

**Exhibit No.:**

**Issue(s):**

**Witness/Type of Exhibit:**

**Sponsoring Party:**

**Case No.:**

\_\_\_\_\_  
Merger Commitments  
and Conditions

Marke/Rebuttal

Public Counsel

EM-2018-0012

**REBUTTAL TESTIMONY**

**OF**

**GEOFF MARKE**

Submitted on Behalf of the Office of the Public Counsel

**GREAT PLAINS ENERGY INCORPORATED,  
KANSAS CITY POWER & LIGHT COMPANY,  
KCP&L GREATER MISSOURI OPERATIONS COMPANY  
AND WESTAR ENERGY, INCORPORATED**

CASE NO. EM-2018-0012

January 16, 2018



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**REBUTTAL TESTIMONY**

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**GREAT PLAINS ENERGY INCORPORATED, KANSAS CITY POWER & LIGHT  
COMPANY, KCP&L—GREATER MISSOURI OPERATIONS COMPANY, AND  
WESTAR ENERGY, INC.**

**FILE NO. EM-2018-0012**

1 **I. INTRODUCTION**

2 **Q. Please state your name, title and business address.**

3 A. Geoff Marke, PhD, Economist, Office of the Public Counsel (OPC or Public Counsel), P.O.  
4 Box 2230, Jefferson City, Missouri 65102.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by the OPC as the Chief Economist.

7 **Q. Please describe your education and employment background.**

8 A. I received a Bachelor of Arts Degree in English from The Citadel, a Masters of Arts Degree in  
9 English from The University of Missouri, St. Louis, and a Doctorate of Philosophy in Public  
10 Policy Analysis from Saint Louis University (“SLU”). At SLU, I served as a graduate assistant  
11 where I taught undergraduate and graduate course work in urban policy and public finance. I  
12 also conducted mixed-method research in transportation policy, economic development and  
13 emergency management.

14 I have been in my present position with OPC since April of 2014 where I have been responsible  
15 for economic analysis and policy research in electric, gas and water utility operations. Prior to  
16 joining OPC, I was employed by the Missouri Public Service Commission as a Utility Policy  
17 Analyst II in the Energy Resource Analysis Section, Energy Unit, Utility Operations  
18 Department, Regulatory Review Division. My primary duties were reviewing, analyzing and  
19 writing recommendations concerning integrated resource planning, renewable energy  
20 standards, and demand-side management programs for all investor-owned electric utilities in

1 Missouri. I have also worked for the Missouri Department of Natural Resources (later  
2 transferred to the Department of Economic Development), Energy Division as a Planner III  
3 and was the lead policy analyst on electric cases. My private sector work includes Lead  
4 Researcher for Funston Advisory in Detroit, Michigan, where I did a variety of specialized  
5 consulting engagements for both private and public entities.

6 **Q. Have you been a member of, or participate in, any work groups, committees, or other**  
7 **groups that have addressed electric utility regulation and policy issues?**

8 A. Yes. I am currently a member of the National Association of State Consumer Advocates  
9 (NASUCA) Distributed Energy Resource Committee which shares information and  
10 establishes policies regarding energy efficiency, renewable generation, and distributed  
11 generation, and considers best practices for the development of cost-effective programs that  
12 promote fairness and value for all consumers. I am also a member of NASUCA's Electricity  
13 Committee and NASUCA's Water Committee which are tasked with analyzing current issues  
14 affecting residential consumers.

15 **Q. Have you testified previously before the Missouri Public Service Commission**  
16 **("Commission")?**

17 A. Yes. A listing of the cases in which I have previously filed testimony and/or comments before  
18 this commission is attached in GM-1.

19 **Q. What is the purpose of this testimony?**

20 A. The purpose of this testimony is to respond to the direct testimony of the Applicant's  
21 (Great Plains Energy Incorporated ("GPE"), Kansas City Power & Light Company  
22 ("KCP&L") KCP&L Greater Missouri Operations Company ("GMO"), Westar Energy,  
23 Inc. ("Westar")) and/or ("the Applicant's")) witness Darrin R. Ives and the subsequent  
24 Stipulation and Agreement filed by the Applicants: the Missouri Public Service  
25 Commission Staff ("Staff"), Brightergy, LLC ("Brightergy") and the Missouri Joint  
26 Municipal Electric Utility Commission ("MJMEUC").

1 In this testimony I also state OPC's present position, including the reasons our Office is  
2 not a signatory to the amended Stipulation and Agreement filed on January 12, 2018.

3 **Q. What is OPC's position?**

4 A. In principle, OPC generally supports the January 12, 2018 Stipulation and Agreement  
5 entered into by the parties listed above. We also applaud the Applicants for including  
6 OPC's previously requested stipulated conditions (in Case No. EM-2017-0226, *In the*  
7 *Matter of the Application of Great Plains Energy Incorporated for Approval of its*  
8 *Acquisition of Westar Energy, Inc.*), most notably the inclusion of the independent third  
9 party audit as well as the corporate social responsibility conditions. Even though we were  
10 unable to ultimately sign onto the January 12, 2018 Stipulation, we expressly  
11 acknowledge the goodwill shown and the recognition of certain benefits created as a result  
12 of this potential merger.

13 Presently, OPC's primary concern centers on the outcome of the conditions negotiated in  
14 Kansas. Out of an abundance of caution, Public Counsel is not able to support the  
15 proposed "merger of equals" until we can be assured that such a transaction will also  
16 result in a "merger of equal outcomes," which, at a minimum, means risk are not being  
17 shifted from Kansas ratepayers to Missouri ratepayers as a result of this transaction.

18 With that in mind, OPC does not oppose the Commission ordering approval of this  
19 transaction with similar provisions as those in KCP&L's Experimental Regulatory Plan  
20 (Case No. EO-2005-0329). That is, comparable terms and provisions specifically  
21 conditioned on approval by the Kansas Corporation Commission ("KCC").

22 A secondary unresolved issue also remains regarding the proposed allocation of the \$50  
23 million in upfront bill credit. Time and resource constraints prevented OPC from  
24 meaningfully engaging intervening parties on the appropriate allocation of these credits.  
25 As such, OPC reserves the right to comment on this issue in surrebuttal testimony if it is  
26 not unanimously resolved.

1 **II. MERGER COMMITMENTS AND CONDITIONS**

2 **Q. In general, is this “merger of equals” more favorable for ratepayers than the terms**  
3 **of the previous acquisition?**

4 A. Yes. I believe it is more favorable for both Missouri and Kansas ratepayers. The primary  
5 concern in the previous acquisition centered on the premium GPE had agreed to pay and  
6 the amount of debt GPE had proposed to incur. The absence of those two pending risks  
7 alone increases the probability of a more stable and beneficial outcome for ratepayers than  
8 would otherwise exist. It is important to note, that unlike the previously filed acquisition  
9 case, this “merger of equals” will result in minority ownership for Missouri affiliate  
10 utilities. The companies are not actually equal, with Westar being the larger utility both in  
11 terms of the number of customers and revenues.

12 **Independent third-party management audit report**

13 **Q. What processes does the Stipulation put in place to ensure that GPE, KCP&L,**  
14 **GMO, and affiliates have complied with the Commission’s Affiliate Transactions**  
15 **Rule (4 CSR 240-20.015), and that corporate costs are allocated appropriately?**

16 A. The Stipulation specifies that a committee with representation from the Company, OPC,  
17 and Commission Staff (“Staff”) will select an independent auditor from the respondents to  
18 a Request for Proposals (“RFP”) to secure bids for this service. If the committee is unable  
19 to select an auditor unanimously, the Commission will make the selection.

20 The audit will provide an independent opinion on the degree and extent of compliance  
21 with the Commission’s Affiliate Transactions Rule as well as assessing the  
22 appropriateness of corporate costs among GPE, KCP&L, GMO, and their affiliates. The  
23 Company shall provide any information necessary to complete the audit, and shall provide  
24 up to \$500,000 to fund the audit from below the line (not recoverable in rates), with any  
25 additional necessary funding to be split evenly between ratepayers and shareholders. Upon  
26 completion, the audit shall be filed with the Commission.

1 **Q. What benefits will the Commission and KCP&L and GMO ratepayers see from these**  
2 **provisions?**

3 A. The Commission’s Affiliate Transaction Rule (4 CSR 240-20.015) (the “Rule”) is  
4 designed to prevent regulated electric utilities in Missouri from giving their unregulated  
5 affiliate companies or other entities an unfair competitive advantage or allowing affiliates  
6 to charge the regulated electric utilities an inflated cost for goods or services. It is  
7 naturally in the interest of KCP&L and GMO ratepayers that to the extent possible,  
8 competitive forces prevail among these unregulated affiliates so that they may provide  
9 goods and services at the lowest possible cost, whether directly to the consumers or to the  
10 parent Company. Affiliate transactions are often complex and difficult to track, and an  
11 independent audit report would be helpful in ensuring compliance with the Rule in light of  
12 the Company’s pending organizational restructuring.

13 **Corporate Social Responsibility**

14 **Q. What provisions does the Stipulation contain regarding corporate social**  
15 **responsibility on the part of the Company?**

16 A. The Stipulation specifies that GPE will provide \$50,000 a year for each of the next ten  
17 years to each of five Community Action Agencies (“CAAs”) that operate in the KCP&L  
18 and GMO service areas. This will be a total of \$3,000,000, with the express purpose of  
19 funding employees at the CAAs to enable further low-income weatherization  
20 deployment.<sup>1</sup> Any excess funds may be used at the CAAs’ discretion for weatherization or  
21 other related purposes.

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<sup>1</sup> Applicant’s acknowledged that CAP St. Joe no longer administers weatherization and that Community Services, Inc. now administers weatherization services for the area formerly served by CAP St. Joe. Consequently, Applicants have recommended that CSI receive \$100,000 no later than thirty days after the closing of the Merger and on or before that calendar day in each of the succeeding nine years.



1 **Q. What benefits will the Commission and KCP&L and GMO ratepayers see from these**  
2 **provisions?**

3 A. The additional workforce provided by these funds will greatly assist the CAAs' ability to  
4 carry out weatherization activities for low-income households throughout KCP&L and  
5 GMO's service territories. "Weatherization" is a broad term for a range of home  
6 improvement activities that help a home or apartment to be more efficient and consume  
7 less energy. These are activities that many ratepayers do not have the means, expertise, or  
8 landlord cooperation to complete on their own. The recipient CAAs have years of  
9 experience assisting low-income ratepayers with weatherization through the Low Income  
10 Weatherization Assistance Program ("LIWAP"), and the funds provided through the  
11 Stipulation will only expand that capability. The result will be many more low-income  
12 ratepayers throughout the Company's service territory with lower electric bills, who will  
13 then have less difficulty paying those bills and less need of bill assistance programs.  
14 As with the funds for the independent auditors, these funds for weatherization are also to  
15 be provided by the Company below the line, and not recoverable in rates. The CAAs are  
16 to file annual reports with the Company on how the funds are expended, with the  
17 Company then submitting condensed reports with the Commission, Staff, and OPC. Staff  
18 and OPC will also be invited to annual meetings for five years to discuss progress of the  
19 funds' use. These measures will ensure that ratepayers are held harmless for the costs of  
20 the additional weatherization funding, and that there is adequate oversight.

21 **III. OUTSTANDING CONCERNS**

22 **Q. Could you provide an illustrative example of an ordered outcome in Kansas that**  
23 **could shift risk to Missouri ratepayers?**

24 A. One such example would be a prolonged rate case moratorium in Kansas which could  
25 predictably result in increased rate case filings in Missouri. If regulatory approval by  
26 Kansas Corporation Commission ("KCC") is predicated on limiting cost recovery for an

1 extended period of time, or if KCC approval results in openly distorted “most favored  
2 nation provisions” then Missouri ratepayers will likely bear the risks in this transaction.  
3 This would result in an overall net detriment to Missouri ratepayers and, therefore, the  
4 Missouri Commission should reject the Application. It is essential that, at a minimum,  
5 Missouri ratepayers be held harmless in this transaction.

6 **Q. What does OPC propose to alleviate this overall concern?**

7 A. From the beginning of these proceedings, the Applicants have represented that a necessary  
8 condition of the “merger of equals” is dependent upon approval by both the KCC and this  
9 Commission. To ensure Missouri ratepayers are held harmless the Commission should  
10 adopt an “equal outcome” provision as it did in KCP&L’s Experimental Regulatory Plan  
11 in EO-2005-0329.<sup>2,3</sup> In short, approval of the merger should be conditioned upon the  
12 terms of the merger approved by the KCC being substantially similar to the terms of the  
13 merger agreed to and approved in Missouri.

14 **Q. Does this conclude your testimony?**

15 A. Yes.

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<sup>2</sup> See GM-2 for the Stipulation and Agreement entered into to resolve EO-2005-0329.

<sup>3</sup> See GM-3 for the Commission’s Report and Order in EO-2005-0329.

CASE PARTICPATION OF  
GEOFF MARKE, PH.D.

Company Name	Employed Agency	Case Number	Issues
Great Plains Energy Incorporated, Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, and Westar Energy, Inc.	Office of Public Counsel (OPC)	EM-2018-0012	<b>Rebuttal:</b> Merger Commitments and Conditions / Outstanding Concerns
Missouri American Water	OPC	WR-2017-0285	<b>Direct:</b> Future Test Year/ Cost Allocation Manual and Affiliate Transaction Rules for Large Water Utilities / Lead Line Replacement <b>Direct:</b> Rate Design / Cost Allocation of Lead Line Replacement
Missouri Gas Energy / Laclede Gas Company	OPC	GR-2017-0216 GR-2017-0215	<b>Rebuttal:</b> Decoupling / Rate Design / Customer Confidentiality / Line Extension in Unserved and Underserved Areas / Economic Development Rider & Special Contracts <b>Surrebuttal:</b> Pay for Performance / Alagasco & EnergySouth Savings / Decoupling / Rate Design / Energy Efficiency / Economic Development Rider: Combined Heat & Power
Indian Hills Utility	OPC	WR-2017-0259	<b>Direct:</b> Rate Design
Rule Making	OPC	EW-2018-0078	Comments on cogeneration and net metering
Empire District Electric Company	OPC	EO-2018-0048	Integrated Resource Planning: Special Contemporary Topics Comments
Kansas City Power & Light	OPC	EO-2018-0046	Integrated Resource Planning: Special Contemporary Topics Comments
KCP&L Greater Missouri Operations Company	OPC	EO-2018-0045	Integrated Resource Planning: Special Contemporary Topics Comments
Missouri American Water	OPC	WU-2017-0296	<b>Direct:</b> Lead line replacement pilot program <b>Rebuttal:</b> Lead line replacement pilot program <b>Surrebuttal:</b> Lead line replacement pilot program

KCP&L Greater Missouri Operations Company	OPC	EO-2017-0230	Comments on Integrated Resource Plan, preferred plan update
Working Case: Emerging Issues in Utility Regulation	OPC	EW-2017-0245	Comments on Emerging Issues in Utility Regulation / Presentation: Inclining Block Rate Design Considerations Presentation: Missouri Integrated Resource Planning: And the search for the “preferred plan.”
Rule Making	OPC	EX-2016-0334	Comments on Missouri Energy Efficiency Investment Act Rule Revisions
Great Plains Energy Incorporated, Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, and Westar Energy, Inc.	OPC	EE-2017-0113 / EM-2017-0226	<b>Direct:</b> Employment within Missouri / Independent Third Party Management Audits / Corporate Social Responsibility
Union Electric Company d/b/a Ameren Missouri	OPC	ET-2016-0246	<b>Rebuttal:</b> EV Charging Station Policy <b>Surrebuttal:</b> EV Charging Station Policy
Kansas City Power & Light		ER-2016-0156	<b>Direct:</b> Consumer Disclaimer <b>Direct:</b> Response to Commission Directed Questions <b>Rebuttal:</b> Customer Experience / Greenwood Solar Facility / Dues and Donations / Electric Vehicle Charging Stations <b>Rebuttal:</b> Class Cost of Service / Rate Design <b>Surrebuttal:</b> Clean Charge Network / Economic Relief Pilot Program / EEI Dues / EPRI Dues
Union Electric Company d/b/a Ameren Missouri	OPC	ER-2016-0179	<b>Direct:</b> Consumer Disclaimer / Transparent Billing Practices / MEEIA Low-Income Exemption <b>Direct:</b> Rate Design <b>Rebuttal:</b> Low-Income Programs / Advertising / EEI Dues <b>Rebuttal:</b> Grid-Access Charge / Inclining Block Rates /Economic Development Riders

KCP&L Greater Missouri Operations Company	OPC	ER-2016-0156	<b>Direct:</b> Consumer Disclaimer <b>Rebuttal:</b> Regulatory Policy / Customer Experience / Historical & Projected Customer Usage / Rate Design / Low-Income Programs <b>Surrebuttal:</b> Rate Design / MEEIA Annualization / Customer Disclaimer / Greenwood Solar Facility / RESRAM / Low-Income Programs
Empire District Electric Company, Empire District Gas Company, Liberty Utilities (Central) Company, Liberty Sub-Corp.	OPC	EM-2016-0213	<b>Rebuttal:</b> Response to Merger Impact <b>Surrebuttal:</b> Resource Portfolio / Transition Plan
Working Case: Polices to Improve Electric Regulation	OPC	EW-2016-0313	Comments on Performance-Based and Formula Rate Design
Working Case: Electric Vehicle Charging Facilities	OPC	EW-2016-0123	Comments on Policy Considerations of EV stations in rate base
Empire District Electric Company	OPC	ER-2016-0023	<b>Rebuttal:</b> Rate Design, Demand-Side Management, Low-Income Weatherization <b>Surrebuttal:</b> Demand-Side Management, Low-Income Weatherization, Monthly Bill Average
Missouri American Water	OPC	WR-2015-0301	<b>Direct:</b> Consolidated Tariff Pricing / Rate Design Study <b>Rebuttal:</b> District Consolidation/Rate Design/Residential Usage/Decoupling <b>Rebuttal:</b> Demand-Side Management (DSM)/ Supply-Side Management (SSM) <b>Surrebuttal:</b> District Consolidation/Decoupling Mechanism/Residential Usage/SSM/DSM/Special Contracts
Working Case: Decoupling Mechanism	OPC	AW-2015-0282	<b>Memorandum:</b> Response to Comments
Rule Making	OPC	EW-2015-0105	Missouri Energy Efficiency Investment Act Rule Revisions, Comments
Union Electric Company d/b/a Ameren Missouri	OPC	EO-2015-0084	Triennial Integrated Resource Planning Comments

Union Electric Company d/b/a Ameren Missouri	OPC	EO-2015-0055	<b>Rebuttal:</b> Demand-Side Investment Mechanism / MEEIA Cycle II Application <b>Surrebuttal:</b> Potential Study / Overearnings / Program Design <b>Supplemental Direct:</b> Third-party mediator (Delphi Panel) / Performance Incentive <b>Supplemental Rebuttal:</b> Select Differences between Stipulations
The Empire District Electric Company	OPC	EO-2015-0042	Integrated Resource Planning: Special Contemporary Topics Comments
KCP&L Greater Missouri Operations Company	OPC	EO-2015-0041	Integrated Resource Planning: Special Contemporary Topics Comments
Kansas City Power & Light	OPC	EO-2015-0040	Integrated Resource Planning: Special Contemporary Topics Comments
Union Electric Company d/b/a Ameren Missouri	OPC	EO-2015-0039	Integrated Resource Planning: Special Contemporary Topics Comments
Union Electric Company d/b/a Ameren Missouri	OPC	EO-2015-0029	Ameren MEEIA Cycle I Prudence Review Comments
Kansas City Power & Light	OPC	ER-2014-0370	<b>Direct</b> (Revenue Requirement): Solar Rebates <b>Rebuttal:</b> Rate Design / Low-Income Weatherization / Solar Rebates <b>Surrebuttal:</b> Economic Considerations / Rate Design / Cyber Security Tracker
Rule Making	OPC	EX-2014-0352	Net Metering and Renewable Energy Standard Rule Revisions, Comments
The Empire District Electric Company	OPC	ER-2014-0351	<b>Rebuttal:</b> Rate Design/Energy Efficiency and Low-Income Considerations
Rule Making	OPC	AW-2014-0329	Utility Pay Stations and Loan Companies, Rule Drafting, Comments
Union Electric Company d/b/a Ameren Missouri	OPC	ER-2014-0258	<b>Direct:</b> Rate Design/Cost of Service Study/Economic Development Rider <b>Rebuttal:</b> Rate Design/ Cost of Service/ Low Income Considerations <b>Surrebuttal:</b> Rate Design/ Cost-of-Service/ Economic Development Rider
KCP&L Greater Missouri Operations Company	OPC	EO-2014-0189	<b>Rebuttal:</b> Sufficiency of Filing <b>Surrebuttal:</b> Sufficiency of Filing

KCP&L Greater Missouri Operations Company	OPC	EO-2014-0151	Renewable Energy Standard Rate Adjustment Mechanism (RESRAM) Comments
Liberty Natural Gas	OPC	GR-2014-0152	<b>Surrebuttal:</b> Energy Efficiency
Summit Natural Gas	OPC	GR-2014-0086	<b>Rebuttal:</b> Energy Efficiency <b>Surrebuttal:</b> Energy Efficiency
Union Electric Company d/b/a Ameren Missouri	OPC	ER-2012-0142	<b>Direct:</b> PY2013 EM&V results / Rebound Effect <b>Rebuttal:</b> PY2013 EM&V results <b>Surrebuttal:</b> PY2013 EM&V results <b>Direct:</b> Cycle I Performance Incentive <b>Rebuttal:</b> Cycle I Performance Incentive
Kansas City Power & Light	Missouri Public Service Commission Staff	EO-2014-0095	<b>Rebuttal:</b> MEEIA Cycle I Application testimony adopted
KCP&L Greater Missouri Operations Company	Missouri Division of Energy (DE)	EO-2014-0065	Integrated Resource Planning: Special Contemporary Topics Comments
Kansas City Power & Light	DE	EO-2014-0064	Integrated Resource Planning: Special Contemporary Topics Comments
The Empire District Electric Company	DE	EO-2014-0063	Integrated Resource Planning: Special Contemporary Topics Comments
Union Electric Company d/b/a Ameren Missouri	DE	EO-2014-0062	Integrated Resource Planning: Special Contemporary Topics Comments
The Empire District Electric Company	DE	EO-2013-0547	Triennial Integrated Resource Planning Comments
Working Case: State-Wide Advisory Collaborative	OPC	EW-2013-0519	Presentation: Does Better Information Lead to Better Choices? Evidence from Energy-Efficiency Labels
Independence-Missouri	OPC	Indy Energy Forum 2014	Presentation: Energy Efficiency
Independence-Missouri	OPC	Indy Energy Forum 2015	Presentation: Rate Design
NARUC – 2017 Winter	OPC	Committee on Consumer Affairs	NARUC – 2017 Winter Presentation: PAYS Tariff On-Bill Financing
NASUCA – 2017 Summer	OPC	Committee on Water Regulation	NASUCA – 2017 Summer Presentation: Regulatory Issues Related to Lead-Line Replacement of Water Systems
NASUCA – 2017 winter	OPC	Committee on Utility Accounting	NASUCA – 2017 Winter Presentation: Lead Line Replacement Accounting and Cost Allocation





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

In the Matter of a Proposed Experimental Regulatory ) Case No. EO-2005-\_  
Plan of Kansas City Power & Light Company )

**STIPULATION AND AGREEMENT**

As a result of discussions among the Staff of the Missouri Public Service Commission (“Staff”), the Office of the Public Counsel (“Public Counsel”), Missouri Department of Natural Resources (“MDNR”), Praxair, Inc. (“Praxair”), Missouri Industrial Energy Consumers (“MIEC”), Ford Motor Company (“Ford”), Aquila, Inc., d/b/a Aquila Networks, Aquila Networks-MPS and Aquila Networks-L&P, (“Aquila”), The Empire District Electric Company (“Empire”), Missouri Joint Municipal Electric Utility Commission (“MJMEUC”), Jackson County, Missouri (“Jackson County”), City of Kansas City, Missouri (“Kansas City”) and Kansas City Power & Light Company (“KCPL”) (collectively “Signatory Parties”), the Signatory Parties hereby submit to the Missouri Public Service Commission (“Commission”) for its consideration and approval this Stipulation and Agreement (“Agreement”). The Signatory Parties state as follows:

**I. KANSAS CITY POWER & LIGHT COMPANY’S APPLICATION**

KCPL is an electric corporation under the jurisdiction of the Commission. On May 6, 2004, KCPL filed an Application in Case No. EO-2004-0577 requesting that the Commission open a docket to investigate emerging issues expected to affect the supply, delivery and pricing of the electric service provided by KCPL in the future. The issues discussed by KCPL, Staff, Public Counsel and other participants in Case No. EW-2004-0596 included the following:

- A. The need for additional generating capacity in the KCPL service territory into the future;
- B. The mix of new generation that would result in a reliable and cost effective service for Missouri customers;
- C. The desirability of proactively addressing environmental concerns relating to new generation and existing generating facilities;
- D. Investment into a highly reliable transmission and distribution infrastructure;
- E. Establishment of customer efficiency and affordability programs and development of new technologies and applications for demand response programs; and
- F. Agreement regarding a regulatory plan that will adequately address the comprehensive undertakings being considered by KCPL, including the timeliness of the recovery of the costs and the financial considerations of such significant investments.

Throughout 2004, KCPL conducted numerous workshops, public forums, and strategic planning seminars, involving employees, customers, energy experts, financial experts, the general public, consumer groups, manufacturers, industrial and trade groups, environmental organizations, and other utility companies, as well as government and community leaders to solicit comment regarding its planning process. Meetings with the Staff, Public Counsel, and other participants to Case No. EW-2004-0596 were also conducted at which KCPL made presentations and answered questions. Requests for information were issued by Staff and other participants in Case No. EW-2004-0596 and responses have been provided by KCPL.

During the course of these proceedings, KCPL has provided to the Staff, Public

Counsel, and the other participants the following information, among other things: (a) a description of KCPL's proposed efficiency, affordability and demand response programs; (b) KCPL's ten-year generation and load forecasts; (c) a description of KCPL's proposed distribution and transmission infrastructure programs; (d) a description of all of the power supply alternatives considered by KCPL to meet its load requirements; and (e) a description of environmental investments considered by KCPL to be necessary for the future.

## **II. PROCEDURAL HISTORY**

1. On May 6, 2004, KCPL filed in Case No. EO-2004-0577 its Application To Establish Investigatory Docket And Workshop Process Regarding Kansas City Power & Light Company. In its Application, KCPL requested that the Commission issue an Order (a) opening an investigatory docket regarding the future supply and pricing of the electric service provided by KCPL; and (b) authorizing the use of the Commission's workshop process to address certain issues related to the future supply and pricing of electricity for KCPL and its customers, and any other issues impacting KCPL that may arise from discussion among the interested participants.

2. On May 25, 2004, the Commission issued an Order Directing Notice And Setting Intervention Deadline in Case No. EO-2004-0577.

3. Participants, including MDNR, Aquila, Empire, Kansas City, Concerned Citizens of Platte County ("Citizens"), Praxair, MIEC and MJMEUC filed applications to intervene in Case No. EO-2004-0577. Subsequently, the Missouri Energy Group ("MEG"), the Sierra Club ("Sierra Club"), Union Electric Company, d/b/a AmerenUE

("AmerenUE"), and Jackson County participated in the workshops conducted in Case No. EW-2004-0596.

4. On June 3, 2004, the Commission issued an Order Establishing Case which granted KCPL's Application to Establish Investigatory Docket and Workshop Process Regarding Kansas City Power & Light Company, filed by KCPL on May 6, 2004, and established an informal, investigatory case designated as Case No. EW-2004-0596. In the June 3, 2004, Order Establishing Case, the parties which filed to intervene in Case No. EO-2004-0577 were also made participants in Case No. EW-2004-0596. On July 1, 2004, the Commission issued its Notice Closing Case in Case No. EO-2004-0577 which formally closed that proceeding.

5. A prehearing conference was held in Case No. EW-2004-0596 on June 30, 2004. A series of presentations and workshops were held on June 21, June 30, July 21, July 30, August 10-11, August 19, August 24-26, September 7, September 15, September 29, and October 29, 2004. During this period KCPL conducted numerous informal meetings with a variety of interested groups and individuals to discuss the many issues raised by this proceeding. The workshop was organized into two teams. Team A reviewed Integrated Resource Planning related issues, including load forecasting, generation planning, demand side management, environmental issues, and distribution and transmission technologies. A subteam within Team A reviewed affordability, efficiency, and demand response programs. Team B reviewed the financial issues associated with KCPL's various plans, including maintaining KCPL's current investment grade rating on its securities. These Teams were led jointly by KCPL and Staff representatives. Meetings also occurred on dates subsequent to October 29, 2004. On

January 18, 2005, the Commission held an on the record conference. On February 18, 2005, the Commission issued its Order Closing Case in Case No. EW-2004-0596.

### **III. STIPULATION AND AGREEMENT OF THE PARTIES**

Having considered the Application that KCPL submitted in Case No. EW-2004-0596, and having participated in workshops, discovery and settlement negotiations, the Signatory Parties agree on certain premises, fundamental concepts, and factual conclusions, as set forth hereafter, and recommend that the Commission adopt as its Order Approving Stipulation and Agreement in this Case No. EO-2005-\_\_\_\_\_ these agreements and an Experimental Regulatory Plan (“Regulatory Plan”) for KCPL as set forth in detail below. For purposes of this Agreement, all obligations and conditions agreed and assumed by KCPL shall become, pursuant to the terms of this Agreement, obligations and conditions of any KCPL affiliate, successor, or assignee, which shall be bound in the same manner and to the same extent as KCPL.

#### **A. DEFINITIONS**

**Significant change** – a change in the related facts and circumstances that would call into question whether the current course of action is still appropriate.

**Regulatory Plan** – all the terms and conditions contained in this Agreement.

**Resource Plan** - the capital investments and customer programs contained in this Agreement, as more fully described in Paragraph III.B.4 “Timely Infrastructure Investments” and Paragraph III.B.5 “Demand, Response, Efficiency, and Affordability Programs.”

**Regulatory Plan Term/Duration** – approximate five (5) year period beginning with the effective date of the Commission Order Approving Stipulation and Agreement.

**Iatan 2** – coal fired, base load generating unit to be located at the Iatan generating station site near Weston, Missouri

## **LIST OF APPENDICES**

APPENDIX A – SO<sub>2</sub> Emission Allowance Management Policy

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### **B. STIPULATIONS AND AGREEMENTS**

The Signatory Parties submit to the Commission this Agreement:

#### **1. AN EXPERIMENTAL REGULATORY PLAN (“REGULATORY PLAN”)**

##### **a. Capital Investments and Programs**

KCPL agrees to make the capital investments and initiate the customer programs contained in this Agreement, as more fully described in Paragraph III.B.4 “Timely Infrastructure Investments” and Paragraph III.B.5 “Demand, Response, Efficiency, and Affordability Programs” below (collectively the “Resource Plan”). The Signatory Parties agree that under the unique circumstances respecting KCPL, the capital investment package described in Paragraph III.B.4 and the customer programs described in

Paragraph III.B.5 constitute major elements of a reasonable and adequate resource plan at the time the Signatory Parties entered into this Agreement.

**b. Current Rate Levels**

KCPL, Staff, Public Counsel and the other Signatory Parties have agreed that, based upon the agreements and commitments contained herein, KCPL's current rates should be maintained at current levels through December 31, 2006, as specified in Paragraph III.B.2 "Rate Moratorium" below.

**c. Single-Issue Rate Mechanisms**

KCPL agrees that, prior to June 1, 2015, it will not seek to utilize any mechanism authorized in current legislation known as "SB 179" or other change in state law that would allow riders or surcharges or changes in rates outside of a general rate case based upon a consideration of less than all relevant factors. In exchange for this commitment, the Signatory Parties agree that if KCPL proposes an Interim Energy Charge ("IEC") in a general rate case filed before June 1, 2015 in accordance with the following parameters, they will not assert that such proposal constitutes retroactive ratemaking or fails to consider all relevant factors:

- (i) The rates and terms for such an IEC shall be established in a rate case along with a determination of the amount of fuel and purchased power costs to be included in the calculation of base rates.
- (ii) The rate or terms for such an IEC shall not be subject to change outside of a general rate case where all relevant factors are considered.
- (iii) The IEC rate "ceiling" may be based on both historical data and forecast data for fuel and purchased power costs, forecasted retail sales, mix of

generating units, purchased power, and other factors including plant availability, anticipated outages, both planned and unplanned, and other factors affecting the costs of providing energy to retail customers.

- (iv) The duration of any such IEC shall be established for a specified period of time, not to exceed two years.
- (v) A refund mechanism shall be established which will allow any over-collections of fuel and purchased power amounts to be returned to ratepayers with interest following a review and true-up of variable fuel and purchased power costs at the conclusion of each IEC. Any uncontested amount of over-collection shall be refunded to ratepayers no later than 60 days following the filing of the IEC true-up recommendation of the Staff.
- (vi) During any IEC period, KCPL shall provide to the Staff, Public Counsel and other interested Signatory Parties monthly reports that include any requested energy and fuel and purchase power cost data.

**d. SO<sub>2</sub> EMISSION ALLOWANCES**

KCPL is authorized to manage its SO<sub>2</sub> emission allowance inventory, including the sales of such allowances, under the Stipulation and Agreement in Case No. EO-2000-357. Under such Stipulation and Agreement, KCPL must record all SO<sub>2</sub> emission allowance sales proceeds as a regulatory liability in Account 254, Other Regulatory Liabilities, for ratemaking purposes. The following, including the attached SO<sub>2</sub> Emission Allowance Management Policy (“SEAMP”) contained in Appendix A, supersedes the plan approved in the Stipulation and Agreement in Case No.



EO-2000-357. The Signatory Parties agree upon the SEAMP contained in Appendix A. The proceeds and costs of all transactions identified in the SEAMP will be recorded in Account 254 for ratemaking purposes.

The regulatory liability will be amortized over the same time period used to depreciate environmental assets (emission control equipment and other emission control investments). This provision recognizes that the sales of SO<sub>2</sub> emission allowances to fund investments in new environmental control equipment, in order to meet emissions standards required now or in the future by legislation, MDNR or the United States Environmental Protection Agency (“EPA”) regulations, are like-kind exchanges of assets. KCPL agrees to provide all correspondence between KCPL and the United States Internal Revenue Service (“IRS”) with respect to SO<sub>2</sub> emission allowances to the Signatory Parties, within fourteen (14) days of such correspondence. KCPL shall be obligated to define the correspondence as “Proprietary” or “Highly Confidential” if it so deems the material.

In the event the IRS fails to certify SO<sub>2</sub> emission allowance sales as like-kind exchanges, the Signatory Parties agree that the above agreement on the amortization period for the regulatory liability is no longer binding on, or prejudicial to, KCPL or the other Signatory Parties, and that KCPL and the Signatory Parties are free to, and may, recommend the appropriate amortization period for such regulatory liability to be included in Rate Filing #4 (Iatan 2 case) revenue requirement required herein and to commence on the effective date of tariffs from Rate Filing #4.

KCPL currently purchases coal from vendors under contracts that indicate nominal sulfur content. To the extent that coal supplied has a lower sulfur content than

specified in the contract, KCPL may pay a premium over the contract price. The opportunity to burn coal with lower sulfur content is both advantageous to the environment and reduces the number of SO<sub>2</sub> emission allowances that must be used. To the extent that KCPL pays premiums for lower sulfur coal up until January 1, 2007, it will determine the portion of such premiums that apply to retail sales and will record the proportionate cost of such premiums in Account 254. But in no event will the charges to the Missouri jurisdictional portion of Account 254 for these premiums exceed \$400,000 annually. The portion of premiums applicable to retail will be determined monthly based on the system-wide percentage of MWh's from coal generation used for retail sales versus wholesale sales as computed by the hourly energy costing model. This system-wide percentage will be applied to premiums invoiced during the same period.

**e. PENSION EXPENSE**

The intent of this pension expense agreement is to:

- A. Ensure that KCPL recovers the amount of the net prepaid pension asset representing the recognition of a negative Statement of Financial Accounting Standards No. 87 (FAS 87) result used in setting rates in prior years;
- B. Ensure that the amount collected in rates is based on the FAS 87 cost using the methodology described below in item 2;
- C. Ensure that once the amount in item A above has been collected in rates by KCPL, all pension cost collected in rates is contributed to the pension trust;
- D. Ensure that all amounts contributed by KCPL to the pension trust per items 3 and 5 below are recoverable in rates; and

E. Ensure that KCPL will receive no more or less than the amount in item 3 below before KCPL is required to fund the plan.

With the exception of item 1 below, this Agreement is consistent with the recent settlement agreement on pension expense in The Empire District Electric Company rate case, Case No. ER- 2004-0570.

To accomplish these goals in items A through E above, the following matters are agreed upon as part of this Agreement, to be applied as of the first day of the calendar year in which the settlement is approved:

1. KCPL's FAS 87 cost, for financial reporting purposes, will differ from the method used for ratemaking purposes described in item 2 below. KCPL made a voluntary decision (not required for compliance with a Commission order) in January 2000, to amortize gains and losses under FAS 87 over a five (5) year period. A five (5) year average of the unrecognized gain/loss balance has been amortized over five (5) years since January 2000. It is KCPL's belief that any method, which recognizes gains and losses over a shorter time frame, is considered a "more preferable" method under Generally Accepted Accounting Principles ("GAAP"). Therefore, KCPL believes that, pursuant to GAAP, it is precluded from changing the method of pension accounting to another method unless the change is to a more preferable method. It is KCPL's contention that, in the case of FAS 87, a more preferable method is a method that amortizes gains and losses more rapidly. The method described in item 2 below does not amortize gains and losses more rapidly and is not considered a more preferable method

under KCPL's belief. Therefore, under KCPL's understanding of this matter, it cannot switch to that method for financial reporting.

Public Counsel and the Staff do not concur in KCPL's belief. Thus, KCPL will establish a regulatory asset or liability for the annual difference in the FAS 87 result from the two different methods. KCPL's outside actuary will maintain actuarial reports under each method on an annual basis. Any difference between the two methods is merely a timing difference which will eventually be recovered, or refunded, through rates under the method used in setting rates over the life of the pension plan. No rate base recognition will be required for any regulatory asset or liability calculated in accordance with this Paragraph.

2. FAS 87 cost, used for ratemaking purposes, will be calculated based on the following methodology:

- a. Market Related Value ("MRV") for asset determination, smoothing all asset gains and losses that occur on and after January 1, 2005 over five (5) years;
- b. No 10% Corridor; and
- c. Amortization period of ten (10) years for unrecognized gains and losses. (With a five (5) year MRV amortization - all gains/losses are reflected in fifteen (15) years.)

3. Any FAS 87 amount (as calculated in item 2 above), which exceeds the minimum Employee Retirement Income Security Act of 1974 ("ERISA") contribution, will reduce the prior net prepaid asset currently recognized in rate base of \$63,658,444 (\$34,694,918 Missouri jurisdictional). When the prior net

prepaid pension asset currently recognized in rate base is reduced to zero (0), any amount of FAS 87 (as calculated in item 2 above), which exceeds the minimum ERISA funding level, must be funded. The Missouri jurisdictional net prepaid pension amount to be included in rate base may be increased as provided in item 5 below. Furthermore, any FAS 87 amount that exceeds the minimum ERISA funding level that is not funded because it exceeds the amount of funding that is tax deductible will be tracked, as a regulatory liability, to ensure it is funded in the future when it becomes tax deductible. The non-funded amount (regulatory liability) will be allowed, as a rate base offset, for the excess collected in rates but not contributed to the trust fund, until such time as the contribution occurs.

4. In the case that FAS 87 expense becomes negative, the Signatory Parties agree that KCPL shall set up a regulatory liability to offset the negative expense. In future years, when FAS 87 expense becomes positive again, rates will remain zero (0) until the prepaid pension asset that was created by negative expense is reduced to zero (0). The regulatory liability will be reduced at the same rate as the prepaid pension asset is reduced until the regulatory liability becomes zero (0). This regulatory liability is a non-cash item and should be excluded from rate base in future years.

5. The Signatory Parties agree to allow KCPL rate recovery for contributions made to the pension trust in excess of the FAS 87 expense, calculated pursuant to item 2 above for the following reasons: the minimum required contribution is greater than the FAS 87 expense level, avoidance of Pension Benefit Guarantee Corporation (“PBGC”) variable premiums, and avoidance of the recognition of a

minimum pension liability (i.e., with associated charge to Other Comprehensive Income (“OCI”)). A regulatory asset will be established and will be allowed rate base treatment for the excess of any contribution (as defined above) over the annual FAS 87 amount calculated in accordance with item 2 above.

6. The Signatory Parties agree that a regulatory asset or liability will be established on KCPL’s books to track the difference between the level of FAS 87 expense calculated, pursuant to item 2 above, during the rate period, and the level of pension expense built into rates for that period, after consideration for pension costs capitalized. The level of FAS 87 current period costs, before capitalization, built into rates for the initial period, is established as \$22,000,000. If the FAS 87 expense during the period is more than the expense built into rates for the period, KCPL will establish a regulatory asset. If the FAS 87 expense during the period is less than the expense built into rates for the period, KCPL will establish a regulatory liability. If the FAS 87 expense becomes negative, a regulatory liability equal to the difference between the level of pension expense built into rates for that period and \$0 will be established. Since this is a cash item, the regulatory asset or liability will be included in rate base and amortized over five (5) years at the next rate case.

7. Any FAS 87 net prepaid pension asset, other than the amount identified in item 3 above, will not earn a return in future regulatory proceedings. The regulatory assets/liabilities identified in items 5 and 6 above address the inclusion of any additional rate base amounts.

The Signatory Parties agree that KCPL should follow the accounting treatment prescribed by the Federal Energy Regulatory Commission (“FERC”) in General Instruction No. 23 regarding pension-related OCI and transfer existing and future pension OCI amounts to a regulatory asset. This regulatory asset will not be included in Rate Base.

**f. FINANCING PLAN TO BE SUBSEQUENTLY FILED BY KCPL FOR COMMISSION AUTHORIZATION**

The Signatory Parties understand that making the capital investments and initiating the customer programs described in Paragraph III.B.4 and Paragraph III.B.5 of this Agreement will require KCPL to issue debt securities. The Signatory Parties also understand that KCPL will be required to refinance all or a portion of debt securities currently scheduled to mature during the Regulatory Plan. Further, KCPL has advised the Signatory Parties that the time that would be required for it to prefile with the Commission for approval of each offering of debt securities during the term of the Regulatory Plan could unduly restrict its ability to access the capital markets under the most advantageous terms and conditions.

In the course of the workshop and subsequent discussions, KCPL has provided the Signatory Parties with a long-term financing plan outlining the anticipated issuance of new debt securities and refinancing of existing debt securities. Thus, related to KCPL’s Regulatory Plan, is KCPL’s issuance of debt securities at future dates for both new expenditures and refinancing purposes. KCPL will soon make a filing with the Commission seeking Commission authorization to engage in these issuances of new debt securities and refinancing of existing debt securities. This future filing of KCPL will

apply to debt securities to be issued in the aggregate by KCPL during the Regulatory Plan.

The debt securities that subsequently would be issued under the Commission authorization that will be sought in the near term by KCPL will have maturities of from one (1) year to 40 years and will be issued by KCPL or through agents or underwriters for KCPL in multiple offerings of differing amounts at different times with different interest rates (including variable interest rates) and other negotiated terms and conditions. Interest rates on the debt securities will not exceed ten percent (10%) on (i) fixed rate debt securities or (ii) the initial rate on any variable or remarketed debt securities. The net proceeds from the issuance of these securities will be used for general corporate purposes, including the repayment of short-term debt.

The debt securities may be senior or subordinated and may be issued as unsecured or secured under KCPL's existing general mortgage debt indentures, depending on cost differentials and market conditions at the time of issuance. The debt securities may take the form of "fall-away" mortgage debt in which it is initially secured debt but converts to unsecured debt based on certain conditions. Finally, the debt securities may include subordinated debt securities to be sold to one or more special purpose financing entities, such as trusts, established by KCPL that, in turn, would issue preferred securities. KCPL will seek Commission authorization to guarantee the distributions, redemption price and liquidation payments respecting such preferred securities.

KCPL will also request Commission authorization to enter into interest rate hedging instruments in conjunction with the debt securities to be issued as a result of the Regulatory Plan. KCPL will continue to maintain separate Commission-granted



authority to enter into interest rate hedging instruments to manage the portfolio of variable rate debt, particularly pollution control bonds, that KCPL currently has outstanding separate from the Regulatory Plan.

Attached to this Agreement, as Appendix B, is the long-term “Financial Plan” that has been provided by KCPL to the Signatory Parties. Also attached to this Agreement, as Appendix D, is the KCPL “Strategic Initiative Projects Projected In-Service Dates” listing the specific generation, environmental and distribution projects included in KCPL’s Regulatory Plan and their projected in-service dates as provided by KCPL’s response to Staff Data Request No. 3025.

**g. ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION (“AFUDC”)**

KCPL agrees to a 1.25% or 125 basis point reduction in the equity portion of the AFUDC rate applicable to Iatan 2. KCPL shall use this 125 basis point reduction in the AFUDC rate from the effective date of the Order Approving Stipulation and Agreement in this proceeding, and in all subsequent calculations of AFUDC on Iatan 2 until the in-service date of Iatan 2.

**h. CURRENT AMORTIZATIONS**

KCPL will continue to include as a component of cost of service \$3.5 million in Missouri jurisdictional amortization expense, from the effective date of this Agreement until the effective date of the tariffs resulting from Rate Filing #1, per Paragraph III.B.3.a of this Agreement, to be filed in 2006, for rates effective in 2007. KCPL shall maintain adequate records that identify the \$3.5 million of annual amortization expense originally authorized in *Re Customer Class Cost of Service and Comprehensive Rate Design Investigation of Kansas City Power & Light Company*, Order Approving Stipulation and

Agreement, Case No. EO-94-199, 5 Mo.P.S.C.3d 76 (1996) on a state specific basis, by vintage year so that Missouri customers will receive recognition, of the amortization funds they have provided, in the determination of rate base for the Missouri jurisdiction, in future rate proceedings.

KCPL shall record additional amortization expense in the amount of \$10.3 million on an annual Missouri jurisdictional basis beginning with the effective date of this Agreement until the effective date of the tariffs resulting from Rate Filing #1, per Paragraph III.B.3.a of this Agreement. This amount is equal to the change in depreciation expense reflecting a change in service life span of the Wolf Creek Nuclear Generating Station from 40 to 60 years provided for in Paragraph III.A.3.n of this Agreement.

KCPL, Staff, Public Counsel and other Signatory Parties may propose that these amortizations be directed toward specific plant accounts: Provided, however, that the Wolf Creek amortizations will be assigned only to the nuclear generation plant accounts. Any such accumulated amortizations will be used as an offset to rate base, in future rate proceedings of KCPL or its successors.

**i. ADDITIONAL AMORTIZATIONS TO MAINTAIN FINANCIAL RATIOS**

*In Re Application of Kansas City Power & Light Company For An Order Authorizing Its Plan to Reorganize Itself Into a Holding Company Structure*, Case No. EM-2001-0464, 10 Mo.P.S.C.3d 394 (2001), KCPL agreed to maintain its debt at investment grade. The Signatory Parties agree that it is desirable to maintain KCPL's debt at investment grade rating during the period of the construction expenditures contained in this Agreement. KCPL understands it has the responsibility to take prudent

and reasonable actions in an effort to achieve the goal of maintaining its debt at investment grade levels. KCPL understands that it is incumbent upon it to take prudent and reasonable actions that do not place its investment grade debt rating at risk. KCPL further agrees that any negative impact from its failure to be adequately insulated from the Great Plains Energy, Inc. (“GPE”) business risks as perceived by the debt rating agencies will not be supported by its Missouri jurisdictional customers. KCPL recognizes its obligation to continue to prudently manage costs, continuously improve productivity, and maintain service quality during the Regulatory Plan. KCPL further recognizes that any finding by the Commission that KCPL has failed to prudently manage its costs, continuously improve productivity, and maintain service quality during the Regulatory Plan will negate the obligation of the Signatory Parties contained in this section.

The non-KCPL Signatory Parties commit to work with KCPL to ensure that based on prudent and reasonable actions, KCPL has a reasonable opportunity to maintain its bonds at an investment grade rating during the construction period ending June 1, 2010. As part of this commitment, the non-KCPL Signatory Parties agree to support the “Additional Amortizations to Maintain Financial Ratios”, as defined in this section and related appendices, in KCPL general rate cases filed prior to June 1, 2010. The “Additional Amortization to Maintain Financial Ratios” will only be an element in any KCPL rate case when the Missouri jurisdictional revenue requirement in that case fails to satisfy the financial ratios shown in Appendix E through the application of the process illustrated in Appendix F.

The “Additional Amortizations to Maintain Financial Ratios”, is designed to satisfy two of three financial ratios shown in Appendix E “Credit Ratio Ranges &

Definitions.” The three selected financial ratios are: Total Debt to Total Capitalization, Funds from Operations Interest Coverage and Funds from Operations as a Percentage of Average Total Debt. The Total Debt to Total Capitalization ratio will be addressed in the KCPL financing application that will be filed in the near future. The values for these ratios were selected to meet the lower end of the top third of the three financial ratios under the BBB columns as shown in Appendix E “Credit Ratio Ranges & Definitions.” If these ratio guidelines or ranges are changed or modified before June 1, 2010, the Signatory Parties will work together to determine the appropriate values for these ratios, including consideration of the use of the last published ranges for these ratios.

The Signatory Parties agree to support an additional amortization amount added to KCPL’s cost of service in a rate case when the projected cash flows resulting from KCPL’s Missouri jurisdictional operations, as determined by the Commission, fail to meet or exceed the Missouri jurisdictional portion of the lower end of the top third of the BBB range shown in Appendix E, for the Funds from Operations Interest Coverage ratio and the Funds from Operations as a Percentage of Average Total Debt ratio. The Signatory Parties agree to adopt an amortization level necessary to meet the Missouri jurisdictional portion of these financial ratios.

Appendix F “Illustration: Adjustment of Amortization Amounts” illustrates the adjustment process that the Signatory Parties agree to use to determine the Missouri jurisdictional amortization levels discussed herein. The additional amortization shown in Appendix F will exclude any consideration of amounts related to imprudent actions as determined by the Commission. The Missouri jurisdictional portion and amounts of the additional amortization will be determined by the Commission in each relevant rate case.

The prudence of the “Capitalized Lease Obligations” and “Off-Balance Sheet Obligations” will be determined in the first general rate case that affords the Commission the opportunity to review the matter, if the matter has not been approved by the Commission in a prior proceeding. Additional taxes will be added to the amortization to the extent that the Commission finds such taxes to be appropriate. The additional amortization will not reflect any negative cash flow impacts related to special contracts. For purposes of calculating additional amortization pursuant to this section, these special contract customers will be treated as if they were paying the full generally applicable tariff rate. In addition, any other provisions and special contracts will not affect rate base for regulatory purposes.

The Signatory Parties recognize that credit rating agencies review other financial indicators and that these three ratios are not definitive in and of themselves. Credit rating agencies acknowledge that other factors, some subjective, do impact their financial ratings. The Signatory Parties recognize the fact that KCPL may not earn an investment grade rating even if it meets the BBB+ ratio guidelines. Conversely, the Signatory Parties recognize the fact that KCPL may earn a BBB+ credit rating without meeting the values set out for a BBB+ credit rating. If KCPL meets the BBB+ credit rating values but does not receive an investment grade credit rating, KCPL agrees that the Signatory Parties are under no obligation to recommend any further cash flow or rate relief to satisfy the obligations under this section. KCPL also recognizes and agrees that its Missouri operations are only responsible for and will only provide cash flow for its Missouri operating share of the necessary cash flows as set out in this Paragraph III.B.1.i. Therefore, if KCPL is unable to meet the BBB+ credit ratio values in Appendix E

because of (1) inadequate cash flows from its regulated Kansas or other non-Missouri retail regulated operations, (2) inadequate cash flows from any wholesale operations, (3) inadequate cash flows from the non-regulated subsidiaries of GPE, (4) any risk associated with GPE that is unrelated to KCPL's Missouri regulated operations, or (5) any KCPL or GPE imprudent costs, KCPL will not argue for or receive increased cash flows from its Missouri regulated operations in order to meet the BBB+ credit ratio values.

The Signatory Parties will not be precluded from suggesting other amortizations or other relief to address cash flow concerns resulting from a significant event such as those identified in Paragraphs III.B.2.b.i-iv. No Signatory Party is precluded from supporting an amortization amount that exceeds the requirements of this Paragraph III.B.1.i.

**j. Off-System Sales**

KCPL agrees that off-system energy and capacity sales revenues and related costs will continue to be treated above the line for ratemaking purposes. KCPL specifically agrees not to propose any adjustment that would remove any portion of its off-system sales from its revenue requirement determination in any rate case, and KCPL agrees that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process.

**k. Transmission Related Revenues**

KCPL agrees that transmission related revenues and related costs will continue to be treated above the line for ratemaking purposes. KCPL specifically agrees not to propose any adjustment that would remove any portion of its transmission related

revenues from its revenue requirement determination in any rate case, and KCPL agrees that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process.

**k. Depreciation on Wind**

Wind assets, when included in rate base, will be depreciated over a 20 year life, as contained in Appendix G “Depreciation & Amortization Rates, Missouri Jurisdictional.”

**l. In-Service Criteria**

KCPL, Staff and Public Counsel have agreed to the in-service criteria in Appendix H for the below list of existing generating units, the future Iatan 2 coal unit, and the future wind units in accordance with the requirements specified under Section 393.135 RSMo 2000. KCPL agrees that all units will meet these in-service criteria before being included in rate base:

- (1) Hawthorn Unit 6/9. Combined cycle.
- (2) Hawthorn 7. Simple cycle combustion turbine.
- (3) Hawthorn 8. Simple cycle combustion turbine.
- (4) Hawthorn Boiler Number 5. Coal fired.
- (5) Hawthorn Turbine Number 5. Steam turbine.
- (6) West Gardner Unit 1. Simple cycle combustion turbine.
- (7) West Gardner Unit 2. Simple cycle combustion turbine.
- (8) West Gardner Unit 3. Simple cycle combustion turbine.
- (9) West Gardner Unit 4. Simple cycle combustion turbine.
- (10) Osawatomie Unit 1. Simple cycle combustion turbine.

KCPL, Staff and Public Counsel agree that in-service criteria will be developed for the emissions equipment that is to be installed on KCPL coal fired units prior to the equipment installation, and the equipment will meet the criteria before the costs for the equipment will be included in rate base.

**m. Wolf Creek Depreciation Reserve**

KCPL agrees to determine the effect on the depreciation reserve related to the difference in depreciation rates for the Wolf Creek Nuclear Generating Station resulting from the depreciation rates approved in Missouri and Kansas prior to this Agreement. KCPL further agrees to include this information in its filing related to Rate Filing #1 required in this Agreement for review by the Signatory Parties and Commission approval. The identified amount of depreciation reserve resulting for Missouri operations shall be identified and be assigned specifically to Missouri jurisdictional operations in Rate Filing #1 and all subsequent cases involving KCPL or its successors. It is the intent of this requirement to ensure Missouri ratepayers receive credit (via the rate base deduction afforded depreciation reserve funds) for providing additional depreciation expense to KCPL and eliminating the possibility of these funds being allocated in future cases to the Kansas jurisdiction or other jurisdictions that did not provide the funds.

**n. Wolf Creek Depreciation**

Upon the effective date of this Agreement, KCPL will begin recording depreciation expense for the Wolf Creek Nuclear Generating Station based on a 60-year life span. The Signatory Parties agree the Commission should authorize KCPL to use depreciation rates for the various nuclear plant accounts, as contained in Appendix G “Depreciation & Amortization Rates, Missouri Jurisdictional”.

**o. Resource Plan Monitoring**

KCPL agrees to actively monitor the major factors and circumstances which influence the need for and economics of all elements of its Resource Plan (the term “Resource Plan” is defined for purposes of this Agreement in Paragraph III.B.1.a.) until



the capital investments described in Paragraph III.B.5 below are completed. Such factors and circumstances would include, but not be limited to:

- (i) terrorist activity or an act of God;
- (ii) a significant change in federal or state tax laws;
- (iii) a significant change in federal utility laws or regulations or a significant change in GAAP;
- (iv) an unexpected, extended outage or shutdown of a major generating unit(s), other than any major generating unit(s) shut down due to an extended outage at the time of the filing of this Agreement (these units are the major coal burning facilities identified as Hawthorn 5, Iatan, LaCygne 1 & 2 and Montrose 1, 2 & 3, and the nuclear unit Wolf Creek);
- (v) a significant change in the cost and/or reliability of power generation technologies;
- (vi) a significant change in fuel prices and wholesale electric market conditions;
- (vii) a significant change in the cost and/or effectiveness of emission control technologies;
- (viii) a significant change in the price of emission allowances;
- (ix) a significant change in KCPL's load forecast;
- (x) a significant change in capital market conditions;
- (xi) a significant change in the construction costs of elements of the resource plan;
- (xii) a significant change in the scope or effective dates of environmental regulations; or

(xiii) a significant change in federal or state environmental laws.

If KCPL determines that its Resource Plan should be modified because changed factors or circumstances have impacted the reasonableness and adequacy of the resource plan, then it shall notify all Signatory Parties in writing within forty-five (45) days of any such determination. In its notification, KCPL shall: (1) explain the reason(s) (e.g., changed circumstances) for the proposed change in the Resource Plan; (2) specify the new proposed Resource Plan; (3) provide a description of the alternatives that it evaluated and the process that it went through in choosing the new proposed Resource Plan; and (4) provide detailed workpapers that support the evaluation and the process whereby a new proposed Resource Plan was chosen.

If any Signatory Party has concerns regarding KCPL's new proposed Resource Plan, it shall notify KCPL and all Signatory Parties in writing within thirty (30) days of KCPL's written notification to the Signatory Parties. Upon receipt of any such written notification from a Signatory Party, KCPL shall promptly schedule a meeting (KCPL must provide reasonable advance notice of the meeting to all Signatory Parties) where the participants will make good faith efforts to reach consensus regarding how the Resource Plan should be modified in order to create a modified plan that is reasonable and adequate in light of changed factors or circumstances. Any disputes about the need to modify the Resource Plan and the manner in which it should be modified will be discussed among the interested Signatory Parties and these Signatory Parties will cooperate to resolve the dispute in good faith. If the Signatory Parties cannot resolve the dispute within ninety (90) days of KCPL's written notification, the matter will be brought to the Commission for its determination.

If any Signatory Party believes that there have been significant changes in factors or circumstances that have not been acknowledged by KCPL, any Signatory Party may notify KCPL and all other Signatory Parties and request a meeting of all Signatory Parties to discuss the specific changes in factors or circumstances that give rise to the concern of the Signatory Party giving such notice. If the interested Signatory Parties cannot resolve the dispute within ninety (90) days of a Signatory Party's written notification, the matter will be brought to the Commission for its determination. The burden of proof to demonstrate the continued reasonableness and prudence of the new resource plan shall remain with KCPL in any dispute regarding changed factors or circumstances.

Signatory Parties by signing this Agreement do not waive any rights to contest, in any proceeding, that KCPL did not properly monitor significant factors or circumstances and as a result did not properly execute its Resource Plan.

Nothing in this section shall be construed to interfere with KCPL's ability to meet its obligations to provide safe and adequate service by obtaining the resources necessary to meet the short-term reserve margin requirements of KCPL's regional reliability organization (KCPL's current regional reliability organization is the Southwest Power Pool, Inc.).

**p. Amortizations: Ten (10) Year Recognition of Future Benefits**

In order to ensure that the benefits of offsetting the rate base related to the amortizations contained in this Agreement accrue to KCPL's customers in future rate proceedings, KCPL agrees that any such benefits shall be reflected in its rates, notwithstanding any future changes in the statutory provisions contained in Chapters 386

and 393 RSMo, for at least ten (10) years following the effective date of the Order Approving Stipulation and Agreement in this proceeding.

**q. Cost Control Process for Construction Expenditures**

KCPL must develop and have a cost control system in place that identifies and explains any cost overruns above the definitive estimate during the construction period of the Iatan 2 project, the wind generation projects and the environmental investments.

**2. RATE MORATORIUM**

**a.** The Signatory Parties to this Agreement (excluding the Office of the Attorney General) agree not to request, or encourage or assist in any request for, (i) a general increase or decrease in KCPL's Missouri retail electric rates, or (ii) rate credits or rate refunds respecting KCPL's Missouri retail electric rates, that would become effective for service rendered prior to January 1, 2007.

**b.** The Signatory Parties agree that KCPL's rates should remain at their current levels through December 31, 2006, unless a significant event that has a major impact on KCPL occurs, including, but not limited to:

- (i) terrorist activity or an act of God;
- (ii) a significant change in federal or state tax laws;
- (iii) a significant change in federal utility laws or regulations or a significant change in GAAP;
- (iv) an unexpected, extended outage or shutdown of a major generating unit(s), other than any major generating unit(s) shut down due to an extended outage at the time of the filing of this Agreement (these units are the major coal burning facilities identified as Hawthorn 5, Iatan, LaCygne

1 & 2 and Montrose 1, 2 & 3, and the nuclear unit Wolf Creek); or

(v) KCPL does not fulfill its commitments to make the investments described in the Resource Plan, Paragraphs III.B.4 and III.B.5 in this Agreement.

### **3. EXPECTED RATE CASES DURING REGULATORY PLAN**

During the period beginning with the effective date of the Commission's Order Approving Stipulation and Agreement, and ending on June 1, 2010, KCPL may file rate schedules incorporating increases at the times and under the conditions detailed below. KCPL is not required to file Rate Filing #2 and Rate Filing #3. However, KCPL agrees to file Rate Filing #1, and a rate case to include the investments related to the completion of Iatan 2. KCPL will not seek any additional rate increases during the Regulatory Plan, other than as specified below as Rate Filing ##1, 2, 3, and 4 unless at least one of the contingencies specified in Paragraph III.B.2.b applies.

If one or more of the investments specified in Paragraphs III.B.3.b-e is not included in a rate case filing, as specified herein, KCPL may include the investments in a later rate case filing. In such an instance, the Signatory Parties' commitment not to take the position that the investments should be excluded from KCPL's rate base will extend to the filing that includes such investments consistent with the "Infrastructure" subparagraph of each "Rate Filing" section immediately below. KCPL further commits to work to develop mutually agreeable procedures in these rates cases to streamline the rate case process.

Because of the magnitude of these investments and the length of time in the Regulatory Plan, KCPL may need to adjust the timing of the rate filings to reflect additional information regarding the construction and timing of investments and other factors. KCPL and the Signatory Parties agree to work together to adjust the rate filing schedules to reflect these needs.

**a. RATE FILING # 1 (2006 RATE CASE)**

(i) Schedule. Rate schedules with an effective date of January 1, 2007 will be filed with the Commission on February 1, 2006. The test year will be based upon a historic test year ending December 31, 2005, (initially filed with nine (9) months actual and three (3) months budget data), with updates for known and measurable changes, as of June 30, 2006, and with a true-up through September 30, 2006. On or about October 21, 2006, KCPL will file in a true-up proceeding a reconciliation as of September 30, 2006. The specific list of items to be included in the true-up proceeding shall be mutually agreed upon between KCPL and the Signatory Parties, or ordered by the Commission during the course of the rate case. However, the Signatory Parties anticipate that the true-up items will include, but not necessarily be limited to, revenues including off-system sales, fuel prices and purchased power costs, payroll and payroll related benefits, plant-in-service, property taxes, depreciation and other items typically included in true-up proceedings before the Commission.

(ii) Interventions. Each of the Signatory Parties shall be considered as having sought intervenor status in the 2006 Rate Filing without the necessity of filing an application to intervene and KCPL consents in advance to such

interventions. The Signatory Parties expect that the Commission's standard procedures and rules will be applicable to this rate filing including public notice, local public hearings and evidentiary hearings at appropriate times and places, and an opportunity for interested parties other than the Signatory Parties to seek to intervene.

(iii) Infrastructure. The 2006 Rate Case will include prudent expenditures made related to 100 megawatts of wind generation, and the additions to transmission and distribution infrastructure identified in Appendix D that are in service prior to the agreed upon true-up date of the rates approved in this case. The Signatory Parties agree that they will not take the position that these investments should be excluded from KCPL's rate base on the ground that the projects were not necessary or timely, or that alternative technologies or fuels should have been used by KCPL, so long as KCPL proceeds to implement the Resource Plan described herein (or a modified version of the Resource Plan where the modified plan has been approved by the Commission) and KCPL is in compliance with Paragraph III.B.1(o) "Resource Plan Monitoring." Nothing in this Agreement shall be construed to limit any of the Signatory Parties' ability to inquire regarding the prudence of KCPL's expenditures, or to assert that the appropriate amount to include in KCPL's rate base or its cost of service for these investments is a different amount (e.g., due to imprudent project management) than that proposed by KCPL.

(iv) Amortization Expense. The 2006 Rate Case will include an amortization expense anticipated to be \$17 million on a Missouri jurisdictional

basis and as this amount may be adjusted to address the requirements as set out in Paragraph III.B.1.i. Conditioned upon KCPL's continued performance pursuant to the Regulatory Plan, the Signatory Parties agree that they will not contest this amortization in the 2006 Rate Case. After the 2006 Rate Case, KCPL will continue to book this amortization annually, which shall continue until the Commission approves a change either upon agreement of the Signatory Parties made with due regard to KCPL's then existing situation, or in the course of a general rate proceeding as further set out in Paragraph III.B.1.i.

Paragraph III.B.1.i does not preclude KCPL, or any other party from requesting that this amortization be directed toward specific plant accounts or from requesting additional changes in depreciation rates that may result from depreciation studies. Any such accumulated amortization balance booked pursuant to this Agreement will be used as an offset to rate base in future rate proceedings of KCPL. KCPL shall maintain adequate records that identify the amortizations on a state specific basis by vintage year so that Missouri customers will receive recognition of the amortization funds they have provided, in the determination of rate base in future rate proceedings.

The Signatory Parties agree that the portion of the amortization expense as provided for in Paragraph III.B.1.i. allocated to Missouri shall reflect the cash flow effect of any difference in depreciation expense due to different service lives (currently 40 years for Missouri and 60 years for Kansas) between Missouri and Kansas with respect to the Wolf Creek Nuclear Generating Station. The Signatory Parties recognize that the failure to recognize this difference will result



in Missouri retail customers providing cash flows in excess of the equitable level provided via the special amortization and depreciation expense for Wolf Creek.

(v) Demand Response, Efficiency and Affordability Programs. The 2006 Rate Case will also include an amortization related to the Demand Response, Efficiency and Affordability Programs, as more fully described in Paragraph III.B.5 below. The Signatory Parties agree not to contest this amortization on any basis other than KCPL's failure to prudently implement the Demand Response, Efficiency and Affordability Programs described in Paragraph III.B.5 below.

(vi) Revenue Computation Inputs. KCPL will provide to Staff monthly billed kWh sales, revenues, customer and billing units aggregated by jurisdiction, by rate class (Small General Service, Medium General Service, Large General Service, Large Power Service, etc.), and by voltage level (primary, secondary, sub-transmission, etc.) for all rate classes. In addition, this data would be provided by usage period (read cycle) for the weather-sensitive groupings. This data would be provided for the nine (9) months of test year actual data that is available when KCPL files the case and for the other three (3) months of the test year as soon as the data is available.

(vii) Class Cost of Service Study. KCPL agrees that the 2006 Rate Case will also include the filing of a Class Cost of Service Study by KCPL. No later than February 1, 2006, KCPL will submit to the Signatory Parties a Missouri jurisdictional revenue requirement cost of service study and a Missouri jurisdictional customer class cost of service study covering the twelve months

ending December 31, 2005. KCPL agrees that the Missouri customer class cost of service study will include the requirements shown in Appendix I, and all underlying workpapers associated with these studies, including but not limited to what is shown in Appendix I, will be provided to all Signatory Parties and any additional intervenors in the 2006 Rate Filing at that time.

(viii) Special Contracts. KCPL agrees that for ratemaking determinations, Praxair, Ford and other special contracts will be treated as if they were paying the full generally applicable tariff rate for service from KCPL and other provisions in special contracts will not affect rate base for regulatory purposes.

**b. RATE FILING # 2 (2007 RATE CASE)**

(i) Schedule. Rate schedules with an effective date of January 1, 2008 may be filed with the Commission on February 1, 2007. The test year will be based upon a historic test year ending December 31, 2006, (initially filed with nine (9) months actual and three (3) months budget data), with updates for known and measurable changes, as of June 30, 2007, and with a true-up through September 30, 2007. On or about October 21, 2007, KCPL will file in a true-up proceeding a reconciliation as of September 30, 2007. The specific list of items to be included in the true-up proceeding shall be mutually agreed upon between KCPL and the Signatory Parties, or ordered by the Commission during the course of the rate case. However, the Signatory Parties anticipate that the true-up items will include, but not necessarily be limited to, revenues including off-system sales, fuel prices and purchased power costs, payroll and payroll benefits, plant-

in-service, depreciation and other items typically included in true-up proceedings before the Commission.

(ii) Interventions. Each of the Signatory Parties shall be considered as having sought intervenor status in the 2007 Rate Filing without the necessity of filing an application to intervene and KCPL consents in advance to such interventions. The Signatory Parties expect that the Commission's standard procedures and rules will be applicable to this rate filing including public notice, local public hearings and evidentiary hearings at appropriate times and places, and an opportunity for interested parties other than the Signatory Parties to seek to intervene.

(iii) Revenue Computation Inputs. KCPL will provide to Staff monthly billed kWh sales, revenues, customer and billing units aggregated by jurisdiction, by rate class (Small General Service, Medium General Service, Large General Service, Large Power Service, etc.), and by voltage level (primary, secondary, sub-transmission, etc.) for all rate classes. In addition, this data would be provided by usage period (read cycle) for the weather-sensitive groupings. This data would be provided for the nine (9) months of test year actual data that is available when KCPL files the case and for the other three (3) months of the test year as soon as the data is available.

(iv) Rate Design. The Signatory Parties agree not to file new or updated class cost of service studies or to propose changes to rate structures in Rate Filing #2.

(v) Infrastructure. The 2007 Rate Case will include prudent expenditures for the installation of a Selective Catalytic Reduction (SCR) facility at La Cygne 1, and the additions to transmission and distribution infrastructure identified in Appendix D that are in service prior to the agreed upon true-up date. The Signatory Parties agree that they will not take the position that these investments should be excluded from KCPL's rate base on the ground that the projects were not necessary or timely, or that alternative technologies or fuels should have been used by KCPL, so long as KCPL proceeds to implement the Resource Plan described herein (or a modified version of the Resource Plan where the modified plan has been approved by the Commission) and KCPL is in compliance with Paragraph III.B.1(o) "Resource Plan Monitoring." Nothing in this Agreement shall be construed to limit any of the Signatory Parties' ability to inquire regarding the prudence of KCPL's expenditures, or to assert that the appropriate amount to include in KCPL's rate base or its cost of service for these investments is a different amount (e.g., due to imprudent project management) than that proposed by KCPL.

(vi) Amortization Expense. The 2007 Rate Case will include an amortization expense of \$17 million on a Missouri jurisdictional basis, as may be adjusted upward or downward as set out in Paragraph III.B.1.i. Conditioned upon KCPL's continued performance pursuant to the Regulatory Plan, the Signatory Parties agree that they will not contest this amortization in the 2007 Rate Case. After the 2007 Rate Case, KCPL will continue to book this amortization annually, which shall continue until the Commission approves a change either upon

agreement of the Signatory Parties made with due regard to KCPL's then existing situation, or in the course of a general rate proceeding as further set out in Paragraph III.B.1.i. Paragraph III.B.1.i does not preclude KCPL, or any other party from requesting that this amortization be directed toward specific plant accounts or from requesting additional changes in depreciation rates that may result from depreciation studies. Any such accumulated amortization balance booked pursuant to this Agreement will be used as an offset to rate base in future rate proceedings of KCPL.

(vii) Demand Response, Efficiency And Affordability Programs. The 2007 Rate Case will also include the amortization related to the Demand Response, Efficiency and Affordability Programs, as more fully described in Paragraph III.B.5 below. The Signatory Parties agree not to contest the continuation of this amortization in the 2007 Rate Case on any basis other than KCPL's failure to prudently implement the Demand Response, Efficiency and Affordability Programs described in Paragraph III.B.5 below.

(viii) Special Contracts. KCPL agrees that for ratemaking determinations, Praxair, Ford and other special contracts will be treated as if they were paying the full generally applicable tariff rate for service from KCPL and other provisions in special contracts will not affect rate base for regulatory purposes.

**c. RATE FILING #3 (2008 RATE CASE)**

(i) Schedule. Rate schedules with an effective date of January 1, 2009 may be filed with the Commission on February 1, 2008. The test year will be based upon a historic test year ending December 31, 2007, (initially filed with

nine (9) months actual and three (3) months budget data), with updates for known and measurable changes, as of June 30, 2008, and with a true-up through September 30, 2008. On or about October 21, 2008, KCPL will file in a true-up proceeding a reconciliation as of September 30, 2008. The specific list of items to be included in the true-up proceeding shall be mutually agreed upon between KCPL and the Signatory Parties, or ordered by the Commission during the course of the rate case. However, the Signatory Parties anticipate that the true-up items will include, but not necessarily be limited to, revenues including off-system sales, fuel prices and purchased power costs, payroll and payroll related expenses, plant-in-service, depreciation and other items typically included in true-up proceedings before the Commission.

(ii) Interventions. Each of the Signatory Parties shall be considered as having sought intervenor status in the 2008 Rate Filing without the necessity of filing an application to intervene and KCPL consents in advance to such interventions. The Signatory Parties expect that the Commission's standard procedures and rules will be applicable to this rate filing including public notice, local public hearings and evidentiary hearings at appropriate times and places, and an opportunity for interested parties other than the Signatory Parties to seek to intervene.

(iii) Revenue Computation Inputs. KCPL will provide to Staff monthly billed kWh sales, revenues, customer and billing units aggregated by jurisdiction, by rate class (Small General Service, Medium General Service, Large General Service, Large Power Service, etc.), and by voltage level (primary, secondary,

sub-transmission, etc.) for all rate classes. In addition, this data would be provided by usage period (read cycle) for the weather-sensitive groupings. This data would be provided for the nine (9) months of test year actual data that is available when KCPL files the case and for the other three (3) months of the test year as soon as the data is available.

(iv) The Signatory Parties agree not to file new or updated class cost of service studies or to propose changes to rate structures in Rate Filing #3.

(v) Infrastructure. The 2008 Rate Case will include prudent expenditures for the installation of an SCR facility, a Flue Gas Desulphurization (“FGD”) unit and a Baghouse at Iatan 1; 100 MWs of wind generation; and the additions to transmission and distribution infrastructure identified in Appendix D that are in service prior to the agreed upon true-up date. The Signatory Parties agree that they will not take the position that these investments should be excluded from KCPL’s rate base on the ground that the projects were not necessary or timely, or that alternative technologies should have been used by KCPL, so long as KCPL proceeds to implement the Resource Plan described herein (or a modified version of the Resource Plan where the modified plan has been approved by the Commission) and KCPL is in compliance with Paragraph III.B.1(o) “Resource Plan Monitoring.” Nothing in this Agreement shall be construed to limit any of the Signatory Parties’ ability to inquire regarding the prudence of KCPL’s expenditures, or to assert that the appropriate amount to include in KCPL’s rate base or its cost of service for these investments is a

different amount (e.g., due to imprudent project management) than that proposed by KCPL.

(vi) Amortization Expense. The 2008 Rate Case will include an amortization expense of \$17 million on a Missouri jurisdiction basis, as may be adjusted upward or downward as set out in Paragraph III.B.1.i. Conditioned upon KCPL's continued performance pursuant to the Regulatory Plan, the Signatory Parties agree that they will not contest this amortization in the 2008 Rate Case. After the 2008 Rate Case, KCPL will continue to book this amortization annually, which shall continue until the Commission approves a change either upon agreement of the Signatory Parties made with due regard to KCPL's then existing situation, or in the course of a general rate proceeding as further set out in Paragraph III.B.1.i. Paragraph III.B.1.i does not preclude KCPL, the Staff, Public Counsel, or any other party from requesting that this amortization be directed toward specific plant accounts or from requesting additional changes in depreciation rates that may result from depreciation studies. Any such accumulated amortization balance booked pursuant to this Agreement will be used as an offset to rate base in future rate proceedings of KCPL.

(vii) Demand Response, Efficiency and Affordability Programs. The 2008 Rate Case will also include the amortization related to the Demand Response, Efficiency and Affordability Programs, as more fully described in Paragraph III.B.5 below. The Signatory Parties agree not to contest the continuation of this amortization in the 2008 Rate Case on any basis other than



KCPL's failure to prudently implement the Demand Response, Efficiency and Affordability Programs described in Paragraph III.B.5 below.

(viii) Special Contracts. KCPL agrees that for ratemaking determinations, Praxair, Ford and other special contracts will be treated as if they were paying the full generally applicable tariff rate for service from KCPL and other provisions in special contracts will not affect rate base for regulatory purposes.

**d. RATE FILING # 4 (2009 RATE CASE)**

(i) Schedule. Rate schedules with an effective date of September 1, 2010, will be filed with the Commission on October 1, 2009, or eight (8) months prior to the commercial in service operation date of Iatan 2. The test year will be based upon a historic test year ending December 31, 2009, (initially filed with nine (9) months actual and three (3) months budget data), with updates for known and measurable changes, as of March 31, 2010, and with a true-up through May 31, 2010. On or about July 1, 2010, KCPL will file in a true-up proceeding a reconciliation as of May 31, 2010. The specific list of items to be included in the true-up proceeding shall be mutually agreed upon between KCPL and the Signatory Parties, or ordered by the Commission during the course of the rate case. However, the Signatory Parties anticipate that the true-up items will include, but not necessarily be limited to, revenues including off-system sales, fuel prices and purchased power costs, payroll and payroll related benefits, plant-in-service, depreciation and other items typically included in true-up proceedings before the Commission.

(ii) Interventions. Each of the Signatory Parties shall be considered as having sought intervenor status in the 2009 Rate Filing without the necessity of filing an application to intervene and KCPL consents in advance to such interventions. The Signatory Parties expect that the Commission's standard procedures and rules will be applicable to this rate filing including public notice, local public hearings and evidentiary hearings at appropriate times and places, and an opportunity for interested parties other than the Signatory Parties to seek to intervene.

(iii) Revenue Computation Inputs. KCPL will provide to Staff monthly billed kWh sales, revenues, customer and billing units aggregated by jurisdiction, by rate class (Small General Service, Medium General Service, Large General Service, Large Power Service, etc.), and by voltage level (primary, secondary, sub-transmission, etc.) for all rate classes. In addition, this data would be provided by usage period (read cycle) for the weather-sensitive groupings. This data would be provided for the nine (9) months of test year actual data that is available when KCPL files the case and for the other three (3) months of the test year as soon as the data is available.

(iv) Infrastructure. The 2009 Rate Case will include prudent expenditures for Iatan 2; the FGD unit and the Baghouse at La Cygne 1; and the additions to transmission and distribution infrastructure identified in Appendix D that are in service prior to the agreed upon true-up date. The Signatory Parties agree that they will not take the position that these investments should be excluded from KCPL's rate base on the ground that the projects were not

necessary or timely, or that alternative technologies should have been used by KCPL, so long as KCPL proceeds to implement the Resource Plan described herein (or a modified version of the Resource Plan where the modified plan has been approved by the Commission) and KCPL is in compliance with Paragraph III.B.1(o) “Resource Plan Monitoring.” Nothing in this Agreement shall be construed to limit any of the Signatory Parties’ ability to inquire regarding the prudence of KCPL’s expenditures, or to assert that the appropriate amount to include in KCPL’s rate base or its cost of service for these investments is a different amount (e.g., due to imprudent project management) than that proposed by KCPL.

(v) Demand Response, Efficiency and Affordability Programs. The 2009 Rate Case will also include the amortization related to the Demand Response, Efficiency and Affordability Programs, as more fully described in Paragraph III.B.5 below. The Signatory Parties agree not to contest the continuation of this amortization in the 2009 Rate Case on any basis other than KCPL’s failure to prudently implement the Demand Response, Efficiency and Affordability Programs described in Paragraph III.B.5 below.

(vi) Special Contracts. KCPL agrees that for ratemaking determinations, Praxair, Ford and other special contracts will be treated as if they were paying the full generally applicable tariff rate for service from KCPL and other provisions in special contracts will not affect rate base for regulatory purposes.

(vii) Construction Accounting. The Signatory Parties agree that KCPL should be allowed to treat the Iatan 2 project under “Construction Accounting” to

the effective date of new rates in the 2009 Rate Case. Construction Accounting will be the same treatment for expenditures and credits consistent with the treatment for Iatan 2 prior to Iatan 2's commercial in service operation date. Construction Accounting will include treatment for test power and its valuation consistent with the treatment of such power prior to Iatan 2's commercial in service operation date with the exception that such power valuation will include off-system sales. The AFUDC rate that will be used during this period will be consistent with the AFUDC rate calculation in Paragraph III.B.1.g. The amortization of the amounts deferred under this Construction Accounting method will be determined by the Commission in the 2009 Rate Case. The non-KCPL Signatory Parties reserve the right to challenge amounts deferred under this Paragraph in the event that they contend that the Iatan 2 commercial in service operation date was delayed due to imprudence relating to its construction.

**e. Post Iatan 2 Rates**

KCPL may file rate requests and any Signatory Party with standing may file a rate decrease request at any time subsequent to the effective dates of the tariffs approved in Rate Filing #4 described above.

**4. TIMELY INFRASTRUCTURE INVESTMENTS**

KCPL agrees to undertake commercially reasonable efforts to make energy infrastructure investments as specified in Appendix D from January 1, 2005 through December 31, 2009 and as generally identified in Paragraph III.B.3.a.(iii), III.B.3.b.(iv), III.B.3.c.(iv) and III.B.3.d.(iv), described above. This commitment includes the completion or substantial progress being made on the following construction projects:

- 800-900 MW of new generation capacity, Iatan 2, to be regulated capacity excepting that interest that may be owned by a municipality or joint municipal utility commission, located at the Iatan site near Weston, Missouri, of which KCPL will own approximately 500 MWs;
- Environmental investments related to Iatan 1 and LaCygne 1 for accelerated compliance with environmental regulations; the Iatan 1 and LaCygne 1 environmental equipment will provide significant reductions in site emissions of SO<sub>2</sub>, NO<sub>x</sub>, Particulate and Mercury and will position the units to meet compliance requirements in the EPA's Clean Air Interstate Rule. With the addition of Iatan 2 at this site, compliance on Iatan 1 will ensure that total site emissions after completion of Iatan 2 will be less than the current site emissions from Iatan 1 and will help address the environmental concerns of citizens living in the area around the Iatan site. In addition, the early installation of the LaCygne 1 SCR is designed to help maintain attainment of the 8-Hour Ozone standard within the metropolitan Kansas City region. Installation of this SCR before the 2007 Ozone season is considered a significant component of the region's proposed Ozone mitigation plan by Mid-America Regional Council, regional EPA officials, Kansas Department of Health & Environment and MDNR. With respect to any of the expenditures anticipated for environmental compliance, KCPL will continue to assess the environmental laws to ensure that its expenditures will comply with existing or expected environmental regulations.
- 100 MW of new wind generation facilities to be installed in 2006. An additional 100 MW of new wind generation facilities will be installed in 2008 if a detailed evaluation (made with input from interested Signatory Parties) supports such an action to proceed with its construction. KCPL's detailed evaluation shall include information obtained from a tall tower wind assessment performed for KCPL at two sites in Missouri. The detailed evaluation will utilize the KCPL tall tower wind assessment information (and other Missouri-specific information, if available) to analyze the cost effectiveness of wind generation in Missouri before installing the second 100 MW of wind generation in any state other than Missouri. The Signatory Parties agree that KCPL will perform an assessment of wind

energy resources at Missouri sites determined in concert with MDNR and other interested Signatory Parties. KCPL will obtain access to two (2) Missouri wind assessment locations and will contract to install wind measuring equipment and evaluate data collected at levels between 50 meters up to and including 100 meters above ground level for the ultimate purpose of producing site-specific measurements that can be used to quantify the wind resources in Missouri. The two (2) Missouri tall tower installations will be in place and operating by December 31, 2005. The initial report analyzing the first 12 months of tall tower data will be completed by March 31, 2007. The final report analyzing the first 18 to 21 months of data will be completed by December 31, 2007.

KCPL shall provide status updates on these infrastructure commitments to the Staff, Public Counsel, MDNR and all other interested Signatory Parties on a quarterly basis. Such reports will explain why these investment decisions are in the public interest. In addition, KCPL will continue to work with the Staff, Public Counsel and all other interested Signatory Parties in its long-term resource planning efforts to ensure that its current plans and commitments are consistent with the future needs of its customers and the energy needs of the State of Missouri.

#### **5. DEMAND RESPONSE, EFFICIENCY AND AFFORDABILITY PROGRAMS**

KCPL and the many participants in the subteam of Team A workshop process have developed or recommended a number of Demand Response, Efficiency and Affordability Programs (“Customer Programs”). The current estimated cost associated with Demand Response, Efficiency and Affordability Programs for the five (5) year period is \$52.8 million split between Missouri (\$29 million) and Kansas (\$23.8 million) as detailed on Appendix C. The initially budgeted expenditures for the five (5) year period for Missouri shall be \$13.8 million for Demand Response Programs, \$2.5 million for Affordability Programs, and \$12.7 million for Efficiency Programs.

The Staff, Public Counsel, MDNR and any other interested Signatory Party will serve as an advisory group (“Customer Programs Advisory Group” or “CPAG”) to KCPL in the development, implementation, monitoring and evaluation of the Demand Response, Efficiency and Affordability Programs. KCPL agrees to meet with and provide updates to the CPAG at least once every six months on the following subjects: (1) the status of program implementation including the amount of expenditures for each program and the level of customer participation, (2) the status of program evaluations including evaluation consultants chosen, evaluation budgets, evaluation expenditures and copies of completed evaluations, and (3) the status of new program selection and design efforts, including copies of program screening results.

KCPL commits to implement the Demand Response, Efficiency and Affordability Programs detailed in Appendix C, beginning in 2005. Further evaluation needs to be made on the Efficiency Programs detailed in Appendix C prior to implementation to determine the impact of the Efficiency Programs on KCPL and the anticipated cost-effectiveness of the Efficiency Programs presented. KCPL will work with the CPAG to complete the necessary pre-implementation evaluations to determine the initial implementation plan for the Efficiency Programs within four (4) months of the effective date of an Order Approving Stipulation and Agreement. The initial implementation plan for Efficiency Programs may be modified (such modifications may include deleting currently proposed programs or adding new programs, as well as increases in the overall funding level for Efficiency Programs) based on results from the pre-implementation evaluations and input from the CPAG.

KCPL shall complete a detailed post-implementation review of the initial two (2) years of each program within six (6) months of the end of each program's second year. This review will include both process evaluations and cost effectiveness evaluations. These evaluations will then be used in the selection and design of future programs. KCPL shall consider input from the CPAG regarding the post-implementation evaluation process as well as the selection and design of future programs. Input from the CPAG regarding post-implementation cost effectiveness evaluations may include recommendations about the appropriate screening tests (e.g., the Total Resource Cost Test) to calculate and/or utilize in selecting and designing future programs.

For both the pre-implementation and post-implementation analysis described above, KCPL shall, at a minimum, use the Total Resource Cost Test and MIDAS present value of revenue requirements analysis in its decision-making process for selecting future Efficiency and Demand Response Programs. KCPL's documentation of its decision-making process for selecting future Efficiency and Demand Response Programs shall identify and explain considerations, if any, other than the minimization of the present value of revenue requirements (e.g., rate impact or risk mitigation considerations) that were used in its decision-making process.

Any Signatory Party's participation in the CPAG shall not be construed as a waiver of that Signatory Party's rights to make arguments in general rate proceedings regarding (1) the appropriate design, selection or expenditure level, for Customer Programs or (2) the appropriate methodology for allocating the costs of Customer Programs to customer classes.



KCPL will accumulate the Demand Response, Efficiency and Affordability Program costs in regulatory asset accounts as the costs are incurred. Beginning with the 2006 Rate Filing, KCPL will begin amortizing the accumulated costs over a ten (10) year period. KCPL will continue to place the Demand Response, Efficiency and Affordability Program costs in the regulatory asset account, and costs for each vintage subsequent to the 2006 Rate Filing will be amortized over a ten (10) year period. Signatory Parties reserve the right to establish a fixed amortization amount in any KCPL rate case prior to June 1, 2011. The amounts accumulated in these regulatory asset accounts shall be allowed to earn a return not greater than KCPL's AFUDC rate. The class allocation of the costs will be determined when the amortizations are approved.

**6. AGREEMENT CONDITIONED ON REGULATORY PLAN APPROVAL BY KANSAS CORPORATION COMMISSION**

From the beginning of these proceedings, KCPL has represented that the viability of the Regulatory Plan is dependent upon approval by both the Kansas Corporation Commission ("KCC") and this Commission. The Signatory Parties other than KCPL concur. The Signatory Parties other than KCPL understand that KCPL expects to file with the KCC a Regulatory Plan agreed upon by entities in Kansas for approval by the KCC. KCPL understands and agrees that in addition to the other Signatory Parties' approval of the instant Regulatory Plan being conditioned upon the approval of a Regulatory Plan by the KCC, the other Signatory Parties' approval of the instant Regulatory Plan is conditioned upon the terms of the Regulatory Plan approved by the KCC being substantially similar to the terms of the Regulatory Plan agreed to and approved in Missouri.

KCPL agrees that it will timely file with this Commission the Regulatory Plan approved by the KCC and that the other Signatory Parties in Missouri will have seven (7) days from that filing with this Commission to indicate whether they still support approval of the Regulatory Plan agreed upon herein and required by this Commission. If the terms of the Regulatory Plan agreed upon in Kansas and/or required by the KCC are not comparable to the terms agreed to in Missouri and required by this Commission, KCPL agrees that it will offer to the other Signatory Parties in Missouri and accept comparable terms to those terms agreed upon in Kansas and/or required by the KCC. Specifically, the agreement to the level of funding of the Demand Response, Efficiency and Affordability Programs contained herein is contingent upon the indicated level of funding in Kansas of these programs.

**7. SURVEILLANCE REPORTS**

KCPL shall continue to submit to the Staff, Public Counsel and all other Signatory Parties who request them its annual surveillance report in the same format previously provided by KCPL.

**8. CUSTOMER SERVICE STANDARDS**

KCPL agrees to provide the Staff and the Office of Public Counsel monthly data submitted quarterly (within forty-five (45) days of end of the period) on the following quality of service measures:

**Call Center Data**

Total Calls Offered to the Call Center  
Call Center Staffing including Call Center Management Personnel  
Average Speed of Answer  
Abandoned Call Rate

## **Reliability Indicators**

Customer Average Interruption Duration Index (“CAIDI”)  
System Average Interruption Duration Index (“SAIDI”)  
System Average Interruption Frequency Index (“SAIFI”)  
Momentary Average Interruption Frequency Index (“MAIFI”)

CAIDI, SAIDI, and SAIFI will be reported on both a weather adjusted and unadjusted basis.

### **9. PARTNERSHIP ISSUES INVOLVING THE IATAN 2 PLANT**

a) Empire and Aquila are partners in the Iatan 1 plant, with a combined share of 30% of Iatan 1, and desire to participate in the Iatan 2 plant. KCPL will consider these entities as preferred potential partners in the Iatan 2 generating plant project of at least a 30% combined share of Iatan 2, if these entities can demonstrate that they have a commercially feasible financing plan for meeting their financial commitments to participate in the ownership of the Iatan 2 plant by the later of August 1, 2005, or such date that KCPL shall issue its request(s) for proposal(s) related to Iatan 2. Such a financing plan must not adversely affect KCPL’s ability to finance its share of the Iatan 2 plant or complete construction on a time frame connected with this Agreement. This Agreement shall not be deemed to change or modify any contractual rights or responsibilities that Aquila and/or Empire may have, or may not have, under existing agreements.

b) MJMEUC has a desire to participate in the Iatan 2 plant. KCPL will consider MJMEUC as a preferred potential partner in the Iatan 2 plant of at least 100 MW of Iatan 2, if it can demonstrate that it has a commercially feasible financing plan for meeting its financial commitment to participate in the ownership of the Iatan 2 plant by August 1, 2005, or such date that KCPL shall issue its request(s) for proposal(s) related to

Iatan 2. Such a financing plan must not adversely affect KCPL's ability to finance its share of the Iatan 2 plant or complete construction on a time frame connected with this Agreement.

c) In addition, KCPL specifically reserves the right to continue to discuss with other entities, including other entities not regulated by the Commission, the potential participation of those entities in the Iatan 2 plant, notwithstanding the specific provisions of this Paragraph.

#### **10. EFFECT OF THIS NEGOTIATED SETTLEMENT**

a. None of the Signatory Parties shall be deemed to have approved or acquiesced in any question of Commission authority, accounting authority order principle, cost of capital methodology, capital structure, decommissioning methodology, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence that may underlie this Agreement, or for which provision is made in this Agreement. This Agreement shall not be construed as fulfilling any requirements for environmental permits necessary for construction or operation of the infrastructure investments delineated in this Agreement. Participation by MDNR in this Agreement shall not be construed as an indication that MDNR has taken any position on any KCPL application for construction of new generation facilities.

b. This Agreement is based on the unique circumstances presented by KCPL to the Signatory Parties. This Agreement shall not be construed to have precedential impact in any other Commission proceeding.

c. The Signatory Parties enter into this Agreement in reliance upon information provided to them by KCPL. In the event that the Commission finds that KCPL failed to provide the Signatory Parties with material and relevant information in its possession, or which should have been available to KCPL through reasonable investigation, or in the event that the Commission finds that KCPL misrepresented facts relevant to this Agreement, this Agreement shall be terminated.

d. This Agreement represents a negotiated settlement. Except as specified herein, the Signatory Parties to this Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement in the instant proceeding, or in any way condition its approval of same.

e. The provisions of this Agreement have resulted from negotiations among the Signatory Parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Agreement in total, it shall be void and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof.

f. When approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the Signatory Parties hereto. The Signatory Parties shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms.

g. This Agreement does not constitute a contract with the Commission. Acceptance of this Agreement by the Commission shall not be deemed as constituting an

agreement on the part of the Commission to forego, during the Regulatory Plan, the use of any discovery, investigative or other power which the Commission presently has. For example, non-signatories to this Agreement may request or file for an earnings/revenues investigation of KCPL, and in response the Commission may direct the Staff to conduct an earnings/revenues investigation of KCPL. Thus, nothing in this Agreement is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation. Nothing in this Agreement is intended to impinge, restrict or limit in any way Public Counsel's discovery powers, including the right to access information and investigate matters related to KCPL. Nothing in this Agreement is intended to impinge, restrict or limit in any way the Office of the Attorney General's discovery powers, including the right to access information and investigate matters related to KCPL. Nothing in this Agreement or participation in this case by MJMEUC shall be deemed to establish or enlarge the jurisdiction of the Commission beyond that provided in existing law with respect to the MJMEUC or any ownership or interest that it may acquire in the Iatan 2 plant or related facilities and assets.

h. This Agreement contains the entire generally-applicable agreements or arrangements of the Signatory Parties. There are no other generally-applicable agreements or arrangements that pertain to these matters. Silence in this Agreement on a particular topic or issue indicates that the Signatory Parties reached no agreement on the handling of that topic or issue.

**11. COMMISSION APPROVAL OF THE STIPULATION AND AGREEMENT**

a. KCPL will and any other Signatory Party may file testimony and/or schedules in support of this Agreement no later than April 11, 2005.

b. Public Counsel reserves the right to request local hearings in the KCPL service area in this case. Notwithstanding any other provision of this Agreement, Public Counsel also specifically reserves the right to assert a position on any new issue raised at local hearings which Public Counsel believes has not been adequately addressed in this Agreement.

c. The Staff shall file suggestions or a memorandum in support of this Agreement and the other Signatory Parties shall have the right to file responsive suggestions or prepared testimony.

d. If requested by the Commission, the Staff shall have the right to submit to the Commission an additional memorandum addressing the matter requested by the Commission. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of the Staff's memorandum, a responsive memorandum, which shall also be served on all parties. The contents of any memorandum provided by any Signatory Party are its own and are not acquiesced in or otherwise adopted by the other Signatory Parties to this Agreement, whether or not the Commission approves and adopts this Agreement.

e. The Staff shall also have the right to provide, at any agenda meeting at which this Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other Signatory Parties with advance notice of when

the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

f. If the Commission does not unconditionally approve this Agreement without modification, and notwithstanding its provision that it shall become void thereon, neither this Agreement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any party has to a hearing on the issues presented by the Agreement, for cross-examination, or for a decision in accordance with Section 536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the parties shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions, memoranda, testimony or exhibits that have been offered or received in support of this Agreement shall thereupon become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

g. In the event the Commission accepts the specific terms of the Agreement, the Signatory Parties waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510 RSMo 2000. This waiver applies only to a



Commission Order Approving Stipulation and Agreement or other Report And Order approving this Agreement issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Agreement.

**12. THE TERMS OF THIS AGREEMENT.**

The terms of this Agreement (once approved by the Commission) will be deemed to have become effective as of the date the Order of the Commission approving this Agreement becomes final, and will expire June 1, 2010, except where otherwise specified in this Agreement.

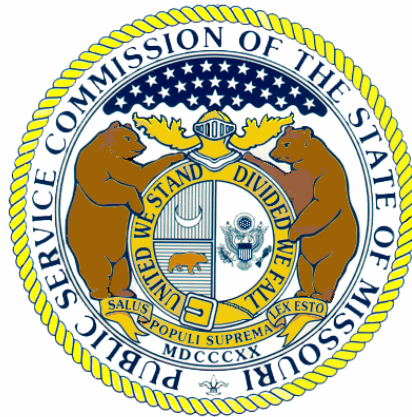
**WHEREFORE**, the Signatory Parties respectfully request that the Commission approve this Agreement to be effective by May 15, 2005, if possible.

Respectfully submitted,

<p><b>STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION</b></p> <p>By:  Dana K. Joyce, MBE #28533 Steven Dottheim, MBE #29149</p>	<p><b>KANSAS CITY POWER &amp; LIGHT COMPANY</b></p> <p>By:  William G. Riggins, MBE #42501 James M. Fischer, MBE #27543 Karl Zobrist, MBE #28325</p>
<p><b>OFFICE OF THE PUBLIC COUNSEL</b></p> <p>By:  John B. Coffman, MBE #36591</p>	<p><b>MISSOURI DEPARTMENT OF NATURAL RESOURCES</b></p> <p>By: _____ Shelley Woods, MBE #33525</p>
<p><b>PRAXAIR, INC.</b></p> <p>By:  Stuart W. Conrad, MBE #23966</p>	<p><b>MISSOURI INDUSTRIAL ENERGY CONSUMERS</b></p> <p>By:  Diana M. Vuylsteke, MBE #42419 <i>by James M. Fenker</i></p>

<p><b>THE EMPIRE DISTRICT ELECTRIC COMPANY</b></p> <p>By: <u>Dean L. Cooper by James M. Fisher</u> Dean L. Cooper, MBE #36592</p>	<p><b>AQUILA, INC.</b></p> <p>By: <u>Dean L. Cooper by James M. Fisher</u> Dean L. Cooper, MBE #36592</p>
<p><b>CITY OF KANSAS CITY, MISSOURI</b></p> <p>By: _____ Mark W. Comley, MBE #28847</p>	<p><b>JACKSON COUNTY, MISSOURI</b></p> <p>By: _____ Jeremiah Finnegan, MBE #18416</p>
<p><b>CONCERNED CITIZENS OF PLATTE COUNTY AND THE SIERRA CLUB</b></p> <p>By: _____ Kathleen G. Henry, MBE #39504</p>	<p><b>MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION</b></p> <p>By: <u>Duncan Kincheloe</u> Duncan Kincheloe, MBE #25497 <u>by James M. Fisher</u></p>
<p><b>FORD MOTOR COMPANY</b></p> <p>By: <u>Diana M. Vuylsteke</u> Diana M. Vuylsteke, MBE #42419 <u>by James M. Fisher</u></p>	

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



In the Matter of a Proposed Regulatory Plan )  
of Kansas City Power & Light Company )

**Case No. EO-2005-0329**

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**REPORT AND ORDER**

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**Issue Date: July 28, 2005**

**Effective Date: August 7, 2005**

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

In the Matter of a Proposed Regulatory Plan    )  
of Kansas City Power & Light Company        )     **Case No. EO-2005-0329**

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## **APPEARANCES**

**James M. Fischer, Esq.**, Fischer & Dority, 101 Madison Street, Suite 400, Jefferson City, Missouri 65101, for Kansas City Power & Light Company

**Karl Zobrist, Esq.**, Sonnenchein Nath & Rosenthal, LLP, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111, for Kansas City Power & Light Company

**William G. Riggins, Esq.**, General Counsel, 1201 Walnut, Kansas City, Missouri 64141, for Kansas City Power & Light Company

**James C. Swarengen, Esq.**, Brydon, Swarengen & England, P.C., Post Office Box 456, Jefferson City, Missouri 65102, for Aquila, Inc.

**Paul A. Boudreau, Esq.**, Brydon, Swarengen & England, P.C., Post Office Box 456, Jefferson City, Missouri 65102, for Aquila, Inc.

**Janet Wheeler, Esq.**, Brydon, Swarengen & England, P.C., Post Office Box 456, Jefferson City, Missouri 65102, for Aquila, Inc.

**Dean L. Cooper, Esq.**, Brydon, Swarengen & England, P.C., Post Office Box 456, Jefferson City, Missouri 65102, for The Empire District Electric Company

**Diana C. Carter, Esq.**, Brydon, Swarengen & England, P.C., Post Office Box 456, Jefferson City, Missouri 65102, for Missouri Gas Energy

**Stuart Conrad, Esq.**, Finnegan, Conrad & Peterson, L.C., 1209 Penntower Office Center, 3100 Broadway, Kansas City, Missouri 64111, for Praxair, Inc.

**Kara Valentine, Esq.**, Department of Natural Resources, Post Office Box 176, Jefferson City, Missouri 65102, for the Missouri Department of Natural Resources

**Michael Dandino, Esq.**, Senior Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel.

**Douglas E. Micheel, Esq.**, Senior Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel.

**Steven Dottheim, Esq.**, Deputy General Counsel, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission

**Dana K. Joyce, Esq.**, General Counsel, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission

**Nathan Williams, Esq.**, General Counsel, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission

**Duncan E. Kincheloe, Esq.**, General Manager and CEO, Missouri Public Utility Alliance, 2407 W. Ash, Columbia, Missouri, 65203, for Missouri Joint Municipal Electric Utility Commission

**Paul W. Phillips, Esq.**, United States Department of Energy, Office of General Counsel, 1000 Independence Avenue SW, Washington, DC 20585, for the United States Department of Energy

**James B. Lowery, Esq.**, Smith Lewis, LLP, Post Office Box 918, 111 South 9<sup>th</sup> Street, Suite 200, Columbia, Missouri 65205, for Union Electric Company, d/b/a AmerenUE

**David Kurtz, Esq.**, Smith Lewis, LLP, Post Office Box 918, 111 South 9<sup>th</sup> Street, Suite 200, Columbia, Missouri 65205, for Union Electric Company, d/b/a AmerenUE

**Paul DeFord, Esq.**, Lathrop & Gage, 2345 Grand Boulevard, Kansas City, Missouri 64108, for Trigen – Kansas City Energy Corp.

**Kathleen Green Henry, Esq.**, Great Rivers Environmental Law Center, 705 Olive Street, Suite 614, St. Louis, Missouri 63101, for Concerned Citizens of Platte County and Sierra Club

**Edward F. Downey, Esq.**, Bryan Cave, LLP, 221 Bolivar Street, Suite 101, Jefferson City, Missouri 65101, for Ford Motor Co. and Missouri Industrial Energy Consumers

**Mark W. Comley, Esq.**, Newman, Comley & Ruth, P.C., 601 Monroe Street, Suite 301, Jefferson City, Missouri 65101, for the City of Kansas City, Missouri

**REGULATORY LAW JUDGE: Ronald D. Pridgin**

# **REPORT AND ORDER**

## **Syllabus**

The Commission determines that it should approve Kansas City Power & Light Company's Experimental Regulatory Plan, which includes construction of coal-fired generating plant to be known as Iatan 2.

## **Procedural History**

### **History Leading Up to this Case**

On May 6, 2004, Kansas City Power & Light Company filed its Application to Establish Investigatory Docket and Workshop Process Regarding Kansas City Power & Light Company. The Commission created Case No. EO-2004-0577 to consider that application.

KCPL requested that the Commission issue an order (a) opening an investigatory docket regarding the future supply and pricing of the electric service provided by KCPL; and (b) authorizing the use of the Commission's workshop process to address certain issues related to the future supply and pricing of electricity for KCPL and its customers, and any other issues affecting KCPL that might arise from discussion among the interested parties.

On May 25, 2004, the Commission issued an Order Directing Notice and Setting Intervention Deadline. Several parties, including the Missouri Department of Natural Resources; Aquila, Inc. d/b/a Aquila Networks, Aquila Networks – MPS and Aquila Networks – L&P; The Empire District Electric Company; the City of Kansas City, Missouri; Concerned Citizens of Platte County; Praxair, Inc.; the Missouri Industrial Energy



Consumers; and the Missouri Joint Municipal Electric Utility Commission applied to intervene.

On June 3, 2004, the Commission issued an Order Establishing Case which granted KCPL's Application to Establish Investigatory Docket and Workshop Process Regarding Kansas City Power & Light Company, and established an informal, investigatory case designated as Case No. EW-2004-0596. In the June 3 order, the intervenors in Case No. EO-2004-0577 were also made participants in Case No. EW-2004-0596.

In addition to those participants, the Missouri Energy Group; the Sierra Club; Union Electric Company, d/b/a AmerenUE; and Jackson County, Missouri, participated in the workshops conducted in Case No. EW-2004-0596. The Staff of the Missouri Public Service Commission and the Office of the Public Counsel also participated throughout the workshop process. On July 1, 2004, the Commission issued its Notice Closing Case in Case No. EO-2004-0577, which formally closed that proceeding.

The Commission held a prehearing conference in Case No. EW-2004-0596 on June 30, 2004. A series of presentations and workshops was held on June 21, June 30, July 21, July 30, August 10-11, August 19, August 24-26, September 7, September 15, September 29, and October 29, 2004. During this period, KCPL conducted numerous informal meetings with a variety of interested groups and individuals to discuss the many issues raised by this proceeding.

The workshop was organized into two teams. Team A reviewed Integrated Resource Planning–related issues, including load forecasting, generation planning, demand side management, environmental issues, and distribution and transmission technologies. A subteam within Team A reviewed affordability, efficiency, and conservation

programs. Team B reviewed the financial issues associated with KCPL's various plans, including maintaining KCPL's current investment grade rating on its securities. These Teams were led jointly by KCPL and Staff representatives.

After the workshops in Case No. EW-2004-0596 had concluded, various interested parties, including the Sierra Club and Concerned Citizens of Platte County, held discussions in an effort to resolve the issues presented in the instant case. These discussions included issues related to KCPL's capacity needs for the future, capital investments related to compliance with environmental regulations, infrastructure investments, and customer programs, as well as the likely impact of those investments and programs upon KCPL's future revenue requirements.

On February 18, 2005, the Commission issued its Order Closing Case in Case No. EW-2004-0596. In the Order Closing Case, the Commission stated:

"The Commission agrees that it is time to close this case. It appears that the general discussion has led to the specific give-and-take of settlement-style negotiations. If KCPL develops a regulatory plan (with or without consensus) for which it wants Commission approval, it can request that approval in a new case." (Order Closing Case, pp. 1-2).

### History of this Case

On March 28, 2005, KCPL, Staff, Public Counsel, Missouri Department of Natural Resources, Praxair, Missouri Industrial Energy Consumers, Ford Motor Company, Aquila, Empire, and Missouri Joint Municipal Electric Utility Commission (collectively referred to as "Signatory Parties") submitted a Stipulation and Agreement. That agreement included an

Experimental Regulatory Plan. The Stipulation is attached to this Order as Attachment No. 1.

Concerned Citizens of Platte County and Sierra Club opposed the agreement. On June 23-24, 27, and July 12, the Commission held an evidentiary hearing. The parties filed proposed Findings of Fact and Conclusions of Law on July 19, and briefs on July 21.

### **Discussion of Issues Presented**

On May 31, 2005, the Staff of the Commission filed a List of Issues. After reviewing the list and the parties' respective position statements, the Commission has determined that the List of Issues contains issues unnecessary and extraneous to this case. As a result, the Commission will not address each and every issue contained in the List of Issues.

The essential substantive issues that the Commission needs to decide are:

1. What action should the Commission take concerning the Experimental Regulatory Plan embodied in the March 28, 2005 Stipulation and Agreement?
2. Should KCPL's Experimental Regulatory Plan include the construction of a coal-fired generation unit at Iatan 2?

The Commission will also address additional legal and procedural issues from the List of Issues in the "Conclusions of Law" Section of this Report and Order. However, in the event that the Commission does not directly address an issue from the List of Issues, it merely indicates that the Commission finds the issue is unnecessary or extraneous.

Because not all parties have signed the Stipulation, and SC/CCPC are opposing certain aspects of the Experimental Regulatory Plan that is embodied in the Stipulation, the Commission will consider this case using the procedures set forth in 4 CSR 2.115(2) relating to Non-unanimous Stipulations and Agreements. That means that the Commission will consider the provisions of the Stipulation filed on March 28, 2005, as if they are joint recommendations of the signatory parties. The Commission will therefore review the competent and substantial evidence to determine how to rule on the issues.

### **Summary of KCPL's Proposed Experimental Regulatory Plan**

The Stipulation, which runs through June 1, 2010, unless otherwise specified in the agreement, contains the key elements of KCPL's proposed Experimental Regulatory Plan and will be briefly summarized below:<sup>1</sup>

#### **RESOURCE PLAN**

KCPL has committed to investing over \$1.3 billion over the course of the Experimental Regulatory Plan. This investment includes the completion or substantial progress on the following projects:

- 800-900 MW of new coal-fired generation capacity, Iatan 2, to be regulated capacity, excepting the interest that may be owned by a municipality or joint municipal utility commission, located at the Iatan site near Weston, Missouri, of which KCPL will own approximately 500 MWs;

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<sup>1</sup> This summary was taken from the Direct Testimony of Chris B. Giles (Ex. No. 1) and the Commission's review of the provisions of the Stipulation.

- Environmental investments related to Iatan 1 and LaCygne 1 for accelerated compliance with environmental regulations; the Iatan 1 and LaCygne 1 environmental equipment will provide significant reductions in site emissions of sulfur dioxide (“SO<sub>2</sub>”), nitrogen oxides, stack particulate matter and mercury, and will position the units to meet compliance requirements set forth in the Clean Air Interstate Rule and the Clean Air Mercury Rule, which were recently promulgated by the U.S. Environmental Protection Agency (“EPA”). With the addition of Iatan 2 at this site, compliance on Iatan 1 will ensure that total site emissions after completion of Iatan 2 will be less than the current site emissions from Iatan 1 and will help address the environmental concerns of persons living in the area around the Iatan site;
- Early installation of a selective catalytic reduction (“SCR”) facility at LaCygne 1, designed to help maintain attainment of the 8-Hour Ozone standard within the metropolitan Kansas City region. Installation of this SCR before the 2007 ozone season is considered a significant component of the region’s proposed ozone mitigation plan by Mid-America Regional Council, regional EPA officials, Kansas Department of Health & Environment and Missouri Department of Natural Resources. With respect to any of the expenditures anticipated for environmental compliance, KCPL will continue to assess the environmental laws to ensure that its expenditures will comply with existing or expected environmental regulations.
- 100 MW of new wind generation facilities to be installed in 2006. KCPL will install an additional 100 MW of new wind generation facilities in 2008 if a

detailed evaluation (made with input from Signatory Parties to the Stipulation) supports such an action. KCPL's detailed evaluation will include information obtained from a tall tower wind assessment performed for KCPL at two Missouri sites. The detailed evaluation will use the KCPL tall tower wind assessment information (and other Missouri-specific information, if available) to analyze the cost effectiveness of wind generation in Missouri before installing the second 100 MW of wind generation in any state other than Missouri. The Signatory Parties agree that KCPL will perform an assessment of wind energy resources at Missouri sites determined in concert with Missouri Department of Natural Resources and other interested Signatory Parties. KCPL will obtain access to two (2) Missouri wind assessment locations and will contract to install wind measuring equipment and evaluate data collected at levels between 50 meters up to and including 100 meters above ground level for the ultimate purpose of producing site-specific measurements that can be used to quantify the wind resources in Missouri. The two Missouri tall tower installations will be operating by December 31, 2005. The initial report analyzing the first 12 months of tall tower data will be completed by March 31, 2007. The final report analyzing the first 18 to 21 months of data will be completed by December 31, 2007.

- Implementing a number of customer programs that include demand response, efficiency and affordability programs throughout the period of the Experimental Regulatory Plan. The initially budgeted expenditures for the five (5) year period for Missouri are \$13.8 million for Demand Response

Programs, \$2.5 million for Affordability Programs, and \$12.7 million for Efficiency Programs.

- Investing \$42.4 million over the period of the Experimental Regulatory Plan into the transmission and distribution infrastructure to ensure a highly reliable transmission and distribution system.

## **CUSTOMER SERVICE AND RELIABILITY**

KCPL has committed to maintaining good customer service and reliability. KCPL has agreed to provide the Staff and Public Counsel monthly data submitted quarterly (within forty-five (45) days of end of the period) on the following quality of service measures:

### **Call Center Data**

Total Calls Offered to the Call Center

Call Center Staffing including Call Center Management Personnel

Average Speed of Answer

Abandoned Call Rate

### **Reliability Indicators**

Customer Average Interruption Duration Index (“CAIDI”)

System Average Interruption Duration Index (“SAIDI”)

System Average Interruption Frequency Index (“SAIFI”)

Momentary Average Interruption Frequency Index (“MAIFI”)

CAIDI, SAIDI, and SAIFI will be reported on both a weather adjusted and unadjusted basis.

## **RATE MORATORIUM AND FUTURE RATE CASES**

The signatories agree that, absent a “significant change” as defined in the Stipulation, they will not seek to change rates through December 31, 2006. KCPL will file rate schedules on February 1, 2006, effective January 1, 2007.

Over the course of the Experimental Regulatory Plan, four rate case filings are contemplated. The first, described as the 2006 Rate Case, and the last, to be filed on October 1, 2009, ("2009 Rate Case") are mandatory. The other two rate cases are optional.<sup>2</sup>

The 2006 Rate Case will include prudent expenditures made related to 100 megawatts of wind generation, and those additions to transmission and distribution infrastructure, as set out in the Experimental Regulatory Plan, which are in service prior to the agreed true-up date of the rates approved in the rate case. The 2006 Rate Case will also include an amortization expense of \$17 million on a Missouri jurisdictional basis, but which can be increased or decreased as specified by the Stipulation.

The 2006 Rate Case will also include an amortization related to the Demand Response, Efficiency and Affordability Programs, as set out in the Stipulation. KCPL has agreed that the 2006 Rate Case will also include the filing of a Class Cost of Service Study. No later than February 1, 2006, KCPL will submit to the Signatory Parties a Missouri jurisdictional revenue requirement cost of service study and a Missouri jurisdictional customer class cost of service study covering the twelve months ending December 31, 2005.

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<sup>2</sup> The Commission reserves its statutory right under Section 393.150 RSMo to suspend or reject any tariffs KCPL may file during the course of this stipulation, or at any other time.



If KCPL chooses to file the second rate case, then it will file rate schedules on February 1, 2007, effective January 1, 2008. The 2007 Rate Case will include prudent expenditures for the installation of an SCR facility at LaCygne 1, and the additions to transmission and distribution infrastructure as set out in the Stipulation that are in service prior to the agreed upon true-up date. The 2007 Rate Case will include an amortization expense expected to be \$17 million on a Missouri jurisdictional basis, as may be adjusted upward or downward. The 2007 Rate Case will also include the amortization related to the Demand Response, Efficiency and Affordability Programs, as more fully described in the Stipulation.

If KCPL chooses to file the third rate case, then it will file rate schedules on February 1, 2008, effective January 1, 2009. The 2008 Rate Case will include prudent expenditures for the installation of an SCR facility, a Flue Gas Desulphurization (“FGD”) unit and a Baghouse at Iatan 1; 100 MWs of additional wind generation, if warranted; and the additions to transmission and distribution infrastructure as set out in the Stipulation that are in service prior to the agreed upon true-up date. The 2008 Rate Case will include an amortization expense expected to be \$17 million on a Missouri jurisdiction basis, as may be adjusted upward or downward. The 2008 Rate Case will also include the amortization related to the Demand Response, Efficiency and Affordability Programs, as more fully described in the Stipulation.

### **COST CONTROL SYSTEM**

KCPL has agreed to develop and have a cost control system in place that identifies and explains any cost overruns above the definitive estimate during the construction period of the Iatan 2 project, the wind generation projects and the environmental investments.

## **RIDERS AND SURCHARGES**

KCPL has agreed that before June 1, 2015, it will not seek to use any mechanism authorized in SB 179, enacted this year, or other change in state law that would allow riders or surcharges or changes in rates outside of a general rate case based upon a consideration of less than all relevant factors.

## **INTERIM ENERGY CHARGE**

KCPL can propose an Interim Energy Charge (“IEC”) in a general rate case filed before June 1, 2015, within the following parameters:

1. The rates and terms for such an IEC shall be established in a rate case along with a determination of the amount of fuel and purchased power costs to be included in the calculation of base rates.
2. The rate or terms for such an IEC shall not be subject to change outside of a general rate case where all relevant factors are considered.
3. The IEC rate “ceiling” may be based on both historical data and forecast data for fuel and purchased power costs, forecasted retail sales, mix of generating units, purchased power, and other factors including plant availability, anticipated outages, both planned and unplanned, and other factors affecting the costs of providing energy to retail customers.
4. The duration of any such IEC shall be established for a specified period of time, not to exceed two years.
5. A refund mechanism shall be established which will allow any over-collections of fuel and purchased power amounts to be returned to ratepayers with interest following a review and true-up of variable fuel and purchased power costs at

the conclusion of each IEC. Any uncontested amount of over-collection shall be refunded to ratepayers no later than 60 days following the filing of the IEC true-up recommendation of the Staff.

6. During any IEC period, KCPL shall provide to the Staff, Public Counsel and other interested Signatory Parties monthly reports that include any requested energy and fuel and purchase power cost data.

### **CURRENT AND ADDITIONAL AMORTIZATIONS**

The Signatory Parties agreed that it is desirable to maintain KCPL's debt at an investment grade rating during the period of the construction expenditures contained in the Stipulation. KCPL understands it has the responsibility to act prudently and reasonably in an effort to achieve the goal of maintaining its debt at investment grade levels. KCPL further understands that it is incumbent upon it to act prudently and reasonably so that its investment grade debt rating will not be at risk. The non-KCPL Signatory Parties committed to work with KCPL to ensure that based on prudent and reasonable actions, KCPL has a reasonable opportunity to maintain its bonds at an investment grade rating during the construction period ending June 1, 2010.

As part of this commitment, the non-KCPL Signatory Parties agreed to support the "Additional Amortizations to Maintain Financial Ratios," as defined in the Stipulation and related appendices, in KCPL general rate cases filed prior to June 1, 2010. The "Additional Amortization to Maintain Financial Ratios" will only be an element in any KCPL rate case when the Missouri jurisdictional revenue requirement in that case fails to satisfy the financial ratios shown in Appendix E of the Stipulation through the application of the process illustrated in Appendix F of the Stipulation.

The Signatory Parties agree to support an additional amortization amount added to KCPL's cost of service in a rate case when the projected cash flows resulting from KCPL's Missouri jurisdictional operations, as determined by the Commission, fail to meet or exceed the Missouri jurisdictional portion of the lower end of the top third of the BBB range shown in Appendix E, for the Funds from Operations Interest Coverage ratio and the Funds from Operations as a Percentage of Average Total Debt ratio. The Signatory Parties agree to adopt an amortization level necessary to meet the Missouri jurisdictional portion of these financial ratios under the conditions indicated above.

#### **IMPUTATION OF REVENUES RELATED TO SPECIAL CONTRACTS**

KCPL has agreed that for ratemaking determinations, customers using special contracts will be treated as if they were paying the full generally applicable tariff rate for service from KCPL, and other provisions in special contracts will not affect rate base for regulatory purposes.

#### **SO<sub>2</sub> EMISSION ALLOWANCE PROGRAM**

The Experimental Regulatory Plan sets out procedures that KCPL will follow to manage its allowance inventory to benefit KCPL and its customers. The plan also has procedures that KCPL will follow to provide the Staff and Public Counsel with information relevant to the Commission's oversight of such activities.

In particular, the proceeds and costs of all transactions identified in the SO<sub>2</sub> Emissions Allowance Management Policy ("SEAMP") will be recorded in Account 254 for ratemaking purposes. The regulatory liability will be amortized over the same time period

used to depreciate environmental assets (emission control equipment and other emission control investments).

### **ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION RATE REDUCTION**

KCPL agreed to a 1.25% or 125 basis point reduction in the equity portion of the Allowance For Funds Used During Construction (AFUDC) rate applicable to Iatan 2. KCPL shall use this 125 basis point reduction in the AFUDC rate from the effective date of the Order Approving Stipulation and Agreement in this proceeding, and in all subsequent calculations of AFUDC on Iatan 2 until the in-service date of Iatan 2.

However, during the hearing, KCPL agreed to substitute the AFUDC Rate Reduction provision from a similar Kansas Stipulation and Agreement. KCPL agrees to a 2.50% or 250 basis point reduction in the equity portion of the AFUDC rate applicable to Iatan 2 from the effective date of the rates determined in the first rate case (anticipated to be January 1, 2007) and in all subsequent calculation of AFUDC on Iatan 2 until the in-service date of Iatan 2.<sup>3</sup>

### **OFF-SYSTEM SALES**

Under the terms of the Stipulation, KCPL agrees that off-system energy and capacity sales revenues and related costs will continue to be treated “above the line” for ratemaking purposes. KCPL will not propose any adjustment that would remove any portion of its off-system sales from its revenue requirement determination in any rate case. KCPL agrees

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<sup>3</sup> On July 26, the Signatory Parties filed a Response to Order Directing Filing. That response memorialized KCPL’s agreement to a 250 basis point reduction in the equity portion of AFUDC, and amended Section III.B.1.g. of the Stipulation and Agreement.

that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process. During the hearing, KCPL also stipulated that it would agree to this ratemaking treatment for off-system sales as long as the latan 2 costs were included in KCPL's rate base. (Tr. 1037-38).<sup>4</sup>

#### **TRANSMISSION-RELATED REVENUES**

KCPL agrees that transmission related revenues and related costs will continue to be treated “above the line” for ratemaking purposes. KCPL specifically agrees not to propose any adjustment that would remove any portion of its transmission related revenues from its revenue requirement determination in any rate case. It further agrees that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process.

#### **PARTNERSHIP ISSUES**

According to the Stipulation, KCPL will consider Empire and Aquila preferred potential partners in the latan 2 plant with at least a 30% combined share, so long as they can each demonstrate that they have a commercially feasible plan for meeting the necessary financial commitments by the later of August 1, 2005, or such date that KCPL shall issue its request(s) for proposal(s) related to latan 2. Such a financing plan must not adversely affect KCPL’s ability to finance its share of the latan 2 plant or to complete construction on the timeframe established in the Stipulation.

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<sup>4</sup> Also in their July 26 Response to Order Directing Filing, the Signatory Parties memorialized KCPL’s agreement that all of its off-system sales would be used to establish Missouri jurisdictional rates as long as the related investments and expenses are considered in determining those rates, and amended Section III.B.1.j. of the Stipulation and Agreement.

KCPL will also consider MJMEUC as a preferred potential partner in the Iatan 2 plant with at least 100 MW of the plant's capacity, so long as it can demonstrate that it has a commercially feasible plan for meeting the necessary financial commitments by the later of August 1, 2005, or such date that KCPL shall issue its request(s) for proposal(s) related to Iatan 2. Such a financing plan must not adversely affect KCPL's ability to finance its share of the Iatan 2 plant or to complete construction on the timeframe established in the Stipulation.

#### **AGREEMENT CONDITIONED ON APPROVAL BY KANSAS CORPORATION COMMISSION**

The Stipulation is conditioned upon the Kansas Corporation Commission's approval of a Regulatory Plan that is substantially similar to the terms of the Missouri Experimental Regulatory Plan. KCPL will timely file with the Commission the Experimental Regulatory Plan that the KCC approves. Within seven (7) days after KCPL files the KCC approved Experimental Regulatory Plan, the Signatory Parties will indicate their disposition respecting the terms of the Experimental Regulatory Plan. KCPL agrees that it will offer to the Signatory Parties and accept comparable terms to those terms that the KCC approves.

#### **RELIANCE ON INFORMATION PROVIDED BY KCPL**

The Stipulation, at Section III.B.10.c, page 53, addresses the effect of the Commission finding that (1) KCPL failed to provide the Signatory Parties with material and relevant information in its possession, or which should have been available to KCPL through reasonable investigation, or (2) KCPL misrepresented facts relevant to the Stipulation.

## Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission has considered the parties' positions and arguments. Failure to specifically address a piece of evidence, position, or argument does not mean that the Commission failed to consider it, but instead means that the omitted material was not dispositive of this decision.

In making its Findings of Fact and Conclusions of Law, the Commission is mindful that it is required, after a hearing, to "make a report in writing in respect thereto, which shall state the conclusion of the commission, together with its decision, order or requirement in the premises."<sup>5</sup> Because Section 386.420 does not explain what constitutes adequate findings of fact, Missouri courts have turned to Section 536.090, which applies to "every decision and order in a contested case," to fill in the gaps of Section 386.420.<sup>6</sup> Section 536.090 provides, in pertinent part:

Every decision and order in a contested case shall be in writing, and . . . the decision . . . shall include or be accompanied by findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order.

Missouri courts have not adopted a bright-line standard for determining the adequacy of findings of fact.<sup>7</sup> Nonetheless, the following formulation is often cited:

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<sup>5</sup> Section 386.420.2, RSMo 2000. All further statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

<sup>6</sup> *St. ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n*, 103 S.W.3d 813, 816 (Mo. App., W.D. 2003); *St. ex rel. Noranda Aluminum, Inc. v. Pub. Serv. Comm'n*, 24 S.W.3d 243, 245 (Mo. App., W.D. 2000).

<sup>7</sup> *Glasnapp v. State Banking Bd.*, 545 S.W.2d 382, 387 (Mo. App. 1976).



The most reasonable and practical standard is to require that the findings of fact be sufficiently definite and certain or specific under the circumstances of the particular case to enable the court to review the decision intelligently and ascertain if the facts afford a reasonable basis for the order without resorting to the evidence.<sup>8</sup>

Findings of fact are inadequate when they "leave the reviewing court to speculate as to what part of the evidence the [Commission] believed and found to be true and what part it rejected."<sup>9</sup> Findings of fact are also inadequate that "provide no insight into how controlling issues were resolved" or that are "completely conclusory."<sup>10</sup> With these points in mind, the Commission renders the following Findings of Fact.

### **The Proposed Regulatory Plan is in the public interest**

Based upon the competent and substantial evidence on the whole record, the Commission finds that the Experimental Regulatory Plan embodied in the Stipulation is in the public interest. The Commission also finds that KCPL's Experimental Regulatory Plan should include the construction of a coal-fired baseload plant at Iatan 2.

The Commission agrees with Public Counsel witness Trippensee that the Stipulation strikes a reasonable and appropriate balance between the interests of customers and shareholders (Ex. 39, p. 24). Staff witness Wood confirmed Mr. Trippensee's analysis. Testifying about Iatan 2, Mr. Wood testified: "I believe it's needed and it is the most appropriate resource addition given all the information available today to serve the growing load and provide for the lowest possible rates to customers." (Tr. 609). Staff witness

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<sup>8</sup> *Id.* (quoting 2 Am.Jur.2d Administrative Law § 455, at 268).

<sup>9</sup> *St. ex rel. Int'l. Telecharge, Inc. v. Pub. Serv. Comm'n*, 806 S.W.2d 680, 684 (Mo. App., W.D. 1991) (quoting *St. ex rel. Am. Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 701 S.W.2d 745, 754 (Mo. App., W.D. 1985)).

<sup>10</sup> *St. ex rel. Monsanto Co. v. Pub. Serv. Comm'n*, 716 S.W.2d 791, 795 (Mo. banc 1986) (relying on *St. ex rel. Rice v. Pub. Serv. Comm'n*, 359 Mo. 109, 220 S.W.2d 61 (1949)).

Schallenberg was the primary facilitator for the negotiations of the Stipulation, and testified that he was involved in development of all of the provisions of the Stipulation. (Tr. 805). He testified that the Stipulation is in the public interest, and he recommended that the Commission approve its provisions. (Tr. 806, 816).

Based upon the testimony of KCPL witness John Grimwade (Ex. 37, p. 7), and Staff witnesses Mantle (Tr. 856), Wood (Tr. 602-04), Warren (Tr. 874, 916) and Elliott (Tr. 920, 923, 940-41, 961), the Commission finds and concludes that there is a reasonably projected need for additional baseload capacity in the year 2010. Mr. Grimwade's testimony demonstrated that with no changes to existing generation and no additional demand side management, based on a 12% capacity margin and a projected peak load of 3,959 MW, KCPL will have a capacity shortfall of 431 MW in 2010. (Ex. No. 37, p. 7). His analysis demonstrates that under base case assumptions that the Commission finds to be reasonable, the addition of a 500 MW share of a pulverized coal-fired generating unit resulted in the lowest Present Value of Revenue Requirements, and that the optimal timing of this addition would be during the 2010 to 2012 time frame. (Ex. No. 37, pp. 8-10).

Without repeating evidence summarized above, the Commission finds that Staff supported KCPL's position (as did all other Signatory Parties) that there is a need for coal-fired capacity on the KCPL system. Mr. Wood testified that KCPL's 500 MW share of Iatan 2 is appropriate to meet this need for its baseload generation (Tr. 600), particularly given the increase in the price of natural gas and the need for low-cost coal generation (Tr. 602-03). Based upon the Staff's review of KCPL's needs, additional baseload as proposed in the Stipulation is warranted. (Tr. 604).

Mr. Wood also explained the inaccuracies in the analysis provided at the Kansas City local public hearing by Witness Byron Combs. (Tr. 593). Mr. Combs claimed that KCPL does not need to build Unit 2 for baseload, but instead that KCPL wants to build it to make off-system sales. (Kansas City Public Hearing Exhibit No. 3). As correctly analyzed, the U.S. Energy Information Administration and FERC data supported Mr. Wood's conclusion that during the times Mr. Combs analyzed, KCPL was a net purchaser of power at times. Mr. Wood further concluded: "In looking at their current position, growth rates and where they are anticipated to be in the time frame this unit (Unit 2) could be built, a unit of this size appears to be appropriate. In fact between now and when that unit would come on, there will likely be some short-term provisions that need to be made in order to have the capacity to serve the obligations required by SPP in that time frame." (Tr. 600). Further, Mr. Wood testified that "(i)n the end, those revenues brought in through (the) off-system sales provide for an offset in operating expenses and can end up resulting in lower rates to customers." (Tr. 600).

Mr. Wood's testimony was consistent with Mr. Grimwade's testimony. Mr. Grimwade summarized KCPL's position in Exhibit No. 43, excerpts from a strategic planning forecast of both peak demand and energy.<sup>11</sup> This exhibit shows that for the next five years KCPL expects 2.4% peak load growth, with an overall growth rate from 2004 to 2014 of 1.9%. (Tr. 638-39). KCPL also assessed the energy needs of its customers for 2004-2014, and concluded that its customers' overall energy demand would grow at an annual rate of 2.1%.

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<sup>11</sup> Exhibit No. 43 is comprised of two pages. The first page of Exhibit No. 43 and page 15 of Exhibit No. 50 are identical except for the page numbers. The second page of Exhibit No. 43 and page 16 of Exhibit No. 50 are identical except for the page numbers.

(Tr. 639-40). Mr. Grimwade stated that this analysis was based upon a 25-year history of company experience, and was weather normalized. *Id.*

Wind generation and energy efficiency are an important part of a comprehensive and balanced resource plan. But the Commission finds and concludes that wind generation alone, energy efficiency alone, or a combination of both, cannot meet KCPL's customers' needs for additional baseload capacity during the term of the Experimental Regulatory Plan.

Sierra Club's witness Troy Helming advocated wind. Yet during the hearing, he admitted that KCPL should not build the 1600 megawatt wind farm that he once believed it should build. (Ex. 6, Tr. 255-56). Mr. Helming stated that wind is intermittent and that as a generation source, wind has its own set of interconnection, transmission overload and aesthetics issues. (Tr. 257-62). What is more, Sierra Club's other witness, Ned Ford, does not approve of wind as a peaking source, much less a baseload source. (Tr. 400-402). The Commission finds and concludes that Concerned Citizens of Platte County's and Sierra's Club's evidence concerning wind generation is contradictory and unconvincing.

Concerning energy efficiency, Staff witness Mantle, who was Staff's facilitator for demand management in KCPL's workshop process, testified that, in her opinion, demand response and energy efficiency programs could not reduce the load growth to the point that Iatan 2 would not be needed in 2010. (Tr. 850, 856). Sierra Club witness Ford testified that KCPL could avoid building Iatan 2 simply by implementing energy efficiency programs. (Tr. 326-28). But Mr. Ford concluded as much without attending the KCPL workshops (Tr. 408), without looking at KCPL's confidential information regarding load forecasting and integrated resource plans (Tr. 411), without talking to KCPL personnel (Tr. 416), or without

discussing with the signatory parties the reasons that they entered into the Stipulation and Agreement. (Tr. 411). Thus the Commission finds that Mr. Ford's testimony is less credible than Ms. Mantle's.

While Concerned Citizens of Platte County and Sierra Club argued that KCPL should pursue IGCC (integrated gasification combined cycle) technology, the Commission finds and concludes that the competent and substantial evidence respecting IGCC technology does not support a large-scale project comparable to Iatan 2. Sierra Club's witness Ford agreed with KCPL's view that IGCC plants "are new and unproven." (Tr. 328). He did not propose that KCPL construct such a plant. (Tr. 328, 383). Sierra Club's witness Helming testified that he was not familiar with the technology that KCPL proposed to use at Iatan 2 and could not express any opinion on the technology that should be employed there. "I'm a wind guy, not a thermal plant guy." (Tr. 263). He noted that the largest IGCC plant in operation today was the 250 MW plant operated by Tampa Electric. (Tr. 277).

Mr. Hale from MDNR testified that IGCC units are only being proposed in the neighborhood of 300 MWs, are "considerably more expensive at this time to build," and have reliability and availability issues that prevent them from serving as baseload units. (Tr. 709). KCPL Exhibit No. 41 summarizes the state of IGCC technology and concludes that when IGCC emissions are compared with those of a super-critical pulverized coal plant, such as planned for Iatan 2, the results are comparable. See Ex. No. 41 at B7. Considering the significant cost and reliability risks associated with developing IGCC technology on a large scale basis, the Commission finds and concludes that the use of the super-critical pulverized coal technology at Iatan 2 is the appropriate choice at this time.

As Mr. Grimwade noted, IGCC, while promising for future development, has not progressed to the point it would be a viable option for consideration for addressing near term baseload requirements. (Ex. No. 37, p. 14). The Commission therefore finds Mr. Helming's recommendation that KCPL should build between 1200 MW to 1600 MWs of IGCC units is not reasonable or persuasive.

As Mr. Grimwade's testimony pointed out, the addition of a coal-fired plant was particularly favorable for the KCPL system, assuming high gas price assumptions (Ex. 37, p.9). With the recent dramatic rise in natural gas prices, the Commission finds and concludes that heavy reliance on additional natural gas-fired combustion turbines or natural gas combined cycle units would not appear to be an optimal strategy at this time.

### **The Proposed Regulatory Plan should result in lower rates**

The Commission finds that the proposed Experimental Regulatory Plan provides a framework that should lead to reasonable rates during the expected 5-year duration of the construction period for the projects included in the Experimental Regulatory Plan. The Commission also agrees with Mr. Schallenberg and Mr. Trippensee that the Stipulation contains provisions that facilitate lower rates for customers in the future that would not exist absent this Stipulation (Ex. 39, pp. 5-8; Tr. 811-812).

The method the signatory parties used to get those lower future rates is additional amortization. KCPL witness Giles testified that the amortization will result in an offset to rate base, which will result in lower rates. (Ex. 1, p. 17). Public Counsel witness Trippensee explained how an increase in amortization expense, rather than an increase in earnings, would result in lower rates:

The reason for the higher rates would be the income taxes associated with receiving a dollar of earnings. Simply put, utilities pay

income taxes only on their earnings. Therefore, to receive a \$1.00 of earnings, a utility must receive approximately \$1.62 of revenue from the customer. The amortization procedure included in this Agreement anticipates that amortization expense (the accelerated recovery of past capital investments of the company) will be offset in the income tax calculation by the depreciation expense associated with the new investment. This will reduce or eliminate the 62 cents that must be recovered from the customer to provide a \$1.00 of cash flow to the Company during the construction phase. (Ex. 39, p.11)

Specifically, the Commission finds and concludes that this Stipulation provides for lower capitalized facilities costs during the period of construction, and therefore will result in a lower future rate base upon which customers must pay a return of and on. In particular, the Commission finds that the use of additional amortizations as proposed by the Signatory Parties to maintain the investment grade ratings of KCPL during the term of the Experimental Regulatory Plan is in the public interest, and will result in lower rates to consumers over the long term. In addition, KCPL's agreement to reduce its AFUDC rate on Iatan 2 by 250 basis points will reduce the overall cost of construction of Iatan 2, and will therefore promote the public interest.

The Commission finds that the treatment of off-system sales is an important part of its conclusion that the Proposed Regulatory Plan is in the public interest. The signatory parties' recommendation states as follows:

"KCPL agrees that off-system energy and capacity sales revenues and related costs will continue to be treated above the line for ratemaking purposes. KCPL specifically agrees not to propose any adjustment that would remove any portion of its off-system sales from its revenue requirement in any rate case, and KCPL agrees that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process. KCPL agrees that all of its off-system energy and capacity sales revenue will continue to be used

to establish Missouri jurisdictional rates as long as the related investments and expenses are considered in the determination of Missouri jurisdictional rates.” (Signatory Parties’ Response to Order Directing Filing, July 25, 2005) (amending Section III.B.1.j. of the Stipulation and Agreement)

Based upon the testimony of KCPL witnesses Giles and Cline, the Commission finds and concludes that the Stipulation should also positively affect KCPL’s credit ratings (Ex. 1, pp. 16-18; Ex. 36, pp. 2-5). Thus, KCPL should have lower debt costs that it will pass on to consumers in the form of lower future rates. The Commission also concludes, based upon the testimony of KCPL witnesses Giles and Cline, Public Counsel witness Trippensee, and Staff witness Schallenberg, that it is reasonable and appropriate to adopt regulatory policies, including the use of the additional amortization provision contained in the Stipulation, that are designed to give KCPL the opportunity to maintain its investment grade ratings during the term of the Experimental Regulatory Plan, based on the conditions set out in the Experimental Regulatory Plan regarding KCPL's necessary conduct.

### **Other Findings of Fact**

Based upon the competent and substantial evidence in the whole record, the Commission finds and concludes that KCPL's Experimental Regulatory Plan should include the construction of Iatan 2, as proposed by the Stipulation. The Commission further finds and concludes that competent and substantial evidence supports the Signatory Parties' position that "under the unique circumstances respecting KCPL, the capital investment package described in Section III.B.4 and the customer programs described in Section III.B.5 constitute major elements of a reasonable and adequate resource plan at the time the Signatory Parties entered into this Agreement." (Stipulation, pp. 6-7).



The Commission further finds and concludes that the competent and substantial evidence in the whole record supports the approval of the additional provisions of the Stipulation, including the following specific approvals: (1) KCPL is authorized to manage its SO<sub>2</sub> emission allowance inventory, including the sales of such allowances, as detailed in Section III.B.1.d (Stipulation, pp. 8-10); (2) KCPL is authorized to establish a regulatory asset or liability on KCPL's books related to FAS 87 pension expense, as detailed in Section III.B.1.e (Stipulation, pp. 10-15); (3) KCPL is authorized to reduce its AFUDC rate in the equity portion of the AFUDC rate by 250 basis points applicable to Iatan 2, as detailed in Section III.B.1.g and modified by agreement of the Signatory Parties; (4) KCPL is authorized to record additional amortization expense in the amount of \$10.3 million on an annual Missouri jurisdictional basis beginning with the effective date of the Stipulation until the effective date of the tariffs resulting from Rate Filing #1, as detailed in Section III.B.3.a of the Stipulation (Stipulation, p. 18); (5) KCPL is authorized to begin recording depreciation expense for the Wolf Creek Nuclear Generating Station based upon a 60-year life span, and KCPL is authorized to use depreciation rates for the various nuclear plant accounts, as detailed in Section III.B.1.n (Stipulation, p. 24); (6) KCPL is authorized to depreciate wind assets over a 20-year life and use depreciation rates for wind assets, as detailed in Section III.B.3.k (Stipulation, p. 23); and (7) KCPL is authorized to accumulate the Demand Response, Efficiency and Affordability Program costs in regulatory asset accounts as the costs are incurred, and amortize those costs as detailed in Section III.B.5 (Stipulation, pp. 46-49).

## **CONCLUSIONS OF LAW**

1. Based upon the competent and substantial evidence in the whole record, the Commission finds and concludes that the Proposed Regulatory Plan promotes safe and adequate service since it establishes a framework for substantial investments into the infrastructure necessary for KCPL to provide safe and adequate service in the future.

2. The Commission finds and concludes that the Experimental Regulatory Plan does not make or grant any undue or unreasonable preference, advantage, prejudice or disadvantage in KCPL's provision of service now, or in the future, because the Commission is not engaging in any setting of rates now, and in the future, the Commission will be called upon to establish just, reasonable, and non-discriminatory rates only within the context of ratemaking proceedings.

3. The Commission finds and concludes that the Proposed Regulatory Plan is in the public interest and is firmly supported by the competent and substantial evidence on the whole record, and that the Stipulation embodied in that Proposed Regulatory Plan is lawful in that it promotes "safe and adequate" service and facilities, in a "just and reasonable" manner. See Section 393.130.1. Such a determination meets the requirements of law that call for Commission decisions to be lawful, to be supported by competent and substantial evidence upon the whole record, and not be arbitrary, capricious or unreasonable. See Section 386.510 ("lawful" and "reasonable" requirements). Given the wide latitude that the Commission possesses in authorizing experimental regulatory plans, the Commission finds and concludes that the approval of the Stipulation does not constitute an abuse of discretion.

4. The Commission finds and concludes that the Signatory Parties have properly invoked the jurisdiction of the Commission. KCPL's request, joined by the Signatory

Parties, that the Commission approve the Stipulation has properly invoked the basic jurisdiction of the Commission. Under Section 386.250(1), the Commission's authority extends to the manufacture, sale or distribution of electricity, and to "corporations owning, leasing, operating or controlling the same." Section 386.250(7) provides for the broad exercise of this jurisdiction "to such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly." See Section 386.040. The provisions of the Public Service Commission Law "shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities." Section 386.610.

The Experimental Regulatory Plan addresses a multitude of resource adequacy issues. Given KCPL's obligation to "furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable" under Section 393.130.1, KCPL and the other signatory parties have invoked the Commission's jurisdiction plainly.

The Commission's exercise of jurisdiction is also consistent with its general powers under Section 393.140. Section 393.140(3) gives the Commission authority to investigate "on its own motion" "plants and methods employed in manufacturing, delivering and supplying electricity." Furthermore, Section 393.140(5) gives the Commission the ability to "prescribe the safe, efficient and adequate property, equipment and appliances thereof." Because the Commission has the power on its own motion to engage in such regulatory oversight, it follows that Commissioners may examine a Stipulation dealing with all these issues and approve it in a formal proceeding initiated by the filing of the Stipulation.

Furthermore, the authority of this Commission to approve an experimental rate plan is well within its powers.<sup>12</sup> Indeed, the Court of Appeals has characterized the Union Electric experimental alternative regulation plan “not as an abdication of the Commission’s responsibility to regulate, but as embodiment of it. It was an attempt to streamline the rate monitoring process and provided a means to resolve issues in lieu of the formal complaint process.”<sup>13</sup> Like the experimental plans approved by the Commission for Union Electric in 1995 and 1997, this Stipulation contemplates “extensive and continuous monitoring and embrace[s] the recognition that not all items [can] be anticipated and addressed . . . .”<sup>14</sup> Other jurisdictional and ratemaking principles remain completely intact in this Stipulation.

Commission Rule 4 CSR 240-2.115 allows parties to file a stipulation and agreement to resolve a contested case. Nothing in statutes, case law or Commission rule prohibits parties from submitting a stipulation arising from other proceedings. To conclude that a pre-existing contested case is a prerequisite to a resolution of serious and well-known issues would be contrary to the regulation’s purpose itself of promoting settlements,<sup>15</sup> as well as contrary to Missouri law which permits settlements in other contexts shortly after the filing of an action.<sup>16</sup> Numerous proceedings before the Commission have been initiated by

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<sup>12</sup> See *Union Electric Co. v. PSC*, 136 S.W.3d 146, 149, 152 (Mo. App. W.D. 2004).

<sup>13</sup> *Id.* at 152.

<sup>14</sup> *Id.* See also *State ex rel. Laclede Gas Co. v. PSC*, 535 S.W.2d at 567, n.1 (noting the Missouri Supreme Court “has long held” that the Commission has the power to grant interim test or experimental rates “as a matter of necessary implication from practical necessity”).

<sup>15</sup> Section 536.060, RSMo.

<sup>16</sup> See Section 416.061.4 (consent judgments or decrees brought by Attorney General).

the filing of a stipulation and agreement, or other motion to open an investigatory docket rather than a formal Application.<sup>17</sup>

The Commission has the power to waive any of its rules of practice and procedure for good cause under 4 CSR 240-2.015. The parties' unprecedented efforts to timely address the multitude of complex issues respecting KCPL's resource needs in in Case No. EW-2004-0596, and the agreement upon the comprehensive framework embodied in the Stipulation, are good cause. To the extent that the Commission's rules require formal application, the Commission waives those rules.

5. The Stipulation Creates Obligations for the Signatories, not the Commission. The Stipulation is a contract among the Signatory Parties, who will be obligated to carry out its terms if approved by the Commission.<sup>18</sup> However, the Commission's approval will not make it a party to the contract.<sup>19</sup> The Stipulation expressly provides that it "does not constitute a contract with the Commission," whose regulatory powers remain fully intact.<sup>20</sup> It is, therefore, consistent with Missouri law.<sup>21</sup>

Approval of the Stipulation, however, does include Commission approval of the following items: (1) KCPL is authorized to manage its SO<sub>2</sub> emission allowance inventory,

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<sup>17</sup> See e.g., *In re Stipulation and Agreement Reducing the Annual Missouri Retail Electric Revenues of Kansas City Power & Light Company*, Order Denying Intervention And Approving Stipulation And Agreement, Case No. ER-99-313, 8 Mo.P.S.C.3d 113 (1999); *In re Customer Class Cost of Service and Comprehensive Rate Design Investigation of Kansas City Power & Light Company*, Order Approving Stipulation and Agreement, Case No. EO-94-199, 5 Mo.P.S.C.3d 76 (1996); *In re Commission Inquiry Into Retail Electric Competition*, Order Establishing Task Force, Case No. EW-97-245, 6 Mo.P.S.C.3d 302 (1997).

<sup>18</sup> See Stipulation, Section III.B.10.f at 53.

<sup>19</sup> *Id.*, Section III.B.10.g at 53-54.

<sup>20</sup> *Id.*

<sup>21</sup> See *State ex rel. Chicago, Rock Island & Pacific R.R. v. PSC*, 312 S.W.2d 791, 796 (Mo. 1958); *Union Elec. Co. v. PSC*, 136 S.W.2d 146, 152 (Mo. App. W.D. 2004).

including the sales of such allowances, as detailed in Section III.B.1.d (Stipulation, pp. 8-10); (2) KCPL is authorized to establish a regulatory asset or liability on its books related to FAS 87 pension expense, as detailed in Section III.B.1.e (Stipulation, pp. 10-15); (3) KCPL is authorized to reduce its AFUDC rate in the equity portion of the AFUDC rate by 250 basis points applicable to latan 2, as detailed in Section III.B.1.g and modified by agreement of the Signatory Parties; (4) KCPL is authorized to record additional amortization expense in the amount of \$10.3 million on an annual Missouri jurisdictional basis beginning with the effective date of the Agreement until the effective date of the tariffs resulting from Rate Filing #1, as detailed in Section III.B.3.a of the Stipulation (Stipulation, p. 18); (5) KCPL is authorized to begin recording depreciation expense for the Wolf Creek Nuclear Generating Station based upon a 60-year life span, and KCPL is authorized to use depreciation rates for the various nuclear plant accounts, as detailed in Section III.B.1.n (Stipulation, p. 24); (6) KCPL is authorized to depreciate wind assets over a 20 year life and use depreciation rates for wind assets, as detailed in Section III.B.3.k (Stipulation, p. 23); and (7) KCPL is authorized to accumulate the Demand Response, Efficiency and Affordability Program costs in regulatory asset accounts as the costs are incurred, and amortize those costs as detailed in Section III.B.5 (Stipulation, pp. 46-49).

6. The Commission finds and concludes that the Experimental Regulatory Plan does not violate the “fully operational and used for service” standard of Section 393.135 with regard to any of the infrastructure contemplated in the Experimental Regulatory Plan. A strict set of In-Service Criteria is contained in Appendix H to the Stipulation, which applies to all of KCPL's units. KCPL, Staff and Public Counsel have further agreed to develop in-

service criteria for emissions equipment to be constructed on KCPL's coal units.<sup>22</sup> The provisions relating to current and additional amortizations are based on KCPL's current operations, not future projected events.<sup>23</sup> Such amortizations will be managed to maintain KCPL's financial integrity, in a manner similar to tax normalization and accelerated depreciation that the courts have been found to be proper ratemaking tools.<sup>24</sup> When the amortizations are considered in future rate cases, any party may request that an amortization be directed toward specific plant accounts or that changes be made in depreciation rates based upon future depreciation studies.<sup>25</sup>

The Commission approved a similar \$3.5 million amortization in *In re Customer Class Cost of Service and Comprehensive Rate Design Investigation of Kansas City Power & Light Company*, Order Approving Stipulation and Agreement, Case No. EO-94-199, 5 Mo.P.S.C.3d 76 (1996), and subsequently extended in *In re Stipulation and Agreement Reducing the Annual Missouri Retail Electric Revenues of Kansas City Power & Light Company*, Order Denying Intervention And Approving Stipulation And Agreement, Case No. ER-99-313, 8 Mo.P.S.C.3d 113 (1999). The Commission finds and concludes that

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<sup>22</sup> See Stipulation, Section III.B.1.i at 23.

<sup>23</sup> *Id.*, Section III.B.1.i at 19-21.

<sup>24</sup> *State ex rel. Utility Consumers Council of Missouri, Inc. v. PSC*, 606 S.W.2d 222, 224-26 (Mo. App. W.D. 1980)(approving Commission's use of the normalization of taxes which provided utility with substantial tax benefits of accelerated depreciation).

<sup>25</sup> See Stipulation, Section III.B.3.a(iv) at 32.

continued use of such amortizations, as discussed in the Stipulation, is reasonable, lawful, and otherwise in the public interest.

7. The Commission finds and concludes that the Stipulation contains nothing which commits the Commission, a non-signatory party or even a Signatory Party to a preapproval of rates. Indeed, the Signatory Parties retain the right to monitor the prudence of KCPL's actions in carrying out the investments called for by the Experimental Regulatory Plan, and to challenge any conduct they believe is imprudent.

The Signatory Parties agree that the elements of the Stipulation that call for a coal-fired plant, wind generation, new environmental controls, and the Demand Response, Efficiency and Affordability programs are "a reasonable and adequate resource plan."<sup>26</sup> However, the manner in which KCPL implements each of these investments is subject to scrutiny during the construction process by Staff, Public Counsel and others.<sup>27</sup> The Stipulation does not limit any Signatory Party's ability to challenge KCPL when it proposes to recover its costs in future rate cases.<sup>28</sup> However, the Signatory Parties have agreed not to argue that the proposed investments were not necessary or timely, or that alternative technologies or fuels should have been used, so long as KCPL implements the Resource Plan and the continuous monitoring of the Resource Plan in accordance with the Stipulation's provisions.<sup>29</sup> The Commission's approval of these elements of the

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<sup>26</sup> See Stipulation, Section III.B.1.a at 6-7.

<sup>27</sup> *Id.*, Section III.B.1.o at 24-25; III.B.4-.5 at 44-49.

<sup>28</sup> *Id.*, Section III.B.3.a(iii) at 31.

<sup>29</sup> *Id.*



Experimental Regulatory Plan would be consistent with its finding in *In re Missouri-American Water Co.*<sup>30</sup>

8. The Commission finds and concludes that the approval of the Stipulation will not inject it into managing KCPL. The standard frequently cited in Missouri case law is that the Commission has no authority to take over the general management of any utility or to dictate the manner in which the company shall conduct its business.<sup>31</sup> The Stipulation, in contrast, calls for the Commission to approve an Experimental Regulatory Plan. By approving the Stipulation, the Commission is permitting KCPL's management to carry out its resource and financial plans, and to use its best judgment in implementing them within the bounds of reasonable and lawful oversight.

As such, it is similar to the Commission's action in finding that a water utility's plan to build a new treatment plant was "a reasonable alternative" when it granted that utility a certificate of convenience and necessity for that purpose, and when it approved the utility's financial plan to support that construction as "reasonable and not detrimental to the public interest."<sup>32</sup>

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<sup>30</sup> Case No. WA-97-46 (Mo. P.S.C. 1997)("[T]he Commission will make no finding regarding the prudence of the actual costs incurred and the management of construction of the proposed project. However, based on the extensive evidence presented, the Commission finds that the proposed project, consisting of the facilities for a new groundwater source of supply and treatment at a remote site, is a reasonable alternative." (slip opinion, pp. 10-11; see also *In re Missouri-American Water Co.*, Case No. WR-2000-281, 9 Mo.P.S.C.3d 254, 280 (Mo. P.S.C. 2000).

<sup>31</sup> See *State ex rel. Laclede Gas Co. v. PSC*, 600 S.W.2d 222, 228 (Mo. 1980); *State ex rel. PSC v. Bonacker*, 906 S.W.2d 896, 899 (Mo. App. S.D. 1995).

<sup>32</sup> *In re Missouri-American Water Co.*, Case No. WA-97-46 (Mo. P.S.C. 1997) (slip op. at 10-11)("The Commission will approve the financial transaction and form of the lease agreement but defer to a future rate proceeding any finding regarding the prudence of the transaction, its costs and the specific contents of the lease agreement."). *Accord, Union Elec. Co. v. PSC*, 136 S.W.3d 146, 149-52 (Mo. App. W.D. 2004)(Commission approval of experimental regulatory plan).

9. The Commission finds and concludes that KCPL has not violated Commission Rule 4 CSR 240-22.050(2)(C).

In their Prehearing Brief, SC/CCPC made the following allegation:

*KCPL violated 4 CSR 240-22.050(2)(C) by failing to look at the amount of capacity avoidance needed to defer Iatan 2 for a whole year as an alternative for a whole year. Had KCPL conducted the requisite look, it would have seen that the construction of Iatan 2 could be avoided. (SC/CCPC Prehearing Brief, p. 3)*

After having reviewed the legal arguments on this issue, the Commission concludes that this allegation is in error.<sup>33</sup> SC/CCPC has failed to fully understand the purpose and application of 4 CSR 240-22.050(2). According to Public Counsel witness Ryan Kind, the purpose of this regulation pertains to the calculation of the public utility's "avoided cost," and not an affirmative requirement to propose a plan to defer the construction of Iatan 2 by one year, as contended by SC/CCPC. (Tr. 797).

A review of the purpose statement of 4 CSR 240-22.050 confirms this conclusion:

*PURPOSE: This rule specifies the methods by which end-use measures and demand-side programs shall be developed and screened for cost-effectiveness. . .*

In addition, subsection (2)(C) specifically states: "Avoided costs shall be calculated as the difference in costs associated with a specified decrement in load large enough to delay the on-line date of the new capacity additions by at least one (1) year." (*Emphasis added*). SC/CCPC misunderstand this regulation.

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<sup>33</sup> In its May 6, 2005 *Order Establishing Procedural Schedule*, the Commission stated that any issue not contained in the List of Issues that Staff was required to file would be viewed as uncontested and not requiring the Commission's resolution. The Commission notes that Staff did not list a potential Chapter 22 violation as an issue in its May 31 List of Issues. More telling, the Commission notes that Concerned Citizens of Platte County and Sierra Club also did not mention an alleged Chapter 22 violation in its June 2 Statement of Position, and only mentioned it for the first time in its June 15 prehearing brief. The Commission will, nonetheless, review CCPC/SC's argument *gratis*.

During cross-examination of the SC/CCPC witness Ned Ford, it also became apparent that he was totally unaware that KCPL and other utilities had obtained a variance from compliance respecting the formal provisions of Chapter 22, including 4 CSR 240-22.050(2)(C).<sup>34</sup> As a result, the Commission concludes that KCPL was not required to comply with the formal rules of Chapter 22 during the term of the variance granted in Case Nos. EO-97-522 and EO-99-544.<sup>35</sup>

For the reasons stated herein, the Commission finds and concludes that SC/CCPC's assertion that KCPL has violated 4 CSR 240-22.050(2)(C) is incorrect.

10. The Commission finds and concludes that the Commission has conducted a full, fair and meaningful hearing to consider the evidence and arguments of all parties, including SC/CCPC. The Commission finds and concludes that all parties have been afforded due process of law, and the Commission has fully and carefully considered the competent and substantial evidence in the whole record. The Commission has put no limitations on the evidentiary proceedings in the instant case. In fact, the Commission is considering this case on a schedule which SC/CCPC agreed to, and when the SC/CCPC requested additional time to prepare for the evidentiary hearings, the Commission granted the request of SC/CCPC. The Commission also accorded each party an opportunity to submit a post-hearing brief, as well as a pre-hearing brief.

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<sup>34</sup> (Tr. 372, 426-27), (Ex. No. 30, Order Approving Joint Agreement, *In re Application of Kansas City Power & Light Company's Electric Resource Plan, pursuant to 4 CSR 240-22, and its request for extension of time to file ERP*, Case No. EO-97-522 (July 18, 1997)); and (Ex. No. 31, Order Granting Joint Motion For Variance, *In re Application of St. Joseph Light & Power Company, The Empire District Electric Company, AmerenUE, Kansas City Power & Light Company, and Utilicorp United Inc. d/b/a Missouri Public Service Company for a Variance from the Provisions of 4 CSR 240-22*, Case No. EO-99-544 (May 20, 1999)).

<sup>35</sup> In addition, Section 386.550 RSMo prevents CCPC/SC from collaterally attacking those orders.

11. Based upon the competent and substantial evidence on the whole record, the Commission finds and concludes that the Stipulation filed on March 28, 2005, is in the public interest, and that the Commission should approve it. The Commission finds and concludes that the Stipulation's Experimental Regulatory Plan is a comprehensive framework that appropriately addresses the need for a cost-based but diverse resource adequacy program. Combining the best elements of proven and latest technology, coal-fired generation, environmental controls, renewable wind energy, and affordability, demand response and efficiency programs, the Experimental Regulatory Plan offers a reasonable proposal for safe and adequate service well into the future.

From a financial perspective, the Commission finds and concludes that the Stipulation adheres to traditional ratemaking principles. It calls for a maximum of four separate rate cases (Stipulation, Section III.B.3 at 29-44), a Class Cost of Service Study (Stipulation, Section III.B.3.a(vii) at 33), and continuous monitoring of KCPL's Resource Plan and of the construction process respecting Iatan 2 and the Iatan 1 and LaCygne 1 environmental enhancements. (Stipulation, Section III.B.1.q at 28).

The Signatory Parties have acknowledged that financial ratios play a role in a utility's ability to maintain its bonds at an investment grade rating. (Stipulation, Section III.B.1.i at 18-22). The Stipulation provides that KCPL must take prudent and reasonable steps to maintain its investment grade rating and must continue to manage costs, improve productivity and preserve service quality during the Experimental Regulatory Plan. (*Id.* at 19). Moreover, the Signatory Parties have agreed to support adding amortization amounts to KCPL's cost of service in rate cases when the projected cash flows resulting from KCPL's Missouri jurisdictional operations, as determined by the Commission, fail to meet or

exceed that portion of the lower end of the top third of the BBB range shown in Appendix E; for reasons other than a failure to adhere to the conditions set out in the Stipulation regarding KCPL's necessary conduct. (*Id.* at 20). The Commission finds and concludes that these agreements are in the public interest and should be approved.

### **CONCLUSION**

Based upon the competent and substantial evidence in the record in this case, the Commission finds and concludes that the KCPL Experimental Regulatory Plan encompassed in the Stipulation is in the public interest and is hereby approved.

#### **IT IS THEREFORE ORDERED:**

1. That the Proposed Experimental Regulatory Plan embodied in the Stipulation and Agreement filed in this case on March 28, 2005, as amended on July 26, 2005, is approved.
2. That the signatory parties shall abide by all of the terms and requirements in the March 28, 2005 Stipulation and Agreement.
3. That this case shall remain open for the Signatory Parties to report to the Commission after the Kansas Corporation Commission issues its decision regarding Kansas City Power & Light Company's Experimental Regulatory Plan.
4. That all pending motions are denied as moot.

5. That this Report and Order shall become effective on August 7, 2005.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton and Appling, CC., concur;  
Gaw, C., concurs, with concurring opinion to follow;  
all certify compliance with the provisions  
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri, on  
this 28th day of July, 2005.