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 in its Charges for Electric Service to Continue the Implementation of Its Regulatory Plan	))) Case No. ER-2010-0355) Tariff No. JE-2010-0692)
In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges for Electric Service	)) Case No. ER-2010-0356) Tariff No. JE-2010-0693)

MOTION FOR CLARIFICATION

COME NOW the Midwest Energy Users Association, Praxair, Inc., Ag Processing, Inc., a cooperative, and the Sedalia Industrial Energy Users' Association ("Industrial Intervenors") and for their Motion for Clarification respectfully state as follows:

1. On July 7, 2010, the Commission issued its Order Regarding Construction and Prudence ("Order"). In that Order, the Commission gave its Staff certain direction regarding the completion and filing of a prudence audit for the Iatan 1 AQCS and Iatan 2 construction projects. Specifically, the Commission noted:

> Because the newly-filed rate cases involve the Iatan plant additions to KCPL and GMO, and because the Commission will require completed construction and prudence audits of the Iatan I and II facilities and common plant, the Commission will direct its Staff to complete all auditing of the environmental upgrades to Iatan 1 and common plant, and commence, if not already started, all audits associated with Iatan 2 immediately, subject to the specific direction of the Commission.

Consistent with this direction, the Commission ordered the following:

> 9. The deadline for final completion for all audit activity, of any type, involved with the Iatan II generating facility, including any common plant shared between Iatan I and II is January 30, 2011.

> 10. The deadline for final completion for all audit activity, of any type, associated specifically with the rate increase request shall be no later than the date set for Staff to file its direct True-Up testimony. If no True-Up is required the final completion date is the deadline set for Staff to file its surrebuttal testimony in Staff's case-in-chief.

2. Originally, the Industrial Intervenors, interpreted the Commission's order to require Staff to conduct and file its prudence audit for all the costs that have been incurred and reasonably capable of being considered within Staff's prudence audit. In recent conversations regarding the procedural schedule in this case, it has become apparent that KCPL / GMO believe that the Commission's order will preclude the possibility of any additional future prudence review even though KCPL / GMO continues to spend money on both of these projects. To the extent that KCPL / GMO is correct in their interpretation, the Commission will be faced in the future with the inevitable decision to either: (1) include capital costs in rate base that have not been subjected to a prudence review or (2) exclude capital costs from rate base simply because those costs have not been audited. Recognizing that option 1 is fundamentally inequitable to ratepayers that rely upon Staff to conduct a prudence review, and that option 2 could result in a hardship to the utility, the Industrial Intervenors ask that the Commission issue its clarification indicating that the Staff is only required to conduct and submit its prudence audit for costs incurred to date and reasonably capable of being considered in Staff's audit.

3. Absent such clarification, the Industrial Intervenors envision numerous problems that will undoubtedly arise in future KCPL and GMO cases. For instance, if interpreted consistent with KCPL / GMO's interpretation, ratepayers would be denied a prudency audit for costs and decisions which occur after the filing of its audit in this case. In this light, envision the scenario where KCPL seeks to give its construction employees a bonus for the completion of the units despite the fact that Iatan 2 is 6 months behind schedule and 25% over budget.

Recognizing the bonus will come after the date for the filing of Staff's audit, the Commission will be left with the possibility of either: (1) including those costs in the Iatan 2 rate base despite the fact that Staff was not permitted to conduct make a prudency disallowance or (2) disallowing those costs simply because a prudency audit was not completed. Therefore, the Industrial Intervenors ask that the Commission clarify its order to permit Staff to conduct a prudency audit in a future case for those costs that occur after the filing of its prudency audit in this case.

4. Similarly, if interpreted consistent with the utility's request, the ratepayers will be denied Staff's prudency audit of decisions that only become questionable once all future costs are known and quantified. For instance, Staff may believe that the decision to retain XYZ contractor was appropriate given the work performed and the quantity of dollars spent through this case. That said, the sudden payment of future dollars to that same contractor after the completion of this case may suddenly cast such decisions in a different light. Using an everyday example, the prudency of my decision to buy a new car may seem reasonable when one believes that I only spent $25,000. If, subsequent to that determination of reasonableness, I suddenly pay an additional $25,000 on the same car, the prudency of my actions will certainly seem less reasonable. Ultimately, the prudency of that decision can only be reviewed when the final cost is determined. Recognizing that KCPL and GMO have not finished spending money on either project, many decisions may not be properly analyzed at this time. Rather, the prudency of such decision will only be properly judged when the final cost to XYZ contractor is known. Therefore, while the Industrial Intervenors do not have a problem with Staff being required to submit its prudency audit for costs known at this time, the Commission should recognize that the future payment of moneys by KCPL and GMO may cause the reasonableness of some decisions to take on a different light. As such, Staff should be permitted in future cases to present

additional prudency issues because KCPL and GMO continue to spend money and seek recovery of such costs.

5. Finally, it is unquestioned that KCPL and GMO will continue to seek to capitalize numerous indirect costs in the Iatan 1 and 2 rate base amounts. In its audit report from last December, Staff raised questions regarding the extravagance of numerous KCPL management entertainment and travel expenses that had been charged to Iatan 1 and 2 as of that time. While Staff has sought to raise those issues for those costs that have been incurred to date, it should not be precluded from raising additional issues regarding future indirect costs charged by KCPL and GMO management. If the Commission precludes the Staff from raising prudency issues for such indirect costs, it is essentially giving KCPL management *carte blanche* to continue to charge the Iatan 1 and 2 projects for extravagant entertainment and travel expenses and, potentially, other items that would be "buried" in the significant Iatan project costs. KCPL's management will only be restrained if they realize that their future decisions on meals and entertainment will be subjected to future prudency disallowances. Even that, by itself, may not be an adequate remedy, but sunlight is a good remedy and disclosure and transparency should be encouraged, not inhibited.

6. As mentioned, the Industrial Intervenors understand the Commission's frustration with the ongoing status of the Iatan 1 and 2 prudency audits. The Industrial Intervenors are unable to state with any first-hand knowledge whether the Staff's audit should have been started sooner or should be further along at this point in time. That said, whether Staff had started earlier or was further along in its audit is, in large part, irrelevant given that KCPL and GMO continue to spend money on both the Iatan 1 and 2 projects. Until KCPL and GMO close the books on these projects, it is necessary that any future costs be subjected to prudency review and,

thus, potential disallowance. Absent such prudency review, KCPL and GMO ratepayers will undoubtedly be charged for costs that were not properly incurred. Therefore, the Commission should clarify its order to require Staff to present its audit for costs that have been incurred and properly subjected to audit to date, but recognize that the presentation of such audit does not preclude the presentation of future disallowances or the necessary prudence audit and review.

7. In addition, the Industrial Intervenors are concerned with the Commission's decision to consolidate Case No. EO-2010-0259 into these rate cases. Case No. EO-2010-0259 was created as a ***non-contested*** case. That case was conducted with only the Staff and the utilities as parties. Despite its non-contested status, the Commission nevertheless accepted testimony, exhibits and briefs. Concern arises when the Commission consolidated this testimony, exhibits and briefs into a ***contested*** case and did so without notice to or involvement of entities that were not parties or participants to Case No. EO-2010-0259. The Industrial Intervenors simply ask that the Commission indicate that the testimony and exhibits that have been presented to date, are not part of the record in this contested case and make a determination on the record of these cases that no part of this "investigation" will be part of or be used to support any decision in these cases. The Industrial Intervenors and other entities were not parties to that case and could not present evidence or conduct cross-examination. It is fundamentally unfair to take the record from one case and impose it on parties to another case that were not capable of representing their interests in that case. Moreover, it certainly presents potential constitutional questions when materials from a non-contested proceeding are bootstrapped into a contested case. As such, the Industrial Intervenors ask that the Commission indicate that the record presented in the EO case was limited to the inquiries made in that case and will not be part of the record to be considered in this contested case.

8. The Industrial Intervenors recognize that this Motion is being filed well past the date established by the Commission for filing of any clarification pleadings. As the Industrial Intervenors have indicated, they were not parties to Case No. EO-2010-0259. Recognizing that they were not parties, they were not aware of the issues raised or the record developed in that case. Furthermore, the Industrial Intervenors were not sufficiently aware of the implications of the Commission's decision until they were granted intervention and the parties began to discuss the procedural schedule in this case. The Industrial Intervenors have prepared and filed this pleading as soon as practical once they became aware of the possible implications of the Commission's Order and the need for clarification. As such, the Industrial Intervenors ask that the Commission grant it leave to file this pleading out of time. Given that the Commission has not yet taken up the Motions for Clarification, the Industrial Intervenors do not believe that any party will be prejudiced by this late filing.

WHEREFORE, the Industrial Intervenors respectfully request that the Commission clarify its July 7, 2010 Order consistent with this pleading.

Respectfully submitted,

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ATTORNEYS FOR THE
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CERTIFICATE OF SERVICE

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

David L. Woodsmall

Dated: July 26, 2010