

That estimate is based on the data contained in the updated reconciliations filed by the Commission’s staff (“Staff”) on January 8, 2013.

This report and order also addresses the settlement provisions incorporated into the

¹ This number is only an estimate of the overall impact of the decisions described in this report and order and does not constitute a ruling.

Commission's orders. As to those matters as to which some parties agree and no parties oppose, but that are outside the Commission's subject matter jurisdiction to order, this report and order constitutes a consent order.

The Commission does not specifically discuss matters that are not dispositive. The Commission makes each ruling on consideration of each party's allegations and arguments, and has considered the substantial and competent evidence on the whole record. Where the evidence conflicts, the Commission must determine which is most credible and may do so implicitly.² The Commission's findings reflect its determinations of credibility and no law requires the Commission to make any statement as to what portions of the record the Commission accepted or rejected.³

On those grounds, the Commission independently makes its findings of fact, reports its conclusions of law,⁴ and orders relief as follows.

[TABLE OF CONTENTS OMITTED]

I. Jurisdiction

The statutes give the Commission jurisdiction to determine Applicants' terms, and amounts charged, for electrical service.

² *Stone v. Missouri Dept. of Health & Senior Services*, 350 S.W.3d 14, 26 (Mo. banc 2011).

³ *Stith v. Lakin*, 129 S.W.3d 912, 919 (Mo. App., S.D. 2004).

⁴ Section 386.420.2, RSMo 2000.

Findings of Fact

1. Each applicant is a subsidiary of Great Plains Energy, Incorporated (“GPE”). GPE is a publicly traded corporation. GPE wholly owns both Applicants, neither of which is a publicly traded corporation. KCPL is a Missouri corporation. GMO is a Delaware corporation authorized to do business in Missouri. GMO is staffed with KCPL and GPE employees.

2. Applicants sell electricity at wholesale and retail. Applicant’s service territories are in the central and northern parts of the western side of Missouri. GMO’s service territory consists of two districts, one called MPS, and the other called L&P.

3. Applicants’ customers consist of approximately the following.

<i>KCPL</i>	<i>Classification</i>	<i>GMO</i>
451,000	Residential	274,000
58,000	Commercial	38,000
2,100	Industrial, municipal, and other electric utilities	500
511,000	<i>Total</i>	312,000

Applicants each have their own generating capacity, but also buy power to serve their respective customers, GMO more than KCPL.

Discussion, Conclusions of Law, and Ruling

The Commission's jurisdiction generally includes every public utility corporation,⁵ which includes electrical companies.⁶ Electrical companies include the Applicants because Applicants provide electrical service to Missouri customers.⁷ Regulating the Applicants' service and rates is specifically within the Commission's jurisdiction through the use of tariffs.⁸ The filing of tariffs began this action. Therefore, the Commission concludes that it has jurisdiction to rule on the tariffs and determine Applicants' terms of and charges for service.

II. Procedural Background

On February 27, 2012, KCPL and GMO filed the pending tariffs seeking revenue increases approximately as follows:

<i>Area</i>	<i>Amount</i>	<i>Percentage</i>	<i>Per Day for a Typical Residential Customer</i>
KCPL			
All	\$105.7 million	15.10%	\$0.48

⁵ Section 386.250(5), RSMo 2000.

⁶ Section 386.020(15) and (43), RSMo Supp. 2012; and Sections 393.140(1).

⁷ Section 386.020(20), RSMo Supp. 2012.

⁸ Sections 393.140(11), 393.150, and 393.290, RSMo 2000.

GMO			
MPS area	\$58.3 million	10.90%	\$0.27
L&P area	\$25.2 million	14.60%	\$0.36
GMO total	\$83.5 million	11.76%	

The tariffs bear an effective date of March 28, 2012. By order dated February 28, 2012, the Commission suspended the tariff until January 26, 2013, the maximum time allowed by statute.⁹

The suspension of the tariffs initiated a contested case.¹⁰ In the same order, the Commission set a deadline for filing applications to intervene. Movants for intervention cited varying interests in this action, including status as a supplier, industrial customer, advocacy group, seller of a competing commodity. The Commission granted applications to intervene as set forth in Appendix A, paragraph iii. Some of the interveners are unincorporated associations of legal entities. On October 16, 2012, the Natural Resources Defense Council withdrew.

Intervener Missouri Electrical Users Association-KC (“MEUA-KC”), an association of industrial customers, charges that the Commission’s notice to the public was inadequate because it did not specifically refer to one of the proposals raised by

⁹ Section 393.150, RSMo 2000.

¹⁰ Section 393.150.1, RSMo 2000; and Section 536.010(4), RSMo Supp. 2012.

another intervener. In the order dated February 28, 2012, the Commission directed that notice of this action be provided to the county commission of each county within applicants' service area, and made notice available to the members of the General Assembly representing applicants' service area, and to the news media serving applicants' service area.¹¹ Further, the Commission ordered individual notice of local public hearings in this action to every customer of Applicants.¹² MEUA-KC cites no authority showing that the Commission's notice was insufficient.

By order dated April 19, 2012, the Commission established the periods relevant to the tariffs:

- a. Test year to determine how much the Applicants need to provide safe and adequate service at just and reasonable rates: 12 months ending September 31, 2011;
- b. Update for known and measurable changes to amounts drawn from the test year: through March 31, 2012; and
- c. True-up for other significant items relevant to rates: through August 31, 2012.

¹¹ *Order Suspending Tariff, Setting Pre-Hearing Conference, and Directing Filings; and Notice of Contested Case and Hearings*, issued Feb. 28, 2012, page 3.

¹² *Order Setting Local Public Hearings and Prescribing Notices*, issued June 5, 2012.

The Commission also consolidated File No. ER-2012-0174 with File No. EU-2012-0130,¹³ in which KCPL sought an order authorizing deferred recording of certain amounts (“accounting authority order”).

The Commission convened local public hearings in Applicants’ service territories as follows.¹⁴

September	6	Nevada Sedalia
September	12	St. Joseph Riverside
September	13	Kansas City Lee’s Summit

Staff filed a list of issues on October 11, 2012, and the parties filed position statements, the last on October 15, 2012.¹⁵

On December 21, 2012, GMO filed an application, with a request for expedited treatment, for a waiver or variance from the Commission’s

¹³ *Order Granting Motion to Consolidate*, issued April 3, 2012.

¹⁴ All cities in are Missouri and all dates are in 2012.

¹⁵ An issues list and position statements function like pleadings. The issues list is a document that Staff assembles in coordination with the other parties, setting forth each matter on which any party seeks the Commission’s ruling. A position statement sets forth the ruling that a party wants on an issue. Most parties take a position on less than all issues. For example, the interests of most interveners are limited to their commercial or public policy purposes. An issues list and position statements appear late in a general rate action because not until then do the parties know which, of the countless items in the tariffs for a utility the size of Applicants, are at issue.

regulation on the costs of complying with renewable energy standards.¹⁶ GMO also filed the same document in File No. ER-2013-0341. In the interest of administrative efficiency, and to avoid duplication of effort and potential inconsistencies, the Commission has addressed the matter under File No. ER-2013-0341.

On December 24, 2012, Staff and KCPL filed notice of a new issue:¹⁷ which demand-side programs a customer may opt out of under the Missouri Energy Efficiency Investment Act (“MEEIA”).¹⁸ Staff recommends that the Commission not address the new issue because it is too late to develop evidence and arguments. Staff is correct and the Commission will not address that matter in these actions.

On December 17, 2012, Midwest Energy Consumers Group (“MECG”), an association of large-scale purchasers, filed a motion to update its reply brief with additional authorities.¹⁹ Applicants filed a response to that motion with additional authorities of

¹⁶ *Application for Waiver or Variance of 4 CSR 240-20.100(6)(A) for St. Joseph Landfill Gas Facility and Motion for Expedited Treatment*, filed on December 21, 2012.

¹⁷ *Joint Notice of Dispute Between Staff and [KCPL] Regarding Customer Opt Out of Demand-Side Management Programs and Associated Programs' Costs*, filed by Staff and KCPL on December 24, 2012.

¹⁸ Section 393.1075, RSMo Supp. 2012.

¹⁹ *Motion to Update Reply Brief*, filed on December 17, 2012.

their own on December 20, 2012.²⁰ Applicants filed further additional authorities on December 26, 2012.²¹ The Commission will grant the motions and consider the additional authorities.

Three motions to strike remain pending. The Office of the Public Counsel (“OPC”) raised the latest motion to strike in its post hearing brief. The Commission denies that motion as an untimely objection to testimony. MECG filed the first motion to strike²² and the second motion to strike,²³ Staff joining in the latter. The first and second motions to strike addressed KCPL’s proposed tariffs and supporting testimony for an interim energy charge (“IEC”). The Commission will deny the first and second motions to strike as moot because the IEC claim is among the issues that the parties have settled.

III. Settlements

A contested case allows for waiver of procedural formalities²⁴ and a decision without a hearing,²⁵

²⁰ *Response to MECG Motion to Update Reply Brief and Motion to Provide Supplemental Authorities*, filed on December 20, 2012.

²¹ *Additional Orders in Support of Motion to Provide Supplemental Authorities*, filed on December 26, 2012.

²² *Motion to Strike Pre-Filed Testimony and Reject Tariffs and Motion for Expedited Treatment*, filed on May 25.

²³ On July 6, 2012.

²⁴ Sections 536.060(3) and 536.063(3), RSMo 2000.

²⁵ Sections 536.060, RSMo 2000.

including by settlement²⁶ The parties filed stipulations and agreements as follows.

ER-2012-0174 and ER-2012-0175			
<i>Partial Non-unanimous Stipulation and Agreement Respecting Kansas City Water Services Department and Airport Issues</i>		Oct 19 ²⁷	
<i>Non-Unanimous Stipulation and Agreement as to Certain Issues</i>		Oct 19	
<i>Non-Unanimous Stipulation and Agreement Regarding Praxair, Inc., Ag Processing Inc. a Cooperative and the Midwest Energy Users' Association's Objection and Withdrawal of Objection and Request for Hearing</i>		Oct 29	
ER-2012-0174		ER-2012-0175	
<i>Non-Unanimous Stipulation and Agreement Regarding and Agreement Regarding Class Cost of Service/Rate Design</i>	Oct 29	<i>Non-Unanimous Stipulation Non-Unanimous Stipulation and Agreement Regarding Class/Cost of Service/Rate Design</i>	Oct 29
<i>Second Non-</i>	Nov 8	<i>Second Non-</i>	Nov 8

²⁶ *Id.* and 4 CSR 240-2.115.

²⁷ All dates in this chart are in 2012.

<i>Unanimous Stipulation and Agreement as to Certain Issues</i>		<i>Unanimous Stipulation and Agreement as to Certain Issues</i>	
---	--	---	--

Also, in File No. ER-2012-0175, Staff filed its Exhibit No. 392,²⁸ which is the stipulation and agreement in File No. EO-2012-0009. That action addressed issues under the Missouri Energy Efficiency Investment Act (“MEEIA”) and the settlement resolves all MEEIA issues. Of those stipulations and agreements, only the *Non-Unanimous Stipulation and Agreement Regarding Class Cost of Service / Rate Design* in File No. ER-2012-0174, remains opposed and so constitutes the signatories’ position statement on an issue to be tried.²⁹ All other stipulations and agreements (“settlements”) are unopposed, so the Commission will treat the settlements as unanimous.³⁰

The settlements address the accounting authority order application that was the subject of File No. EU-2012-0130, consolidated into ER-2012-0174, and other claims and defenses in File Nos. ER-2012-0174 and ER-2012-0175. On the matters disposed of by settlement, no party seeks an evidentiary hearing, so no hearing is required,³¹ and

²⁸ *Non-unanimous Stipulation and Agreement Resolving [GMO]’s MEEIA Filing*, filed on October 29, 2012.

²⁹ 4 CSR 240-2.115(2)(D).

³⁰ 4 CSR 240-2.115(2)(C).

³¹ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm’n*, 776 S.W.2d 494, 496 (Mo. App., W 1989).

the Commission need not separately state its findings of fact.³² Nevertheless, applicants have the burden of proving that increased rates are just and reasonable.³³ Except as otherwise provided by statute, the preponderance of the evidence,³⁴ and reasonable inferences from the evidence,³⁵ guide each determination.

The Commission's review of the record shows that substantial and competent evidence weighs in favor of the settlements' provisions as follows.

A. Standard for Service

The standard for service is that Applicants must provide "service instrumentalities and facilities as shall be safe and adequate[.]³⁶" Upon review of the record and the settlement, the Commission independently finds and concludes that the settlement's proposed terms support safe and adequate service. Without further discussion, the Commission incorporates such terms, as if fully set forth, into this report and order.

³² Section 536.090, RSMo 2000.

³³ Section 393.150.2, RSMo 2000.

³⁴ *State Board of Nursing v. Berry*, 32 S.W.3d 638, 641 (Mo. App., W.D. 2000).

³⁵ *Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968).

³⁶ Section 393.130.1, RSMO Supp. 2012.

B. Standard for Rates

The standard for rates is “just and reasonable,”³⁷ a standard founded on constitutional provisions, as the United States Supreme Court has explained.³⁸ But the Commission must also consider the customers.³⁹ Balancing the interests of investor and consumer is not reducible to a single formula,⁴⁰ and making pragmatic adjustments is part of the Commission’s duty.⁴¹ Thus, the law requires a just and reasonable end, but does not specify a means.⁴² The Commission is charged with approving rate schedules that are as “just and reasonable” to consumers as they are to the utility.⁴³

Determining whether an increase is necessary requires comparing the companies’ current net income to the companies’ revenue requirement. Revenue requirement is the amount of money

³⁷ *Id.* and Section 393.150.2, RSMo 2000.

³⁸ *Bluefield Water Works & Improvement Co. v. Public Serv. Comm’n of the State of West Virginia*, 262 U.S. 679, 690 (1923).

³⁹ *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

⁴⁰ *Id.* at 586 (1942).

⁴¹ *Bluefield*, 262 U.S. at 692; *State ex rel. Associated Natural Gas Co. v. Public. Serv. Comm’n*, 706 S.W.2d 870, 873 (Mo. App., W.D. 1985) (citing *Hope Natural Gas Co.*, 320 U.S. at 602-03).

⁴² *Id.*

⁴³ *Valley Sewage Co. v. Public Service Commission*, 515 S.W.2d 845, 851 (Mo. App., K.C. D. 1974).

necessary for providing safe and effective service at a profit. Those needs are tangible and intangible.⁴⁴ The Commission determines the revenue requirement from a conventional analysis of the resources devoted to service.

To provide service, a utility devotes its resources, which accounting conventions classify as either investment or expense as follows.

- Investment is the capital basis devoted to public utility service (“rate base”) on which the utility seeks profit (“return” on investment).
 - Return is therefore a percentage (“rate of return”) of rate base.
 - Rate base equals capital assets (“gross plant”), minus historic deterioration of such assets (“accumulated depreciation”), plus other items.
- Expenses include operating costs, replacement of capital items as they depreciate (“current depreciation”), and taxes on the return.

Those components relate to each other in the following formula:

- Revenue Requirement = Expenses + (Return x Rate Base)
- Rate Base = Gross Plant – Accumulated Depreciation + Other Items

⁴⁴ *Hope Natural Gas Co.*, 320 U.S. at 603 (1944).

- Expenses = Operating Costs + Current Depreciation + Taxes

The rate of return depends on the cost of each component in the utility's capital structure.

But determining the revenue requirement is not the entire analysis. The utility collects its revenue from its customers, who are not all the same, and so need not—and sometimes should not—receive the same treatment. The treatment afforded among the various classes of customers is rate design. Rate design should reflect the costs attributable to serving each class of customer respectively.

Accordingly, just and reasonable rates may account for such differences among customers.

C. Conclusion as to Matters Settled

Under those standards of law and policy, the Commission has compared the evidence on the whole record with the settlements. The Commission independently finds and concludes that the terms proposed in the settlement support safe and adequate service at just and reasonable rates. Therefore, the Commission will incorporate the settlements' provisions into this report and order, either as the Commission's rulings or, for those matters to which the parties agreed but the Commission has no authority to order, as the Commission's consent order.⁴⁵

⁴⁵ Section 536.060, RSMo 2000.

IV. Matters not Addressed in Settlements

The *Non-Unanimous Stipulation and Agreement Regarding Class Cost of Service / Rate Design* in File No. ER-2012-0174 remains subject to opposition from OPC, AARP, and Consumers Council of Missouri, Inc. and so constitutes the position statement of the signatories.⁴⁶

The Commission consolidated the actions in File Nos. ER-2012-0174 and ER-2012 0175 for hearing on the remaining disputes regarding the test year, updates, and related matters.⁴⁷ The Commission set the evidentiary hearing for October 17, 19, 22, 23, 24, 25, 26, 29, and 30, 2012. The parties stipulated to the admission of certain exhibits without objection and all such exhibits are admitted into the record. The parties filed initial briefs and reply briefs as set forth in Appendix B.

Bearing in mind the standards of law and policy set forth above, the Commission makes conclusions of law on the matters not disposed of in the settlements, with separately stated findings of fact on those remaining in dispute, as follows.

⁴⁶ 4 CSR 240-2.115(2)(D).

⁴⁷ Knowing that the GPE subsidiaries would be the subject of overlapping evidence, the Commission made one record on both actions. That is why all exhibits appear under each file number in the Commission's electronic filing and information service (also called "EFIS"). Staff states that the actions "were consolidated for hearing but not for evidentiary purposes." *Staff's Reply Brief*, page 24. Because the hearing was an evidentiary hearing, Staff's statement is not well-taken.

A. KCPL and GMO

The following matters are common to both KCPL and GMO.

i. Policy Matters

AARP and Consumers Council of Missouri, Inc. (“CCoMo”)—entities that advocate for residential customers—Staff, and OPC ask the Commission to put their dispute in perspective as follows.

Findings of Fact

1. Missouri’s economy suffered more and is recovering more slowly than the rest of the nation’s economy, expressed as gross domestic product, with 100 as the start of the downturn, as follows.

<i>GDP</i>	<i>Nation</i>	<i>State</i>
Lowest point	95.3	91.9
June 2012	101.2	94.4

Adjusted for inflation (“real GDP”), in 2011, the nation grew by 1.5% and Missouri grew by 0.04%

2. In 2010, the unemployment rate in the KCPL service area reached 9.8%. In 2011, all the counties that GMO serves had higher unemployment rates than in pre-recession 2007.

3. Between 2007 and 2011, the Consumer Price Index (“CPI”) increased 11.58%. During that same time period, Applicants’ customers have experienced the following increases in electric rates and weekly wages (expressed as percentages).

	Average Weekly Wages	Electric Rates
KCPL		
	11.45	43.80
GMO		
MPS	11.80	32.13
L&P	14.72	46.14

Discussion

The parties offering these matters do so as a factor affecting other matters in these actions, *but seek* no conclusions of law or ruling on them, so the Commission will make none.

ii. Return on Equity

The Commission is setting Applicants' return on common equity, also called return on equity, ("RoE") at 9.7%. Because RoE is so important in determining Applicants' rates, the Commission sets forth its determination on RoE first. That primacy in this report and order does not reflect an absence of other considerations, like capital structure, that influence RoE. Many are the issues affecting an appropriate RoE:

Determining a rate of return on equity, however, is imprecise and involves balancing a utility's need to compensate

investors against its need to keep prices low for consumers.⁴⁸

The Commission's determination stands on evidence for which the foundation is unchallenged, and objections therefore waived, including the qualifications of any witness to offer an opinion as an expert.⁴⁹ As to each expert's testimony, the Commission may believe all, part, or none.⁵⁰ The most convincing evidence and argument is reflected in the Commission's findings of fact, as follows.

Findings of Fact

1. Return on equity ("RoE") influences the amount that a stock issuer pays to an investor, so it is a major factor in how much an investor is willing to pay for the stock. Applicants do not issue their own equity and debt. GPE issues debt and equity in Applicants' names.

2. To simulate an RoE for Applicants requires economic modeling. An accurate model requires accurate data, which means recent measures of comparable companies' earnings potentials and risks.

3. The three most commonly used economic models for simulating RoE are Risk Premium,

⁴⁸ *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 274 S.W.3d 569, 573-74 (Mo. App., W.D. 2009) (citations omitted).

⁴⁹ *Proffer v. Fed. Mogul Corp.*, 341 S.W.3d 184, 187 (Mo. App., S.D. 2011).

⁵⁰ *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n*, 367 S.W.3d 91, 103 (Mo. App., S.D. 2012). described more fully below.

Capital Asset Pricing Model (“CAPM”) and Discounted Cash Flow (“DCF”).

4. Risk Premium considers that debt is less risky than equity, so stock issuers must offer a premium to attract investors over bonds. Generally, the risk premium is the difference between cost of debt and return on equity. But return on equity is less subject to market forces for a regulated utility as it is for other businesses.

5. CAPM focuses on the degree of risk that distinguishes one investment from another. CAPM multiplies degree of risk (from standard references) times the risk premium (calculated as the difference between stock and a risk-free investment like a United States Treasury bond) and adds the risk-free rate to determine RoE.

6. DCF models posit that a stock’s price equals the cumulative present value of the dividends per share that the stock will pay out for the indefinite future, discounted for a present value. The discount rate is the investors’ cost of equity for that stock, which is the competitive market return that investors find acceptable to hold or purchase that stock. It can be calculated as the stock’s current dividend yield (as directly and precisely observed) plus the long term dividend growth rate (which must be estimated). Normally, this growth rate is assumed for simplicity to be constant, but in some applications it is assumed to change over time (*e.g.*, the two-stage DCF).

7. The DCF formula focuses on current stock prices and dividends, consequent current dividend yields, and predicted growth rates as follows:

$$RoE = \text{current dividend/stock price} \times (1 + \text{long-term dividend growth rate})/2 + \text{long term dividend growth rate stock price}$$

For those factors, current conditions are as follows.

<i>Factor</i>	<i>Conditions</i>
current stock dividends and prices	higher than dividends
predicted growth rates	Low
consequent current dividend yields	Lower

8. The best DCF analysis includes long-run investor expectations calculated by “sustainable” or earnings retention growth rates. Alternatives include published analyst earnings projections and historical trends. But projections may be overstated and are not necessarily reliable; and the most recent historical trend data is less useful than in the past due to recent economic disruptions.

9. From 2001 through 2012, capital costs have generally declined. Early in that period, utility bond yields averaged about 8% and 10-year Treasury yields about 5%. By 2011, those bond and Treasury yields had declined to 5.1% and 2.8%, respectively. In 2012, yields declined even further, to near or below the lowest levels in decades.

10. The reasons are several. The U.S. Treasury and the Federal Reserve Board bought U.S. government debt, which deflates interest rates.

Other factors pushing interest rates down include low inflation rates and slow economic growth. None of those phenomena will end any time soon. That trend manifests in low inflation rates, and low ten-year Treasury yields, 3-month Treasury bill yields, and Moody's Single A yields on long-term utility bonds.

11. These disruptions also make Risk Premium and CAPM useful only as a check on the results from DCF analysis. The results from DCF analysis decrease when investor expectations decrease, which happens when interest rates decrease. Therefore, as a result of current economic conditions, RoE awards have trended lower, as shown by the national averages of other state commissions' awards:

<i>Period</i>	<i>Average</i>
2011	10.22
2012 first quarter	10.84
2012 second quarter	9.92
2012 third quarter	9.78
2012 first nine months	9.97

12. For future economic growth under DCF analysis, the best measure is gross domestic product ("GDP") plus inflation ("nominal GDP"). The best projections of nominal GDPs are:

<i>Year</i>	<i>Percent</i>
2012	3.9%
2013	4.1%
2014-15	5.1%
2018-23	4.7%

13. Currently, and for the foreseeable future, utility equity investors are accepting yields considerably lower than they have in the past. Nevertheless, returns on electric utility stocks are relatively stable and Applicant's business risk has not increased since the Commission set Applicants' RoE at 10.0% on April 27, 2011. GPE's relatively strong capital structure supports a lower RoE for Applicants.

14. An RoE of 9.7 is enough for both KCPL and GMO to continue operating and to attract investment.

Conclusions of Law

Applicants have not carried their burden of proving that their RoE should be in the range they propose and, of all parties' evidence and argument, the single most persuasive is that of the federal executive agencies ("FEAs"), entities within the United States' government that are customers of Applicants.

The parties sponsored witnesses testifying to RoE ranges and recommendations as follows.

<i>Sponsor</i>	<i>Range</i>	<i>Recommendation</i>
Staff	8.00 to 9.00	9.00
OPC	9.10 to 9.50	9.40
FEAs	8.80 to 9.80	9.50
Applicants	9.80 to 10.30	10.30

Of the ranges supported by expert testimony, the authorized RoE is:

- within the FEAs’,
- between OPC’s and Applicants’, and
- outside Staff’s, as follows.

	FEAs 8.80 to 9.80		
Staff 8.00 to 9.00	OPC 9.10 to 9.50	Authorize d 9.70	Applicants 9.8 to 10.30

The Commission will discuss the parties’ cases in the following order:

- The FEAs first because their case is the most persuasive,
- Applicants and OPC next because their experts’ analyses bracket the authorized RoE, and
- Staff last because its expert’s range is the outlier.

FEAs. The FEAs suggest a range of 8.8% to 9.8%, which includes the authorized RoE of 9.7%. The Commission finds their analysis the most persuasive for several reasons. The FEAs’ expert

used the Applicants' first proxy group⁵¹ and so begins his analysis on the same footing. For growth projections, the FEAs' expert employed multiple sources of published projections, but did not rely on these alone, resulting in a more thoroughly researched result. The FEAs' expert also generously considered potential future earnings growth contribution from issuance of new common stock at prices above book value.

Applicants. Applicants suggest a range of 9.80% to 10.30%. In support of that range, Applicants offer several standard analyses, and one non-standard analysis, but all the results are exaggerated because of the values that Applicants use in the formulas.

Applicants' proxy group changed between the filing of their direct testimony and rebuttal testimony. The second group omitted three of the companies with the lowest RoE, while retaining the three companies with the highest RoE, and adding companies with higher-than-average RoEs. Inevitably, that raises the resulting RoE.

Also troubling is the DCF Terminal Value model that Applicants offer. DCF analyses look at long-term events but DCF Terminal Value looks at just four years. It is a new approach to DCF and is not in general use. Also, the proffered analysis is flawed. The DCF Terminal Value analysis stands on the premise that current low interest rates make debt less attractive to investors, who therefore invest in

⁵¹ Applicants' RoE witness changed his proxy group over the course of litigation, skewing his results, as described more fully below.

stocks at prices higher than usual. The analysis assumes that investors will pay a price-to-earnings ("P:E") ratio of 16:1 through 2016. But the analysis also claims that interest rates will soon rise, which will send investors back to debt instruments and away from stocks, undercutting the 16:1 P:E ratio on which the analysis relies.

Further, all Applicants' DCF analysis share certain flaws. They use a 5.7% GDP projected from 1971-1980 data, which is not helpful compared to the 30 most recent lower growth years, and does not reflect investor expectations. Nor does that rate account for events likely to shape GDP in the future. Given the economic conditions currently prevailing, it is not credible that investors today use a 5.7% GDP to assess their expectations for low-risk investments.

Moreover, Applicants' attempt to adjust for the economic intervention of the U.S. Treasury and the Federal Reserve Board that is lowering interest rates undercuts the DCF model itself. To an investor, a decrease in return figures into the price investors will pay for an investment only because it is a decrease, and the reason for the decrease is irrelevant whatever the cause. The markets are not wrong—RoE cannot increase when risk has not increased and capital costs have decreased.

Thus, Applicants' DCF analyses (other than Terminal Value) are sound but the variables employed exaggerate the results. Therefore, the Commission rejects Applicant's suggested range of RoEs. Nevertheless, the Commission notes that

Applicants' second proxy group has a median RoE of 9.8 percent, which is just above the authorized RoE of 9.7%.

OPC. Just below the authorized RoE is the analysis of OPC's witness. OPC's witness offers a range of 9.1% to 9.5%, based on investor expectations of both short-term growth and long-term sustainable growth, therefore employing multi-stage DCF analysis, which thus constitutes a thorough consideration. The Commission finds the analyses slightly too cautious, resulting in results too modest, so the Commission rejects it. Nevertheless, the Commission notes that, accounting more fully for the inverse relationship between risk premiums and interest rates OPC's expert analysis results in a range that includes the authorized RoE of 9.7%.

Staff. Staff suggested one range at hearing and another in briefing, but neither is entirely persuasive for the following reasons.

At hearing, Staff offered a range of 8.00% to 9.00%. In support of that range, Staff offers data from the period between 1968 and 1999. After that period, Staff alleges, industry disruptions make data unreliable, and an earlier period analogous to recent years more useful. Those arguments do not persuade the Commission that data from a remote period starting 44 years ago is more reliable for determining recent RoE than more recent data. Therefore, the Commission rejects the 8.00% to 9.00% range.

In briefing, Staff argues for an expanded range of 8.00% to 9.78%. The new upper end comes from a variety of sources including the downward trend in

national averages of other state commissions' RoE awards as the Commission has found:

<i>Period</i>	<i>Average</i>
2011	10.22
2012 first quarter	10.84
2012 second quarter	9.92
2012 third quarter	9.78

Those numbers are relevant, not because any other RoE ruling on different facts and different law helps calculate Applicants' RoE, but because Applicants must be able to attract capital. An RoE set too low will, as discussed above, unlawfully handicap Applicants when they compete for capital in the national marketplace.

Staff cites the 2012 third quarter amount—9.78%—for the high end of its expanded range. But the lower end of the expanded range comes from the discredited data discussed in the preceding paragraph. For that reason, the Commission does not entirely embrace the expanded range for RoE.

Nevertheless, the Commission notes that the authorized RoE is well within the upper end of Staff's expanded range.

Zone of Reasonableness. The national marketplace is also among the factors that help the Commission establish a zone of reasonableness for Applicants' RoE.⁵² Based on the downward trend in

⁵² *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 274 S.W.3d 569, 574 (Mo. App., W.D. 2009), citing *In re Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

national averages of other state commissions' RoE awards, the continuing downward pressure on interest rates nationally, the slower-than average recovery in Missouri, and the copious testimony of the many experts, the Commission has found a reasonable opportunity for Applicants to earn a reasonable return on their investment exists at 9.7%.

The Commission's Ruling. In proposing an RoE for Applicants, all experts agree that setting an RoE is not merely a matter of arithmetic. RoE is a multi-disciplinary exercise culminating in the application of the Commission's policy expertise. The factors influencing an RoE are legion, balancing or outweighing one another in permutations too numerous for any expert to fully catalogue, and growing exponentially as experts compare each other's models.

Among those myriad factors, the testimony indicates that a lower RoE may be appropriate for a utility that has an FAC like GMO than for a utility that does not have an FAC like KCPL, all things being equal. But no witness quantifies a difference between the Applicants, which implies that all things are not equal, and that other factors outweigh the distinction of the FAC, and support the same RoE for KCPL as for GMO: 9.7%.

An RoE of 9.7% lies within the zone of reasonableness as determined by the courts of Missouri and the United States. It will also allow Applicants to compete in the market for capital that they need to maintain their financial health, without raising rates unnecessarily. Therefore, the Commission concludes that an RoE of 9.7% for each

of the Applicants will best support safe and adequate service at just and reasonable rates, and the Commission will order that RoE.

ii. Capital Structure

The Commission is ordering a capital structure reflecting GPE's actual capital structure for each Applicant.

Findings of Fact

1. As of August 31, 2012, GPE's capital structure is 46.84% debt to 53.16% equity (52.56% common and 0.60% preferred).

2. Ordinarily, capital structure excludes short-term debt and includes long-term debt. GPE is re-financing long-term debt with short-term debt. The short-term debt excluded from GPE's capital structure is thus a temporary substitute for long-term debt. This makes the capital structure more equity-rich, which is more expensive. But GPE is consolidating the short-term debt for re-financing back into long-term debt which is likely to attract more buyers and cost less in interest.

3. GPE's capital structure also excludes other comprehensive income ("OCI"), which is ordinarily included in equity.

Discussion, Conclusions of Law, and Ruling

Applicants have carried their burden of proving that the actual capital structure of GPE as described by Applicants is more likely to support just and reasonable rates than the proffered alternatives. But the FEAs have shown that the capital structure

should include Other Comprehensive Income (“OCI”) in equity.

OPC and MEEG argue for a hypothetical capital structure of 50% debt to 50% equity. In support, they cite the exclusion of short-term debt because it is a temporary stand-in for long-term debt, which is ordinarily included in capital structure. The argument for including the short-term debt is not without merit. But its proponents have not shown how including short term debt leads to the structure of 50% debt to 50% equity. Nor have they shown how much of the shift should come from preferred equity. Their proposal lacks evidentiary support and adopting it would be merely arbitrary.

The FEAs challenge Applicants’ exclusion of OCI. Applicants argue that, while OCI is ordinarily part of equity, the relevant periods’ OCI is more accurately allocated to debt because it comes from settled interest rate derivatives’ unamortized net-of-tax income or loss. Applicants cite no provision of USoA supporting that adjustment, so they have not carried their burden of proof on that issue. Therefore, the Commission will order that OCI shall be part of equity.

The Commission concludes that safe and adequate service at just and reasonable rates has better support in a capital structure for each Applicant at the actual capital structure of GPE as Applicants describe it—46.84% debt to 53.16% equity (52.56% common and 0.60% preferred)—but including OCI, so the Commission will order that capital structure.

iii. Cost of Debt

The Commission is ordering that GPE's consolidated cost of debt be assigned to Applicants at 6.425% and is not ordering the reductions in interest suggested by Staff.

Findings of Fact

1. Aquila committed to assess debt costs to Missouri ratepayers at a rate consistent with a "BBB" credit rating. Aquila lost its investment grade credit rating and had to take on higher-cost debt.

2. When GPE acquired Aquila, now known as GMO, it boosted GMO's credit rating by guaranteeing its debt. As of July 2, 2012, all the Aquila high-cost debt is gone from GMO's books. GMO now has an investment grade credit rating. But GMO does not have ratings as high as KCPL, so GMO still pays more interest than Aquila promised to pass on to ratepayers, and more interest than KCPL has to.

3. GPE's consolidated cost of debt is 6.425%.

Discussion, Conclusions of Law, and Ruling

Applicants and Staff agree that the Commission should assign GPE's consolidated cost of debt to each Applicant, and GPE's practice of issuing securities in Applicants' names supports that practice.

Staff argues that the Commission should order each Applicant's consolidated cost of debt to be 6.187% by reducing GPE's notes as follows:

GPE Note	Recommended Reduction in Basis Points	Basis Point Estimates
\$250 million, 3-year, 2.75%	60 to 75	65
\$350 million, 10-year, 4.85%	60 to 85	65
\$287.5 million, 10-year, 5.292%	110 to 120	115

In support, Staff argues that its adjustments align GMO's cost of debt with KCPL. KCPL's rating, Staff argues, would also be GMO's but for the misdeeds of Aquila. Hence, this is one of several Aquila legacy matters.

Staff's arguments are unpersuasive. Their basis—what GMO would look like if the past were different—is speculation. By contrast, no party disputes that GMO's ratings have improved under current management. And using GPE's consolidated cost of debt is more consistent with the capital structure that the Commission has ordered, which is based on GPE's actual capital structure.

Though succeeding to assets generally means succeeding to liabilities, for Missouri citizens it also means the rescue of a distressed utility and preservation of service. Those considerations suggest that the Commission's treatment of GMO should not stray too far into punitive action. The Commission concludes that a cost of debt at 6.425% will better support safe and adequate service at just and reasonable rates.

Therefore, the Commission concludes that a cost of debt for each Applicant at 6.425%, and without Staff's proposed adjustments, will better support safe and adequate service at just and reasonable rates, so the Commission will order that cost of debt for each of the Applicants.

iv. Transmission Tracker

Applicants have not carried their burden of proving that the Commission should order deferred recording ("a tracker") for transmission costs. The issue is moot because Applicants can already determine how to record that cost by themselves, as they do with almost every cost every day, under the Uniform System of Accounts ("USoA").

Findings of Fact

1. Applicants pay to send and receive power ("transmission") through the territory of regional transmission organizations including the Southwest Power Pool ("SPP"). The costs for transmission include:

<i>Name</i>	<i>USoA Account</i>
Transmission Costs	565
Schedule 1-A Administration Charge	561 and 575
Schedule 12 Assessment Fees	928

2. SPP's regional transmission upgrade projects and increasing SPP administrative fees are increasing Applicants' transmission costs as follows.

Calendar Year	Cost (\$ million)	
	KCP&L	GMO
2012	\$18.4	\$6.8
2014	\$25.0	\$9.2
2019	\$45.2	\$16.7

Those increases represent an approximately 14% increase per year. Each of those amounts represents more than five percent of the respective applicant's income, computed before those costs.

[3 missing in original]

4. Transmission costs will continue to increase at an accelerating pace.

Discussion, Conclusions of Law, and Ruling

The Applicants ask the Commission to order deferred recording⁵³ (a “tracker”) for transmission costs. But that matter is moot because the Commission can grant no practical relief.⁵⁴ No

⁵³ Deferred recording was the subject of File No. GU-2011-0392, *In the Matter of the Application of Southern Union Company for the Issuance of an Accounting Authority Order Relating to its Natural Gas Operations* [,] *Report and Order* issued on January 25, 2012. Though that order does not constitute precedent and does not control the Commission. *McKnight Place Extended Care, L. L. C. v. Missouri Health Facilities Review Comm.*, 142 S.W.3d 228, 235 (Mo. App., W.D. 2004), the Commission finds the analysis in that order both insightful and persuasive. The event at issue in File No. GU-2011-0392 was the multi-vortex Joplin tornado of 2011.

⁵⁴ *Precision Invs., L. L. C. v. Cornerstone Propane, L. P.*, 220 S.W.3d 301, 304 (Mo. banc 2007).

practical relief is possible because Applicants can already “track” transmission cost increases under the plain language of the only authority that any party cites for a tracker.

That authority is the *Uniform System of Accounts* (“USoA”), which is the set of federal regulations that governs utilities’ recording of gains and losses (“items”). 18 CFR 201. The Commission’s regulation 4 CSR 240-40.040(1) incorporates USoA’s *General Instructions, Definitions, and Balance Sheet Accounts Assets and other Debits* (“Accounts”) into the Commission’s regulations. 4 CSR 240-40.040(1). Specifically applicable are Accounts 182 and 254, other regulatory liabilities and assets, respectively, set forth at length in Appendix C. Those provisions describe accounts for recording an item outside the year of occurrence (“deferral”) for determination in a later action.

Whether a utility may defer an item is the subject of General Instruction No. 7. General Instruction No. 7 provides that the Commission’s order is only necessary for an item that is less:

. . . than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary. [55]

“Extraordinary” describes matters subject to deferral, and does not apply to transmission cost increases, as discussed below. But even if transmission cost

⁵⁵ General Instruction No. 7.

increases were extraordinary, Applicants' evidence shows that transmission costs are not less than five percent of income. Therefore, no Commission order is needed to defer the transmission costs, and Applicants can decide for themselves whether to defer the transmission costs.

Whether to defer an item is a decision that Applicants make every day because it is simply a matter of recording. Recording any item ordinarily means assigning it to the year in which it occurred ("the period"):

[N]et income shall reflect all items of profit and loss during the period with the exception of [certain items].^{56]}

And:

All other items of profit and loss recognized during the year shall be included in the determination of net income for that year.
[^{57]}

But, if an item with far-reaching impact for Applicants and their customers falls outside the test year, omitting that item from consideration may threaten just and reasonable rates. To protect just and reasonable rates, the Commission allows deferral for:

Extraordinary items. . . . Those items related to the effects of events and transactions which have occurred during

⁵⁶ General Instruction No. 7 (emphasis added).

⁵⁷ General Instruction No. 7.1 (emphasis added).

the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future [.58]

That language examines an event's:

- Time (during current period);
- Effect (significant);
- Rarity (unusual, infrequent, not foreseeably recurring, activities abnormal and significantly different from the ordinary and typical).

Applicants have not proved that the transmission cost increases meet that standard. The projected transmission cost increases are not “extraordinary” within the legal definition because they are not rare or current.

“Rare” does not describe cost increases in the utility business generally. Specifically, Applicants’ evidence shows the following as to transmission. Transmission is an ordinary and typical, not an abnormal and significantly different, part of Applicants’ activities. Also, Applicants showed that paying more for transmission than in the previous

⁵⁸ General Instruction No. 7 (emphasis added).

year is a foreseeably recurring event, not an unusual and infrequent event. Thus, “items related to the effects of” transmission cost increases are not rare and, therefore, are not extraordinary.

As to time, Applicants project increases on a yearly basis so each projection will apply to its respective “current period[.]” But no party cites any authority under which the Commission may order deferral of an item before the item occurs. And that predetermination—a ruling on facts that have not occurred—is what makes a “tracker” different from an accounting authority order under USoA’s plain language. Thus, “items related to the effects of” future transmission cost increases are not current and, therefore, are not extraordinary.

Because Applicants have not shown that the projected transmission increases are current and will be rare, Applicants have not carried their burden of proving that the projected transmission increases are extraordinary. If the increases—once they happen prove to be less than five percent of income, Applicants may apply for an accounting authority order under the law they cite. If the projected transmission increases prove to be more than five percent of income, they will be subject to deferral without the Commission’s order.

Either way, the law provides a “regulatory mechanism to ensure that increasing SPP transmission expenses between rate cases are appropriately deferred for possible recovery in a

future rate proceeding.”⁵⁹ The only thing that the Commission is denying Applicants is a blessing upon the treatment of facts that have not yet occurred, an order for which Applicants cite no authority in the law. Whether the Commission can create a transmission tracker by regulation, or the General Assembly can create a tracker by legislation, or some other jurisdiction has already done either, does not change the result.

For those reasons, the Commission concludes that denying a tracker is consistent with the law and does not threaten safe and adequate service at just and reasonable rates, so the Commission will not order a transmission tracker.⁶⁰

v. Winter, Space Heat, and All-Electric

The Commission is changing Applicants’ respective rate designs to bring certain classes of customer closer to paying the cost of serving them (“recovery”). The Commission:

- Is not eliminating and not freezing Applicants’ residential space-heat classes.

⁵⁹ *Reply Post-Hearing Brief of (KCPL) and (GMO)* page 25, paragraph 69.

⁶⁰ This conclusion renders it unnecessary to determine whether USoA General Instruction 7 represents unconstitutional retro-active ratemaking, or single-issue ratemaking that is contrary to statute as some parties argue. No party cites any authority under which the Commission may declare a regulation unconstitutional or resort to the statutes with which its own regulation conflicts.

- Is shifting⁶¹ KCPL's costs of service away from small and general service rates and toward large power service as OPC proposes.
- Is increasing KCPL's first blocks of the residential space heating rates and winter All-Electric General Services rates, and GMO's non-residential and residential rates, as Staff proposes.
- Is not implementing the increasing residential true-up revenues by the additional 1.00%, with a corresponding equal-percentage revenue neutral decrease in the true-up revenues for all other non-lighting rate classes, proposed by signatories to the *Non-Unanimous Stipulation and Agreement Regarding Class Cost of Service / Rate Design* in File No. ER-2012-0174.
- Is not raising any monthly customer service charge.

The Commission bases those determinations on the credibility of the witnesses supporting the class cost of service studies ("CCoSSs") and other evidence, and the Commission's policy choices that, together, suggest relief as follows.

⁶¹ The parties use this term in different ways. For Staff, it means an increase in one place with no corresponding decrease in another. For Applicants and OPC, and this report and order, it means decreasing rates in one schedule and raising them correspondingly in another.

Findings of Fact

1. All of Applicant's customer classes recover their costs but some recover more than others. Recovery is among the focuses of experts in rate design because how much one class recovers determines how much other classes must recover. That creates the mechanism for one class to subsidize another, the use of which experts in rate design determine based on economic conditions, including those described in section IV.A.i of this report and order.

2. Because winter is Applicants' off-peak season, certain of Applicants' rate schedules recover less than their class's cost of service. Those schedules are, for KCPL:

- Residential general use and space heat—one meter ("RESB"),
- Residential general use and space heat—two meters separately metered, space heat rate ("RESC"),
- All-electric Small General Service ("SGS"), and
- All-electric Medium General Service ("MGS");

and for GMO:

- Residential service with space heating ("L&P MO 920 rate schedule"),
- Residential space heating / water heating—separate meter ("L&P MO 922 Frozen rate schedule"), and

- Non-residential space heating/water heating—separate meter (“L&P MO 941 Frozen rate schedule”).

3. For example, KCPL’s RESB generates a 5.859% return in the summer, but only 2.922% in the winter, and RESC generates 4.161% in the summer and only 2.284% in the winter.

4. Nevertheless, those rates recover their costs of service over the course of a year, do not constitute a discount or promotion, and do not constitute a subsidy of all-electric and space heat customers.

5. If residential space heat rates were eliminated or priced out of the market, Applicants would lose part of their winter load, and the profit margin it represents. To maintain their profitability, Applicants would have to seek that margin through other rates.

6. For example, a typical KCP&L customer’s bill would increase 24.83%. A typical GMO’s L&P customer’s bill would increase 12.58%. For GMO’s space heating customers, \$50.88 per year at the low-use end and \$674.88 for customers at the higher usage level of 4,000 kilowatt hours per month, or 17.53%. Those increases do not consider any increase ordered in this action.

7. To freeze a rate is to close it to new customers. Frozen rate tariff language has proven to be difficult to draft and administer for other services. Such a tariff has caused confusion among the utility,

customers, and the Commission. The result was multiple customer complaints and litigation.⁶²

8. On a scale in which 1.0 represents KCPL's system-average rate of return, KCPL's rate classes contribute to KCPL's rate of return as follows.

Residential	0.98
Small General Service	1.98
Medium General Service	1.28
Large General Service	1.05
Large Power Service	0.54

9. KCPL devotes \$431,849,089 of its rate base to its Large Power Service ("LP"), which generates a 3.011% return, compared to the system average return of 5.539%.

10. Rate design sometimes employs two components for billing: a periodic customer charge that does not vary with use, and a volumetric charge that varies with usage. The amount of service the customer uses determines the volumetric charge, so the volumetric charge is more within the customer's control.

Conclusions of Law

Applicants propose that any increase awarded in this report and order apply equally to all classes and rate components, after any adjustment specific to any class, and MEUAKC concurs. Staff, OPC, and

⁶² *Briarcliff Developments v. Kansas City Power & Light Company*, Case No. EC-2011-0383, *Report and Order* issued Mar. 7, 2012.

Southern Union agree, but each adds a set of adjustments to remedy the disparity in certain classes between costs and recovery. The parties' proposals include the following.

- Eliminate space heat and all-electric rates (either immediately⁶³ or gradually through freezing⁶⁴),
- Shift revenue among rate schedules,⁶⁵ and
- Raise some space heating and all-electric rates.⁶⁶

Counter-proposals and other matters arise in response. Therefore, the Commission will order that any increase awarded in this report and order apply equally to all classes and rate components, after any adjustment specific to any class, as follows.

Eliminate Space Heating and All-Electric Rates.

Southern Union d/b/a Missouri Gas Energy proposes eliminating Applicants' space-heating classes, either immediately or gradually after freezing those classes. In support, Southern Union offers several arguments. The Commission rejects that proposal as follows.

Southern Union alleges that residential space-heating rates represent an unfair subsidy from other customers, because they return less than other

⁶³ Issues List I.6.g.i. and III.7.e.i.

⁶⁴ Issues List I.6.g.ii. and III.7.e.ii.

⁶⁵ Issues List I.6.f.i. and III.7.d.i.

⁶⁶ Issues List I.6.g.iii and I.6.d; and III. e.iii and e'.

classes. The Commission has found otherwise; there is no such subsidy. Contrary to Southern Union's allegations, Applicants have shown that elimination of space heating rates would cause a hardship on Applicant's customers. Moreover, such hardship would be even greater under Southern Union's calculations. Southern Union's alternative, gradual elimination by freezing space heating rates, causes its own set of difficulties, as the Commission has learned from experience.

Southern Union also argues that residential space-heating rates are a policy relic of an earlier time, when the Commission favored electricity over natural gas for reasons that no longer exist, especially price. Southern Union cites the recent drop in natural gas prices. The Commission is aware of that development but is also aware of the investment that customers have made in reliance on those classifications, which represents a commitment that such rates represent among Applicants, customers, and the Commission. The Commission will not abandon its part of that commitment.

Southern Union asks whether it is fair that two of Applicants' customers pay different amounts for electricity just because one is all-electric? The answer is yes, if the record supports that result. Even ignoring Southern Union's obvious incentive to make electricity less attractive than natural gas, the Commission concludes that eliminating residential space heat rates—suddenly or gradually through freezing—does not support safe and adequate electric service at just and reasonable rates.

Revenue Shift among Rate Schedules. For KCPL, the low contribution to return of Large Power (“LP”) and high contribution from Small Gas Service (“SGS”) and Medium Gas Service (“MGS”) requires a remedy.

Based on KCPL’s CCoSS, which is in part the basis of the Commission’s findings, OPC proposes to increase LP as follows. It takes the difference between LP return (3.011%) and KCPL’s system-average return (5.539%). The difference is 2.528% (5.539% - 3.011%). The amount of LP rate base under-contributing is therefore \$10,917,144. (2.528% x \$431,849,089).

Using those amounts, OPC recommends shifting half the under-contributing LP rate base (\$10,917,144 x 1/2 = \$5,458,572) to decrease SGS and MGS by a 69% / 31% split: \$5,458,572 x 69% = \$3,319,366 decrease to SGS,

\$5,458,572 x 31% = \$2,139,206 decrease to MGS, with the remaining \$5,458,572 as an increase to LP.

The results are:

- LP increases by \$5,458,572, which is 50% of KCPL’s CCoSS shifts.
- MGS decreases by \$2,139,206, which is 39% of the LP increase; and
- SGS decreases by \$3,319,366, which is 61% of the LP increase.

The Commission concludes that the shifts that OPC proposes for KCPL best furthers the policy of moving rates toward recovery. That is because it represents a middle ground between the undesirable results of the

status quo (leaving disparities in recovery unaltered) and eliminating all disparities immediately (causing rate shock). The Commission concludes that OPC's proposal will best support safe and adequate service at just and reasonable rates, so the Commission will order the shifts that OPC proposes for KCPL.

Increase Space Heating and All-Electric Rates.

In this matter, the Commission must resolve two policies that, as of this date, conflict. The general consensus is that a class of customers should pay for the cost of serving them. But the Commission's finding on lingering economic hardships, as set forth in section IV.A.i of this report and order raises a reluctance to increase rates. This is especially true of residential customers, who cannot simply pass on the expense to someone else. The Commission is applying its policy-making expertise by ordering rates altered according to the proposal of Staff.

Staff proposes to gradually move recovery toward winter costs by increasing certain rates, in addition to any other revenue increase required by this report and order, as follows. For KCPL, 5% to each of the following:

- First winter block of RESB (residential general use and space heat—one meter); and
- Winter season separately metered space heat rate of RESC (residential general use and space heat—two meters). For GMO, 6% to each of the following:
- L&P MO 920 rate schedule (residential service with space heating), the two winter energy block rates;

- L&P MO 922 Frozen rate schedule (residential space heating / water heating—separate meter), the winter energy rate; and
- MO 941 Frozen rate schedule (“non-residential space heating / water heating—separate meter”).

OPC concurs as to the KCPL increases. As to all Staff’s proposed increases, the Commission concludes that safe and adequate service at just and reasonable rates finds the most support in the shifts that Staff proposes for KCPL. Therefore, the Commission will order those increases as Staff recommends.

Additional 1% for KCPL Residential Rates. The signatories to the KCPL *Non-Unanimous Stipulations and Agreements Regarding Class Cost of Service / Rate Design* agree that the Commission should increase KCPL residential true-up revenues by 1% in addition to any other increase, with a corresponding equal-percentage revenue decrease in true-up revenues for all other non-lighting rate classes. OPC objects, and AARP and CCoMO join in that objection. The objectors are correct that the slow recovery from economic woes, on which the Commission heard much testimony during local public hearings, supports no more increase in residential rates than the Commission has already reluctantly ordered. Therefore, the Commission will rule in favor of OPC and against the 1% residential increase that OPC opposes.

Customer Charge⁶⁷ OPC asks the Commission that any increase in residential rates not apply to the

⁶⁷ Issues List I.6.f.ii and III.7.d.2.

monthly customer charge. AARP and CCoMO concur. Because volumetric charges are more within the customer's control to consume or conserve, the volumetric rate is the more appropriate to increase. Therefore, the Commission will order that any increase in residential rates should not apply to the monthly customer charge.

Rulings. The Commission concludes that the grant and denial of rate shifts and increases as described above will best support safe and adequate service at just and reasonable rates, so the Commission will order those shifts and increases accordingly.

vi. PURPA

Staff seeks a determination that the Commission and Applicants need take no further actions under certain federal laws. That request has no opposition from any party.

Findings of Fact

1. To address the four Energy Independence and Security Act of 2007 ("EISA") standards, the Commission established Files No.

a. EW-2009-0290 ("IRP Docket");⁶⁸

b. EW-2009-0291 ("Rate Design Docket");⁶⁹ and

⁶⁸ *In the Matter of the Consideration of Adoption of the PURPA Section 111 (d)(16) Integrated Resource Planning Standard as Required by Section 532 of the Energy Independence and Security Act of 2007.*

⁶⁹ *In the Matter of the Consideration of Adoption of the PURPA Section 111 (d)(17) Rate Design Modifications to Promote*

c. EW-2009-0292 (“Smart Grid Docket”).⁷⁰

In each of those files, the Commission issued its *Order Finding Consideration / Implementation of New Federal Standards through Workshop and Rulemaking Procedures Is Required*,⁷¹ stating at page 5:

The Commission has satisfied the requirements for consideration of the new EISA standards, and on the basis of the quasi-legislative record created in these workshops, the Commission determines that no comparable standards have been considered that would constitute prior state action and prohibit the Commission from taking any further action in relation to the new EISA standards[.]

3. The Commission promulgated a rulemaking in File No. EX-2010-0368,⁷² as a result of which Commission regulations 4 CSR 240-20.093, 20.094, 3.163, and 3.164The rules became effective on May 30, 2011.

Energy Efficiency Investments Standard as Required by Section 532 of the Energy Independence and Security Act of 2007.

⁷⁰ *In the Matter of the Consideration of Adoption of the PURPA Section 111 (d)(18), Smart Grid Investments Standard, and the PURPA Section 111 (d)(19), Smart Grid Information Standard, as Required by Section 1307 of the Energy Independence and Security Act of 2007.*

⁷¹ Issued on November 23, 2009.

⁷² *In the Matter of the Consideration and Implementation of Section 393. 1075, The Missouri Energy Efficiency Investment Act.*

3. The Commission's promulgation of a rulemaking revising Chapter 22 Electric Resource Planning Rules in File No. EX-2010-0254⁷³ became effective on June 30, 2011.

4. The Commission opened a repository on December 29, 2010, for information concerning the Smart Grid in Missouri as File No. EW-2011-0175. In File No. EW-2011 0175, on January 13, 2011, Staff, filed the *Missouri Smart Grid Report* Among other things, the *Missouri Smart Grid Report* presents issues and concerns and identifies key issues requiring further emphasis, including Smart Grid deployment, planning, implementation, cost recovery, cyber security and data privacy, customer acceptance and involvement, and customer savings and benefits. It recommends the Commission hold a Smart Grid workshop every six months for information exchange and sharing of best practices and educational opportunities; and also recommends the Commission open a docket to address cost recovery issues.⁷⁴

5. The Commission has also held Smart Grid conferences on June 28, 2010, and November 29, 2011, and the Smart Grid was also the recent subject of the *PSCconnection*, a publication of the Commission. On July 17, 2012, the Commission issued an *Order Directing Notice and Directing Filing* in File No. EW-2013-0011 to gather

⁷³ *In the Matter of a Proposed Rulemaking Regarding Revision of the Commission's Chapter 22 Electric Utility Resource Planning Rules.*

⁷⁴ Section 393.1075.3, RSMo Supp. 2012.

information related to cyber vulnerabilities and the integrity of the electric utilities' internal cyber security practices. This workshop proceeding provides another opportunity for the Commission to explore issues and take action related to the PURPA Smart Grid Investments standard. The Commission on October 5, 2012 issued a *Notice And Order Setting On-The-Record Proceeding* scheduling an on-the-record proceeding in File No. EW-2013-0011 for November 26, 2012 regarding cyber security practices.

6. In 2009, Governor Nixon signed Senate Bill 376, the "Missouri Energy Efficiency Investment Act," with a stated policy ⁷⁵ to "value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs."

7. The Commission has a workshop docket, Case No. EW-2010-0187, open to investigate how to achieve its statutory responsibilities under the Missouri Energy Efficiency Investment Act ("MEEIA"),⁷⁶ among other things, within the background of Federal Energy regulatory Commission ("FERC") policies that eliminate barriers to demand response and that direct the Midwest Independent Transmission System Operator ("MISO") and the Southwest Power Pool ("SPP") to accommodate state policy regarding retail customer demand-side activity.

⁷⁵ Section 393.1075, RSMo. Supp. 2012.

⁷⁶ File No. EO-2012-0008.

8. On December 22, 2011, KCPL⁷⁷ and GMO⁷⁸ each submitted a MEEIA application.

9. KCPL dismissed its action on February 17, 2012. The Commission closed that file on March 6, 2012. Nevertheless, the Commission has in place the framework necessary to make a determination on the associated PURPA principles.

10. In GMO's action, certain parties filed the *Non-Unanimous Stipulation And Agreement Resolving KCP&L Greater Missouri Operations Company's MEEIA Filing* ("GMO MEEIA settlement"), filed in File No. ER- 2012-0175 as Exhibit No. 392.⁷⁹

11. On November 7, 2012, in File Nos. ER-2012-0174 and ER-2012-0175, the Commission issued an *Order Incorporating Unopposed Non-Unanimous Stipulations And Agreements* in which it incorporated, as if fully set forth at length, the GMO MEEIA agreement as modified by the October 26, 2012 *Non-Unanimous Stipulation And Agreement Regarding Low-Income Weatherization And Withdrawal Of Objection And Request For Hearing* and October 29, 2012 *Non-Unanimous Stipulation And Agreement Resolving KCP&L Greater Missouri Operations Company's MEEIA Filing*, among other documents.

⁷⁷ File No. EO-2012-0009.

⁷⁸ On November 19, 2012.

⁷⁹ Section 393.135, RSMo 2000.

12. On November 15, 2012, the Commission in File No. EO-2012-0009 issued an *Order Approving Non-Unanimous Stipulation and Agreement Resolving KCP&L Greater Missouri Operations Company's MEEIA Filing*.

Discussion, Conclusions of Law, and Ruling

The Commission must consider and determine whether to implement each of the four “new” Public Utility Regulatory Policies Act of 1978 (“PURPA”) Section 111(d) standards for electric utilities established by Congress through the Energy Independence and Security Act of 2007 (“EISA”) so as to carry out the purposes of PURPA, which are to encourage:

- (1) conservation of electric energy,
- (2) efficiency in the use of facilities and resources by electric utilities, and
- (3) equitable rates to consumers of electricity.⁸⁰

If the Commission determines that a standard is appropriate to carry out the above-noted purposes, but declines to implement it, the Commission must state in writing its reasons. The law required the Commission to complete its consideration and determination of each standard no later than December 19, 2009. Absent such determination, the Commission is to consider whether or not it is appropriate to implement such standard to carry out

⁸⁰ *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges for Electric Service, Report and Order*, issued May 4, 2011.

the above noted purposes in the first general rate case for each individual electric utility commenced after December 19, 2010. Staff asks the Commission to consider each standard and make its determination with respect to Applicants.

PURPA Section 111(d)(16), Integrated Resource Planning Standard as required by Section 532 of EISA, requires state commission consideration of whether to implement the following:

(A) integrate energy efficiency resources into utility, State, and regional plans;

and

(B) adopt policies establishing cost-effective energy efficiency as a priority resource.

While not specifically making a determination to implement PURPA Section 111(d)(16), the Commission has promulgated rulemakings to address the principles of that section. Therefore, the Commission concludes that nothing remains for the Commission to determine in response to PURPA Section 111(d)(16) for KCPL and GMO.

PURPA Section 111(d)(17), Rate Design Modifications to Promote Energy Efficiency Investments Standard as required by Section 532 of EISA, requires state commissions to consider whether to implement:

- (1) removing the throughput incentive and disincentives to energy efficiency;
- (2) providing utility incentives for successful management of energy efficiency programs;

- (3) including the impact of energy efficiency as one of the goals of retail rate design;
- (4) adopting rate designs that encourage energy efficiency;
- (5) allowing timely recovery of energy efficiency related costs; and
- (6) offering energy audits, demand-response programs, publicizing the benefits of home energy efficiency improvements and educating homeowners about Federal and State incentives.

The Commission concludes that no further determination is needed in response to PURPA Section 111(d)(17) for Applicants.

PURPA Section 111(d)(18), the Smart Grid Investments Standard, requires the Commission to consider and determine whether the following is appropriate to implement to carry out the purposes of PURPA:

- (A) **IN GENERAL**—Each State shall consider requiring that, prior to undertaking investments in non-advanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including—
 - (i) total costs;

- (ii) cost-effectiveness;
 - (iii) improved reliability;
 - (iv) security;
 - (v) system performance;
 - (vi) and societal benefit.
- (B) **RATE RECOVERY**—Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.
- (C) **OBSOLETE EQUIPMENT**—Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

PURPA Section 111(d)(19), the Smart Grid Information Standard, requires the Commission to consider and determine whether it is appropriate that all electricity purchasers and other interested

parties should be provided access to information from their electricity provider related to, among other things, time-based prices, usage, and sources of power and type of generation, with associated greenhouse gas emissions for each type of generation, to the extent such information is available on a cost-effective basis, so as to carry out the purposes of PURPA. The standard appears in EISA as follows:

- (A) STANDARD.—All electricity purchasers shall be provided direct access, in written or machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B).
- (B) INFORMATION.—Information provided under this section, to the extent practicable, shall include:
 - (i) PRICES.—Purchasers and other interested persons shall be provided with information on—time-based electricity prices in the wholesale electricity market; and time-based electricity retail prices or rates that are available to the purchasers.
 - (ii) USAGE.—Purchasers shall be provided with the number of electricity units, expressed in kwh, purchased by them.
 - (iii) INTERVALS AND PROJECTIONS — Updates of information on prices and usage shall be offered

on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.

(iv) SOURCES—Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.

(C) ACCESS—Purchasers shall be able to access their own information at any time through the internet and on other means of communication elected by that utility for Smart Grid applications. Other interested persons shall be able to access information not specific to any purchaser through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.

The Commission has established the appropriate avenues for monitoring smart grid activities and no greater ongoing activity is needed in response to PURPA sections 111(d)(18) and 111(d)(19).

B. KCPL Only (ER-2012-0174): Additional Resource Planning

The following matter relates to KCPL only, and not to GMO.

- The Commission is not ordering procedures and standards in addition to those already provided by law for examining the prudence of environmental protection measures at Montrose and La Cygne.

Sierra Club, OPC, and the consumer groups ask the Commission to order procedures and standards, related to environmental retrofits at coal-fired plant, in addition to those already existing at law.

Findings of Fact

1. When running a power plant costs more than the revenue it generates, it is time to consider retiring the plant. Retirement of coal-fired plants is common for several reasons. The cost of complying with environmental regulations are rising. Market prices for natural gas and wholesale electricity are declining. The availability of alternative resources like renewable energy and energy efficiency are growing. Those trends make sales of electricity off-system less profitable.

2. KCPL owns 50 percent of the coal-fired La Cygne generating plant. The only other owner of La Cygne is Westar. That power plant has two units, one of which started operating in 1973 and the other of which started operating in 1977.

3. KCPL also owns Montrose Generating Station, which consists of three coal-fired generating units built in 1958, 1960, and 1964

4. To comply with environmental standards, KCPL is investing a highly confidential amount in Montrose and approximately \$1.23 billion in La Cygne. Of that latter amount, Westar will pay 50 percent to KCPL when the work is done, which will be approximately June 2015. KCP&L's 2012 IRP filing addresses the economics of retrofitting coal units at La Cygne and Montrose versus retiring them.

Discussion, Conclusions of Law, and Ruling

In support of its proposed orders for more procedures and standards, Sierra Club alleges that retrofitting La Cygne and Montrose is economically inefficient, but the Commission will not pre-determine the prudence of those expenses.

Sierra Club also cites the possibility of rate shock because the Commission cannot include the retrofit costs in rates not until that work is done. That is because of an initiative passed in 1976:

Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully

operational and used for service, is unjust and unreasonable, and is prohibited.⁸¹

That provision bars construction work in progress (“CWIP”), like the retrofit, from rate base and makes graduated accommodation nearly impossible. Sierra Club also cites the possibility of imprudent expenditures. On those bases, Sierra Club, OPC AARP, and the Consumers Council of Missouri ask the Commission to prescribe an ongoing formal procedure during retrofitting.

Sierra Club acknowledges the existence of the Integrated Resource Planning (“IRP”) procedure, KCPL’s informational meetings with Staff and OPC, and the Commission’s periodic prudence reviews. Nevertheless, Sierra Club alleges that some kind of ongoing formal hearing procedure would benefit shareholders and customers. The cost of such proceedings to rate-payers does not figure into Sierra Club’s proposal. Absent a full analysis of the effects on ratepayers, Sierra Club’s proposals are

⁸¹ Section 386.490.2, RSMo 2000. Another standard of proof appears in the statutes for “[a]ll proceedings arising under the provisions of” chapter 386, RSMo: A “party . . . seeking to set aside any . . . order of said commission [must] show by clear and satisfactory evidence that the . . . order of the commission complained of is unreasonable or unlawful as the case may be. Section 386.430, RSMo 2000. Clear and satisfactory evidence is a standard higher than the preponderance of the evidence. *State ex rel. Taylor v. Anderson*, 254 S.W.2d 609, 615 (Mo. Div. 1, 1953). Missouri courts equate it with clear and convincing evidence. *Hackbarth v. Gibstine*, 182 S.W.2d 113, 118 (St.L. Ct. App. 1944). The Commission need not decide whether the higher standard applies because GMO did not meet the lower preponderance of evidence in addressing the previous rulings.

unpersuasive as a matter of fact and policy. Moreover, no rulemaking, IRP, or prudence review is before the Commission in this contested case.

The Commission concludes that the proposed additional standards and procedures do not support safe and adequate service at just and reasonable rates, so the Commission will not order the proposed procedures or standards for KCPL in this contested case.

C. GMO Only (ER-2012-0175)

The following matters relate to GMO only, and not to KCPL.

- Crossroads: the Commission is updating, but not changing, the method of valuing amounts to include in MPS rate base, and exclude transmission costs
- Off-System Sales: the Commission is making no ruling because none is sought.
- FAC: The Commission is not changing the sharing percentage, ordering flow-through of both gains and losses for REC flow-through, excluding transmission costs, continuing current reporting, and ordering new tariff terminology.

i. Crossroads

The parties dispute the value for MPS rate base of the Crossroads as to physical plant, depreciation, accumulated tax set-off and transmission costs. The Commission already ruled on these issues in GMO's last general rate action ("previous rulings"), which

was in File No. ER-2010-0356.⁸² GMO asks to increase the amounts in rate base attributable to Crossroads. Dogwood Energy, LLC, (“Dogwood,”) which owns a generating facility), and Staff oppose that claim. MECG, MEUG, and Ag Processing, Inc. a Cooperative (“Ag Processing,” a customer) ask to reduce those amounts. No party has shown that the Commission should change its previous rulings. The Commission incorporates, as if fully set forth its findings of fact and conclusions of law from the previous rulings and recapitulates only the most salient facts relevant to Crossroads’ valuation only as necessary to show how the movants for change have failed to meet their burden of proof.

Generally. The following matters relate generally to both valuation and transmission costs.

Findings of Fact

1. GMO’s MPS service area receives part of its power from Crossroads Energy Center (“Crossroads”), a generating facility in Clarksdale, Mississippi.

2. In the previous rulings, the Commission determined that the fair market value of Crossroads was \$61.8 million before depreciation and deferred taxes.

3. In the previous rulings, the Commission denied the costs of transmitting power from Crossroads to MPS territory.

⁸² Case No. WD75038, *KCPL&L v. Missouri Public Service Comm’n*.

Discussion, Conclusions of Law, and Ruling

The parties may seek review of matters already determined under the previous rulings before the current Commission, which may alter those rulings.

Every order or decision of the commission . . . shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission[.⁸³]

But even if GMO met its burden of proof, administrative and judicial economy would support a reservation of ruling in this report and order. That is because the previous rulings are pending before the Court of Appeals.⁸⁴ Departure from the previous rulings before the

Court of Appeals has reviewed them invites confusion and uncertainty to these matters for all involved.

Plant, Depreciation, Taxes. The parties dispute the value that Crossroads represents for MPS rate base, including physical plant, depreciation, and deferred taxes. GMO has not shown that GMO's proposed valuation best supports safe and adequate service at just and reasonable rates. The preponderance of the evidence shows the updated values as follows.

⁸³ File No. ER-2010-0356, *Report and Order* page 96.

⁸⁴ *Springfield Gas & Elec. Co. v. PSC*, 10 F.2d 252, 255 (W.D. Mo. 1925); and *State ex rel. Missouri Water Co. v. PSC*, 308 S.W.2d 704, 717 (Mo. 1957).

Findings of Fact

1. Crossroads is the property of the City of Clarksdale, Mississippi. GMO neither owns nor leases any part of Crossroads. GMO has a capital lease on the power generated at Crossroads that includes the duty to pay for, and the right to inspect, Crossroads operations.

2. GMO uses Crossroads power for peak demand in the summer. Crossroads runs less than half of the summer's days and has never run in the winter. Nevertheless, GMO pays for gas to be available in the winter.

3. The previous rulings recognized that Crossroads represents some value to GMO customers, and based valuation upon the market for the same technology, and on GPE's valuation of Crossroads in filings with the United States Securities and Exchange Commission ("SEC").⁸⁵

4. In a Joint Proxy Statement/Prospectus and amendments filed with the SEC between May and August 2007, Aquila (GMO under its previous name and management) and GPE stated three times that the fair market value of Crossroads was \$51.6 million. Aquila and GPE stated that they based the evaluation on sales of comparable assets.

5. The comparable assets were combustion turbines of the same type as those in Crossroads. Aquila Merchant installed the turbines in two Illinois facilities: Raccoon Creek and Goose Creek, both of which facilities it sold at a loss. Aquila Merchant

⁸⁵ 4 CSR 240-20-030.

(Aquila's unregulated affiliate) sold other turbines to utilities in Nebraska and Colorado at a loss. Aquila Merchant returned the last of those turbines to the manufacturer and, in so doing, surrendered to the manufacturer the deposit it had put down on that turbine. Those sales occurred between 2006 and 2008.

6. Aquila Merchant also tried to sell Crossroads, but could come to terms with no buyer, so it transferred Crossroads to a subsidiary of Aquila. Aquila became financially distressed and GPE bought it, thus acquiring Crossroads. GPE also tried, but failed, to sell Crossroads to an outside buyer. GPE sold Crossroads to Aquila, which it later renamed GMO.

7. Using the same valuation principles as in the previous rulings, the value of Crossroads updated as of August 31, 2012, is \$62,609,430. Based on a fair market value of Crossroads at \$62,609,430, the applicable depreciation is \$10,033,437 and the deferred tax due on Crossroads is \$4,333,301.

Discussion, Conclusions of Law, and Ruling

The parties agree generally that depreciation and accumulated taxes must follow the valuation of physical plant.

GMO argues that Crossroads' rate base value is GMO's depreciated net original cost, sometimes called depreciated book value, of \$82.7 million. In support, GMO offers case law from another jurisdiction,⁸⁶ which states that all evidence bearing

⁸⁶ 4 CSR 240-20.015(2)(A).

on value is relevant, but pre-dating the Commission regulation that adopts USoA.⁸⁷ USoA defines cost as beginning with the amount incurred by the entity that first put the asset to public service. GMO relies on Aquila's building costs, the price in a transaction between affiliated entities GPE and GMO, and an estimate expressly designed to justify the price paid in that transaction, none of which are persuasive.

Holding GMO to those statements nonetheless, MEGC suggests that, if the Commission departs from its previous rulings, the Commission should embrace the values that GPE and GMO (then Aquila) assigned in its filings with the SEC.

MEGC also cites the Commission's affiliate transaction rule, which sets the cost of goods from an affiliate at the lesser of either (i) fully distributed cost or (ii) fair market price.⁸⁸ Staff emphasizes fair market price as determined in the previous rulings. Then, as now, Staff argues, the fair market price is determinable from the sales of the comparable Raccoon Creek and Goose Creek facilities. The Commission stated:

The ten 75 MW General Electric model 7EA combustion turbines installed at Raccoon Creek and Goose Creek that Aquila Merchant sold to AmerenUE in 2006 are ten of the eighteen combustion turbines Aquila Merchant bought at the same time. Four of

⁸⁷ File No. ER-2010-0356, *Report and Order*, page 94 (citations omitted).

⁸⁸ File No. ER-2010-0356, *Report and Order*, page 99.

those eighteen were installed at Crossroads. The turbines sold at an average installed cost of \$205.88 per kW. Based on that average installed cost of \$205.88 per kW, the 300 MW of combustion turbines at Crossroads would have an installed cost of \$61.8 million.⁸⁷

Staff provides an analysis based on that method in direct testimony on its true-up accounting schedules. That amount is less than GMO's cost figure and therefore controls. In this regard, the arguments for maintaining the status quo analysis rebuts GMO's claim for a higher amount in rate base.

Finally, MEUG and Ag Processing succinctly suggest that the MPS rate base value of Crossroads is zero. The argument has an elegant simplicity. After all, GMO does not own or lease Crossroads. And constructing a surrogate value for Crossroads is not the only way to account for the power that GMO buys from the City of Clarksdale, Mississippi. But the evidence does not weigh in that direction. The Commission rejected Staff's argument to disallow Crossroads from rate base entirely in the previous rulings⁸⁹ because some benefit from distant Mississippi does reach the MPS customers and that remains true today. Therefore, the Commission will not value Crossroads at zero.

⁸⁹ MEUG spares its readers no gruesome detail. *Initial Post-Hearing Brief of [MEUG] (GMO Issues)*, pages 59-73. reasonable rates for MPS, so the Commission will order those amounts to be included in GMO's MPS rate base.

Crossroads is a relic of the failed utility Aquila. A full recital of Aquila's tortured history is unnecessary to the Commission's rulings,⁹⁰ because it only raises the issue of how long the Commission will visit the sins of the predecessor on the successor. It is true that GMO is the same legal entity as Aquila, but it is also true that management is different.

Therefore, the Commission will order that the value of Crossroads for GMO's MPS rate base shall be \$62,609,430 without transmission cost. At that value, GMO and Staff agree, the accumulated depreciation is \$10,033,437 and the accumulated deferred taxes are \$4,333,301. Those values best support safe and adequate service at just and reasonable rates for MPS, so the Commission will order those amounts to be included in GMO's MPS rate base.

Transmission Costs. GMO asks the Commission to depart from the previous rulings and include in MPS rates the costs of transmitting power from Crossroads to MPS territory but it has not carried its burden of proof on that claim.

Findings of Fact

1. Crossroads is 500 miles from GMO's MPS territory.

2. Between the territory of MPS and Crossroads are the territories of regional transmission organizations ("RTOs"). RTOs collect payment for the transmission of power through their territories. GMO

⁹⁰ *Nantahala Power and Light Co. v. Thornburg*, 476 U.S. 953, 972 (1986).

does not belong to all those RTOs so GMO must pay higher fees for transporting power than to an RTO of which GMO is a member.

3. There are generating facilities closer, including Dogwood's facility and the South Harper plant. Even though Crossroads provides power for GMO only during half of the days in the summer, GMO pays about \$5.2 million to transmit power from Crossroads all year round. The high cost of transmission is not outweighed by lower fuel costs in Mississippi.

Discussion, Conclusions of Law, and Ruling

GMO has not carried its burden of proof on transmission costs. GMO alleges that the lower price of fuel in Mississippi outweighs the cost of transmission. The Commission has found that the evidence preponderates otherwise.

GMO also argues that the Commission must include transmission costs because FERC has approved a rate for that service. In support, GMO cites opinions providing that the Commission cannot nullify FERC's rate or any other FERC ruling.

But as Dogwood explains, and Staff and MEGG agree, those opinions do not bar the Commission from determining the prudence of buying power from Crossroads. For example:

Without deciding this issue, we may assume that a particular quantity of power procured by a utility from a particular source could be deemed unreasonably excessive if lower cost power is available elsewhere, even though the higher cost power actually purchased is

obtained at a FERC-approved, and therefore reasonable, price. [91]

In other words, FERC's rate-setting for a facility requires neither the purchase of power, nor approval of that purchase, from that facility.

Moreover, in the presence of a FERC-approved rate, the courts have opined that review of cost prudence remains within the Commission's jurisdiction.

Regarding the states' traditional power to consider the prudence of a retailer's purchasing decision in setting retail rates, we find no reason why utilities must be permitted to recover costs that are imprudently incurred; those should be borne by the stockholders, not the rate payers. Although Nantahala underscores that a state cannot independently pass upon the reasonableness of a wholesale rate on file with FERC, it in no way undermines the long-standing notion that a state commission may legitimately inquire into whether the retailer prudently chose to pay the FERC-approved wholesale rate of one source, as opposed to the lower rate of another source.^[92]

⁹¹ *Kentucky W. Virginia Gas Co. v. Pennsylvania Pub. Util. Comm'n*, 837 F.2d 600, 609 (3d Cir. 1988).

⁹² Section 386.266.1, RSMo Supp. 2012.

And to recognize the marginal value of purchased power from Crossroads does not constitute an endorsement of its inflated cost.

Therefore, the Commission concludes that including the Crossroads transmission costs does not support safe and adequate service at just and reasonable rates, and the Commission will deny those costs.

ii. Off-System Sales Margins

Staff expresses concerns at the amount of negative margins in GMO's off-system sales compared to other regulated electric companies and asks the Commission to urge GMO to do better. GMO promises to try. No party seeks any relief on this matter any longer so the Commission will order none, and no further findings of fact and conclusions of law are required..

iii. Fuel Adjustment Clause

The fuel and purchased power adjustment clause ("FAC") is, essentially, a device by which GMO can pass increases or decreases in fuel or purchased power costs to its customers without a general rate action.

AARP and CCoMO argue for an end to GMO's FAC, and all FACs, on policy grounds. But the General Assembly has determined that the Commission shall have discretion to order an FAC. AARP and CCoMO have not shown that an FAC for GMO makes safe and adequate service at just and reasonable rates impossible, so the Commission will not grant AARP and GMO's request.

For GMO's FAC, the Commission is ordering:

- No change in the sharing mechanism.
- Flow-through of revenues from excess RECs.
- Specific exclusion of Crossroads transmission costs.
- Continued reporting.
- New tariff language.

Sharing Percentages. The sharing percentage splits fuel and purchased power price fluctuations between GMO and its customers.

Findings of Fact

1. The essence of the current FAC is that fluctuations in the price of fuel and purchased power, up or down from an established baseline, pass through to GMO customers at 95%, the remaining 5% is GMO's to pay or retain.

2. The record shows no incident of imprudent GMO purchasing.

3. The 95%-5% sharing has been enough incentive for GMO to maintain prudence in its purchases.

Discussion, Conclusions of Law, and Ruling

In simplified terms, an FAC measures fluctuations in the price that GMO pays for fuel and purchased power and allows GMO to pass such fluctuations through to customers between general rate actions:

1. [...] periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation.^[93]

An FAC must not compromise the opportunity to earn a fair rate of return; and include periodic true-ups, prudence reviews, refunds, and review during a general rate action.⁹⁴ The statutes also allow incentives to look for lower prices:

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.^[95]

Among those incentives is the sharing percentage.

Essentially, under the current sharing percentage, of any price decrease, GMO gets to keep 5% and the rest passes on to customers in the form of a rate decrease. And of any price increase, GMO has to pay 5% and the rest passes on to customers in the form of a rate increase. Staff proposes an 85%-15% split.

⁹³ Section 386.266.1, RSMo Supp. 2012.

⁹⁴ Section 386.266.1, RSMo Supp. 2012.

⁹⁵ *State ex rel. Noranda Aluminum, Inc. v. Pub. Serv. Comm'n of State*, 356 S.W.3d 293, 314 (Mo. App., S.D. 2011).

In support, Staff alleges that the current split does not give GMO enough incentive to seek the best prices. In support, Staff offers evidence related to GMO's satisfaction with the current split, its transactions with KCPL, and its use of short-term purchase contracts. None of that is persuasive because Staff has cited no incident of imprudent purchasing. "[M]ere speculations . . . do not demonstrate that the Commission act[s] unreasonably in permitting this particular FAC."⁹⁶

The Commission concludes that GMO's current FAC sharing percentages of 95%-5% better support safe and adequate service at just and reasonable rates than 85%-15%, so the Commission will order GMO's current percentages for GMO's FAC.

REC Flow-Through. Staff proposes that, if GMO has more renewable energy certificates than it needs for compliance with the renewable energy laws⁹⁷ ("excess RECs"), and GMO sells those excess RECs, the proceeds must pass through the FAC like a fuel price decrease. GMO proposes that the costs of those RECs pass through the FAC, too, like a fuel price increase. Staff's proposal is consistent with law and GMO's proposal is contrary to law as follows.

Findings of Fact

1. When GMO customers pay their bills, GMO uses that money for a variety of purposes, including purchasing power. GMO has agreements to purchase

⁹⁶ Section 393.1030, RSMo Supp. 2012; and Commission regulation 4 CSR 240-20.100.

⁹⁷ Section 386.266.1, RSMo Supp. 2012.

power from sellers of renewable energy, including wind and methane. Purchases or use of power from those sources generate renewable energy certificates (“RECs”).

2. RECs are a measure of compliance with laws promoting the use of renewable energy. When purchasing power, the REC does not cost extra. If GMO has more RECs than it needs to satisfy the requirements of law (“excess RECs”), it is prudent practice to sell them.

3. Because GMO customers paid the money that generated the REC, if GMO sells the REC, it sells something that the customers bought.

Discussion, Conclusions of Law, and Ruling

The FAC law provides that the Commission may use GMO’s FAC to encourage efficient fuel and power purchasing:

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. [97]

Making sure that GMO does not retain the revenue from excess RECs constitutes an incentive to purchase renewable power efficiently.

GMO proposes to pass the costs of excess RECs on to customers through the FAC but Staff cites 4 CSR 240-20.100(6)(A)16, which bars GMO’s proposal:

RES compliance costs shall only be recovered through an RESRAM or as part of a general rate proceeding and shall not be considered for cost recovery through an environmental cost recovery mechanism or fuel adjustment clause or interim energy charge.

That law bars the pass-through of REC costs through GMO's FAC. Even without that regulation, GMO's proposal constitutes a disincentive to purchase renewable power efficiently.

Staff's proposal supports safe and adequate service at just and reasonable rates, so the Commission will order excess REC revenues to pass through the FAC, but not the costs of RECs.

Crossroads Transmission. Several parties ask the Commission to order that GMO's FAC tariff sheets state expressly that GMO's FAC excludes transmission costs related to the Crossroads. Insofar as the Commission has determined that no transmission costs from Crossroads will enter GMO's MPS rates, there is no further dispute, and no further findings of fact and conclusions of law are required. The Commission will order GMO's FAC clarified to state that GMO's FAC excludes transmission costs related to Crossroads.

Additional Reporting. Staff and GMO dispute only whether the Commission should order the reporting in Appendix D to continue. GMO objects only to the implication that it has failed to deliver something demanded of it. That dispute requires no findings of fact and no conclusions of law because no party seeks relief on it. Therefore, without any

finding that GMO has failed to do anything listed in Appendix D, the Commission will order GMO to do, or continue to do, the reporting listed in Appendix D.

Changes to FAC Tariff Sheet Terminology. Staff asks the Commission to order GMO's FAC tariff modified to include replacement sheets that, without making substantive changes, employ standard terminology proposed for all of the Missouri regulated electrical corporations FACs. No party opposes that request so the Commission makes no findings of fact and no conclusions of law. Therefore, the Commission will order that any FAC tariff sheets filed pursuant to this report and order shall employ the language sought by Staff as set forth in the revised exemplar FAC tariff sheets.

V. Compliance Tariffs

For those reasons, the Commission will reject the tariffs and order the filing of new tariff sheets in compliance with this report and order ("compliance tariffs"). The parties request approval of such compliance tariffs effective on January 26, 2013. To accommodate that request, the Commission will expedite the effective date for this decision,⁹⁸ the filing date for compliance tariffs, and the filing date for Staff's recommendation on the compliance tariffs.

THE COMMISSION ORDERS THAT:

1. The provisions of the following documents are incorporated into this order as if fully set forth, either as the Commission's order or as a consent

⁹⁸ Section 386.490.2, RSMo 2000.

order, as described in the body of this report and order:

a. In File Nos. ER-2012-0174 and ER-2012-0175:

Document	Filed (2012)
<i>Partial Non-unanimous Stipulation and Agreement Respecting Kansas City Water Services Department and Airport Issues</i>	October 19
<i>Non-Unanimous Stipulation and Agreement as to Certain Issues Non-Unanimous Stipulation and Agreement Regarding Low-Income</i>	October 19
<i>Weatherization and Withdrawal of Objection and Request for Hearing</i>	October 26
<i>Non-Unanimous Stipulation and Agreement Regarding Praxair, Inc., Ag Processing Inc. a Cooperative and the Midwest Energy Users' Association's Objection and Withdrawal of Objection and Request for Hearing</i>	October 29

b. In File No. ER-2012-0174:

<i>Second Non-Unanimous Stipulation and Agreement as to Certain Issues</i>	November 8
--	------------

c. In File No. ER-2012-0175:

<i>Non-Unanimous Stipulation and Agreement Regarding Class Cost of Service/Rate Design</i>	October 29
--	------------

<i>Second Non-Unanimous Stipulation and Agreement as to Certain Issues</i>	November 8
--	------------

2. The first and second motions to strike, as described in the body of this report and order, are denied without ruling on the merits. The third motion to strike, as described in the body of this report and order, is denied.

3. The *Motion to Update Reply Brief* and *Motion to Provide Supplemental Authorities*, including the additional orders filed on December 26, 2012, are granted.

4. All other rulings described in the body of this report and order are made in, and incorporated into, this paragraph as if fully set forth; and, on those grounds, the tariff sheets listed in Appendix E are rejected.

5. No later than January 16, 2013:

- a. Kansas City Power and Light Company ("KCPL") shall file a new tariff consistent with the rulings described in this report and order ("compliance tariff") under File No. ER-2012-0174; and
- b. KCPL Greater Missouri Operations Company ("GMO") shall file a compliance tariff in File No. ER-2012-0175.

6. No later than January 24, 2013, the Commission's staff shall file a recommendation on the compliance tariffs.

7. No later than February 5, 2013, the information required under Section 393.275.1, RSMo 2000, and 4 CSR 240-10.060 shall be filed:

a. By KCPL in File No. ER-2012-0174;
and

b. By GMO in File No. ER-2012-0175

8. This order shall become effective on January 9, 2013.

BY THE COMMISSION

/s/ Shelley Brueggemann
Acting Secretary

[APPENDIX A – APPEARANCES (OF
ATTORNEYS) – OMITTED]

Appendix C:
USoA Accounts for Other Regulatory
Assets and Liabilities

182.3 Other regulatory assets.

A. This account shall include the amounts of regulatory-created assets, not includible in other accounts, resulting from the ratemaking actions of regulatory agencies. (See Definition No. 31.)

B. The amounts included in this account are to be established by those charges which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the

Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of developing rates that the utility is authorized to charge for its utility services. When specific identification of the particular source of a regulatory asset cannot be made, such as in plant phase-ins, rate moderation plans, or rate levelization plans, account 407.4, regulatory credits, shall be credited. The amounts recorded in this account are generally to be charged, concurrently with the recovery of the amounts in rates, to the same account that would have been charged if included in income when incurred, except all regulatory assets established through the use of account 407.4 shall be charged to account 407.3, Regulatory debits, concurrent with the recovery in rates.

C. If rate recovery of all or part of an amount included in this account is disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, or Account 435, Extraordinary Deductions, in the year of the disallowance.

D. The records supporting the entries to this account shall be kept so that the utility can furnish full information as to the nature and amount of each regulatory asset included in this account, including justification for inclusion of such amounts in this account.

18 C.F.R. § 201

254 Other regulatory liabilities.

A. This account shall include the amounts of regulatory liabilities, not includible in other accounts,

imposed on the utility by the ratemaking actions of regulatory agencies. (See Definition No. 30.)

B. The amounts included in this account are to be established by those credits which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that: Such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services; or refunds to customers, not provided for in other accounts, will be required. When specific identification of the particular source of the regulatory liability cannot be made or when the liability arises from revenues collected pursuant to tariffs on file at a regulatory agency, account 407.3, regulatory debits, shall be debited. The amounts recorded in this account generally are to be credited to the same account that would have been credited if included in income when earned except: All regulatory liabilities established through the use of account 407.3 shall be credited to account 407.4, regulatory credits; and in the case of refunds, a cash account or other appropriate account should be credited when the obligation is satisfied.

C. If it is later determined that the amounts recorded in this account will not be returned to customers through rates or refunds, such amounts shall be credited to Account 421, Miscellaneous Nonoperating Income, or Account 434, Extraordinary Income, as appropriate, in the year such determination is made.

D. The records supporting the entries to this account shall be so kept that the utility can furnish full information as to the nature and amount of each regulatory liability included in this account, including justification for inclusion of such amounts in this account.

18 C.F.R. § 201

Appendix D: Additional FAC Reporting

- As part of the information GMO submits when it files a tariff modification to change its FAC rate, GMO includes GMO's calculation of the interest included in the proposed rate;
- GMO maintains at GMO's corporate headquarters or at some other mutually agreed upon place within a mutually agreed upon time for review, a copy of each and every nuclear fuel, coal and transportation contract GMO has that is, or was, in effect for the previous four years;
- Within 30 days of the effective date of each and every nuclear fuel, coal and transportation contract GMO enters into, GMO provides both notice to the Staff of the contract and opportunity to review the contract at GMO's corporate headquarters or at some other mutually agreed upon place;
- GMO maintains at GMO's corporate headquarters or provides at some other mutually agreed upon place within a mutually agreed upon time, a copy for review of each and every natural gas contract GMO has that is in effect;

- Within 30 days of the effective date of each and every natural gas contract GMO enters into, GMO provides both notice to the Staff of the contract and opportunity for review of the contract at GMO's corporate headquarters or at some other mutually agreed upon place;
- GMO provides a copy of each and every GMO 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 to retain;
- Within 30 days of any change in a GMO hedging policy, GMO provides a copy of the changed hedging policy for Staff to retain;
- GMO provides a copy of GMO's internal policy for participating in the SPP, including any GMO sales or purchases from that market that are in effect at the time the tariff changes ordered by the Commission in this rate case go into effect for Staff to retain; and
- If GMO revises any internal policy for participating in the SPP, within 30 days of that revision, GMO provides a copy of the revised policy with the revisions identified for Staff to retain.

[APPENDIX E—Tariff Sheets Rejected—Omitted]

Case No. ER-2024-0189

SCHEDULE KM-r22

HAS BEEN DEEMED

CONFIDENTIAL

IN ITS ENTIRETY

Joshua K T. Harden
Counsel

joshua.harden@dentons.com
D +1 816 460 2535

Dentons US LLP
4520 Main Street
Suite 1100
Kansas City, MO 64111-7700
United States

大成 Salans FMC SNR Denton McKenna Long
dentons.com

December 3, 2015

BY E-MAIL

Morris Woodruff
Chief Regulatory Judge
Public Service Commission of the State of Missouri
200 Madison St.
Jefferson City, Missouri
65101

Re: Notice of Communication, Crossroads Seams Presentation, December 2, 2015 Public Agenda Meeting

Dear Judge Woodruff:

Enclosed please find a Notice of Communication regarding the KCP&L-Greater Missouri Operations, Inc. (KCP&L-GMO) agenda presentation involving seams issues related to Crossroads power plant. Per the discussion in the Agenda we submit this notice to be filed in the next future rate case of KCPL-GMO.

Should you have any questions please feel free to contact me.

Sincerely,

/s/ Joshua K T. Harden

Joshua K T. Harden
Counsel

Enclosures

cc: Dustin Allison, Office of Public Counsel
Amy Moore, Chief of Staff for Chairman Daniel Hall
Shelley Brueggemann, General Counsel
Kevin Thompson, Staff Counsel

NOTICE OF COMMUNICATION

KCP&L Greater Missouri Operations Company (“GMO”), pursuant to 4 CSR 240-4.020(11), files this notice of communication:

1. On December 2, 2015 GMO's Executive Vice President and Chief Operating Officer Scott H. Heidtbrink communicated with the Missouri Public Service Commission (“Commission”) regarding the negative impact that the integration of Entergy Corporation’s operating utilities into the Midcontinent Independent System Operator, Inc. (“MISO”) has had on GMO with regard to the cost of transmission for the Crossroads generating unit to serve customer load (“Crossroads Seams Presentation”).

2. The Crossroad Seams Presentation occurred during a public agenda meeting of the Commission. Chairman Daniel Hall, Commissioner William Kenney, Commissioner Steven Stoll, and Commissioner Maida Coleman were present in person. Commissioner Scott Rupp participated via telephone.

3. The Crossroad Seams Presentation included several power-point slides entitled "Crossroads Power Plant Discussion" which are attached as Schedule 1.

4. An archived video of Mr. Heidtbrink’s communication can be found at: <http://psc.mo.gov/General/Agendas%20and%20Minutes>

5. At the present time, Mr. Heidtbrink’s communication does not relate to an “anticipated contested case” within the meaning of 4 CSR 240-4.010(1)(A), and GMO has not filed a 60-day notice pursuant to 4 CSR 240-4.020(2). GMO expects to file a 60-day notice regarding a general rate case in the near future. The issues discussed by Mr. Heidtbrink at the December 2, 2015 public agenda meeting will likely be issues in that case.

6. GMO submits this Notice to the Secretary of the Commission to hold until GMO files such 60-day notice for a general rate case, at which time this Notice should be filed in that docket.

Respectfully Submitted,

Attorney for the Company

Dentons US LLP

/s/ Joshua Harden

Joshua Harden, Mo 57941

4520 Main St #1100

Kansas City, MO 64111

816-460-2535

joshua.harden@dentons.com

Crossroads Power Plant Discussion

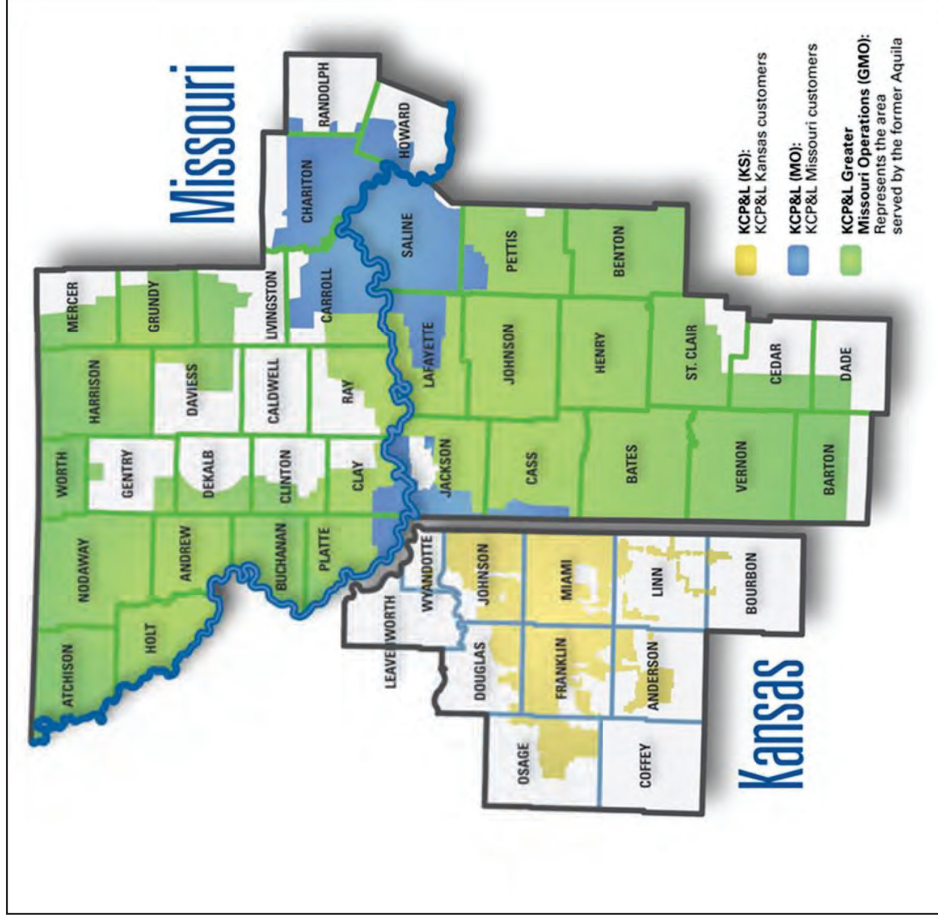
December 2, 2015

Scott Heidtbrink
Darrin Ives
Denise Buffington

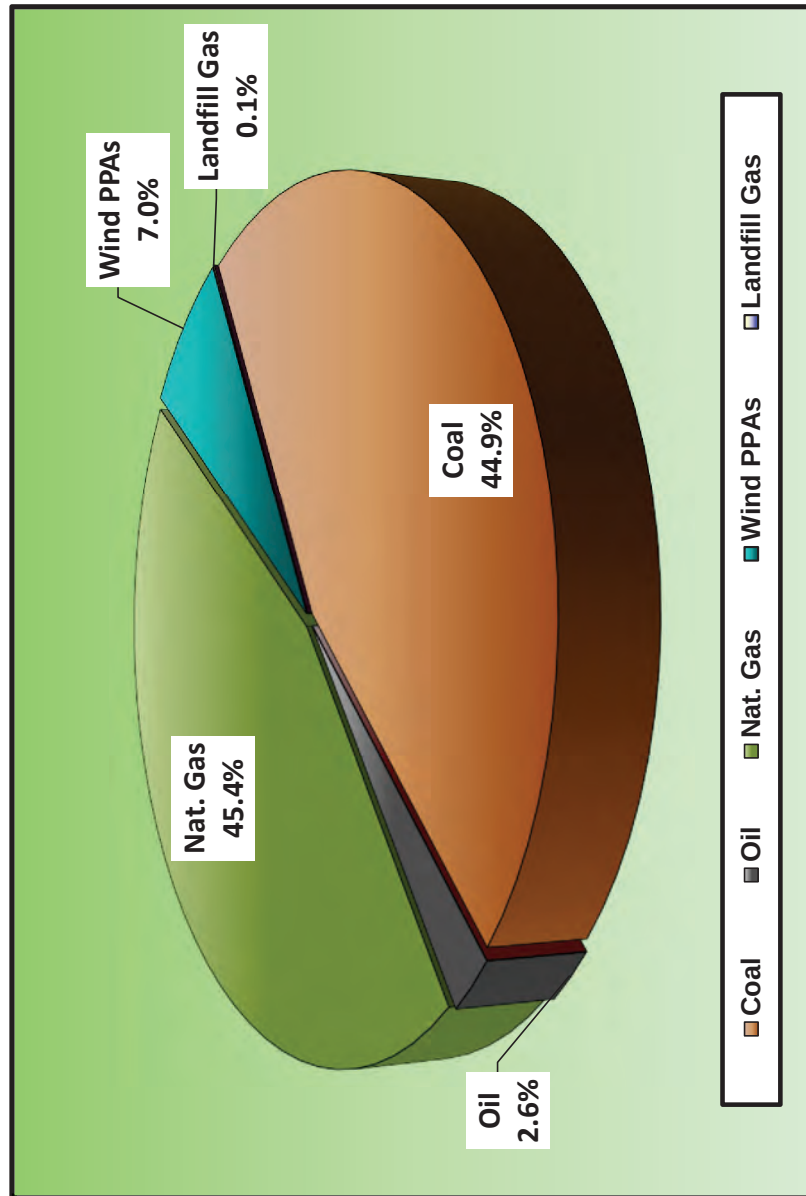


KCP&L and KCP&L GMO

- KCP&L History
 - 1882 Incorporated as Kawsmouth Electric Light Company
 - 1922 Final name change to Kansas City Power & Light Company
 - 2001 Formed Great Plains Energy Inc.
 - 2008 Merged with Aquila, which is now called KCP&L Greater Missouri Operations Company



2015 GMO Current Capacity Portfolio Mix



Capacity By Fuel Type	Capacity (MW)
Coal	1017
Oil	59
Nat. Gas	1029
Wind PPAs	159
Landfill Gas	2
Total	2266

What is Crossroads?

- KCP&L GMO generating facility
 - Completed construction in 2002
 - Total capacity of 300 MW (4 units at 75 MW each)
 - Unit type: General Electric 7EA combustion turbines
 - Fuel supply: natural gas – Texas Gas Transmission
 - Location: Clarksdale, MS (70 miles south of Memphis, TN) in Entergy's service territory (within MISO footprint effective 2013)
- Features
 - Diversified fuel supply
 - Not dependent on same gas supply as Missouri generators
 - On several days during the 2014 Polar Vortex when gas was unavailable for local GMO gas-fired generation, gas was available at Crossroads
 - In 2015, Crossroads was the second most utilized of the KCP&L GMO gas assets.
 - Low-cost accredited capacity
 - Equal to 16% of KCP&L GMO customer peak load in 2015
 - MPSC approved cost in KCP&L GMO rates: \$185/kW
 - When evaluated in 2007 for use by KCP&L GMO, equivalent new capacity would have cost over \$600/kW



Background: Crossroads the Lowest-cost Option

- In the early 2000's, Aquila Merchant Services had stranded/uneconomic` assets.
 - Discussions with Staff led to their questioning why we couldn't just leave assets in place and use transmission to deliver the power to Missouri customers.
- On numerous occasions, the Company and Staff discussed Crossroads as well as other supply options:
 - October 2007
 - Study showing Crossroads was the low cost option for Missouri customers even with transmission costs included
 - Ownership issue (issue resolved in 2008)
 - Transmission issue (issue resolved in 2009, as the Company signed a 20-year transmission agreement with Entergy)
 - August 2008 – Discussed decision to move Crossroads to GMO books and include in upcoming rate case filing
 - December 2008 – Discussed prior Crossroads evaluation and provided transmission service request update
- **The Company was able to solve both the ownership and transmission challenges and:**
 - Transmission recovery is not unprecedented (Empire's Plum Point Plant is also in Entergy/MISO and pays the same transmission rate as GMO does for Crossroads).
 - It is not unprecedented for generation resources to be located outside of Missouri, Wolf Creek, Jeffrey and Spearville are all owned assets outside of Missouri.



Current Status – KCP&L GMO is delivering generation to Missouri customers with no recovery of associated transmission costs.

- In prior rate orders (Case Nos. ER-2010-0356 and ER-2012-0175) Commission set rate base value of plant below level requested by KCP&L GMO and disallowed transmission cost recovery of approximately \$4 million/year.
 - Legal avenues for those rate orders exhausted.
- After the rate orders, Entergy joined MISO in 2013, increasing the cost of transmission for Crossroads.
 - Unrecovered transmission costs now approximately \$12 million/year (approximately \$7-8 million of which is due to Entergy joining MISO – this represents incremental transmission costs beyond the costs addressed in the rate orders).
 - The Commission has considered MISO/SPP Seams Issues previously in dockets (EO-2013-0431 and EW-2014-0156).



So why doesn't KCP&L GMO recover Crossroads transmission costs today?

- The Commission, at time of ER-2010-0356 rate order, was not happy with Aquila's handling of its previous Merchant Services and South Harper.
- It became clear in the ER-2010-0356 case that there was a push for a disallowance of Crossroads
 - The Staff had signaled that they would push for a rate base reduction based on previous Staff positions regarding capacity – and this did occur.
 - The Company did not even conceive of a transmission disallowance – which did occur as well.
 - The result of the order was an inclusion of Crossroads in rate base (at a level less than cost for KCP&L GMO) with no recovery of transmission to transport energy from the asset included in rate base to KCP&L GMO load.
- At the time of the original decision the cost to KCP&L of the transmission disallowance was approximately \$4 million/year:
 - Prevalent thought at the time was that in a few years Entergy would join SPP and then the cost would be \$0.
 - Instead Entergy joined MISO in 2013 and the cost jumped to now approximately \$12 million/year.



Options for Optimizing Value of Crossroads

- Subsequent to the 2012 Order, a cross-functional team of Company employees identified and evaluated options for maximizing the value of Crossroads for both customers and shareholders.
- The only option to status quo that remains potentially feasible (move Crossroads and equivalent KCP&L GMO load into MISO) would be cumbersome and difficult to achieve.
 - If pursued, Missouri Commission's support would be essential
- The Company continues to try to minimize the financial impacts of the price of transmission service from Entergy after it joined MISO in various FERC and court proceedings.

So Why Are We Here?

- 1) KCP&L GMO should not be negatively impacted because of Entergy's decision to join MISO.
- 2) This is an incredibly good asset for Missouri customers:
 - Crossroads was the low-cost option in the 2007 IRP.
 - With Entergy-related transmission costs, Crossroads remains the low-cost option.
 - Crossroads continues to provide operational benefits for the Company and Missouri customers as discussed earlier.
- 3) We are here to make the Commission aware of continuing issues related to Crossroads transmission.

In informing the Commission of the above points, we felt it was important to discuss the Crossroads history with the Commission at this time.

- We will not be asking this Commission to revisit the Crossroads rate base disallowance.
- We will not be asking this Commission to revisit the prior decision to disallow the \$4 million of transmission costs from the original 20-year transmission agreement with Entergy.
- We will be asking this Commission to consider the new circumstances since its prior decisions and the incremental transmission costs in light of the value of the Crossroads asset for Missouri customers.



Crossroads Power Plant Discussion

David Woodsmall - Midwest Energy Consumers' Group

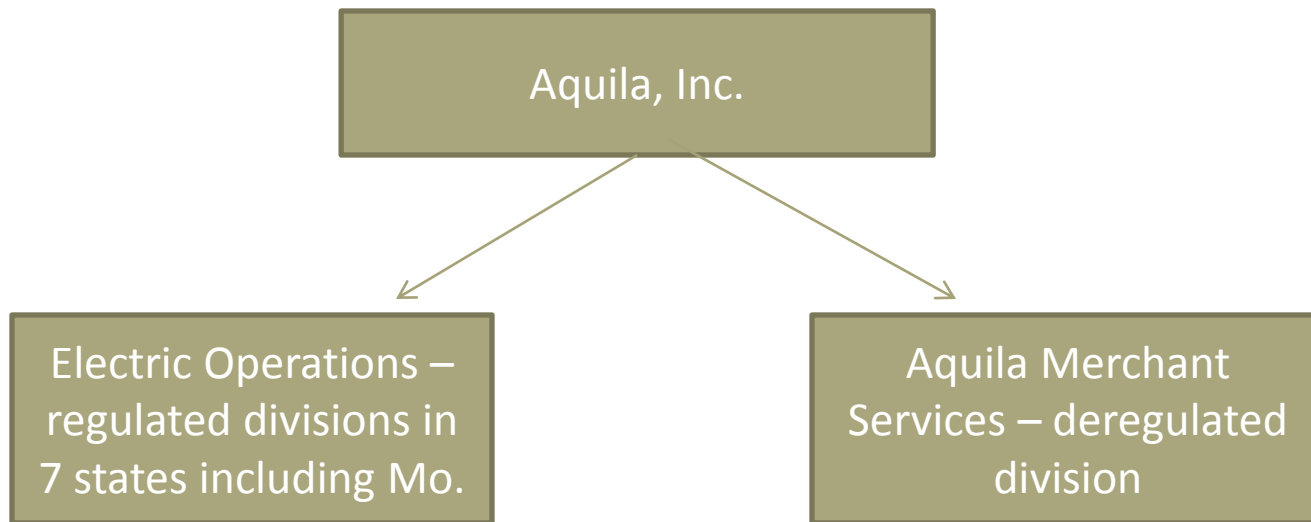
Lena Mantle – Office of the Public Counsel

Presentation

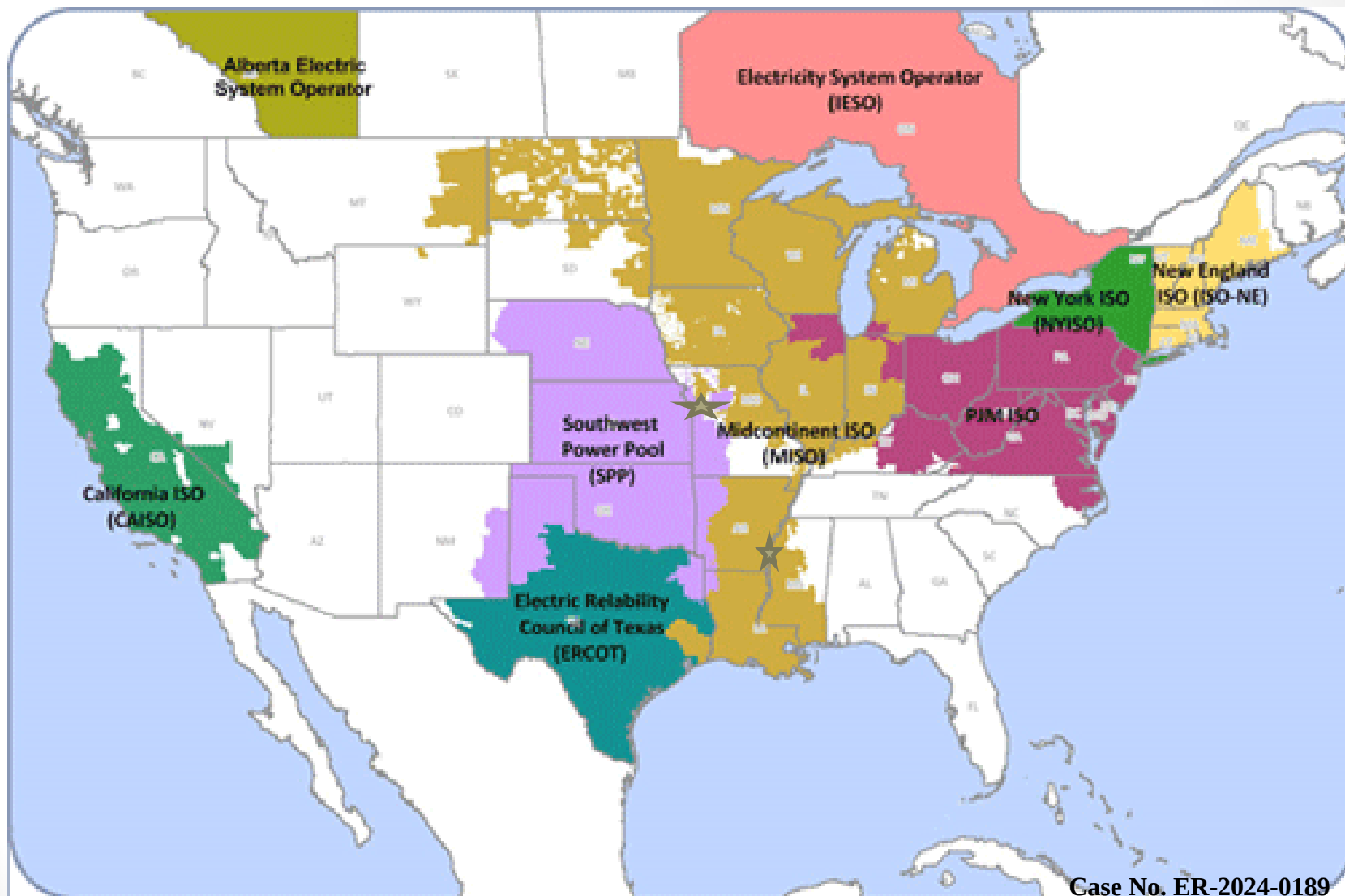
- 1) Give background on Crossroads; where it is located relative to GMO service area; and how it was acquired.
- 2) Explain GMO's historic need for capacity and Aquila's generation capacity decisions. Aquila hadn't built any capacity for 20 years.
- 3) Valuation Issues – GMO historically sought a rate base value for Crossroads above the market value
- 4) Transmission Issues – GMO historically sought to include transmission costs associated with transmitting power from Crossroads to GMO customers.
- 5) Commission valuation was based upon combustion turbines located in the same RTO as the customers. As such, there were no additional transmission costs.

Background

- Crossroads consists of four 75 MW gas-fired CT's.
- Constructed in 2002 by Aquila Merchant – a deregulated subsidiary of Aquila.



Crossroads Location



Crossroads Location

- Crossroads was located in Clarksdale to take advantage of transmission constraints. These transmission constraints in Mississippi made the purchase of outside energy cost prohibitive.
- Those same transmission constraints now make it expensive to transmit the energy from Crossroads to GMO.

Crossroads Acquisition

- The collapse of Enron resulted in a destabilization of the deregulated electric market. In 2005 and 2006, Aquila began to sell its regulated electric and gas service areas in Colorado, West Virginia, Iowa, Michigan, Kansas and Nebraska.
- In addition, Aquila Merchant was selling its deregulated operations. This included Raccoon Creek and Goose Creek CTs to AmerenUE. SEC filings indicate that Aquila repeatedly tried to sell Crossroads. Because of the transmission constraints, Aquila could not even get a bid for Crossroads.
- In 2007, Great Plains (KCPL and GMO parent) agreed to buy the remainder of Aquila and Aquila Merchants including its Missouri operations and its merchant plant at Crossroads.
- Further efforts by Great Plains Energy to sell Crossroads were a failure.

GMO Historic Need for Capacity

- In the late 90s, Aquila had a corporate policy not to build generation assets for its regulated utility operations. All construction was deregulated with the desire to sell power to regulated operations.

“Although every other investor-owned electric utility in Missouri built generation, Aquila, Inc. had a corporate policy not to build regulated generating units that it followed until it built South Harper in 2005. Instead, Aquila, Inc. relied exclusively on purchased power to meet its retail customers’ increasing demands for electricity.” [Order ER-2010-0356, Page 80]

GMO Historic Need for Capacity (cont.)

- Constructed the 580 MW Aries (now Dogwood) in 2001 as a deregulated plant. 500 MW PPA with MPS that expired in May 2005. Prior to that, GMO conducted an IRP which showed that the least cost plan was the construction of 5 combustion turbines with a capacity of 525 MWs in GMO's service territory.
- GMO did not build to its least cost plan. Instead of building 5 combustion turbines (525 MWs), GMO only built 3 combustion turbines (315 MWs at South Harper). The rest of GMO's capacity needs were met through a long-term contract with NPPD and short-term contracts with GMO's Merchant Plant Crossroads. GMO's capacity needs continued to grow.

MPS Historic Need for Capacity

Chairman Davis dissent:

- “There are ample grounds for questioning the prudence of Aquila’s management, past and present. These include: management decision to pursue unregulated business ventures that eventually caused Aquila to hemorrhage money, lose its investment grade status and some would say neglect its customers for years.”
- “There is no question Aquila’s decisions have been detrimental to its ratepayers.”
- “These issues will continue to haunt Aquila management for years to come regardless of who’s in charge.”
 - *Concurring Opinion of Chairman Davis*, Case No. ER-2007-0004, pages 11 and 12 (issued July 9, 2007).

Perfect Marriage??

- Great Plains Energy had two situations colliding:
 - First, Great Plains had a deregulated facility that it couldn't sell with capacity of 300 MWs.
 - Second, MPS had a need for capacity nearing 300 MW when the contract with NPPD ended.

Not Quite!

Problem 1: Timing

Crossroads was fulfilling capacity needs known in 2002 at a cost well above the costs GMO would have incurred had it built the five CTs its least cost plan called for in 2002.

Problem 2:

Crossroads Valuation

- GMO sought a value for Crossroads based upon its book value at time of construction (\$117.9 million).
- Great Plains SEC filings reflect the fact that Crossroads could not be sold and had a depressed value of \$51.6 million.

“The preliminary internal analysis indicated a fair value estimate of Aquila’s non-regulated Crossroads power generating facility of approximately \$51.6 million. This analysis is significantly affected by assumptions regarding the current market for sales of units of similar capacity. The \$66.3 million adjustment reflects the difference between the fair value of the combustion turbines at \$51.6 million and the \$117.9 million book value of the facility at March 31, 2007. Great Plains Energy management believes this to be an appropriate estimate of the fair value of the facility.” SEC filing from 5-8-2007.

Crossroads Valuation

Legal Standard: “The corporation may not be required to use its property for the benefit of the public without receiving just compensation for the services rendered by it. . . . We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation . . . must be the *fair value of the property being used by it for the convenience of the public*. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be extracted from it than the services rendered by it are reasonably worth.”

- *Smyth v. Ames*, 169 U.S. 466, 546-547 (1898) (emphasis added).

Problem 3: Transmission Costs

There were, and still are, significant problems and expense associated with transmitting energy from Crossroads (Mississippi) to customers (Missouri).

- A Special Protection Scheme for the Crossroads plant was necessary due to transmission constraints.
- At the time that Crossroads was transferred to GMO rate base, Clarksdale, Mississippi was surrounded by Entergy service area. Therefore, GMO paid the Entergy transmission rate. At the time, \$1.55 / kW – month.
- During the 2012 GMO rate case, Entergy had applied for membership in MISO. MISO had a much more expensive transmission rate. At the time, \$3.10 / kW – month.
- GMO was aware of the likely increase in the Crossroads transmission costs in its 2012 rate case.

Prior Commission Decisions

- The Commission has twice considered the Crossroads valuation and transmission issues.
- In 2010 / 2011 (Case No. ER-2010-0356), the Commission rejected both GMO's valuation as well as its request to recover transmission costs.
- In 2012 / 2013 (Case No. ER-2012-0175), the Commission, including Commissioners Hall, Stoll and Kenney, again rejected GMO's valuation and transmission costs.

Prior Commission Decision – Valuation

“It is incomprehensible that GPE would pay book value for generating facilities in Mississippi to serve retail customers in and about Kansas City, Missouri. And, it is a virtual certainty that GPE management was able to negotiate a price for Aquila that considered the distressed nature of Crossroads as a merchant plant which Aquila Merchant was unable to sell despite trying for several years. Further, it is equally likely that GPE was in as good a position to negotiate a price for Crossroads as AmerenUE was when it negotiated the purchases of Raccoon Creek and Goose Creek, both located in Illinois, from Aquila Merchant in 2006.” [Case No. ER-2010-0356, Report and Order, ¶271]

Prior Commission Decision – Valuation

- The Goose Creek / Raccoon Creek turbines, also built by Aquila Merchant, were the same as the Crossroads combustion turbines.
- Crossroads, built in 2002, acquired by Great Plains in 2007.
- Raccoon Creek / Goose Creek, built in 2003, acquired by AmerenUE (third party transaction) in 2006.
- Perfect proxy transaction, excluding location, to determine fair market value of Crossroads.
 - Raccoon Creek: 340,000 kW sold for \$71 million
 - Goose Creek: 510,000 kW sold for \$104 million
 - TOTAL: 850,000 kW for \$175 million (\$205.88 / kW)
- Therefore, Crossroads (300,000 kW) (\$205.88 / kW) =
 - **\$61,764,000 - fair market value**

Prior Commission Decision – Transmission Costs

- “Paying the additional transmission costs required to bring energy all the way from Crossroads and including Crossroads at net book value with no disallowances, is not just and reasonable.” (Case No. ER-2010-0356, Report and Order, page 91).
- “It is not just and reasonable to require ratepayers to pay for the added transmission costs of electricity generated so far away in a transmission constricted location. Thus, the Commission will exclude the excessive transmission costs from recovery in rates.” (page 100).
- “In addition to the valuation, the Commission concludes that but for the location of Crossroads, customers would not have to pay the excessive cost of transmission. Therefore, transmission costs from the Crossroads facility . . . shall be disallowed from expenses in rates and therefore also not recoverable through GMO’s fuel adjustment clause (FAC).” (page 99).

Commission Valuation Includes Exclusion of Transmission Costs

- The Commission's proxy sale involved the sale of combustion turbines that were in the same RTO as AmerenUE.

	CT Location	Service Area	Transmission Costs	Fair Market Value
Proxy Sale	MISO	MISO	Same RTO – no transmission costs	\$205.88 / kW
Crossroads Acquisition	Inside Entergy	SPP	Different RTO – Therefore costs to transmit across Entergy to SPP	\$205.88 / kW

- In order to make an apples to apples comparison, the Commission eliminated all transmission costs.

Court Actions Regarding Prior Commission Decisions

- The Western District Court of Appeals considered reasonableness and lawfulness of the Commission's decision to disallow recover of Crossroads transmission costs and affirmed decision.
 - “We have no difficulty understanding the basis for the PSC’s decision to disallow excessive transmission costs from recovery in rates. . . . The PSC found that it would not be just and reasonable to require ratepayers to pay for the added transmission costs of the electricity generated at Crossroads. Because the PSC made the decision on the recoverability of transmission costs based on a prudence analysis that considered both the prudence of including the transmission costs and the resulting harm to the ratepayers if such costs were included, the PSC’s decision denying recovery was lawful.” 408 S.W.3d 153, 162-163 (Mo.App. W.D. 2013).
- The Missouri Supreme Court and the United States Supreme Court refused to consider this matter and upheld Court of Appeals decision.

Case No. ER-2024-0189

SCHEDULE KM-r25

HAS BEEN DEEMED

CONFIDENTIAL

IN ITS ENTIRETY