BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Exploration of a Joint Proceeding with the Kansas Corporation Commission to Investigate the Off-System Sales Allocation methods of Kansas City Power & Light Company	)))))	Case No. EO-2012-0020

RESPONSE OF MIDWEST ENERGY USERS' ASSOCIATION

COMES NOW the Midwest Energy Users' Association ("MEUA") and for their Response to the Commission's Second Order Directing Filing respectfully states as follows:

INTRODUCTION

1. In Case No. ER-2010-0355, the Commission considered KCPL's latest rate increase request. In that case, KCP&L raised concerns regarding the different off-system sales allocation methodologies utilized by the Missouri and Kansas Commission as well as the implications of those differing allocators. Following the issuance of its Report and Order, the Commission opened this case for purposes of exploring a joint proceeding with the Kansas Commission to investigate the differing methods used to allocate KCPL's off-system sales between the states.

2. In its Order Directing Filing, the Commission pointed out that the purpose of this case is:

> To solicit the opinions of the interested parties (defined as those who participated in the last KCP&L rate case as well as anyone else who may be interested) as to whether they think it would be a worthwhile endeavor for the Commission to explore a joint proceeding with the KCC to further examine how both jurisdictions currently treat non-firm off system sales, and how the Commission should treat such sales in the future.

Later, KCPL asked that the Commission extend the scope of this case to include an examination of the allocation of capacity-related power costs. KCP&L claims that while Missouri uses the 4 coincident peak ("CP") methodology, Kansas uses the 12 CP methodology.

3. MEUA is generally not opposed to the Commission engaging in joint conferences for the purposes of educating itself on the way its regulated utilities are treated in other states. That said, the use of different allocation methods does not result from inappropriate Missouri decisions, but rather from issues existing solely between KCPL and the Kansas Corporation Commission. In particular, the continued use of the unused energy allocator and the 12 CP demand allocator are firmly established in Kansas as a result of stipulations that KCPL has voluntarily entered. As such, MEUA questions whether the Missouri Commission should venture into issues derived solely from the decisions made by another state commission and which the regulated utility has voluntarily agreed to.

This pleading will raise three specific points showing that the Missouri Commission should reconsider any decision to engage in a joint investigation regarding KCPL's allocation methodology.

First, this pleading demonstrates that the use of different off-system sales allocators is solely a function of KCPL's misguided request to implement the unused energy allocator in Kansas. In fact, KCPL's own witness has noted that KCPL proposed this allocator "without sufficient study of its implications and reasonableness."

Second, the continued future use of the unused energy allocator in Kansas is guaranteed through KCPL's *stipulated* actions. In exchange for consideration it received in Kansas settlements, KCPL knowingly implemented an allocation method resulting in the over-allocation of off-system sales to Kansas. While KCPL received consideration for this Kansas decision,

Missouri ratepayers received nothing. As such, it would be inappropriate to expect Missouri ratepayers, who received no consideration, to shield KCPL from the implications of this misguided Kansas decision.

Third, the Missouri Commission has previously made changes in its allocation methodologies in an effort to help bridge the differences that exist between Missouri and Kansas. Evidence indicates that in the 25 years since that change, however, Kansas has made no effort to meet Missouri in the middle. Instead, Kansas continues to steadfastly employ the allocation methodology that results in the lower rates for its customers.

For all of these reasons, MEUA respectfully requests that the Missouri Commission not engage in a joint investigation with the Kansas Commission. Instead, Missouri should encourage KCPL to extricate itself from its previous misguided decisions in Kansas.

OFF-SYSTEM SALES ALLOCATION

4. Prior to 2005, Missouri and Kansas used identical methods for allocating off-system sales margins. Thus, a perfect allocation of margins was made with KCPL neither over- or under-collecting off-system sales. In 2006, however, KCPL jeopardized this long established allocation by proposing the use of the unused energy allocator in both jurisdictions.[1] As KCPL notes in its testimony, "the margin component [of off-system sales] was allocated on the basis of "unused energy." The Unused Energy allocator is derived from the Demand and Energy allocators. It is calculated by subtracting the actual energy usage from the 'available energy.'"[2]

Realizing that this new method would allocate a greater share of off-system margins to its jurisdiction and thus result in lower rates for its ratepayers, the Kansas Commission quickly

[1] See, Direct Testimony of Don A. Frerking, filed January 31, 2006, KCC Docket No. 06-KCPE-828-RTS.
[2] *Id.* at page 7.

accepted KCPL's newly-created allocation methodology.[3] The Missouri Commission, however, called KCPL's proposal "novel," and rejected its implementation.[4]

> A primary concern is the underlying philosophy implied by utilization of the unused energy allocator. Specifically, the unused energy allocator rewards the lower load factor of KCPL's Kansas retail jurisdiction by allocating a greater percentage of the profit from non-firm off-system sales to that jurisdiction. Load Factor is average energy usage divided by peak demand. The higher the load factor, the closer the average load is to peak demand. The lower load factor of KCPL's Kansas jurisdiction causes the Company to build higher energy cost combustion turbines, which provide KCPL with less opportunity to make off-system sales.[5]

5. Rather than trying to immediately fix this discrepancy between Missouri and Kansas, however, KCPL further exacerbated this problem by tying its receipt of a Kansas fuel adjustment clause to the continued use of the flawed unused energy allocator.[6] In 2007, KCPL sought the implementation of a Kansas fuel adjustment clause. In the stipulation implementing the fuel adjustment clause, KCPL expressly committed to continuing to recognize the unused energy ("UE1") allocator. "KCPL agrees to utilize its UE1 Allocator to allocate off-system sales margins to Kansas retail ratepayers within the context of its ECA tariff."[7]

6. Then, in 2010, KCPL sought to fix the allocation difference between Missouri and Kansas. Recognizing the now well-recognized flaws in the unused energy allocator, KCPL asked the Kansas Commission to discontinue its use. In its recently completed Kansas case, the KCPL witness found that KCPL proposed the allocator "without sufficient study." As such, the KCPL witness concluded that it is "not an appropriate method for allocating off-system sales margins."

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[3] Tr. 3365 (Case No. ER-2010-0355).
[4] Report and Order, Case No. ER-2006-0314, issued December 22, 2006, at page 40.
[5] *Id.* at pages 38-39. The Missouri Commission also found that the unused energy allocator creates a disincentive for demand side management programs which are "aimed at increasing load factor" and ignores the fact that fuel costs, the primary component of off-system sales, are allocated via the energy allocator. (*Id.*).
[6] In Kansas, the fuel adjustment clause is referred to as an ECA (energy cost adjustment) rider.
[7] *Stipulation and Agreement*, Case No. 07-KCPE-905-RTS, filed September 12, 2007, at page 5.

> ***I believe that KCP&L proposed the unused energy allocator without sufficient study of its implications and reasonableness***. Since the unused energy allocator allocates more off-system sales margins (and hence, lower overall costs) to the Kansas jurisdiction, the other parties may not have devoted the resources to study its reasonableness. Based on the analysis that I present here, I believe that the unused energy allocator is not an appropriate method for allocating off-system sales margins.[8]

KCPL's request to discontinue the unused energy allocator received immediate opposition from other parties. Among other things, parties argued that the continued use of the unused energy allocator was part of the consideration provided in exchange for the Kansas fuel adjustment clause.[9] Ultimately, the KCC decided to continue to use the unused energy allocator and rejected KCPL's request to eliminate its use.[10] Among the rationales relied upon by the KCC was KCPL's earlier commitment to use the unused energy allocator in consideration for its receipt of a Kansas fuel adjustment clause.

> We are also persuaded by Crane's testimony and find that the unused allocator was an important consideration to CURB in settling this issue in one of the prior rate cases. We stated elsewhere that absent a sound justification for ruling otherwise, binding parties to their bargains is sound policy and consistent with signaling regulatory certainty.[11]

7. Just as the Kansas Commission found that KCPL should be bound by its previous bargains, the Missouri Commission should use similar logic to dispose of the immediate inquiry. In the 2010 Missouri case, KCPL agreed, as part of a partial stipulation and agreement, to the continued use of the energy allocator for allocating off-system sales between the jurisdictions.[12]

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[8] Tr. 3367-3368 (emphasis added) (Case No. ER-2010-0355).
[9] *Order: 1) Addressing Prudence; 2) Approving Application, In Part; and 3) Ruling on Pending Requests*, Case No. 10-KCPL-415-RTS, page 126 (Kansas Corporation Commission, issued November 22, 2010) at page 127 ("CURB also states that the use of the unused energy allocator was an integral part of the arrangement by which CURB agreed to the Company's use of an ECA rider.").
[10] *Id.* at page 127.
[11] *Id.*
[12] See, *Non-Unanimous Stipulation and Agreement as to Miscellaneous Issues*, filed February 3, 2011, at page 5 ("Staffs energy allocator of 56.94% shall be used for allocating off-system sales margins to the Missouri jurisdiction.").

Just as in Kansas, Missouri ratepayers should be permitted to rely on that settlement without fear that the approved settlement will be upset now.

8. Ultimately, it has been shown that the difference in allocation methodologies between Missouri and Kansas has its genesis in KCPL's misguided recommendation to approve the unused energy allocator "without sufficient study of its implications and reasonableness." KCPL exacerbated this problem by tying its receipt of the Kansas fuel adjustment clause to the continued use of the unused energy allocator. Now after receiving the benefits of its bargain in Kansas, KCPL asks that Missouri ratepayers compensate it for the consideration necessary for it to receive that Kansas fuel adjustment clause. Two wrongs do not make a right! Blind adoption of the unused energy allocator by Missouri would undermine the sound regulatory policy previously implemented by this Commission. As this Commission has previously found, adoption of the unused energy allocator would penalize the higher load factor customers in Missouri and discourage Missouri's developing demand side management programs that are "aimed at increasing load factor."[13] In the final analysis, the Commission should encourage KCPL to take steps to remedy the allocation problem that currently exists in Kansas. This problem was caused by KCPL's misguided decision and it is KCPL's sole responsibility to fix it.

ALLOCATION OF CAPACITY RELATED COSTS

9. While the Commission initially opened this docket to investigate the allocation of off-system sales margins, KCPL asked that the Commission also use it as a vehicle to remedy the difference in allocation of capacity-related costs. As KCPL notes:

> The Commissions differ on the appropriate basis for the CP demand factor. Missouri maintains that a coincident demand based on four peak months is appropriate, whereas Kansas requires use of a 12 month CP allocator. A 4CP demand factor results in a lower allocation of costs to Missouri. A 12CP demand factor results in a lower allocation of costs to Kansas. Thus, the use of a Missouri

[13] 2006 Order at pages 38-39.

> 4CP and a Kansas 12CP demand factor results in the under-allocation of KCP&L costs, which once again denied KCP&L an opportunity to earn its allowed return.[14]

Interestingly, while complaining about its alleged inability to earn its allowed return, KCPL fails to enlighten the Commission as to two other considerations critical to the current predicament. ***First***, the Missouri Commission has previously made concessions in an effort to help KCPL bridge the difference regarding the allocation of capacity-related costs. The Kansas Commission failed to take similar steps. ***Second***, as with the allocation of off-system sales, KCPL is bound by a stipulation to the continued use of the 12CP allocator in Kansas.

10. Prior to 1986, the Missouri Commission utilized a 1CP demand allocator for purposes of allocating capacity related costs between Missouri and Kansas. This allocator was based upon the well-recognized belief that plant and transmission capacity are sized to meet the annual system peak. The Kansas Commission, on the other, continued to use the 12CP methodology and the lower amount of plant costs that it allocated to the Kansas jurisdiction.

In the 1986 case, Staff continued to advocate the use of the 1CP methodology. KCPL, however, asked the Commission to adopt the 4CP methodology in an effort to bridge the difference that existed between Missouri and Kansas. "Company asserts that 4CP is the appropriate allocation method since it represents a compromise position between what it views as two extremes: the 1CP approach taken by the Missouri Staff and the 12 CP approach taken by the Kansas Corporation Commission Staff."[15] Ultimately, the Missouri Commission agreed and agreed to the use of the 4CP methodology.

While the Missouri Commission compromised, used the 4CP methodology and accepted the increased costs that accompany its use, the Kansas Commission held steadfastly at the other

[14] KCPL Response to Commission Order, filed August 8, 2011, at page 2.
[15] *Report and Order*, Case No. EO-85-185, 28 Mo.P.S.C. 228, 236 (issued April 23, 1986).

"extreme" – the use of the 12CP methodology. The Missouri Commission has taken efforts to assist KCPL in bridging this difference. It is time that KCPL convince the Kansas Commission to make concessions as well.

Such concessions, however, are not likely from Kansas. As part of its settlement of the Kansas Regulatory Plan, KCPL committed to the continued use of the 12CP allocation of capacity-related costs. "Jurisdictional Allocations. The parties agree to use the 12 Coincident Peak method of allocating costs to the Kansas jurisdictional cost of service."[16] KCPL has contractually bound itself to the continued use of the 12CP demand allocator. In its recent decision, the Kansas Commission held that KCPL was estopped from even requesting the use of an alternative demand allocator. "KCPL requested to change the allocator to either 46.18% (4CP) or 45.64% (12CP), ***but the 1025 S&A precludes the use of a 4CP allocator***."[17]

Thus, as a result of this Kansas Stipulation, any further attempts to bridge the difference that exists between Missouri and Kansas as to the appropriate demand allocator would necessarily have to **again** come from Missouri.

CONCLUSION

As this pleading demonstrates, a joint investigation with Kansas of KCPL's allocation methodology appears to be pointless. It is unquestionable that KCPL's recommended implementation of the unused energy allocator was the result of a misguided decision made without "sufficient study." Now, despite recognizing the flaws in that allocator, KCPL has nonetheless ensured its continued use in Kansas by tying it to its receipt of a fuel adjustment clause. Since KCPL, not Missouri ratepayers, received the benefit of this bargain, it is up to

[16] *Stipulation and Agreement*, Case No. 04-KCPE-1025-GIE, filed April 27, 2005, at Appendix C, paragraph 8.

[17] *Order: 1) Addressing Prudence; 2) Approving Application, In Part; and 3) Ruling on Pending Requests*, Case No. 10-KCPL-415-RTS, page 126 (Kansas Corporation Commission, issued November 22, 2010) at page 126 (footnote 491).

KCPL, not Missouri ratepayers, to shield shareholders from any detriment associated with the bargain. For all these reasons, MEUA respectfully requests that the Commission discontinue any efforts to engage in a joint investigation regarding KCPL's jurisdictional allocations.

Respectfully submitted,

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ATTORNEYS FOR THE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

David L. Woodsmall

Dated: August 23, 2011