BEFORE THE PUBLIC SERVICE
COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Eighth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of KCP&L Greater Missouri Operations Company	))))	**File: EO-2019-0067**
In the Matter of the Second Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Kansas City Power and Light Company	))))	**File: EO-2019-0068**
In the Matter of the Application of KCP&L Greater Missouri Operations Company Containing Its Semi-Annual Fuel Adjustment Clause True-Up	)))	**File: ER-2019-0199**

INITIAL POST-HEARING BRIEF OF
KANSAS CITY POWER & LIGHT COMPANY
AND KCP&L GREATER MISSOURI OPERATIONS COMPANY

COME NOW Kansas City Power & Light Company ("KCP&L"), and KCP&L Greater Missouri Operations Company ("GMO") (collectively "Company"), and respectfully submit their *Initial Post-Hearing Brief* ("Brief") in this matter:

ISSUE NO. 1

A. Was it imprudent, or in violation of its Rider FAC tariff, for KCP&L to allow 722,628 renewable energy credits ("RECs") to expire during the review period of File EO-2019-0068 rather than take action which would have allowed KCP&L to generate revenues from those RECs?

Staff of the Missouri Public Service Commission (Staff), as well as the Office of Public Counsel (OPC) have alleged that KCP&L acted imprudently by not selling the RECs remaining

after compliance with the Missouri Renewable Energy Standard (RES).[1] Staff and OPC have also alleged that the decision to not sell the RECs is a violation of KCP&L's Rider FAC tariff.[2]

BACKGROUND

On February 28, 2019 Staff filed its FAC Prudence Review Reports for both KCP&L and GMO in docket numbers EO-2018-0067 (KCP&L) and EO-2018-0068 (GMO).[3] These cases were consolidated on March 31, 2019 by order of the Commission.[4] Staff found no evidence of imprudence in the GMO Prudence Review Report on the issue of unsold RECs in excess of RES compliance.[5] But Staff took a different position with regard to Kansas City Power & Light, alleging imprudence in its decision to not sell its RECs in excess of RES compliance.

This is a case of first impression for the Commission. To the Company's knowledge no other regulated electric utility has been accused of imprudence based upon its decision to not sell RECs remaining after RES compliance. This is certainly true for KCP&L and GMO, which only knew of Staff's position upon the filing of Staff's Report in this case.

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[1] Section 393.1020, et seq.

[2] In the evidentiary hearing Staff and OPC appear to have adjusted their legal position that KCP&L violated its FAC tariff by its failure to sell RECs to the position that KCP&L violated its Rider FAC tariff by their alleged failure *to attempt to* sell the remaining RECs. KCP&L will address both of arguments herein.

[3] See, Docket No. E0-2018-0069, *In the Matter of the Second Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Kansas City Power and Light Company*, Staff's Second Prudence Review Report, consolidated with, EO-2018-0069, *In the Matter of the Eighth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of KCP&L Greater Missouri Operations Company*, Staff's Eighth Prudence Review Report.

[4] See, *Order Granting Consolidation, Setting Procedural Schedule, and Further Suspending True-Up Timeline,* Docket EO-2018-0067 (Issued March 31, 2019).

[5] See, Staff Report, Eighth Prudence Review of Costs Related to the Fuel Adjustment Clause For the Electric Operations of KCP&L Greater Missouri Operations Company, p. 26, ll. 9-10.

ARGUMENT

1. KCP&L did not act imprudently in its decision to not sell RECs in excess of those used for RES compliance because not selling the RECs was reasonable under all the circumstances.

The legal standard for determining "imprudence" involves a two-fold analysis: First, the question is whether the company's "conduct was reasonable at the time, under all the circumstances…" *State ex rel. Associated Natural Gas Co. v. Public Service Com'n State of Mo.*, 954 S.W.2d 520, 529 (Ct. App. W. D. 1997). The PSC's "responsibility is to determine how reasonable people would have performed the tasks that confronted the company." *Id.* Second, if the PSC determines the company failed the reasonableness test, it must determine if "such imprudence resulted in harm to the utility's ratepayers." *Id.* A utility's costs are initially presumed to be prudent. *Office of Public Counsel v. Missouri Public Service Com'n*, 409 S.W.3d 371, 376 (Mo. en banc 2013). If a "serious doubt as to the prudence of an expenditure" is made then the burden shifts to the company to dispel this doubt and prove the questioned expenditure as prudent. *Id.*

As a threshold matter, nailing down the exact action or inaction taken by KCP&L's management which Staff and OPC claim to constitute imprudence is difficult. Staff's and OPC's position seems to be that KCP&L acted imprudently by *not selling* or *not attempting*[6] (Tr. 88, ll. 5-7) *to sell* its RECs. (Tr. 109, ll. 5-6; Tr. 118, l. 20) But this position is confused by the unsupported claim that KCP&L acted imprudently by not considering selling excess RECs. (Tr. 109, ll. 15-17; Tr. 119, ll. 4-5: Tr. 110; ll. 11-13) Neither Staff, nor OPC offered a scintilla of evidence to support this claim. In fact, as candidly stated by OPC witness Geoff Marke in the evidentiary hearing, "Now, whether or not the company considered information that was out there

[6] In the evidentiary hearing, Staff provided more detail to its interpretation of KCP&L's Rider FAC tariff, asserting that the required "attempt" to sell the RECs means "Having a broker price the RECs in the market."

or not, I don't believe I'm in a position under oath right now to go ahead and say one way or the other what the company's belief on that is." (Tr. 121, ll. 15-20). Likewise, Staff offered no evidence suggesting the Company acted imprudently by a failure to consider or analyze the issue of whether or not to sell RECs in excess of those needed for RES compliance.

KCP&L offered uncontested testimony regarding its consideration and analysis of selling RECs. (*See e.g.*, Ex. 1, Martin Direct, P. 4; Ex. 2, Martin Surrebuttal, P. 4) Contrary to the unsupported speculation of OPC, KCP&L did not "forget"[7] (Tr. 109, ll. 15-17) to consider and analyze the appropriate treatment of RECs remaining after RES compliance. Staff and OPC have clearly failed to satisfy their burden of showing a "serious doubt as to the prudence" of KCP&L's analysis and consideration of the REC sale issue.

This leaves the question as to whether prudent management *always requires* an attempt to unbundle and sell all RECs in excess of those needed for Missouri RES compliance, regardless of REC price, customer desires or historical representations made about the power. The evidence provided by KCP&L witness Jeffrey Martin, shows that its decision to not sell the RECs was reasonable given the very low price of RECs (Ex. 1, Martin Direct, p. 11, l. 1) and customers' desires regarding the environmental attributes of the power they receive from the Company. (Ex. 1, Martin Direct, pp. 4-7) As explained by Mr. Martin, "…the revenue opportunity is currently very limited and outweighed by how such a policy would necessarily change the representations KCP&L could make regarding the environmental attributes of the power it sells to customers." (Ex. 2, Martin Surrebuttal, p. 4, ll. 2.5)

[7] Prior to Dr. Marke's admission that he was not in a position to opine as to what information KCP&L considered in its determination to not sell excess RECs, he speculates, "If I'm a betting man, it's looking awful lot like they just forgot to sell the RECs."

Notably, neither Staff, nor OPC argued that the balancing of REC prices with customer desires *weighed in favor* of selling RECs in excess of those needed for RES compliance or that KCP&L management had incorrectly balanced the competing interests of customers. The position taken by Staff and OPC is that a prudent managerial decision would *always require* an attempt to sell RECs in excess of those necessary for RES compliance, regardless of the limited revenue opportunity, customer desires or any other variable. (*See e.g.*, Ex. 100, Mark Rebuttal, p. 16, ll. 4-7)("KCP&L management erred in its discretion and management of ratepayer dollars by not realizing revenues from the sale of its RECs. It's as simple as that. Arguing that the costs are immaterial to its customers is frankly offensive and departs from fundamental economic regulation.") KCP&L does not agree with this strident position and recognizes its customers as "multi-dimensional" and requiring a balancing of the "environmental and affordability concerns of its customers." (Ex. 2, Martin Surrebuttal, p. 10, ll. 3-7.)

Additionally, KCP&L pointed out the need to adjust the past representation made to our customers regarding the environmental attributes of their power if it were forced to sell all RECs remaining after RES compliance. (Ex. 2, Martin Rebuttal, P. 5, ll. 8-14; Ex.1, Martin Direct, P. 9, ll. 5-12.) Staff and OPC seemed unsure of this undeniable fact. (Tr. 105-107, ll. 16-14.) For example, Staff witness Boustead was asked "if KCP&L sold all of its RECs and then simultaneously told customers that they were receiving renewable energy, the environmental attributes of renewable energy, would you consider that double accounting?" (Tr. 80, ll. 16-21.) Witness Boustead responded, "I don't know." (*Id.)*

Similarly, OPC takes the position that selling excess RECs would have no effect on the City of Kansas City, Missouri's declared emission reductions, despite the fact that the City of Kansas City is one of KCP&L's largest customers. (Ex. 100, Rebuttal Marke, p. 11, Tr. 106-07.)

This position is not only illogical, but inconsistent with Dr. Marke's own testimony, in which he provides the following: "Importantly, one can purchase a REC and can 'claim emission reductions' even if they do not actually reduce their end-use at all—or even increase it." Ex. 100, Marke Rebuttal, p. 3, ll. 17-18. Bizarrely, Dr. Marke fails to recognize the two-way street of "claimed emission reductions" and denies that *selling* a REC to a third-party would have just as much effect on "claims of emissions reduction" as *buying* a REC.

Staff and OPC deny what RECs are and how they work.[8] A REC represents the "environmental attributes" or environmental benefit of renewable energy. (Tr. 63-64, ll. 23-3.) A customer cannot claim credit for the environmental attributes of power purchased from KCP&L if the REC associated with that power is sold to a third-party. (Ex. 2, Martin Surrebuttal, p. 5, ll. 1-15.) The position advocated by Staff and OPC effectively turns the Missouri Renewable Energy Standard into a cap on the amount of environmental attributes KCP&L's customers may receive from the power they purchase because it would force KCP&L to sell the environmental benefits beyond what is required under the RES. (Ex. 2, Martin Surrebuttal, pp. 6-7, ll. 21-7.) *There is no evidence, and it is absurd to believe, that Missouri voters intended for the RES to serve as a hard cap on the environmental attributes its customers can receive.*

2. KCP&L was not in violation of its Rider FAC tariff by its decision to not sell or attempt to sell RECs remaining after RES compliance.

Staff asserts that KCP&L is in violation of its Rider FAC tariff because it did not attempt to sell the RECs remaining after RES compliance.[9] (Tr. 89-90.) This position is without legal

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[8] OPC's position is particularly perplexing given Dr. Marke's accurate description of REC in his rebuttal testimony, "A Renewable Energy Credit ("REC") is a certificate corresponding to the environmental attributes of energy produced from renewable energy sources." (Ex. 100, Marke Rebuttal, p. 3.)

[9] Staff's specific legal position regarding what, if any, obligation to sell or attempt to sell RECs imposed under KCP&L's Rider FAC tariff became difficult to decipher in the evidentiary hearing. At one point, Staff seems to concede that KCP&L Rider FAC does not impose, impliedly or otherwise, any obligation to sell or attempt to sell excess RECs.

merit. KCP&L's Rider FAC tariff contemplates revenues from REC sales flowing through the FAC, but in no way requires the selling of RECs. Staff then makes the following illogical leap based on the tariff's consideration of revenues from such REC sales:

> Staff's position is due to the wording that's in the tariff regarding the revenues if they're sold for the renewable energy credits that it's in the tariff it was already implied that they should be sold because the wording is there what to do with it if they have revenues, not whether or not if they sell them.

(Tr. 87, ll. 2-7.)

This illogical leap by Staff is wholly unsupportable and KCP&L disagrees strenuously with this position. Simply because the tariff contemplates how certain revenues from the sale of RECs would be treated, it does not impliedly require the sale of RECs. This troubling interpretation by Staff could then also mean that just because a cost is identified in the tariff as being eligible for recovery, it is incumbent on the utility to incur that cost regardless of whether it is needed for operations or is in the best interest of customers. This would clearly be an absurd outcome. There is simply no language in the Rider FAC tariff that could be interpreted to require the selling of excess RECs regardless of price, customer desires or other business variables. Further, neither Staff, nor OPC offered any evidence suggesting that it was the intent of either the parties or the Commission that such a requirement be imposed.

B. If it was, what if any adjustment should the Commission order?

If the Commission were to make the unfortunate policy decision to impose a compulsory REC sales program on KCP&L and turn the Missouri RES into a customer cap on the environmental attributes of renewable energy – it should only do so on a prospective basis. There should be no imputation of revenues in this case based on KCP&L's decision to not sell the RECs in excess of RES compliance. As previously stated, no such requirement has been imposed on any

other Missouri regulated electric utility company, and this is the first time KCP&L has been confronted with this position by Staff or OPC.

ISSUE NO. 2

A. Has GMO appropriately allocated the costs associated with the auxiliary power between the electric operations and the steam operations at GMO's Lake Road plant?

The Auxiliary Power Issue involves the OPC's allegation that GMO has improperly allocated the costs associated with Auxiliary Power needed to run the steam plant at GMO's Lake Road plant[10]. (Ex. 101-C, Mantle Direct, pp. 3-14) The Staff has conducted an audit in this case, and "Staff found no indication that GMO imprudently included steam auxiliary power costs in the FAC during the Review Period." (Staff Statement of Position, p. 2; Tr. 148, 190-92).

GMO agrees with the Staff that there is no basis for a prudence adjustment in this case related to the allocation of costs between electric and steam operations since GMO appropriately allocated the costs associated with the auxiliary power between the electric operations and the steam operations at GMO's Lake Road plant in the same manner that it has done, by agreement of the parties, since 2009. (Tr. 138-39)

BACKGROUND

Prior to the purchase of St. Joseph Light and Power Company ("SJLP") in 2000 by UtiliCorp United, Inc., (a predecessor to Aquila, Inc. ("Aquila")), SJLP used an allocation methodology that included direct assignment as well as allocation of costs. At that time, SJLP had separate sets of accounting records for its electric, gas and steam businesses. The cost of auxiliary power, which is the power used to run the Lake Road plant, was identified and directly

[10] The Lake Road Plant is located at 1413 Lower Lake Road in St. Joseph, Missouri. Seven electric generators are located at the site along with equipment for the production and delivery of industrial steam. Four of the seven generators are driven by steam turbines and have a combined name plate capacity of 150.5 megawatts ("MW"). Units 1, 2, and 3 are part of the 900 lb. steam system and Unit 4 is part of the 1800 lb. steam system. Units 5, 6, and 7 are combustion turbines and have a combined name plate capacity of 127.6 MW. (Ex.101-P, Mantle Rebuttal, p. 5).

assigned separately to the electric and steam businesses. In 1994, SJLP agreed to utilize the direct assignment method until the Commission ordered SJLP to use a different allocation method. The Stipulation and Agreement approved by the Commission in Case No. EO-94-36 stated as follows:

> For settlement purposes, the parties agree that SJLP will allocate costs between its electric, gas and steam jurisdictions according to the Allocations Procedures manual (attached as Schedule A) **until the Commission orders SJLP to use a different allocation method** (emphasis added).[11]

(Ex. 3, Nunn Direct, p. 3)

In a 2005 Aquila steam rate case, File No. HR-2005-0450[12], Aquila agreed to continue to use that direct assignment allocation methodology until another approach was "presented and approved or agreed among parties in a general rate proceeding."[13] (Ex. 3, Nunn Direct, p. 3).

GMO used that direct assignment allocation methodology until 2009. In Case Nos. ER-2009-0090 and HR-2009-0092 ("2009 cases"), GMO proposed to allocate its costs, both rate base and cost of service expenses, for its L&P jurisdiction (what SJLP was called after being acquired by Utilicorp/Aquila), between its electric and industrial steam businesses using seven allocation

[11] Report and Order, Case No. EO-94-36, pp. (February 10, 1995).
[12] Aquila (formerly UtiliCorp United Inc.) acquired the SJLP steam operation as a part of its acquisition of SJLP in 2000. See Second Report & Order, Re: UtiliCorp United Inc. and St. Joseph Light & Power Company, Case No. EM-2000-292 (Feb. 26, 2004).
[13] Order Regarding Stipulation and Agreement, Case No. HR-2005-0450, paragraph 9, pp. 8-9 (February 28, 2006).

factors. ("seven-factor allocation method")[14] The costs for auxiliary power were not directly assigned to the steam business through the seven-factor allocation methodology used in the 2009 cases (Ex. 3, Nunn Direct, p. 4) but were subsumed in other operations and maintenance accounts. (Tr. 165-68)

No party to the 2009 electric and steam cases, including OPC, disputed the use of the seven-factor allocation method for separating the costs of the electric and steam businesses. (Ex. 3, Nunn Direct, p. 4). Rather than disputing the use of the seven-factor allocation method, Public Counsel signed a global settlement which resolved all issues in the cases. (Tr. 206-07) In its order approving the Non-Unanimous Stipulations and Agreements, the Commission stated that "[N]o party objected to the Agreements within the deadlines set by the Commission. Consequently, pursuant to the Commission's rules, the Agreement shall be treated as unanimous…"[15]

While GMO has not filed a general rate case for its steam operations since the resolution of Case No. HR-2009-0092, GMO has filed a number of general rate cases for its electric

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[14] The seven-factor Allocation Method included the following factors:

1. Allocated Plant Base Factor – this is the ratio of all allocated steam plant to total regulated electric and steam plant.

2. Land Factor, Structures Factor, Access Electric Equipment Factor, Electric/SteamPlant Factor (FERC 310, 311, 315, 341-346)– this is the ratio of all allocated steam production plant to total electric and steam production plant.

3. Boiler Plant Factor (FERC 312) – this is the ratio of all allocated steam boiler plant
5 equipment to total regulated electric and steam boiler plant equipment.

4. Turbogenerators ("turbogen") Factor (FERC 314) – this is the ratio of all allocated steam turbogen units to total regulated electric and steam turbogen units.

5. 900# Steam Demand Factor - this is used in steam production allocation calculations, and Miscellaneous Steam Gen Equipment Factor (FERC 316) – this is the weighted ratio of the highest maximum steam coincident peaks over the previous three years and the total highest maximum coincident peaks over the previous three years.

6. Electric after Steam operation and maintenance ("O&M") allocation (O&M Factor) – this is the ratio of allocated payroll applicable to steam business to the total generation payroll charged to O&M. The allocated payroll applicable to steam business is calculated using the ratio of the previous three years of steam coal burn to total Lake Road coal burn applied against total Lake Road payroll charged to O&M.

7. Electric after Steam administrative and general ("A&G") allocation (A&G Factor) – this factor is comprised of the sum of a 50% weighting of steam O&M to total O&M from Annual Report Form 1, page 323 and a 50% weighting of total allocated steam plant to total steam and electric plant. (Ex. 7, Klote Direct, File No. HR-2009-0092, pp. 4-5, and Ex. 8, Klote Direct, File No. ER-2009-0090, pp. 5-6 (September 5, 2008).

[15] Order Approving Non-Unanimous Stipulations and Agreements and Authorizing Tariff Filing, Case No. ER-2009-0090, p. 8 (June 10, 2009). (Ex. 3, Nunn Direct, p. 5)

operations since June 10, 2009 (the date on which the Commission issued its decisions in Case Nos. ER-2009-0090 and HR-2009-0092). The rates finally established for electric service in each general rate case for GMO's electric operations since 2009, have been based on the seven-factor allocation methodology proposed by GMO in Case Nos. ER-2009-0090 and HR-2009-0092 which did not involve direct assignment of auxiliary power costs to the steam operation as set forth in the Allocation Procedures manual from Case No. EO-94-36. In fact, when GMO proposed in GMO's most recently concluded general rate case a more detailed allocation methodology involving direct assignment of auxiliary power costs that was more akin to the methodology used in Case No. EO-94-36, Staff objected and the electric/steam allocations issue was resolved by the Company agreeing to the continued use of the allocators developed by Staff in the immediately preceding general rate case, Case No. ER-2016-0156.[16] (Ex. 3, Nunn Direct, p. 6; Tr. 146-47) From the 2009 rate case to the present, the Company has used the seven factor allocation method, not the direct assignment methodology approved in ER-94-36, to distribute costs between its electric and steam operations. (Ex. 3, Nunn Direct, p. 8)

ARGUMENT

1. The Seven-factor Allocation Method Has Been Agreed To By All Parties and Properly Allocates the Costs of Operation of the Lake Road Plant, Including Auxiliary Power, Between the Steam and Electric Operations.

Contrary to the arguments of OPC witness Lena Mantle (Ex. 101-P, Mantle Rebuttal, pp. 5-14), the allocation method used by GMO in the last five electric rate cases as well as GMO's last industrial steam rate case appropriately allocates the costs of auxiliary power to its steam operations, and is not recovered in GMO's Fuel Adjustment Clause ("FAC"). All of Ms. Mantle's

[16] As Commissioner Hall observed during the hearings, the Non-Unanimous Stipulation and Agreement in Case No. ER-2016-0156 (filed September 20, 2016), specifically included the allocation factors and values to be used in the future and were based upon the seven-factor allocation method. (Tr. 144-45) The Company has continued to utilize these allocation factors and values as agreed to in the stipulation in the 2016 GMO rate case. (Tr. 145)

recommendations should be rejected because they are based on OPC's incorrect claim that GMO is not allocating auxiliary power costs to its steam operations. While OPC has refused to recognize the settlement agreements which govern how steam customers have been allocated costs in GMO's last six rate cases, the Commission has approved the use of the seven-factor allocation method. As a result, the direct assignment method that was previously used by SJLP and Aquila in 1994, and 2005, respectively, no longer applied.

As explained by Ms. Nunn in answer to Commissioner Hall's questions, there is no separate line item or account for auxiliary power (Tr. 166). However, a representative amount of overall operations and maintenance costs are allocated to cover a variety of costs, including the cost of auxiliary power, by allocating other non-fuel steam O&M costs out of the electric base rates to produce steam. (Ex. 4, Nunn Surrebuttal, p. 5; Tr. 156-57) These costs were apportioned between the steam and electric operations by using the seven-factor allocation method used in settlements agreed to by many parties, including OPC, and approved by the Commission in GMO's 2009 industrial steam general rate case and five previous GMO electric general rate cases.

Approximately $3.4 million in non-fuel O&M costs were allocated to the steam business in the true-up filing of GMO's most recent electric rate case. In addition, GMO's last filed Steam Management Report included $3.4 million in allocated non-fuel O&M costs as well. (Ex. 4, Nunn Surrebuttal) While there is no direct assignment of auxiliary power under the seven-factor allocation method, this allocation method nevertheless ensures that the costs are properly separated between the steam and electric operations. OPC apparently has a fundamental misunderstanding

of how the allocation process works, and has therefore incorrectly argued that the cost of auxiliary power used for steam operations is being recovered through GMO's FAC.

Ms. Nunn explained the difference between the direct assignment method and the seven-factor allocation method as follows (Tr. 170-71):

> In the direct assignment method, you would take each individual cost or a number of them, you could do a combination of direct and indirect and general, but you would take individual costs and you would determine okay, how much of this individual cost goes over to this jurisdiction versus this jurisdiction. In the indirect method, you use some sort of cost causation to allocate those costs which is what we've done when we've said okay, the primary cost in there to produce that electricity is in the O&M area arena is payroll and then how did we get to that payroll cost to be allocated to steam, we said well, how much fuel is used to produce the electricity for the two and that split was how we got to the payroll piece that belonged to steam versus the total payroll that's at GMO. So it's a cost causation distribution of costs and then there's a general allocate where you just would pick kind of a general, sometimes I guess I would think of maybe a utility mass formula might be considered a general allocator that you just do everything else based on this one allocation method -- or one allocation factor.

In answer to Commissioner Hall's questions, Ms. Nunn elaborated on the approved method of allocating costs between the steam and electric operations at the Lake Road Plant. She explained that auxiliary power costs are subsumed within the other costs in the operations and maintenance category of the Lake Road plant. The Company therefore cannot specifically identify how auxiliary power was allocated because it is subsumed into the O&M categories. The auxiliary power costs are not identified individually, but they have been allocated using the seven-factor method in every rate case since 2009. This allocation method does not affect the FAC since this allocation process is done in a general rate case and not in the FAC ratemaking process. (Tr. 165-68)

Based upon the competent and substantial evidence in the record, the Commission should reject OPC's assertions that auxiliary power costs are being recovered through the GMO's FAC.

While the seven-factor allocation method is different from the previously used direct assignment method, both methods are wholly acceptable allocation methodologies and ensure that a representative amount of costs are allocated between the electric and steam operations.

2. OPC's Allegation Does Not Involve the Prudence of Auxiliary Power Expenses but Is A Dispute Over the Proper Allocation Method Which Is A Rate Case Issue and Not an Issue For a FAC Prudence Review Case.

In its Position Statement, OPC alleges that GMO "has not appropriately allocated the costs associated with auxiliary power between the electric and steam operations at its Lake Road plant because it has not allocated ***any*** of the fuel costs related to auxiliary power used at its Lake Road plant to its steam operations." (OPC Position Statement, p. 3) This issue is fundamentally a disagreement about the allocations method which has historically been an issue for rate cases. (Tr. 200) It is simply not a prudence issue at all.

No party, including OPC, has suggested that the use of auxiliary power is not necessary and reasonable for the production of steam service. Nor has any party suggested that the level of auxiliary power was too high or that the Company made any imprudent decisions to use auxiliary power to provide industrial steam service. However, OPC has attempted to shoehorn this allocation issue into this FAC prudence review case by arguing that GMO "has imprudently collected fuel costs related to the production of auxiliary powered used for steam operations at its Lake Road facility from its electric ratepayers." (OPC Position Statement, p. 6). This attempt to argue that this difference of opinion about the appropriate method of allocating costs is a prudence issue is misplaced, and should be rejected.

As explained in the Staff Report, the prudence standard has been described by the Courts as follows:

> In *State ex rel. Associated Natural Gas Co. v. Public Service Com'n of State of Mo.*, the Western District Court of Appeals stated the Commission defined its prudence standard as follows:
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> [A] utility's costs are presumed to be prudently incurred... However, the presumption does not survive "a showing of inefficiency or improvidence... [W]here some other participant in the proceeding creates a serious doubt as to the prudence of expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.
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> In the same case, the PSC noted that this test of prudence should not be based upon hindsight, but upon a reasonableness standard: [T]he company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company. 954 S.W.2d 520, 528-29 (Mo. App. W.D., 1997)(citations omitted).

(Staff Report, EO-2019-0067, p. 4)

Under this court-approved prudence standard, GMO is presumed to have prudently incurred auxiliary power costs. OPC has not raised a serious doubt as to the prudence of this expenditure. In fact, OPC has not challenged the expenditure of funds for auxiliary power. (Tr. 202) Instead, OPC is arguing that the costs of the Lake Road plant should be allocated using a direct assignment method for allocating auxiliary power rather than the seven-factor allocation method that OPC and other parties have agreed to and implemented in the last seven GMO rate cases.

As Ms. Mantle explained during cross-examination, allocation issues are usually rate case issues. (Tr. 200) In fact, this case is the first FAC prudence review case in which Ms. Mantle has raised an allocation issue. (Tr. 202)

When the Commission adopts a different allocation of costs in rate cases, and reduces the level of allocated costs to a particular service, it re-allocates those costs to other services. ("It's

usually an allocation of a pie. The pie does not get bigger or smaller. It's just the slices, yes sir." (Tr. 200)) In rate cases involving allocation disputes, the Commission does not disallow those costs so that shareholders must absorb the difference between the allocation methods. It would re-allocate those costs so that the pie stays the same, but the size of the slices of costs paid for by the different services will change. (Tr. 200-01) The rate case process is fundamentally different from the approach OPC is endorsing in this case since GMO's shareholder will have to bear the cost of the disallowance in this case if OPC prevailed on this issue. As acknowledged by Ms. Mantle, there would be no rate increase for steam service customers. (Tr. 211)

This is the first case in which Ms. Mantle has argued that an allocation issue is a "prudence" issue. (Tr. 202) However, this is fundamentally incorrect, and such allocation issues should be reviewed in rate cases, and not in FAC prudence review cases. Therefore, OPC's proposed disallowance should be rejected by the Commission.

B. If not, what if any adjustment should the Commission order for the review period of File EO-2019-0067?

As explained above, there is no prudence adjustment that should be made for the review period (December 2016 through May 2018) of File EO-2019-0067. GMO merely followed the approved allocation method that has been used for the last seven GMO rate cases.[17] There was no imprudent decision related to the auxiliary power at the Lake Road plant. Therefore, no prudence disallowance of any kind is reasonable or appropriate.

[17] The Company also used the allocations numbers used in Staff's model filed in Case No. ER-2016-0156, as agreed by the parties to the Non-Unanimous Partial Stipulation And Agreement, p. 5 in Case Nos. ER-2018-0145 and ER-2018-0146 (filed Sept. 19, 2018).

C. Should the Commission order GMO to calculate the fuel cost of the steam operations auxiliary power that was recovered through the FAC since July 1, 2011, and return that amount plus interest at its short-term borrowing rate back to GMO's customers?

No. In this case, OPC has argued that the Commission should order GMO "to calculate the fuel cost of the steam operations auxiliary power that was recovered through the FAC since July 1, 2011, and return that amount plus interest at its short-term borrowing rate back to its customers. (Ex. 101-P, Mantle Rebuttal, p. 3) In effect, OPC is requesting that the Commission re-open past FAC prudence review periods to make the OPC's proposed prudence adjustment.

The Commission should reject OPC's attempt to re-open past FAC periods by ordering GMO to calculate the fuel cost of the steam operations auxiliary power that was recovered through the FAC since July 1, 2011, and return that amount plus interest at its short-term borrowing rate back to GMO's customers. Electric customers' rates have already been adjusted to account for a representative amount of fuel used to produce steam auxiliary power during this time period.

In addition, OPC's proposed adjustment goes beyond the time frame of the audit in this case. The current audit period covers December 2016 through May 2018. It is inappropriate and unlawful to venture back to periods that have already been prudence reviewed and approved by the Commission.

As Ms. Mantle explained during the hearing, the Commission has already reviewed prudence issues in previous periods, and the previous seven prudence review cases are now closed. (Tr. 209-10) The FAC rates have been approved and it would be inappropriate, unreasonable, and unlawful for the Commission to re-open previous review periods to make OPC's proposed disallowances in this case. Such a disallowance would amount to unlawful retroactive ratemaking

since the rates have been reviewed and approved, and the related orders are now final decisions.[18]

In essence, the OPC's proposed retroactive disallowances are also unlawful collateral attacks on previous Commission decisions prohibited by Section 386.550, RSMo.[19]

In summary, the Commission should reject Public Counsel's proposed disallowance of $469,409 from the current prudence period as well as Ms. Mantle's proposed adjustment dating back to July 1, 2011.

D. Should the Commission Order GMO to make adjustments to the method by which it allocates auxiliary power between the electric operations and the steam operations at GMO's Lake Road plant for the 23rd Accumulation Period and/or any future FAC rate change cases?

No. The Commission has already ordered that GMO work with Staff, OPC, and MECG to develop new allocations procedures before GMO's next rate case. (Ex. 4, Nunn Surrebuttal, p. 7)

In Case Nos. ER-2018-0145 and ER-2018-0146, the Commission approved a Stipulation and Agreement filed on September 19, 2018 that included the following language in paragraph 10:

> GMO will use the allocations numbers used in Staff's model filed in Case No. ER-2016-0156. These allocation numbers shall be used by GMO in its FAC, QCA and surveillance reporting. GMO agrees to work with Staff, OPC and MECG to develop new steam allocation procedures prior to GMO's next electric general rate case. (emphasis added.)

The Commission should allow the collaborative process to progress, as already ordered. It is unnecessary for the Commission to step in at this juncture to mandate any specific adjustments to the method by which GMO allocates auxiliary power between the electric operations and the steam operations at GMO's Lake Road plant for the 23rd Accumulation Period and/or any future FAC rate change cases.

[18] See State ex. rel UCCM v. Public Service Commission, 585 S.W.2d 41, 59-60 (Mo. Banc 1979); Lightfoot v. City of Springfield, 236 S.W.2d 348, 351 (Mo. Banc 1951).

[19] See State ex rel. Mid-Missouri Telephone Company v. Public Service Commission, 867 S.W. 2d 561 (Mo. App. 1993)

ISSUE NO. 3

A. Was it prudent for GMO and KCP&L to have entered into Purchase Power Agreements with the Rock Creek and Osborn Wind Projects under the terms of the contracts as executed?

Yes, the cost of the Osborn and Rock Creek PPAs should continue to be recovered in rates and the Commission should reject OPC's allegation of imprudence against the Company. OPC's allegations either have nothing to do with prudence or do not meet the Commission's prudence standard. OPC improperly shortchanges the value of the Rock Creek and Osborn 20-year wind PPAs by measuring them only by the revenues received from the Southwest Power Pool ("SPP"). The Commission's prudence standard does not judge a utility's decision by the difference between spot market energy revenues and wind costs but at what was reasonable at the time of the utility's decision to acquire the wind resources. As explained below, in the 2014-2015 time period the Company was facing the potential need for Missouri wind for environmental compliance as well as the expiration of the federal production tax credit ("PTC"), which would have made future wind additions without the PTC more expensive. In addition, the Osborne and Rock Creek PPAs were projected to reduce the long-term revenue requirements and were interconnected in the GMO transmission zone. The wind projects also provided benefits to local Missouri communities. The Osborn and Rock Creek wind project provided millions in tax revenues and landowner payments to Clinton, Dekalb and Atchison counties as well as new jobs in these areas. (Ex. 5, Crawford Direct, p. 5) All of these factors combined to make the Company's decision to enter in the Osborn and Rock Creek PPAs a prudent one.

As referenced in Section 1 of this brief, the legal standard for determining "imprudence" involves a two-fold analysis: First, the question is whether the company's "conduct was reasonable at the time, under all the circumstances…" *State ex rel. Associated Natural Gas Co. v. Public Service Com'n State of Mo.*, 954 S.W.2d 520, 529 (Ct. App. W. D. 1997). The Commission's

responsibility is to determine how reasonable people would have performed the tasks that confronted the Company. *Id.* If the Commission determines the Company failed the reasonableness test, it must determine if "such imprudence resulted in harm to the utility's ratepayers." *Id.* A utility's costs are initially presumed to be prudent. *Office of Public Counsel v. Missouri Public Service Com'n*, 409 S.W.3d 371, 376 (Mo. en banc 2013). If a "serious doubt as to the prudence of an expenditure" is made then the burden shifts to the company to dispel this doubt and prove the questioned expenditure as prudent. *Id.*

OPC has not created a serious doubt regarding the prudence of the Rock Creek and Osborne wind PPAs. (Ex.6, Crawford Surrebuttal, p.2) OPC's allegations concerning RES requirements or identification of the projects in the Company's Integrated Resource Plan ("IRP") have nothing to do with prudence. (Ex.6, Crawford Surrebuttal, pp.5-7). OPC's remaining allegations use a hindsight analysis and therefore do not provide a proper basis for reviewing the decisions by KCP&L and GMO to enter into the wind PPAs. (Ex. 6, Crawford Surrebuttal, p. 2) In addition, the Commission's Staff reviewed the costs of the wind PPAs in its audit in this proceeding and specifically did not make a prudence adjustment. (Tr. 225)

1. Timeline of the PPAs

- In December 2013, the federal wind PTC expired. Absent this PTC, future wind projects would become more expensive.
- In June 2014, the Environmental Protection Agency ("EPA") issued their proposed Clean Power Plan ("CPP"). The CPP set state-specific CO_2 reduction targets for most states, including Missouri and Kansas. The state targets were based in part on the assumption that current renewable resources in the state stayed in the state. In addition, the EPA was seeking

comments on only allowing in-state renewables to meet CPP compliance. At that time, it was a reasonable assumption that Missouri-based wind may be needed as part of the Company's future CPP compliance.

- In September 2014, the Company's only Missouri-based wind project then pending, Mill Creek, was halted due to environmental concerns. The project developer, Element Power, began to look for an alternative location.
- In October 2014, the Company was approached by Element Power and Tradewind Energy with a Missouri-based wind project proposal, Rock Creek wind. Since this project had already been started, it would qualify for the PTC. The Mill Creek developer, Element Power, was looking to Rock Creek as an alternative project.
- In November 2014, the Company was approached by NextEra Energy with a Missouri-based wind project, Osborn wind. This was prompted by the cancellation of the Mill Creek project. Since this project had already been started, it would qualify for the PTC.
- In December 2014, the PTC was retroactively implemented for calendar year 2014.
- On April 7, 2015, the Company executed PPAs with Rock Creek and executed the termination agreement for Mill Creek.
- On May 22, 2015 the Company executed PPAs with Osborn.

(Ex. 6, Crawford Surrebuttal, pp. 3-4)

The timeline above shows that the Company had a need for Missouri-based wind. One month after the proposed CPP was released, the Commission scheduled a July 2014 workshop in

Case No. EW-2012-0065 so that Missouri utilities could inform the Commission of compliance concerns, including concerns with the CPP. In the workshop, the Company indicated concerns over the uncertainty of using out-of-state renewable resources for CPP compliance. In addition, the Company indicated at that time that if state implementation plans would not allow current and future wind resources located in Kansas to be utilized to meet Missouri goals, KCP&L and GMO would likely need to add significant Missouri wind resources, resulting in higher costs for Missouri customers. (Ex. 9) Also during this time, the continuation of the PTC was uncertain, and if the PTC did not continue, the price of all Missouri wind would increase.

With this backdrop, the Company evaluated the Osborn and Rock Creek wind projects with respect to their projected impact on long-term retail revenue requirements over nine different scenarios. (Ex. 6, Crawford Surrebuttal, p. 6) Both wind projects were shown to reduce the net present value of revenue requirements ("NPVRR") under eight of nine scenarios modeled. *Id.* Given the projected favorable economics, both potential projects were included in KCP&L's and GMO's IRPs filed on April 1, 2015. Both projects were included in subsequent IRPs as well.

2. The Company's decision-making process was robust and based on the best information it had at the time

OPC alleges (Ex. 100, Mantle Rebuttal, p. 34) that the Company had an opportunity to enter into other Missouri wind projects at a lower price. However, OPC admitted that it was not aware of any other lower price projects than those already identified by the Company in an RFP. (Ex. 10).

Near the time the Company entered into the Rock Creek and Osborne wind PPAs, there were two lower price Missouri wind proposals, Mill Creek and Farmers City. (Ex. 6, Crawford Surrebuttal, p. 13) The Company executed a PPA for the Mill Creek facility which was subsequently halted in September 2014 for environmental concerns. (Ex. 6, Crawford Surrebuttal,

p. 4). While the Farmers City project had a lower PPA price, it was located on the MISO system and therefore the Company would have needed to request and purchase transmission service which made the cost of the wind energy from the project higher than Rock Creek and Osborn. (Ex. 6, Crawford Surrebuttal, pp. 13-14). The Farmers City project also had a much lower capacity factor than Rock Creek and Osborn and would have therefore provided less energy. *Id.* The Commission should reject OPC's unsupported contention that cheaper Missouri projects were available. The Company thoroughly evaluated all available Missouri opportunities and did not reject any viable cheaper Missouri project in favor of the Rock Creek and Osborn PPAs.

OPC contends (OPC Position Statement, p.10) that since the Company knew that the price of wind was falling and it should have waited to finalize the Rock Creek and Osborn PPAs. As shown in the wind pricing chart on p. 11 of Crawford's Surrebuttal, through earlier RFPs the Company was aware and evaluated the Rock Creek and Osborn projects 4-5 years earlier and the prices had fallen significantly. Also, as discussed earlier, the wind PTC had expired which could have resulted in making future wind projects more expensive. The evidence also shows that after the Rock Creek and Osborn PPAs were executed, the price of a competing Missouri wind offer was significantly higher and that project required significant transmission upgrades (Ex. 6, Crawford Surrebuttal, p. 11) Thus, OPC's suggestion that the Company should have waited to acquire wind assets would have meant that customers could have paid more for Missouri wind.

OPC continues its second-guessing of the Company when it claims that because the Company did not issue a Request for Proposal ("RFP") with respect to the Rock Creek and Osborn PPAs that it did not perform the due diligence on the projects (OPC Position Statement, p. 10). This claim ignores the fact that the Rock Creek and Osborn PPAs arose out of a July 2013 RFP where the Company received 47 offers from 16 developers. (Ex. 6, Crawford Surrebuttal, p.9) That

2013 RFP resulted in the Company entering into a PPA for the Mill Creek wind farm which was halted in September 2014 due to environmental concerns. (Ex. 6, Crawford Surrebuttal, pp. 9-10) The Mill Creek developer and another developer worked with the Company on the Rock Creek as a replacement for Mill Creek. *Id.* The following exchange at the hearing (Tr. 234) between GMO witness Burton Crawford and Commissioner Rupp explains how RFPs were utilized to secure cheaper wind in 2015:

09 Q. So if the project, the one you went with, the
10 alternative project that -- Mill Creek fell through.
11 The alternative project Rock Creek that went forward,
12 was that part of any of the RFPs you had received prior
13 to choosing Mill Creek?
14 A. Actually both Rock Creek and Osborn were
15 projects that we received offers on. I think Osborn we
16 had offers going back to five years ago. So the offer
17 that we actually ended up striking on was about half of
18 the cost of the offers from five years ago. Rock Creek,
19 I think the first time we saw that project was four
20 years prior to entering into the deal and like Osborn it
21 was also a pretty high price.
22 Q. These were projects that you had seen before
23 that they had responded to your RFP?
24 A. Yes. And we had rejected them because they
25 were too high priced at the time.

OPC's arguments are all based on its belief that today OPC knows best how to acquire 2015 wind energy resources: the Company should have waited; there were other cheaper Missouri wind options; another RFP would have resulted in better prices; the Company should not have chosen Missouri based wind. However, the record doesn't support OPC's belief. There were no viable cheaper alternatives in Missouri at the time and waiting would have resulted in a more expensive Missouri wind project, the Company successfully negotiated cheaper wind alternatives by waiting a number of years before entering PPAs with Rock Creek and Osborn and Kansas wind would not have, at that time, allowed the Company to comply with the CPP's proposed state

specific reduction target. The Commission should reject OPC's hindsight attacks and affirm the Company's decision-making process which resulted in PPAs for valuable Missouri wind resources.

B. If it was not prudent, what if any adjustment should the Commission order?

The Osborn and Rock Creek wind PPAs were prudent long-term contracts and therefore no adjustment should be made in the Company's FAC.

WHEREFORE, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company respectfully submit their Brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been electronically mailed this 23rd day of September 2019, to all counsel of record in this proceeding.

/s/ Roger W. Steiner
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