

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 10th day of
June, 2009.

In the Matter of the Application of Kansas City)	
Power and Light Company for Approval to Make)	<u>Case No. ER-2009-0089</u>
Certain Changes in its Charges for Electric)	Tariff No. JE-2009-0192
Service to Continue the Implementation of its)	
Regulatory Plan)	

**ORDER APPROVING NON-UNANIMOUS STIPULATIONS AND
AGREEMENTS AND AUTHORIZING TARIFF FILING**

Issue Date: June 10, 2009

Effective Date: June 23, 2009

Syllabus

This order approves the Non-Unanimous Stipulation and Agreement executed by Kansas City Power and Light Company (“KCPL” or KCP&L”), the Staff of the Missouri Public Service Commission (“Staff”), the Office of the Public Counsel (“Public Counsel”), Praxair, Inc. and the Midwest Energy User’s Association (collectively “Industrial Intervenors”), the US Department of Energy (“DOE”), the National Nuclear Security Administration (“NNSA”), the Federal Executive Agencies (“FEA”), Ford Motor Company (“Ford”), the Missouri Industrial Energy Consumers (“MIEC”) and the Missouri Department of Natural Resources (“DNR”) to resolve all issues in this case (“Global Agreement”).¹ The

¹ The parties who are non-signatories to the agreement are the City of Kansas City, Missouri, Hospital Intervenors, Trigen-Kansas City Energy Corporation, Missouri Gas Energy, The Empire District Electric Company, Union Electric Company d/b/a AmerenUE, and the Missouri Joint Municipal Electric Utility Commission.

order also rejects KCPL's initial tariff filing, and authorizes KCPL to file tariffs in compliance with the Non-Unanimous Stipulation and Agreement.

This order further approves the Non-Unanimous Stipulation and Agreement Regarding Pensions and Other Post Employment Benefits ("OPEBs") executed by KCPL and Staff ("Pension & OPEB Agreement").²

The Global Agreement and Pension & OPEB Agreement may also be referred to throughout this Order singularly or collectively as an "Agreement" or as the "Agreements." The parties signing the agreements may be referred to collectively as "Signatories." The term "Non-Utility Signatory" refers to a party other than KCPL that has signed the Agreements.

I. Procedural History

On September 5, 2008, Kansas City Power & Light Company ("KCPL") submitted to the Commission proposed tariff sheets intended to implement a general rate increase for electrical service provided in its Missouri service area. The proposed tariff sheets bear an effective date of August 5, 2009.

According to KCPL's application, the tariff sheets are designed to produce an annual increase of \$101.5 million in KCPL's Missouri jurisdictional revenues, which would be a 17.5 percent increase in revenue. The press release attached to the application stated that a typical Missouri residential customer would see a 16.2 percent increase in rates or approximately \$12.27 per month increase in charges. Together with its proposed tariff

²This agreement purports to resolve pension and OPEB costs for KCP&L as of April 30, 2009.

sheets and other minimum filing requirements, KCPL also filed prepared direct testimony in support of its requested rate increase.

On November 20, 2008, the Commission set the procedural schedule. This schedule included an evidentiary hearing scheduled for April 20 – May 1, 2009, and ultimately a True-Up hearing was scheduled for July 1-2, 2009.³

The Commission held local public hearings in Lee's Summit, Sedalia, St. Joseph, Marshall, Carrollton, Nevada, and two separate hearings in Kansas City, Missouri.⁴ At the conclusion of all of the local public hearings, the Commission had received the sworn testimony of sixty-eight witnesses.⁵

The evidentiary hearing commenced on April 20, 2009. Once preliminary matters were complete, the parties requested a recess to engage in settlement negotiations. The hearing reconvened on April 21, where again the parties requested an additional recess to

³ EFIS Docket Entry Number 59, *Order Setting Procedural Schedules*, issued November 20, 2008; EFIS Docket Entry Number 103, *Status Report and Motion to Extend Period to Demonstrate Compliance with Certain In-Service Criteria of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company*, filed March 2, 2009; EFIS Docket Entry Number 77, *Notice Concerning Start-Up Issues at Iatan Unit 1*, filed February 11, 2009; EFIS Docket Entry Number 161, *Order Modifying Procedural Schedules For True-Up Proceedings and Formally Adopting Test Year And Update Period*, issued March 18, 2009. In this same order, the Commission imposed certain conditions on the True-Up proceedings advocated by Staff. However, on April 15, 2009, the Commission rescinded those conditions following an oral argument held on April 6, 2009 on KCPL's and GMO's motion for reconsideration. See Transcript Vol. 10 (EFIS Docket Entry Number 184); EFIS Docket Entry Number 231, *Order Rescinding Conditions Imposed in the Commission's Order Modifying Procedural Schedules for True-Up Proceedings*, issued April 15, 2009.

⁴ EFIS Docket Entry Number 63, *Order Setting Public Comment Hearings*, issued January 6, 2009; EFIS Docket Entry Number 65, *Motion To Revise Local Hearing Schedule To Allow For Notice To Customers*, filed January 9, 2009; EFIS Docket Entry Number 70, *Order Rescheduling Public Comment Hearings*, issued January 23, 2009; EFIS Docket Entry Number 93, *Notice Regarding Requests for Additional Local Public Hearings*, filed February 25, 2009; EFIS Docket Entry Number 96, *Order Expanding Access To Public Comment Hearings*, issued February 25, 2009.

⁵ See Transcript Vol. 2, Lee's Summit - March 2, 2009 – 22 witnesses (EFIS Docket Entry Number 162); Vol. 3, Sedalia - March 3, 2009 – 5 witnesses (EFIS Docket Entry Number 154); Vol. 4, St. Joseph – March 4, 2009 – 7 witnesses (EFIS Docket Entry Number 155); Vol. 5, Marshall – March 5, 2009 – 2 witnesses (EFIS Docket Entry Number 156); Vol. 6, Carrollton – March 9, 2009 – 1 witness (EFIS Docket Entry Number 171); Vol. 7, Nevada – March 11, 2009 (EFIS Docket Entry Number 163); Vol. 8, Kansas City – March 12, 2009 – 13 witnesses (EFIS Docket Entry Number 177); Vol. 9, Kansas City – March 12, 2009 – 14 witnesses (EFIS Docket Entry Number 179).

complete settlement negotiations. Following completion of the negotiations, the Signatories to the Agreement presented an Agreement in Principle to the Commission and announced their intention to memorialize a Non-Unanimous Stipulation and Agreement and file it no later than April 24, 2009. Consequently, the Commission suspended the remainder of the evidentiary hearing to allow for the filing of the Agreement and for responses or objections.⁶

On April 24, 2009, KCPL filed the Agreements. Deadlines were set for responses, suggestions supporting the agreements and replies to the suggestions.⁷ No party objected to either of the Agreements and no party requested that the evidentiary hearing be resumed to try any disputed issue.

On June 8, 2009, the Commission convened a hearing for the formal presentation of the Agreements and to direct questions about the Agreements to the parties' counsel and subject matter experts. The Commission did not order briefs and closed the recording of all evidence at the conclusion of the stipulation hearing on June 8, 2009. The case was deemed submitted for the Commission's decision on that date.⁸

II. The Agreements

A. Global Agreement

The Global Agreement provides that KCPL should be authorized to file revised tariff sheets containing new rate schedules for electric service designed to produce overall Missouri jurisdictional gross annual electric revenues, exclusive of any applicable license,

⁶ Transcript Volumes 11 and 12.

⁷ EFIS Docket Entry Number 263, *Notice And Order Suspending Evidentiary Hearing, Setting Deadlines For Filings And Setting Deadline For Requesting A Hearing*, issued April 21, 2009; EFIS Docket Entry Number 268, *Notice And Order Resetting Deadlines For Filings, Adding Additional Deadlines and Resetting Deadline For Requesting A Hearing*, issued April 27, 2009.

⁸ Commission Rule 4 CSR 240-2.150(1).

occupation, franchise, gross receipts taxes or other similar fees or taxes, in the amount of \$95.0 million for electric service rendered on and after September 1, 2009.⁹ Ten million dollars of the \$95 million rate increase shall be comprised of Additional Amortization to Maintain Financial Ratios (“Additional Amortizations”), as that term is defined in the Stipulation and Agreement reached in KCPL’s proceeding to approve its Experimental Regulatory Plan in Case No. EO-2005-0329 (“2005 Stipulation”).¹⁰

The Global Agreement establishes the rate design as an equal percentage, across-the-board basis for each rate class. Within the Large Power Service (“LPS”) class, however, no change will be made to the tail block energy charge and, instead, the entirety of the rate increase shall be spread on an equal percent across the board basis between the first two energy blocks, and all demand and service charges.¹¹ The rates for separately metered space heating and the winter energy rate blocks on the all-electric rates for the general service classes shall be increased by an additional five (5%) percentage points above the equal percentage increase. The date for the determination of the interest rate to be paid on deposits will be changed to the first business day of December of the preceding calendar year rather than the last business day of the preceding calendar year.

The Global Agreement contains additional items that the Commission must address. These items include the following: (1) Future Customer Class Cost of Service Study, (2) Vegetation Management and Infrastructure Inspection, (3) Prudence and In-Service Timing

⁹ The in-service criteria are attached to the prefiled direct testimony of Brent Davis as Schedule BCD-2. This agreement was conditioned on the Iatan I Air Quality Control System (“AQCS”) facilities meet the Staff’s in-service criteria by May 30, 2009.

¹⁰ See Case Number EO-2005-0329, *In the Matter of a Proposed Experimental Regulatory Plan of Kansas City Power & Light Company*, Report and Order issued July 28, 2005. See also Case Number EO-2005-0329: EFIS Docket Entry No. 1, Stipulation and Agreement, filed on March 28, 2005 and EFIS Docket Entry No. 198, Order Approving Amendments to Experimental Regulatory Plan, issued on August 23, 2005.

¹¹ See Schedule 1 of the Agreement, exemplar revised tariff sheets.

of Iatan I, (4) Allocations of Common Plant for Iatan I and II, (5) Additional Amortizations to Maintain Financial Ratios, (6) AFUDC Rate, Surveillance Reporting, (7) Economic Relief Pilot Program, (8) Wolf Creek Refueling Cost, (9) Surface Transportation Board Litigation, (10) Off-System Sales Margins – Excess Over 25th Percentile for 2007 and 2008, (11) Deferred DSM Advertising Costs, (12) Off-System Sales Tracker, (13) Rate Case Expense, (14) Miscellaneous Costs Not Included in Rates, (15) Demand-Side Management, Supplemental Weatherization and Minor Home Repair Program, (16) Low Income/Weatherization Issues, and (17) Pension Agreements. The Signatories negotiated the various terms of these provisions and no other party has objected or sought a hearing with respect to any of these provisions. There are no disputed issues between the parties with regard to these provisions of the Global Agreement.

B. Pension and OPEB Agreement

The Pension and OPEB Agreement contains additional items that the Commission must address. These items include the following: (1) FAS 87, FAS 88 and FAS 158 Pension Cost, (2) Pension Cost Treatment for Joint Partners in Iatan and LaCygne Units/Stations, (3) Pension Cost Treatment for the Supplemental Executive Retirement Plan, (4) Annual OPEB Cost of Termination Fees – Case No. ER-2007-0291, (5) Annual Pension Cost and Regulatory Assets – Case No. ER-2009-0089, (6) FAS 88 Pension Cost Treatment for Financial Reporting and Ratemaking, (7) FAS 158 Pension and OPEB Cost Treatment for Financial Reporting and Ratemaking, and (8) Ratemaking Contributions Made Pursuant to the Pension Protection Act.

These provisions largely reaffirm the provisions built into in the Regulatory Plan from Case No. EO-2005-0329 and from other stipulations from KCPL’s subsequent rate cases. The Signatories negotiated the various terms of these provisions and no other party has objected or sought a hearing with respect to any of these provisions. There are no disputed issues between the parties with regard to the provisions of the Pension and OPEB Agreement.

III. Relevant Legal Standards

A. Jurisdiction

KCPL is an “electrical corporation” and a “public utility,” as defined in Sections 386.020(15) and (43),¹² respectively, and is subject to the personal jurisdiction, supervision, and control of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. KCPL filed its application pursuant to Commission Rules 4 CSR 240-2.060, 3.030 and 3.160. These rules outline the minimum filing requirements for KCPL to pursue its rate increase request.

KCPL’s rate increase request falls under the Commission’s subject matter jurisdiction pursuant to Section 393.150. Additionally, Section 393.130 mandates that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable.

B. Standards for Approving Stipulations and Agreements

¹² Section 386.020, RSMo Cum. Supp. 2008.

The Commission has the legal authority to accept a Stipulation and Agreement as offered by the parties as a resolution of the issues raised in this case.¹³

In reviewing the Agreement, the Commission notes:

Every decision and order in a contested case shall be in writing, and, except in default cases, or cases disposed of by stipulation, consent order or agreed settlement, the decision, including orders refusing licenses, shall include or be accompanied by findings of fact and conclusions of law.¹⁴

A stipulation and agreement that is entered into by fewer than all parties to a case is deemed to be a non-unanimous stipulation and agreement.¹⁵ Each party is given seven days from the filing of a non-unanimous stipulation and agreement to file an objection to the non-unanimous stipulation and agreement, and failure to file a timely objection constitutes a full waiver of that party's right to a hearing.¹⁶

No party objected to the Agreements within the deadlines set by the Commission.¹⁷ Consequently, pursuant to the Commission's rules, the Agreement shall be treated as though they are unanimous and the Non-Signatory Parties are deemed to have waived their right to a hearing on any issue in this matter. Should the Commission find that the

¹³Section 536.060 and 4 CSR 240-2.115(1)(B).

¹⁴Section 536.090. This provision applies to the Public Service Commission. *State ex rel. Midwest Gas Users' Association v. Public Service Commission of the State of Missouri*, 976 S.W.2d 485, 496 (Mo. App. 1998).

¹⁵Commission Rule 4 CSR-240-2.115(2)(A).

¹⁶Commission Rule 4 CSR 240-2.115(2)(B). The Commission initially set a response deadline of six days for the Global Agreement because it had admitted Exhibit 57 into the record on April 21, 2009 during the evidentiary hearing. Exhibit 57 is the Agreement in Principle outlining the key elements that would be embodied in the Stipulation and Agreement, and being offered into the record on the April 21 essentially gave the parties nine days notice of the general contents of the Agreement. No party objected to the deadline set for responses, (Transcript pp. 268-269). However, once KCPL filed the Pension and OPEB Agreement, an additional agreement without advance notice of its contents, the Commission extended the response deadline to a full seven days for both agreements to ensure adequate time for responses.

¹⁷"A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it." Commission Rule 4 CSR 240-2.115(2)(D). In the instance of a non-unanimous stipulation and agreement that has been timely objected to, all issues shall remain for determination after hearing." *Id.*

terms of the Global Agreement are lawful and just and reasonable, the Commission may approve the Global Agreement as a resolution of all factual issues in this matter.

Discussion

A. Introduction

This case illustrates one of the most important public policy questions faced by this Commission: What is the proper balance between keeping rates affordable in order to protect the health and welfare of consumers and ensuring that utilities have the necessary cash flow to operate their business, maintain their infrastructure, and have an opportunity to earn a fair return on investment, which is necessary to encourage development and maintenance of infrastructure?¹⁸ As already noted, both of these objectives are statutory duties of this Commission.

The Commission recognizes that the recommended revenue requirement and its components presented in the Agreements is not a trivial amount of money to customers like those who testified at the public hearings. The increased cost of all utilities along with the recent rise in food costs, gasoline prices, and healthcare costs have had an effect on customers' ability to keep current on their bills. That being said, the Commission also recognizes that the Agreements before the Commission resulted from negotiations between parties with diverse interests, as well as the Commission's Staff. Local Public Hearings were held to receive public comment on the proposed rate increase, and Public Counsel was an active party to ensure the rights of the ratepaying public.¹⁹

¹⁸ See *generally*, Section 386.610, RSMo 2000.

¹⁹ See the Procedural History section of this Order.

Subject matter experts, including accountants, economists and engineers, filed extensive testimony outlining their respective analyses and positions prior to the Signatories reaching a consensus as to the reasonableness of the Agreements and all of its elements. The Signatories agree, and the Non-Signatories did not raise objection, to the conclusion that the proposed revenue and rate design set out in the Agreement are just and reasonable.

The Commission further notes that no party has objected to the proposed annual revenue requirement, or to any component of any calculations, allocations, negotiations or compromise resulting in the proposed annual revenue requirement as set forth in the Agreements. No party has objected to the use of any determinants or to any Class Cost of Service allocation factors or any other billing determinants utilized for the purpose of determining rate design in the Agreements.

No party has objected to the miscellaneous provisions, or to any component of any calculations, negotiations or compromise resulting in determining the miscellaneous provisions as set forth in the Global Agreement. Similarly, no party has objected, in any way, to any component of any calculations, negotiations or compromise resulting in determining the provisions of the Pension and OPEB Agreement. And finally, no party requested a hearing on any issue related to the determination of the proposed annual revenue requirement, rate design, or any other provision set forth in either of the Agreements.

B. Revenue Requirement

KCPL has compromised on its requested revenue requirement by entering into the Global Agreement and recommending to the Commission that its authorized revenue requirement in this case represents an increase of \$95 million in revenues associated with its electric service. This proposed revenue requirement is advocated for by Staff, Public Counsel and a wide group of industrial and other commercial consumers.

The Reconciliation filed in this case reveals that the parties initially had differing positions on rate base, revenue, expenses, depreciation, and taxes, as well as the many components and allocations that determine these factors. Indeed, as the Commission has recognized many times, the complexity of the issues and the number of parties often involved in rate cases can be staggering. Parties regularly engage in settlement negotiations, sometimes, as in this case, resolving their disputes with “black box” settlements. That is to say, the many parties arrive at, for example, a final revenue requirement number that they all find acceptable. But that settlement does not reveal how the parties arrived at that number, who moved how many dollars on what issue, etc.

Therefore, the Commission finds that the proposed increase in overall Missouri gross annual electric revenues, exclusive of any applicable license, occupation, franchise, gross receipts taxes or similar fees or taxes, of \$95 million (\$10 million of which is composed by Additional Amortization to Maintain Financial Ratios), effective for electric services rendered on and after September 1, 2009, is just and reasonable and is fair to both the utility and its customers.²⁰

²⁰ KCPL satisfied the Global Agreement's condition that the Iatan I Air Quality Control System (“AQCS”) facilities meet the Staff's in-service criteria by May 30, 2009. See Transcript, Volume 13, Stipulation Hearing, Testimony of Michael Taylor.

This revenue requirement is concluded to be no more than is sufficient to keep KCPL's utility plants in proper repair for effective public service, and insure to KCPL's investors a reasonable return upon funds invested. The Commission shall approve the Global Agreement as to KCPL's annual revenue requirement, in all respects, as encompassed in the Global Agreement.

C. Rate Design

No party opposed the rate design as articulated in the Global Agreement. The Signatories agreed to an equal percentage, across-the-board, spread of the rate increase, with the exception of the deviations outlined with regard to the Large Power Class and separately-metered space heating and winter energy blocks on the all-electric rates for general service classes.

The Commission has previously found that the approach of using equal percentage, across-the-board, rate increases essentially maintains the same rate design as exists and that is presently lawful and approved.²¹ Consequently, the Commission concludes that the equal percentage across-the-board, rate increases to individual customer classes, as contemplated by the Global Agreement, are just and reasonable.

With regard to the proposed adjustments, having examined the respective positions of the parties who presented positions on rate design and recognizing that all of those parties agreed certain adjustments needed to be made to the various rate classes, the Commission concludes that the Signatories' compromise on these adjustments affirmatively

²¹ See Case No. ER-2007-0291, In the Matter of the Application of Kansas City Power and Light Company for Approval to Make Certain Changes in its Charges for Electric Service To Implement Its Regulatory Plan., Report and Order, p. 67. See also *In re The Empire District Electric Company*, Commission Case No. ER-2001-299, Report and Order, p. 21, issued September 20, 2001.

demonstrates they are just and reasonable adjustments. Further no party has objected to any determinants or factors utilized for the purpose of determining the rate design in the Global Agreement, again demonstrating to the Commission that this portion of rate design is just and reasonable. The Commission shall approve the Global Agreement as to rate design, in all respects, as encompassed in the Global Agreement.

D. Remaining Provisions of the Global Agreement and the Pension and OPEB Agreement

After reviewing the remainder of the items encompassed in the Global Agreement and the Pension and OPEB Agreement, as outlined above, and the parties' positions on, or lack of position on, those items, the Commission finds the proposed items are reasonable as adjunctive provisions of the Agreements. These remaining items proposed in the Agreements, as previously outlined, are acceptable to all concerned parties as evidenced by these parties being either a Signatories to the Agreements or not having objected to these provisions.

The Commission concludes that none of these adjunct provisions to either Agreement are contrary to any statute or rule, or in any way violative of the public interest. The Commission shall approve all of the miscellaneous provisions encompassed in both Agreements.

E. Precedential Effect

An administrative body, that performs duties judicial in nature, is not and cannot be a court in the constitutional sense.²² The legislature cannot create a tribunal and invest it with

²² *In re City of Kinloch*, 362 Mo. 434, 242 S.W.2d 59, 63[4-7] (Mo. 1951); *Lederer v. State, Dept. of Social Services, Div. of Aging*, 825 S.W.2d 858, 863 (Mo. App. 1992).

judicial power or convert an administrative agency into a court by the grant of a power the constitution reserves to the judiciary.²³

An administrative agency is not bound by stare decisis, nor are agency decisions binding precedent on the Missouri courts.²⁴ “In all events, the adjudication of an administrative body as a quasi-court binds only the parties to the proceeding, determines only the particular facts contested, and as in adjudications by a court, operates retrospectively.”²⁵

The Commission emphasizes that its decision in this matter is specific to the facts of this case. Evidentiary rulings, findings of fact and conclusions of law are all determined on a case-by-case basis. Consequently, consistent with the Commission’s statutory authority,

²³ *State Tax Comm'n v. Administrative Hearing Comm'n*, 641 S.W.2d 69, 75 (Mo. banc 1982); *Lederer*, 825 S.W.2d at 863.

²⁴ *State ex rel. AG Processing, Inc. v. Public Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003); *Fall Creek Const. Co., Inc. v. Director of Revenue*, 109 S.W.3d 165, 172 -173 (Mo. banc 2003); *Shelter Mut. Ins. Co. v. Dir. of Revenue*, 107 S.W.3d 919, 920 (Mo. banc 2003); *Southwestern Bell Yellow Pages, Inc. v. Dir. of Revenue*, 94 S.W.3d 388, 390 (Mo. banc 2002); *Ovid Bell Press, Inc. v. Dir. of Revenue*, 45 S.W.3d 880, 886 (Mo. banc 2001); *McKnight Place Extended Care, L.L.C. v. Missouri Health Facilities Review Committee*, 142 S.W.3d 228, 235 (Mo. App. 2004); *Cent Hardware Co., Inc. v. Dir. of Revenue*, 887 S.W.2d 593, 596 (Mo. banc 1994); *State ex rel. GTE N. Inc. v. Mo. Pub. Serv. Comm'n*, 835 S.W.2d 356, 371 (Mo. App. 1992). On the other hand, the rulings, interpretations, and decisions of a neutral, independent administrative agency, “while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.” *Lacey v. State Bd. of Registration For The Healing Arts*, 131 S.W.3d 831, 843 (Mo. App. 2004). “The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” *Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S.Ct. 161, 164, 89 L.Ed. 124 (1944). “Courts are not concerned with alleged inconsistency between current and prior decisions of an administrative agency so long as the action taken is not otherwise arbitrary or unreasonable.” *Columbia v. Mo. State Bd. of Mediation*, 605 S.W.2d 192, 195 (Mo. App. 1980); *McKnight Place Extended Care, L.L.C. v. Missouri Health Facilities Review Committee*, 142 S.W.3d 228, 235 (Mo. App. 2004). The mere fact that an administrative agency departs from a policy expressed in prior cases which it has decided is no ground alone for a reviewing court to reverse the decision. *Id.*

²⁵ *State ex rel. Gulf Transport Co. v. Public Serv. Comm'n*, 658 S.W.2d 448, 466 (Mo. App. 1983); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759, 765, 89 S.Ct. 1426, 1429, 22 L.Ed.2d 709 (1969); *State ex rel. Summers v. Public Serv. Comm'n*, 366 S.W.2d 738, 741[1-4] (Mo. App. 1963); *State ex rel. Consumers Public Service Co. v. Public Serv. Comm'n*, 352 Mo. 905, 180 S.W.2d 40, 46[6-8] (banc 1944); Sections 386.490 and 386.510. 1 Cooper, *State Administrative Law*, pp. 177 et seq. (1965); Mayton, *The Legislative Resolution of the Rulemaking Versus Adjudication Problem in Agency Lawmaking*, *Duke Law Journal*, Vol. 1980: 103, 118.

this decision does not serve as binding precedent for any future determinations by the Commission.

Decision

By submitting the Agreements for consideration by the Commission, the Signatories jointly recommend that the Commission accept the Agreements as a fair compromise of their respective positions on the issues in this matter. Based on the Signatories' Agreements, the testimony received at the local public hearings, and the testimony, comments and positions presented at the stipulation hearing, the Commission finds that the parties have reached a just and reasonable settlement in this case. Rate increases are necessary from time to time to ensure utilities have the cash flow to maintain safe and adequate service. Accordingly, the Commission shall authorize KCPL to file tariffs in compliance with the Global Agreement. The parties shall be directed to comply with the terms of the Global Agreement and the Pension and OPEB Agreement.

The Commission shall, as agreed to by the Signatories, admit, without modification or condition, the prefiled testimony (including all exhibits, appendices, schedules, etc. attached thereto) of all Signatories' witnesses.

THE COMMISSION ORDERS THAT:

1. The Non-Unanimous Stipulation and Agreement filed on April 24, 2009, is hereby approved as the resolution of all factual issues encompassed within that Agreement in case number ER-2009-0089. A copy of the Non-Unanimous Stipulation and Agreement is attached to this order as Appendix A.

2. The Signatories to the Non-Unanimous Stipulation and Agreement are ordered to comply with the terms of the Agreement.

3. The proposed electric service tariff sheets (JE-2009-0192) submitted on September 5, 2008, by Kansas City Power and Light Company for the purpose of increasing rates for electric service to retail customers are hereby rejected.

4. The specific tariff sheets rejected are:

P.S.C. Mo. No. 2

3rd Revised Sheet No. 1.09A, Canceling 2nd Revised Sheet No. 1.09A

P.S.C. Mo. No. 7

**5th Revised Sheet No. 5A, Canceling 4th Revised Sheet No. 5A
5th Revised Sheet No. 5B, Canceling 4th Revised Sheet No. 5B
5th Revised Sheet No. 8, Canceling 4th Revised Sheet No. 8
4th Revised Sheet No. 8A, Canceling 3rd Revised Sheet No. 8A
5th Revised Sheet No. 9A, Canceling 4th Revised Sheet No. 9A
5th Revised Sheet No. 9B, Canceling 4th Revised Sheet No. 9B
5th Revised Sheet No. 10A, Canceling 4th Revised Sheet No. 10A
5th Revised Sheet No. 10B, Canceling 4th Revised Sheet No. 10B
5th Revised Sheet No. 10C, Canceling 4th Revised Sheet No. 10C
5th Revised Sheet No. 11A, Canceling 4th Revised Sheet No. 11A
5th Revised Sheet No. 11B, Canceling 4th Revised Sheet No. 11B
5th Revised Sheet No. 11C, Canceling 4th Revised Sheet No. 11C
5th Revised Sheet No. 14A, Canceling 4th Revised Sheet No. 14A
5th Revised Sheet No. 14B, Canceling 4th Revised Sheet No. 14B
5th Revised Sheet No. 14C, Canceling 4th Revised Sheet No. 14C
5th Revised Sheet No. 17A, Canceling 4th Revised Sheet No. 17A
5th Revised Sheet No. 18A, Canceling 4th Revised Sheet No. 18A
5th Revised Sheet No. 18B, Canceling 4th Revised Sheet No. 18B
5th Revised Sheet No. 18C, Canceling 4th Revised Sheet No. 18C
5th Revised Sheet No. 19A, Canceling 4th Revised Sheet No. 19A
5th Revised Sheet No. 19B, Canceling 4th Revised Sheet No. 19B
5th Revised Sheet No. 19C, Canceling 4th Revised Sheet No. 19C
5th Revised Sheet No. 20C, Canceling 4th Revised Sheet No. 20C
4th Revised Sheet No. 28B, Canceling 3rd Revised Sheet No. 28B
5th Revised Sheet No. 30, Canceling 4th Revised Sheet No. 30
5th Revised Sheet No. 33, Canceling 4th Revised Sheet No. 33
5th Revised Sheet No. 35, Canceling 4th Revised Sheet No. 35
5th Revised Sheet No. 35A, Canceling 4th Revised Sheet No. 35A
5th Revised Sheet No. 35B, Canceling 4th Revised Sheet No. 35B
5th Revised Sheet No. 35C, Canceling 4th Revised Sheet No. 35C**

5th Revised Sheet No. 36, Canceling 4th Revised Sheet No. 36
5th Revised Sheet No. 36A, Canceling 4th Revised Sheet No. 36A
5th Revised Sheet No. 36B, Canceling 4th Revised Sheet No. 36B
5th Revised Sheet No. 37, Canceling 4th Revised Sheet No. 37
5th Revised Sheet No. 37A, Canceling 4th Revised Sheet No. 37A
5th Revised Sheet No. 37B, Canceling 4th Revised Sheet No. 37B
5th Revised Sheet No. 37C, Canceling 4th Revised Sheet No. 37C
5th Revised Sheet No. 37D, Canceling 4th Revised Sheet No. 37D
5th Revised Sheet No. 37E, Canceling 4th Revised Sheet No. 37E
5th Revised Sheet No. 37F, Canceling 4th Revised Sheet No. 37F
5th Revised Sheet No. 37G, Canceling 4th Revised Sheet No. 37G
5th Revised Sheet 45, Canceling 4th Revised Sheet No. 45
5th Revised Sheet No. 45A, Canceling 4th Revised Sheet No. 45A
1st Revised Sheet No. 6, Canceling Original Sheet No. 6
Sheet No. 6A, Original, New
Sheet No. 6B, Original, New
Sheet No. 6C, Original, New

5. Kansas City Power and Light Company is authorized to file tariffs in compliance with the terms of the Non-Unanimous Stipulation and Agreement.

6. Tariffs filed in accordance with Ordered Paragraph #5 shall be filed with an effective date of September 1, 2009.

7. The Non-Unanimous Stipulation and Agreement Regarding Pensions and Other Post-Employment Benefits filed on April 24, 2009, is hereby approved as the resolution of all factual issues encompassed within that Agreement in case number ER-2009-0089. A copy of the Non-Unanimous Stipulation and Agreement Regarding Pensions and Other Post-Employment Benefits is attached to this order as Appendix B.

8. The Signatories to the Non-Unanimous Stipulation and Agreement Regarding Pensions and Other Post-Employment Benefits are ordered to comply with the terms of the Agreement.

9. All objections not ruled on are overruled and all pending motions not otherwise disposed of herein, or by separate order, are denied.

10. The prefiled testimony, including all reports, exhibits, appendices, schedules, etc. attached thereto, of the Signatory witnesses to the Non-Unanimous Stipulation and Agreement are received and into the case file pursuant to the Signatories' agreement. A copy of the exhibits list is attached to this order as Appendix C.

11. The evidentiary hearing that was suspended on April 21, 2009, is canceled.

12. The remainder of the procedural schedule adopted by the Commission on November 20, 2008, and subsequently modified on March 18, 2009, is canceled.

13. This order shall become effective on June 23, 2009.

BY THE COMMISSION



**Colleen M. Dale
Secretary**

(S E A L)

Clayton, Chm., Davis, and Jarrett, CC., concur
with separate concurring opinions to follow;
Gunn, C., concurs.

Stearley, Senior Regulatory Law Judge

Appendix A. Non-Unanimous Stipulation and Agreement

(Attached)

Appendix B. Non-Unanimous Stipulation and Agreement Regarding Pensions and OPEBs

(Attached)

Appendix C Exhibits List

No.	Description
1	KCPL Exh. 1 (HC) Jimmy D. Alberts -- Rebuttal
2	KCPL Exh. 1 (NP) Jimmy D. Alberts -- Rebuttal
3	KCPL Exh. 2 (HC) Wm. Edward Blunk -- Direct
4	KCPL Exh. 2 (NP) Wm. Edward Blunk -- Direct
5	KCPL Exh. 3 (HC) Wm. Edward Blunk -- Rebuttal
6	KCPL Exh. 3 (NP) Wm. Edward Blunk -- Rebuttal
7	KCPL Exh. 4 Wm. Edward Blunk -- Surrebuttal
8	KCPL Exh. 5 Carl Churchman -- Direct
9	KCPL Exh. 6 (HC) Carl Churchman -- Rebuttal
10	KCPL Exh. 6 (NP) Carl Churchman -- Rebuttal
11	KCPL Exh. 7 (HC) Michael W. Cline -- Direct
12	KCPL Exh. 7 (NP) Michael W. Cline -- Direct
13	KCPL Exh. 8 (HC) Michael W. Cline -- Rebuttal
14	KCPL Exh. 8 (NP) Michael W. Cline -- Rebuttal
15	KCPL Exh. 9 (HC) Burton L. Crawford -- Direct
16	KCPL Exh. 9 (NP) Burton L. Crawford -- Direct
17	KCPL Exh. 10 Burton L. Crawford -- Rebuttal
18	KCPL Exh. 11 (HC) Burton L. Crawford -- Surrebuttal
19	KCPL Exh. 11 (NP) Burton L. Crawford -- Surrebuttal
20	KCPL Exh. 12 (HC) F. Dana Crawford -- Direct
21	KCPL Exh. 12 (NP) F. Dana Crawford -- Direct
22	KCPL Exh. 13 (HC) F. Dana Crawford -- Rebuttal
23	KCPL Exh. 13 (NP) F. Dana Crawford -- Rebuttal
24	KCPL Exh. 14 Barbara C. Curry -- Rebuttal
25	KCPL Exh. 15 Barbara C. Curry -- Surrebuttal
26	KCPL Exh. 16 (HC) Brent C. Davis -- Direct
27	KCPL Exh. 16 (NP) Brent C. Davis -- Direct
28	KCPL Exh. 17 (HC) Brent C. Davis -- Rebuttal
29	KCPL Exh. 17 (NP) Brent C. Davis -- Rebuttal
30	KCPL Exh. 18 Brent C. Davis -- Surrebuttal
31	KCPL Exh. 19 Allen D. Dennis -- Direct

No.	Description
32	KCPL Exh. 20 Allen D. Dennis -- Rebuttal
33	KCPL Exh. 21 Allen D. Dennis -- Surrebuttal
34	KCPL Exh. 22 (HC) William H. Downey -- Rebuttal
35	KCPL Exh. 22 (NP) William H. Downey -- Rebuttal
36	KCPL Exh. 23 (HC) Chris B. Giles -- Direct
37	KCPL Exh. 23 (NP) Chris B. Giles -- Direct
38	KCPL Exh. 24 (HC) Chris B. Giles -- Rebuttal
39	KCPL Exh. 24 (NP) Chris B. Giles -- Rebuttal
40	KCPL Exh. 25 Chris B. Giles -- Surrebuttal
41	KCPL Exh. 26 (HC) Samuel C. Hadaway -- Direct
42	KCPL Exh. 26 (NP) Samuel C. Hadaway -- Direct
43	KCPL Exh. 27 Samuel C. Hadaway -- Rebuttal
44	KCPL Exh. 28 Samuel C. Hadaway -- Surrebuttal
45	KCPL Exh. 29 Melissa K. Hardesty -- Rebuttal
46	KCPL Exh. 30 Melissa K. Hardesty -- Surrebuttal
47	KCPL Exh. 31 William P. Herdegen III -- Direct
48	KCPL Exh. 32 William P. Herdegen III -- Rebuttal
49	KCPL Exh. 33 Darrin R. Ives -- Direct
50	KCPL Exh. 34 Darrin R. Ives -- Rebuttal
51	KCPL Exh. 35 Darrin R. Ives -- Surrebuttal
52	KCPL Exh. 36 (HC) Steven Jones -- Rebuttal
53	KCPL Exh. 36 (NP) Steven Jones -- Rebuttal
54	KCPL Exh. 37 Larry W. Loos -- Direct
55	KCPL Exh. 38 Larry W. Loos -- Rebuttal
56	KCPL Exh. 39 Larry W. Loos -- Surrebuttal
57	KCPL Exh. 40 Edward C. Matthews -- Direct
58	KCPL Exh. 41 George M. McCollister, Ph.D -- Direct
59	KCPL Exh. 42 (HC) Daniel F. Meyer -- Rebuttal
60	KCPL Exh. 42 (NP) Daniel F. Meyer -- Rebuttal
61	KCPL Exh. 43 (HC) Dr. Kris R. Nielsen -- Rebuttal
62	KCPL Exh. 43 (NP) Dr. Kris R. Nielsen -- Rebuttal
63	KCPL Exh. 44 Dr. Kris R. Nielsen -- Surrebuttal
64	KCPL Exh. 45 Paul M. Normand -- Direct
65	KCPL Exh. 46 Kenneth M. Roberts -- Direct

No.	Description
66	KCPL Exh. 47 (HC) Kenneth M. Roberts -- Rebuttal
67	KCPL Exh. 47 (NP) Kenneth M. Roberts -- Rebuttal
68	KCPL Exh. 48 Kenneth M. Roberts -- Surrebuttal
69	KCPL Exh. 49 Timothy M. Rush -- Direct
70	KCPL Exh. 50 Timothy M. Rush -- Rebuttal
71	KCPL Exh. 51 (HC) Michael M. Schnitzer -- Direct
72	KCPL Exh. 51 (NP) Michael M. Schnitzer -- Direct
73	KCPL Exh. 52 (HC) Michael M. Schnitzer -- Rebuttal
74	KCPL Exh. 52 (NP) Michael M. Schnitzer -- Rebuttal
75	KCPL Exh. 53 (HC) Michael M. Schnitzer -- Surrebuttal
76	KCPL Exh. 53 (NP) Michael M. Schnitzer -- Surrebuttal
77	KCPL Exh. 54 Richard A. Spring -- Direct
78	KCPL Exh. 55 (HC) John P. Weisensee -- Direct
79	KCPL Exh. 55 (NP) John P. Weisensee -- Direct
80	KCPL Exh. 56 (HC) John P. Weisensee -- Rebuttal
81	KCPL Exh. 56 (NP) John P. Weisensee -- Rebuttal
82	KCPL Exh. 57 Primary Revenue Requirement Issues
83	KCPL Exh. 58 Term Sheet (Agreement in Principle)
84	Staff Exh. 1 (HC) Staff's Cost-of-Service Report for KCP&L as of February 11,2009
85	Staff Exh. 1 (NP) Staff's Cost-of-Service Report for KCP&L as of February 11,2009
86	Staff Exh. 2 Appendices to Staff's Cost-of-Service Report for KCP&L as of February 11, 2009
87	Staff Exh. 3 March 11, 2009 Correction page to Staff's Cost-of-Service Report for KCP&L as of February 11, 2009
88	Staff Exh. 4 Staff Accounting Schedules as of February 11, 2009
89	Staff Exh. 5 Staff's Class Cost-of-Service and Rate Design Report as of February 24, 2009
90	Staff Exh. 6 KCPL ER-2009-0089 Revenue Requirement Reconciliation filed April 15, 2009
91	Staff Exh. 7 Kofi Boateng -- Surrebuttal
92	Staff Exh. 8 Cary G. Featherstone -- Direct
93	Staff Exh. 9 Cary G. Featherstone -- Rebuttal
94	Staff Exh. 10 (HC) Cary G. Featherstone -- Surrebuttal
95	Staff Exh. 10 (NP) Cary G. Featherstone -- Surrebuttal
96	Staff Exh. 11 (HC) V. William Harris -- Rebuttal

No.	Description
97	Staff Exh. 11 (NP) V. William Harris -- Rebuttal
98	Staff Exh. 12 (HC) V. William Harris -- Surrebuttal
99	Staff Exh. 12 (NP) V. William Harris -- Surrebuttal
100	Staff Exh. 13 (HC) Paul R. Harrison -- Surrebuttal
101	Staff Exh. 13 (NP) Paul R. Harrison -- Surrebuttal
102	Staff Exh. 14 Karen Herrington -- Rebuttal
103	Staff Exh. 15 (HC) Karen Herrington -- Surrebuttal
104	Staff Exh. 15 (NP) Karen Herrington -- Surrebuttal
105	Staff Exh. 16 Charles R. Hyneman -- Rebuttal
106	Staff Exh. 17 (HC) Charles R. Hyneman -- Surrebuttal
107	Staff Exh. 17 (NP) Charles R. Hyneman -- Surrebuttal
108	Staff Exh. 18 Lisa Kremer -- Surrebuttal
109	Staff Exh. 19 Keith Majors -- Rebuttal
110	Staff Exh. 20 Keith Majors -- Surrebuttal
111	Staff Exh. 21 David Murray -- Rebuttal
112	Staff Exh. 22 David Murray -- Surrebuttal
113	Staff Exh. 23 Bret Prenger -- Surrebuttal
114	Staff Exh. 24 (HC) Michael Proctor -- Rebuttal
115	Staff Exh. 24 (NP) Michael Proctor -- Rebuttal
116	Staff Exh. 25 (HC) Michael Proctor -- Surrebuttal
117	Staff Exh. 25 (NP) Michael Proctor -- Surrebuttal
118	Staff Exh. 26 Anne Ross -- Replacement Rebuttal
119	Staff Exh. 27 (HC) Robert Schallenberg -- Surrebuttal
120	Staff Exh. 27 (NP) Robert Schallenberg -- Surrebuttal
121	Staff Exh. 28 Michael Scheperle -- Direct
122	Staff Exh. 29 Michael Scheperle -- Rebuttal
123	Staff Exh. 30 Michael Scheperle -- Surrebuttal
124	Staff Exh. 31 Michael Taylor -- Surrebuttal
125	Staff Exh. 32 Curt Wells -- Direct
126	OPC Exh. 1 Mike Gorman -- Direct
127	OPC Exh. 2 Mike Gorman -- Rebuttal
128	OPC Exh. 3 Mike Gorman -- Surrebuttal
129	OPC Exh. 4 Russ Trippensee -- Direct
130	OPC Exh. 5 Russ Trippensee -- Rebuttal

No.	Description	
131	OPC Exh. 6	Barb Meisenheimer -- Direct (Rate Design)
132	OPC Exh. 7	Barb Meisenheimer -- Rebuttal (Revenue Requirement)
133	OPC Exh. 8	Barb Meisenheimer -- Surrebuttal (Rate Design & Revenue Requirement)
134	OPC Exh. 9	Ryan Kind -- Rebuttal
135	DOE/NNSA Exh. 1	Jatinder Kumar -- Direct
136	DOE/NNSA Exh. 2 (HC)	Jatinder Kumar -- Direct
137	DOE/NNSA Exh. 3	Jatinder Kumar -- Rebuttal
138	DOE/NNSA Exh. 4 (HC)	Jatinder Kumar -- Rebuttal
139	DOE/NNSA Exh. 5	Jatinder Kumar -- Surrebuttal
140	DOE/NNSA Exh. 6 (HC)	Jatinder Kumar -- Surrebuttal
141	Industrials Exh. 1	Maurice Brubaker -- Direct (Rate Design)
142	Industrials Exh. 2	Maurice Brubaker -- Rebuttal (Revenue Requirement)
143	Industrials Exh. 3	Greg Meyer -- Rebuttal
144	Industrials Exh. 4	Maurice Brubaker -- Rebuttal (Rate Design)
145	Industrials Exh. 5	Maurice Brubaker -- Surrebuttal (Rate Design)
146	MDNR Exh.1	Laura Wolfe -- Direct
147	MDNR Exh.2	Laura Wolfe -- Surrebuttal
148	MDNR Exh.3	Quantec Energy Economics: "Assessment of Energy and Capacity Savings Potential in Iowa, Vol. II," Portland., OR. February 2008. Appendix G
149	MDNR Exh.4	http://www.dps.state.ny.us/NY_Standard_Approach_for_Estimating_Energy_Savings_12-08.pdf
150	MDNR Exh.5	Efficiency Vermont Technical Reference User Manual (TRM) No. 2009-54