BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of	)	
Kansas City Power & Light Company	)	
For Approval to Make Certain Changes	)	**Case No. ER-2007-0291**
In its Charges for Electric Service to	)	
Implement Its Regulatory Plan	)	

INITIAL POSTHEARING BRIEF

OF

PRAXAIR, INC.

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November 5, 2007

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COMES NOW Praxair, Inc. ("Praxair"), by and through the undersigned counsel, pursuant to the Commission's October 18, 2007 Order Setting Briefing Schedule, and submits its Initial Posthearing Brief on the issue set forth below. As to the issue addressed below, this brief will use the description and numbering of the issues as set forth in the List of Issues filed in this case by Staff. Specifically, Praxair will address Issue 22: Design of the Large Power Service Rate Schedule. As to the remaining issues, Praxair reserves the right to address such issues in the context of its Reply Brief scheduled to be filed on November 15, 2007.

ISSUE 22: LARGE POWER SERVICE RATE DESIGN

A. INTRODUCTION

It is a well established goal of ratemaking that those customers that cause the incurrence of a cost, should also incur the payment of the rates associated with that cost (i.e., cost causer = rate payer). Taken one step further, another goal is that the nature of the cost incurred should be recovered through the proper rate element. In this way, fixed

costs of generating electricity should be recovered through a demand rate element and variable costs should be recovered through an energy charge.

Through his proposal in this proceeding, Mr. Brubaker seeks to better align the nature of the costs incurred to provide service to the Large General Service ("LPS") rate schedule customers with the rate elements contained in that tariff. Specifically, Mr. Brubaker proposes a reduction in the LPS energy charge and a concurrent increase in the LPS demand charge such that KCPL will better collect its fixed costs through the demand charge rate element. The evidence in this case shows that, because some amount of fixed costs are being recovered through the energy charge, high load factor customers are paying more than their share of fixed costs. This results in an inappropriate subsidization of low load factor customers on the LPS tariff. By reducing the energy charges in the LPS rate schedule to a level that is closer to KCPL's actual variable cost of generating electricity (1.4¢/kWh), the Commission will send more appropriate price signals to these customers and increase the likelihood that KCPL will recover its cost of service from the appropriate cost causers in the appropriate manner.

B. DOES THE STIPULATION AND AGREEMENT INCORPORATING THE KCPL EXPERIMENTAL REGULATORY PLAN THAT THE COMMISSION APPROVED IN CASE NO. EO-2005-0329 ALLOW THE SIGNATORIES TO THE STIPULATION AND AGREEMENT TO MAKE RATE DESIGN MODIFICATIONS WITHIN THE LARGE POWER SERVICE RATE SCHEDULE?

On March 28, 2005, KCPL and several other parties executed and filed a Stipulation and Agreement designed to implement an Experimental Regulatory Plan.[1] This Regulatory Plan established a process by which KCPL would construct certain wind

[1] Exhibit 29.

and coal generation facilities and recover those costs through four scheduled rate proceedings. Among other things, the Stipulation mandated a class cost of service / rate design study to be presented in the context of the 2006 rate proceeding.[2] Contrary to some parties' assertions in this case, the Stipulation did not preclude rate design changes in the subsequent rate proceedings.

Specifically, the Stipulation and Agreement creating KCPL's experimental regulatory plan provides that "[t]he Signatory Parties agree not to file new or updated class cost of service studies or to propose changes to rate structures in Rate Filing #2."[3] In a strained interpretation of this Stipulation provision, KCPL asserts that "anything other than an equal shift in rates uniformly to all classes does not comply with the provisions of the S&A [Stipulation and Agreement]."

KCPL's interpretation not only stretches the plain wording of the Stipulation, it is also contrary to a well established industry custom, demonstrated by both the parties and the Commission, of implementing an "equal shift in rates" where such a shift is desired by the parties. For instance, in Case No. ER-2001-299, the parties executed a Stipulation regarding class cost of service / rate design. In that Stipulation the parties agreed that any rate increase would be "allocated to each customer class ***on an equal percent of current revenues basis and reflected on all Empire Missouri rate schedules as an equal percentage increase (or decrease) to each rate component on each tariff***."[4] In approving the Stipulation, the Commission recognized "this approach as a means of essentially maintaining the same rate design as exists and is presently lawful and

[2] Exhibit 29, pages 33-34 ("KCPL agrees that the 2006 Rate Case will also include the filing of a Class Cost of Service Study by KCPL.").
[3] Exhibit 29, page 35.
[4] See, Report and Order, Case No. ER-2001-299, issued September 20, 2001, at page 21. (emphasis added).

approved, ***since it increases each charge by an <u>equal</u> percentage basis***." (emphasis added).

Another example provides that the parties in Case No. ER-2002-424 knew how to draft language to implement the equal-percent rate increase KCPL asserts. "The Parties agree that the increase in the Company's revenue requirement shall be allocated to each rate schedule ***on an equal-percent-of-current-revenues basis***."[5] More recently, the parties to Case No. WR-2007-0216 also demonstrated an ability to implement an equal-percent across the board rate increase. "No party opposed this portion of the rate design and from all appearances in Appendix A-1 of the Global Agreement, the parties agreed to maintain the status quo as evidenced by repeated references to the terminology of 'equal percent class revenue increase/decrease.'"[6] Still again, the parties to Case No. GR-98-140 also exhibited an ability to implement an equal percent increase where applicable.

Given the demonstrated ability of parties to implement an equal-percent increase where warranted, it is apparent that the Regulatory Plan Stipulation neither mandates the across-the-board increase argued by KCPL nor precludes other rate design changes. Rather, as explained by Praxair witness Brubaker, the Stipulation merely prohibits parties from making changes in the <u>structures</u> contained in the rate schedules. As Mr. Brubaker explains, "[r]ate structure may generally be thought of as the number of rate schedules, the type of charges within the rate schedule and the number of blocks through which revenues are collected as a function of customer consumption."[7] In this regard then, the Regulatory Plan Stipulation prohibition against rate structure changes would preclude the

[5] See, Report and Order, Case No. ER-2002-424, issued November 14, 2002, at page 6; Attachment A, page 4. (emphasis added).
[6] See, Report and Order, Case No. WR-2007-0216, issued October 4, 2007, at page 54.
[7] Exhibit 602, page 3.

following actions: (1) elimination of a rate schedule; (2) change in the number of demand or energy blocks within a specific rate schedule; and (3) creating an entirely new rate schedule.

Mr. Brubaker's interpretation of the Regulatory Plan Stipulation and construction of the phrase "rate structure" is consistent with that advanced by the Staff, another Signatory Party to the Stipulation:[8]

> Rate structure is composed of the various types of monthly prices charged for the utility's products. At the most basic level there are: a) customer charges, a fixed dollar amount to be paid each month irrespective of the amount of the product taken; b) usage (energy) charges, a price per unit charged on the total units of the product consumed over the month; and c) peak (demand) charges, a price per unit charge on the maximum units of the product taken over a short period of time (for electricity, usually 15 minutes or 30 minutes).[9]

In contrast to the interpretation of "rate structure" advanced by Staff and Praxair, others appear to advance a more expansive interpretation that would not only preclude changes in the number or type of cost recovery elements (i.e., customer, demand and energy charges), but would also preclude any changes to the actual amounts of such charges.

> **The Rate Structure.** The second aspect of rate regulation, the determination of a utility's rate structure, involves the establishment of rates (prices) to be charged consumers.[10] . . . The rate structure thus

[8] It should be pointed out that Praxair concurs in Staff's interpretation of the Regulatory Plan Stipulation as well as the phrase "rate structure". That said, however, Praxair does **not** agree with Staff's disclosure of privileged settlement communications in order to justify its interpretation. As demonstrated in this brief and the testimony of Mr. Brubaker, there is adequate non-privileged evidence on the record to justify the interpretation advanced by Praxair and the Staff. As detailed in Praxair's October 5, 2007 pleading, the "unilateral disclosure of such privileged information by any party. . . will undoubtedly have a chilling effect upon frank and candid exchanges of information and compromise positions in the settlement process." For this reason, Praxair concurs in the Motions to Strike filed by OPC and KCPL. Consistent with this position, Praxair has refrained from relying upon any of the privileged information contained in Exhibit 111, page 9, line 19 through page 11, line 12.

[9] Exhibit 111, page 8; Exhibit 103, Appendix I, page 3.

[10] Exhibit 209, page 171.

> involves determination of specific rates and determination of rate relationships.[11]

Indeed, this interpretation is so expansive that it would prevent the Commission from even adopting a rate increase in this case.

> Q. All right. On page 410 of that exhibit there's the sentence, "The rate structure thus involves determination of specific rates and determination of rate relationships." If you accept that definition of rate structure, would the – would the prohibition of rate structure changes in this case prohibit a general rate increase?
>
> A. Under that -- that definition is so broad that I think it could be construed that way.[12]

Given therefore, that the Stipulation provision only precludes parties from proposing changes to "rate structures" within the various KCPL rate schedules, it is apparent that parties may suggest changes to the levels of particular rates within those schedules. KCPL's argument that Praxair's proposal is precluded by the Regulatory Plan Stipulation is based upon an unduly expansive definition of rate structure that is without any support and which defies the parties' demonstrated ability to mandate equal-percent across-the-board increases where appropriate.

C. IF SO, WHAT ARE THE APPROPRIATE DEMAND AND ENERGY CHARGES FOR THE LARGE POWER SERVICE RATE SCHEDULE?

1. CURRENT STRUCTURE OF LPS TARIFF

As currently designed, the LPS rate schedule "consists of a series of charges differentiated by voltage level."[13] Specifically, KCPL collects revenues under this rate schedule based upon customer, facilities, demand and energy charges for customers

[11] Exhibit 209, page 410.
[12] Tr. 1032.
[13] Exhibit 601, page 2.

taking service at: (1) secondary voltage; (2) primary voltage; (3) substation voltage or (4) transmission voltage levels.[14] In each case, the demand and energy charges are seasonally differentiated.[15] The need to differentiate between the various voltage service levels is necessary to reflect the additional facilities and attendant costs associated with serving customers at the lower voltage levels.[16]

Of particular importance to the issue presented, the demand charges for each voltage service level decrease based upon increased levels of electricity demand (on a per kW basis) and the energy charges decrease based upon the increased energy usage (on a kWh per kW basis). As explained by Mr. Brubaker:

> These are what are known as hours use, or load factor based charges. The rates decrease as the hours use increases to recognize the spreading of fixed costs over more kilowatthours (kWh) as the number of hours use, or load factor, increases. The structure also recognizes that energy consumed in the high load factor block likely will be off-peak or at times when energy costs are lower than during on-peak periods.[17]

The need to account for the decreased costs associated with serving customers with increased load factors is a long standing regulatory concept. The lower cost of serving such customers is a well established concept and was recognized in the 1964 treatise entitled *Public Utility Economics*.

> The *load factor* shows the average use of facilities as a percentage of the maximum use. It is defined as the ratio of the average load over a designated period of time to the peak load occurring in that period. . . . In a public utility enterprise characterized by high fixed costs, the importance of the load factor may be assessed in cost terms. **The higher the system load factor, the lower the average unit of cost of service.** . . . High

[14] *Id.* at pages 2-3; Exhibit 122.
[15] Exhibit 601, page 3; Exhibit 122.
[16] Exhibit 601, page 3.
[17] *Id.* at page 4.

> load-factor usage means relatively continuous use, which is apt to contribute both to the peak and the off-peak demands alike.[18]

This fundamental concept underlying the structure of the LPS rate schedule was confirmed by KCPL's witness.

> Q. Would you agree that all other things being equal, the average cost to serve a high load factor customer is lower than the average cost to serve a low load factor customer?
>
> A. Generally speaking, yes.[19]

As applied to KCPL's current LPS rate schedule, the specific energy charges to be applied to a particular customer's usage decrease as the customer's load factor increases. As KCPL's witness explains, energy usage (on a kWh basis) is charged in a sequential fashion. Energy is first billed at the initial 180 hour energy block rate; any usage in excess of this is billed at the second 180 hour energy block and finally, any remaining usage is billed at the tail block rate.[20] In order to receive the benefit of the lower energy charges in the second energy block and the tail block, customers must first fill the preceding blocks and pay for energy at the associated higher energy rate.[21] Customers receiving service exclusively out of the first energy block have a load factor less than or equal to 25%.[22] Given that these customers will usually take service only during the peak hours of the day when energy costs are higher (Monday – Friday, 8:00 a.m. through 5:00 p.m.), they are billed at a higher energy charge.[23] Similarly, customers using enough energy to fill both the first and second energy block have a load factor of 50%.[24] These

[18] *Public Utility Economics*, Garfield and Lovejoy, Prentice-Hall, Inc. (1964) at page 153. (Italics part of original, boldface added).
[19] Tr. 753-754.
[20] Tr. 755-756.
[21] Tr. 756.
[22] Tr. 756-757.
[23] Exhibit 601, page 4.
[24] Tr. 757.

customers will likely be taking energy during the same peak hours as well as some usage during evening and nights or weekends.[25] Finally, customers using energy in excess of the second energy block will have a load factor in excess of 50% and will receive the benefit of the lowest energy charge. These customers are taking energy at the lowest cost off-peak periods experienced by the utility.[26]

> Because the Hopkinson rate schedule contains a demand element, it is sometimes termed a "load factor" rate. . . . Studies of Hopkinson rate schedules show that, as the customer increases his use without any increase in maximum demand, or with a less than proportionate increase in maximum demand, his load factor will increase and his average rate will decrease. If a customer decreases his use without any decrease in maximum demand, or with a less than proportional decrease in his maximum demand, his load factor will decrease and his average rate will increase.[27]

As can be seen, the KCPL LPS tariff is structured in such a manner that it recognizes the lower cost associated with providing service during off-peak hours as well as the closely related concept of the lower cost of serving customers with high load-factors. Despite the efficient structure of the LPS tariff, there is a flaw currently inherent in the levels of the charges contained in that tariff. This flaw forms the basis of Praxair's proposed adjustment.

2. PROPOSED CHANGE TO LPS TARIFF

As was detailed, KCPL's LPS tariff collects revenues through, among others, a demand and an energy charge. In general, the demand charges are designed to recover the fixed costs of providing service (i.e., the plant-related costs, property taxes, depreciation and the return on rate base). While these costs will vary with the quantity of plant, they will not vary as a result of the amount of usage. On the other hand, energy

[25] Exhibit 601, page 4.
[26] Tr. 757-759.
[27] *Public Utility Economics* at page 157.

charges designed to recover the variable costs associated with providing electric service (i.e., fuel and fuel handling) will vary on the quantity of kilowatt-hours produced.[28]

After analyzing KCPL's filed revenue requirement request, including the breakdown of fixed and variable costs, it became apparent that KCPL is collecting a large portion of its fixed costs through energy charges. As Mr. Brubaker points out:

> KCPL's claimed average variable costs (before being offset by the margin earned from off-system sales) are approximately 1.4¢/kWh. Factoring in the margin to off-system sales as an offset, net variable costs would be reduced to a value significantly lower. . . . The energy charges in the high load factor block [tail block] of KCPL's current LPS tariff are substantially higher, as previously noted.[29]

Contrasted to the average variable cost of 1.4¢/kWh, KCPL currently charges customers an energy charge that varies, based upon the specific block, between 2.3¢/kWh and 7.7¢/kWh.[30] As such, customers with a 100% load factor would be receiving a significant majority of their energy during the low costs evening hours as well as weekends. Despite using energy at these low cost periods, the lowest energy block will still be over 1.0¢ higher than KCPL's average energy cost – a cost that includes energy costs experienced during the on-peak hours.

In order to bring the energy charge more inline with the amount of variable costs it is designed to collect, Mr. Brubaker proposes to reduce each of the energy charges by 1.0¢/kWh.[31] This would be accompanied by a concurrent increase in each of the demand charges.[32] In this way, KCPL would begin to collect a larger portion of its fixed costs through its demand charge rather than through its energy charge.

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[28] *Public Utility Economics* at page 154 and 158.
[29] Exhibit 601, page 5.
[30] Exhibit 122.
[31] *Id.* at page 6.
[32] *Id.*

3. BENEFITS OF CHANGE

In his direct testimony, Mr. Brubaker discusses the many advantages associated with adopting his proposal. Among the benefits noted by Mr. Brubaker are: (1) proper price signals; (2) more equitable to high load factor customers and (3) stability of KCPL earnings.

> This structure will collect more costs through demand charges and provide better price signals to customers. It also will be a more equitable rate because it will charge high load factor and low load factor customers more appropriately. This structure also improves the stability of KCPL's earnings. Because customer demands are generally more stable than their energy purchases, this rate design makes KCPL's revenue collection and earnings less volatile.[33]

The benefits inherent in Mr. Brubaker's proposal are remarkably similar to those advanced by the Commission in adopting a straight fixed variable rate design for its gas utilities. Recently, the Commission has begun to recognize the appropriateness of utilizing a rate design which more appropriately aligns the nature of the cost (fixed v. variable) with the corresponding rate element (demand v. commodity). For instance, in a recent Atmos decision, the Commission adopted the use of a "straight fixed variable" rate design.[34] As discussed, this rate design would allow the utility to recover "the entire amount of the non-gas, or margin, costs in a fixed monthly delivery charge."[35] In a similar fashion, the volumetric charge would be used to collect only the variable costs. As presented, this purer type of rate design would: "(1) remove disincentives for utilities to encourage and assist customers in making conservation and efficiency investments; and (2) reduce the effects of weather on utility revenues and customers bills."[36]

[33] Exhibit 601, page 6.
[34] *In re: Atmos Energy Corporation*, Case No. GR-2006-0387, issued February 22, 2007, at pages 13-25.
[35] *Id.* at page 14.
[36] *Id.*

Ultimately, the Commission pointed out, in adopting the straight fixed variable rate design that "the proposed fixed monthly rate design will eliminate the inherent conflict between the shareholders (whose returns increase if more gas is sold) and the ratepayers (who will only pay less by using less)."[37] The same logic was relied upon when the Commission adopted the straight fixed variable rate design for Missouri Gas Energy.[38]

Interestingly, KCPL does not dispute any of the benefits asserted by Mr. Brubaker in his testimony. For instance, KCPL does not refute: (1) that its average variable cost is approximately 1.4¢;[39] (2) that Mr. Brubaker's adjustment will allow for a more equitable collection of fixed costs through the demand charge rather than the energy charge; (3) that Mr. Brubaker's adjustment will treat high load factor and low load factor customers in a more appropriate manner; and (4) that Mr. Brubaker's adjustment will increase the stability of their revenue collection and earnings. Nor does anyone dispute that Mr. Brubaker's proposal will: (1) remove disincentives for utilities to encourage and assist customers in making conservation investments and (2) reduce the effects of weather on utility revenues.

4. RESPONSE TO CRITICISMS

Given all the unrefuted benefits associated with Mr. Brubaker's adjustment, KCPL and Staff's resistance is somewhat surprising. In fact, KCPL's opposition to Mr. Brubaker's testimony could be called, at best, half-hearted, given that it encompasses a total of 2 pages of rebuttal testimony and 1 page of surrebuttal testimony. First, KCPL asserts that Mr. Brubaker's proposal will benefit high load factor customers and may

[37] *Id.* at page 20.
[38] *In re: Missouri Gas Energy*, Case No. GR-2006-0422, issued March 22, 2007, at pages 9-13.
[39] KCPL, in fact, admits that its "average fuel and purchased power costs among LPS customers" is "approximately 1.4¢ per kWh annually." Exhibit 20, page 3.

result in some low load factor customers migrating to another tariff. KCPL suggest that this may result in an under-collection of revenues from the LPS tariff.[40] Second, KCPL contends that Mr. Brubaker's proposal is flawed because it will reduce the tailblock energy charge to an amount less than KCPL's parallel generation tariff.[41] Staff presents a similar, half-hearted opposition to Praxair's proposal. In a mere two pages of rebuttal testimony, Staff suggests that the reduction in the energy charge should be on a proportional basis across energy blocks. In addition, Staff proposes to eliminate the declining block demand charge.

A. Effect on Low Load Factor Customers

Rather than address the substance of Mr. Brubaker's proposal, that is whether it better collects variable and fixed costs from the appropriate rate elements, KCPL instead addresses the possible impact of the proposal. Specifically, KCPL claims that the decrease in the energy charge and the attendant increase in demand charge will benefit the highest load factor customers while increasing the costs for lower load factor customers.[42] As a result of the increased demand charge, KCPL postulates that some customers may migrate to a large general service rate schedule and that KCPL will undercollect rates from the LPS tariff.[43]

The response to such a criticism has been readily demonstrated in this brief. As KCPL readily admits, the "average cost to serve a high load factor customer is lower than the average cost to serve a low load factor customer."[44] Given KCPL's recognition that it is cheaper to serve high load factor customers, it is readily apparent that the criticism that

[40] Exhibit 20, page 3.
[41] *Id.* at pages 3-4.
[42] Exhibit 20, page 3.
[43] *Id.*
[44] Tr. 753-754.

Mr. Brubaker's proposal will benefit high load factor customers to the detriment of low load factor customers is nothing more than a red herring.

Praxair recognizes that, as a result of the adjustment, some of these higher-cost, low load factor customers may find it advantageous to migrate to the large general service rate schedule. Whether Mr. Brubaker's adjustment is made or not, migration between rate schedules is always a possibility. With such migration, however, KCPL may experience an increase or decrease in its billed revenues. Despite the recognition that low load factor customers should pay more and that migration may occur anyway, Praxair nevertheless suggests that the remaining LPS customers should make KCPL whole for any undercollection in revenues from that rate schedule.[45]

> While it would be important to make the adjustment in an appropriate manner, an adjustment is appropriate because the intent was not to cause KCPL to suffer a loss of revenue as a result of this customer migration. It is my understanding that the amount of revenue difference would be less than 2% of the LPS revenues.[46]

B. Applicability of the Parallel Generation Tariff

KCPL's only substantive criticism is to compare the energy charges that result from Mr. Brubaker's adjustment to the energy charge contained in KCPL's parallel generation tariff.[47]

> The apparent basis of Mr. Brubaker's proposal is the difference in the overall average fuel and purchased power costs among LPS customers. While these costs are approximately 1.4 cents per Kwh, they reflect the average and not the system incremental cost. KCPL's recent parallel generation tariff filing, which is based on incremental energy costs, is 2.4 cents per Kwh. . . . If the Commission adopted the changes suggested by Mr. Brubaker, the energy charge is some blocks per Kwh would fall below the parallel generation tariff.[48]

[45] Exhibit 602, page 6.
[46] *Id.*
[47] Exhibit 20, pages 3-4.
[48] *Id.*

The flaw in KCPL's criticism is apparent from KCPL's own testimony. As KCPL admits, the energy charges in the LPS tariff reflect "average" generation cost, while the parallel generation tariff reflects "incremental energy costs."[49] As Mr. Brubaker notes:

> The concepts are apples and oranges. The LPS tariff (and all others) is designed to collect the Company's average costs throughout the rate schedule, and not its incremental costs. The prices in the Parallel Generation Tariff are essentially the avoided costs, which are the cost of the kilowatthour generated or purchased at the margin and reflect the costs that would be avoided if KCPL purchased from an eligible generating customer, rather than generating the power itself or purchasing it on the market. This is an entirely different concept from collecting the average cost revenue requirement through the tariffs. Accordingly, the observations made by Mr. Rush have no applicability to or bearing upon the design of retail tariffs such as LPS.[50]

To state this a different way, the <u>average</u> energy cost, as admitted by KCPL, is 1.4¢/kWh.[51] That said, the <u>marginal</u> or <u>incremental</u> cost for KCPL to generate an additional kWh of energy is approximately 2.4¢, as reflected in its Parallel Generation Tariff.[52] This is entirely logical. The average cost reflects the cost of generation using all of KCPL's generation facilities including KCPL's low cost nuclear and coal units. On the other hand, the marginal cost will reflect only the cost of operating the last generating unit in the economic dispatch order. This will invariably be the cost of generation associated with a less efficient, high-cost gas unit or the cost of purchasing power in the market.

Given that the energy charges in the rate schedules are based upon <u>average</u> cost, it is apparent that KCPL's comparison to the Parallel Generation tariff is "apples and

[49] *Id.*
[50] Exhibit 602, page 7.
[51] Exhibit 20, page 3.
[52] Exhibit 602, page 7.

oranges". In fact, the inapplicability of KCPL's incremental cost is best demonstrated by the fact that KCPL has other rate schedules which have an energy charge that is below KCPL's incremental cost of 2.4¢/kWh. Specifically, KCPL's time or use tariff has an energy charge that is 2.0¢/kWh.[53]

C. Equal Percentage Change on Energy Charges

In its Rebuttal Testimony, Staff suggests, rather than reducing each energy charge in the LPS tariff by 1.0¢, that all energy charges be reduced on an equal percentage (proportional) basis.[54] As Mr. Brubaker explains, however, there is no substantive basis for Mr. Watkins equal percentage proposal. As Mr. Brubaker explains, his proposal of a flat 1.0¢ reduction in the energy charges is driven by a desire to drive the energy charges toward KCPL's actual variable cost of generation.

> What I proposed was to reduce the amount in excess of variable costs collected in each of the load factor-based energy blocks by the same amount, because the same amount per kWh of excess is included in each block. (The amounts in excess of the variable costs that are included in each of the energy blocks are fixed costs, not variable costs).[55]

Mr. Watkins' proposal to decrease energy charges on a proportional basis would not serve this purpose.

> Mr. Watkins' approach would not accomplish the desired result because he would be making substantial reductions in the collection of fixed costs in the first two load factor-based blocks, and much less in the final block. The reduction in summer season fixed cost recovery per kWh would be nearly twice as much in the first block as in the final block.[56]

[53] Tr. 771.
[54] Exhibit 117, page 6.
[55] Exhibit 602, page 8.
[56] *Id.*

D. Elimination of Declining Block Demand Charges

Most interesting is Staff's proposal to eliminate the declining block demand charge. Staff's proposal is not so much a criticism of Mr. Brubaker's adjustment, but rather an attempt to bootstrap a "rate structure" change, that is precluded by the Regulatory Plan Stipulation, to an adjustment that is permitted by the Stipulation.

As demonstrated by Staff's testimony, the Regulatory Plan Stipulation precludes changes to the "rate structure" of KCPL's tariffs. By this, Staff claims that parties can not propose changes to the way KCPL's collects its revenues. Specifically, it is inappropriate to eliminate demand or energy blocks.[57] Given this position, it is surprising that Staff proposes to eliminate "the declining block demand charge."[58] While implemented in the last case, Staff now claims that there is no "cost-based justification" for the structure of the demand charge.[59]

Putting aside concerns with violation of the Regulatory Plan Stipulation, Mr. Brubaker asserts that there is justification for the declining block demand charge. As Mr. Brubaker explains, given that all customer-related costs are not collected through the customer charge, it is appropriate that the residual customer-related costs be recovered "in the early blocks of the declining block demand structure."[60]

Second, the declining block demand charge helps to reflect the differences in cost of service between customers taking service at different voltage levels.[61]

> When customers take service at the substation or transmission level, they do not require the utility to make the investment in the primary distribution network or the secondary distribution network. Because these

[57] Exhibit 111.
[58] Exhibit 117, pages 6-7.
[59] *Id.* at page 7.
[60] Exhibit 602, page 8-9.
[61] *Id.* at pages 9-10.

> facilities are not needed to provide service to substation and transmission level customers, there is less cost associated with supplying service to them and they should pay a lower demand charge. The same distinction is present between primary voltage delivery and secondary voltage delivery.[62]

While distinguishing between the various voltage levels of delivery helps to recognize this cost of service difference, it alone is not enough. As Mr. Brubaker demonstrates, the customers taking service at lower voltage levels not only need more facilities, they also use less demand than the higher voltage delivery customers.

> [C]ustomers at the secondary level have the smallest demand, customers at the primary service level have the second highest demand and the substation and transmission customers have the highest demands. Therefore, in order to properly reflect cost of service differences, secondary customers should pay the highest average price per kW, followed by primary service customers and then by substation and transmission level customers.[63]

For this very reason, the "declining block demand structure is appropriate for the LPS tariff."[64] "Mr. Watkins' complicated proposals for adjusting rates would not produce an appropriate result, and he has clearly not shown that his proposals with respect to either energy charges or demand charges are consistent with cost of service."[65]

D. CONCLUSION

It is undeniable that KCPL's LPS tariff improperly seeks to recover fixed costs through the energy charge. This point has been confirmed by KCPL. Contrary to the Commission's recent proclamations on rate design, which seek to align the recovery of fixed and variable costs with the appropriate rate element, KCPL seeks to perpetuate this

[62] *Id.* at page 10.
[63] *Id.*
[64] *Id.*
[65] *Id.*

rate design flaw. Mr. Brubaker's proposal would correct this problem and result in several tangible benefits. For all the reasons expressed in this brief, Praxair requests that the Commission adopt Mr. Brubaker Large Power Service energy charge adjustment proposal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

David L. Woodsmall

Dated: November 5, 2007