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 Implement its Regulatory Plan	))))	**Case No. ER-2007-0291**

INITIAL BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

INTRODUCTION

On February 1, 2007,[1] the Kansas City Power and Light Company (KCPL)filed with the Commission tariff sheets designed to implement a general rate increase for electric service it provides to its Missouri customers. In an order issued October 18, the Commission established November 5 as the deadline for initial post-hearing briefs. The Commission later extended that deadline until August 31, 2006.

This brief will generally address three issues (although several of these have sub-issues): rate of return and capital structure; 2) off-system sales margins; and 3) class cost of service and rate design. This brief will retain the numbering of the issues as set out in the List of Issues filed on September 21.

Although this brief only addresses a limited number of issues, Public Counsel took positions on most of the disputed issues and those positions are reflected in Public Counsel's Statement of Positions filed on September 25. In addition, Public Counsel expects that several new issues will arise during the true-up phase of this proceeding, and further information during the true-up phase may shed additional light on the issues addressed herein.

[1] Unless otherwise noted, all dates refer to calendar year 2007.

RETURN ON EQUITY

As is typical in recent rate cases, the issue of the proper return on equity to award is one of the most significant in this case. Indeed, in this case, the ROE issue dominates to an even greater extent than usual. The main witnesses on this issue were: Sam Hadaway for KCPL; Matt Barnes for Staff; and Mike Gorman for Public Counsel. KCPL witness Hadaway proposed an ROE of 11.25%, Staff witness Barnes proposed an ROE of 9.72%, and Public Counsel witness Gorman proposed an ROE of 10.1%. Other witnesses, notably Public Counsel witness Trippensee, provided testimony on factors that affect KCPL's risk profile and thus its appropriate return.

The three main ROE witnesses generally agree on the framework that guides the Commission's ROE decision. These are the principles annunciated in the landmark United States Supreme Court cases of Hope and Bluefield. Public Counsel witness Gorman described those principles as follows:

> In general, determining a fair cost of common equity for a regulated utility has been framed by two decisions of the U.S. Supreme Court, in Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n of West Virginia, 26 U.S. 679 (1923) and Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944).
>
> These decisions identify the general standards to be considered in establishing the cost of common equity for a public utility. Those general standards are that the authorized return should: (1) be sufficient to maintain financial integrity; (2) attract capital under reasonable terms; and (3) be commensurate with returns investors could earn by investing in other enterprises of comparable risk. (Exhibit 201, Gorman Direct, p. 9)

The other two witnesses offered similar testimony.

Mr. Gorman analyzed two different proxy groups, one that he developed himself and one that KCPL witness Hadaway developed. Mr. Gorman's proxy group used the following criteria:

1. S&P's bond rating in the BBB and A categories.

2. Moodys bond rating in the Baa and A categories.

3. Consensus analyst growth rates estimates available from Zacks, Reuters and SNL Financial.

4. Not suspended of dividends over the last two years.

5. Common equity ratios of total capital between 40% and 60%.

6. S&P's business profile scores in the range of 4 to 6.

7. No significant merger and acquisition activities.

8. Not exposed to corporate or market restructuring.

Mr. Gorman's resulting proxy group has average bond ratings reasonably comparable to KCPL's credit ratings from S&P and Moody's. With regard to financial risk and business risk, Mr. Gorman testified that:

> My proxy group has an average common equity ratio of 49% from Value Line and 46% from AUS Utility. In comparison, KCPL's requested common equity ratio is 53%. As such, my comparable group has higher financial risk than KCPL. Finally, the group has a Standard & Poor's business profile score of "5", which is somewhat lower business risk than KCPL which has a S&P business profile score of '6'. Hence, my proxy group has somewhat lower business risk but greater financial risk compared to KCPL. Based on this assessment, I believe my proxy group has reasonably comparable movement risk as KCPL. (Exhibit 201, Gorman Direct, p. 11)

Mr. Gorman also analyzed Dr. Hadaway's proxy group, but removed two companies (Green Mountain Power Company and Duquesne Light Holding) from it that were involved in acquisitions and/or merger activities. Once those two companies were removed, Mr. Gorman testified that the total investment risk of Dr. Hadaway's proxy group reasonably approximates the investment risk of KCPL.

Both Public Counsel witness Gorman and KCPL witness Hadaway used a number of different models to estimate KCPL's cost of common equity. Mr. Gorman used: (1) a constant

growth discounted cash flow (DCF) model, (2) a two-stage growth DCF model, (3) a risk premium (RP) model, and (4) a capital asset pricing model (CAPM).

The first of these, the constant growth DCF model, is explained at pages 12 through 20 of Mr. Gorman's direct testimony. (Exhibit 201). Ultimately, with respect to the application of this model to KCPL, Mr. Gorman concludes that the result is unreasonably high because it reflects a growth rate that is not sustainable over an indefinite period of time. He notes that the constant growth DCF model is limited in that it "cannot reflect a rational expectation that a period of abnormally high/low short-term growth can be followed by a change in growth to a rate that is more reflective of long-term sustainable growth." (Exhibit 201, Gorman Direct, p. 20)

Because of this limitation, Mr. Gorman relied more on the next model: the two-stage DCF model. This model is a better fit for KCPL because, although the consensus analysts' growth rate estimates are likely reflective of investors' expectations over the next three to five years, rational investors would not expect those growth rates to remain in effect indefinitely. Thus, in the two-stage DCF model, the high growth rates in the analysts' consensus are applied to the first stage, and a lower, more sustainable growth rate is applied to the second stage. As Mr. Gorman explains:

> The two-stage DCF growth model reflects the possibility of non-constant growth to the company over time. The two-stage reflects two growth periods: (1) a short-term growth period, which consists of the first five years; and (2) a long-term growth period, which consists of each year starting in year six through perpetuity. For the short-term growth period, I relied on the consensus analysts' growth projections described above in relationship to my constant growth model. For the long-term growth period, I assumed each company's growth would increase toward the maximum sustainable growth rate for a utility company as proxied by the consensus analysts' projected growth for the U.S. GDP. (Exhibit 201, Gorman Direct, p. 21)

The results of the two-stage DCF model using Mr. Gorman's proxy group are 9.3%, and 9.6% using Dr. Hadaway's proxy group.

The next approach that Mr. Gorman used to estimate KCPL's cost of equity is the Risk Premium Model, described at pages 22-25 of Mr. Gorman's direct testimony (Exhibit 201). The risk premium analysis is based on the principle that investments with greater risk command a higher return. Common equity investments have greater risk than bonds because: bonds have more security of payment in bankruptcy proceedings than common equity; the coupon payments on bonds represent contractual obligations; companies are not required to pay dividends on common equity; and companies are not required to guarantee returns on common equity investments. Mr. Gorman calculated the premium that an investor in KCPL stock would require over two types of bonds: Treasury bonds and contemporary A-rated utility bonds. For KCPL, Mr. Gorman determined that the equity risk premium over Treasury bonds is 5.2% (midpoint of the 4.4% to 5.9% range), and the equity risk premium over utility bond yields is 3.7% (midpoint of the 3.0% to 4.4% range). Adding these premiums to the appropriate bond yields produces a return estimate in the range of 10.1% to 10.5%, with a mid-point estimate of 10.3%.

The final method that Mr. Gorman used to estimate KCPL's cost of equity is the CAPM, based upon the principle that the return an investor requires for a particular security is equal to the risk-free ROR, plus a risk premium associated with the specific security. To use the CAPM, and analyst needs an estimate of the market risk-free rate, the market risk premium, and the beta for the particular security. For his market risk-free rate, Mr. Gorman used the Blue Chip Financial Forecasts' projected 30-year Treasury bond yield of 5.4%. Mr. Gorman derived two market premium estimates, one forward-looking estimate (6.1%) and one based on a long-term historical average (6.5%). He used the mid-point of these (6.3%) in the calculation of his CAPM results.

Because the selection of the beta is critical in the CAPM, Mr. Gorman took great pains to get it right, noting that:

> Utility betas have been increasing over the last five years, as shown on Schedule MPG-13, largely because electric utility stocks have outperformed the overall market. While this increasing beta gives the impression of increasing risk, that interpretation is incorrect.
>
> Indeed, electric utility risk factors have been decreasing as these companies revert to a back-to-basics investment strategy that lower their operating risks, and they have been divesting non-regulated businesses to reduce debt and strengthen balance sheets, which is lowering risk. (Exhibit 201, Gorman Direct, p. 27)

Mr. Gorman also noted that Value Line parameters indicate lower financial risk and stronger earnings and cash flow coverages for utilities, with corresponding reduction in risk. The final calculation of the CAPM result, using a market risk premium of 6.3%, a beta of 0.90 and a risk free rate of 5.4% produced a CAPM return of 11.1%.

At the hearing, Mr. Gorman explained how he took the results of these analyses into account in developing his final recommendation on the cost of equity:

> I distinguished the risk premium and the DCF numbers. The risk premium range of 10.3 to 11.1 averaged about 10.7, which was the same as my constant growth DCF number of 10.7. So I used 10.7 as the high end of my recommended range. The low end was based on the two-stage DCF model because of all the problems in the constant growth DCF model that I discussed in my testimony. While the average of my two-stage DCF of 9.3 to 9.6 is less than 9.5, I used judgment to set it at 9.5 because I thought that was a reasonable low end of the range. (Transcript, pp. 378-379).

The midpoint of that range (9.5% to 10.7%) is 10.1%, Mr. Gorman's final recommendation.

In contrast to the detailed, thorough analysis that Mr. Gorman presented, KCPL witness Hadaway urged the Commission to give KCPL **exactly** what the Commission gave it in the last case. Dr. Hadaway gave a lengthy explanation of how it was simply coincidence that KCPL asked for exactly the same return the Commission awarded in Case No. ER-2006-0314. In fact, he confesses that he would have changed his recommendation somewhat if he'd noticed that it

was the same. (Transcript, p. 250). While possible that Dr. Hadaway himself failed to notice that the number was exactly the same (although such an oversight would be uncharacteristic of the highly polished work that Dr. Hadaway has presented to this Commission in a number of cases), it is impossible that **all** of the people conducting KCPL's prefiling review missed the significance. No, KCPL knew exactly what it was doing: it got from this Commission the highest ROE awarded to any electric utility in the country in 2006 (and so far in 2007), and it wants to get it again.

Both Dr. Hadaway's base ROE recommendation of 10.75% and his "adder" of .50% are badly flawed and should be rejected. With respect to his base ROE recommendation of 10.75%, simply properly applying Dr. Hadaway's models and using updated information yields an ROE of 10.1%. The following chart from Public Counsel witness Gorman's rebuttal testimony (Exhibit 202, p. 10) makes this point:

TABLE 2

Summary of Hadaway's ROE Estimate

Description	Hadaway Results (1)	Adjusted Hadaway Results (2)
Constant Growth DCF (Traditional)	**9.4% - 9.5%**	**9.1%**
Constant Growth (GDP Growth)	**10.7% - 10.8%**	**9.3%**
Two-Stage Growth DCF	**10.5%**	**9.1%**
Estimated DCF*	**10.5% - 10.8%**	**9.2%**
Risk Premium Utility	**10.72%**	**10.1%**
Ibbotson Risk Premium	**10.80%**	**10.2%**
Harris-Marston Risk Premium	**11.43%**	**10.7%**
Average		**10.1%**

Source: Hadaway Direct at 39.

*** The constant growth DCF model was excluded from Dr. Hadaway's range.**

One of the most significant flaws in Dr. Hadaway's DCF analysis was his use of a GDP growth rate of 6.6%. This GDP growth is excessive and not reflective of current market expectations. (Exhibit 202, Gorman Rebuttal, p. 10). Dr. Hadaway's GDP growth rate is too heavily influenced by data from as far back as fifty years ago, and simply is not consistent with economists' projected GDP growth over the next five and ten years. Furthermore, his growth rate, because he calculated it himself, cannot be "part of the investment public's assessment of future growth prospects." (Transcript, p. 357). As Mr. Gorman stated, "what's important is to try to understand what the market expectations are about future growth prospects and future changes in capital costs that are reflected in observable stock prices which where the valuation is determined by the marketplace." (Transcript, p. 358). As opposed to Dr. Hadaway's growth rate, the one that Public Counsel witness Gorman used for the second stage of his two-stage DCF analysis is:

> consistent with current market expectations are for future growth so it reflects the future growth, not historical growth, and it's the likely growth rate that the analysts and investors use to make investment decisions. So it wasn't selected on the basis of being the lowest growth, but it's the most rational growth-rate estimate to use in the GDP study for a multistage GDP growth analysis. (Transcript, p. 267).

Dr. Hadaway's risk premium analysis is also flawed. Dr. Hadaway's use of only forecasted interest rates in his risk premium analysis renders its results inaccurate:

> [T]he accuracy of projected interest rates is highly problematic. Indeed, while interest rates have been projected to increase over the last five years, those increased interest rate projections have turned out to be wrong and significantly inflated. Despite economists' continued pessimistic projections of increases to interest rates over the last five years, interest rates have actually either stayed flat

> or have declined. Accordingly, Dr. Hadaway's analysis should be performed based on current interest rates, with some consideration given to forecasted interest rates. (Exhibit 202, Gorman Rebuttal, p. 14).

Even the checks that Dr. Hadaway performed on his risk premium analysis are flawed. He attempts to take two studies that look at the entire market and apply them to KCPL, a regulated electric utility. Because a regulated electric utility like KCPL is less risky than the market as a whole, Dr. Hadaway's use of the Ibbotson & Associates and Harris & Marston studies as checks on his risk premium analysis is meaningless.

Dr. Hadaway's proposal to inflate his already-too-high ROE recommendation with a 50 basis point adder should also be rejected. There are a number of significant problems with this adder. Perhaps the most significant is Dr. Hadaway's refusal to consider the risk-mitigating impacts of KCPL's Regulatory Plan. Even Dr. Hadaway, when pressed, confessed that the Regulatory Plan does reduce shareholder risk. (Transcript, p. 276). But he also testified that there is nothing in his recommendation that explicitly accounts for that reduction in risk. The best that he could offer is that it his 10.75% ROE recommendation somehow "reflects" this reduction in risk. (Transcript, p. 279) But he also testified that he recommended the exact same 10.75% base ROE in "at least ten" other recent cases. (Transcript, p. 251). It is difficult to understand how the specific 10.75% recommendation "reflects" any KCPL-specific risk reductions when 10.75% appears to be Dr. Hadaway's current generic ROE number.

Despite Dr. Hadaway's testimony that the Regulatory Plan has little benefit to shareholders, the record evidence shows that it has a significant benefit. Public Counsel witness Trippensee testified that:

> But so long as [KCPL prudently implements] the plan … the decisional prudence to implement that plan is not in question. That is something that Dr. Hadaway in his discussion about all the risk factors today didn't address whatsoever, and that's a factor that goes directly against the risk that the stockholders face.

…
His focus was on the additional amortization which addresses bond risk and getting them to invest, but the stockholder risk is -- the decisional prudence was the key component to address risk stockholders faced. (Transcript, p. 331)

The importance of this decisional prudence is illustrated by the following example:

Q. Mr. Gorman, you had some questions from Mr. Zobrist that essentially went to the difference between decisional prudence and implementation prudence. Do you recall that line of questioning?
A. Yes.
…
Q. And let me just run you through a couple of quick hypotheticals and see if I can illustrate that difference. If a utility builds a 100 million dollar power plant and the decision to build that is later imprudent -- later found to be imprudent, how much of that is at risk?
A. The full investment cost.
Q. If a utility has been given some sort of a -- a blessing on its decisional prudence to build a 100 million dollar power plant and does, in fact, build that power plant for 110 million dollars, how much of that investment is at risk?
A. I would expect 10 million dollars.
Q. Okay.
A. The difference between the amount related to the prudence decision and the actual construction expenditures.
Q. And in the regulatory plan, KCPL is given deference on its decisional prudence; is that correct?
A. Based on my reading of it, yes.
Q. But not on its implementation prudence?
A. Correct.
Q. So that the effect of the regulatory plan is to **significantly limit KCPL's risk** by only having the implementation prudence [in play]?
A. Correct.
(Transcript, p. 380-181; emphasis added).

Another significant problem with KCPL's proposed 50 basis point adder is that Dr. Hadaway was unable to offer a cogent explanation of why the adder was 50 basis points -- instead of 32 or 81. Dr. Hadaway's explanation was "I think the standard RTO FERC adder, a minimum of 50 basis points was probably the thing that stuck in my mind more than anything from my review. Nothing any more elaborate than that." But Dr. Hadaway conceded that the

circumstance under which the FERC awards such an adder (a utility ceding control to an RTO) are nothing like the circumstances in this case. (Transcript, p. 266-267; 269-270).

The Commission should reject KCPL's entreaties to get another sky-high ROE award and instead give KCPL an ROE award based on the only recommendation that is reasonable: the one proposed by Public Counsel witness Gorman. Mr. Gorman's recommendation is the only one anywhere near the national average of 10.27% (Exhibit 121). It is also very near the midpoint (10.24%) between KCPL witness Hadaway's "base" recommendation of 10.75% and Staff's midpoint recommendation of 9.72%.

CAPITAL STRUCTURE

The following table, from Mr. Gorman's direct testimony (Exhibit 201, p. 8) summarizes the capital structure that Mr. Gorman recommends in this case. At the close of the evidentiary hearing, KCPL was in agreement with this capital structure (although it appeared that differences would arise during the true-up). Indeed, Mr. Gorman used the capital structure that KCPL witness Hadaway proposed in his direct testimony.

TABLE 1

KCPL's Requested Capital Structure

Description	Percent of Total Capital
Debt	45.24%
Preferred Stock	1.33%
Common Equity	53.43%
Total Regulatory Capital Structure	100.0%

Source: Hadaway Direct at 7.

The only other party to take a position on capital structure is the Staff. The Staff's capital structure at the evidentiary hearing was very different from the one agreed to by Public Counsel and KCPL. However, at the evidentiary hearing, Staff abandoned the capital structure it proposed in prefiled testimony, explaining that it would propose a different capital structure based on Great Plains' actual capital structure as of September 30. (Transcript, p. 297; 302). Indeed, Staff counsel even objected to questions about the Staff's capital structure proposal, on the grounds that it "is no longer of any relevance." (Transcript, p. 297). Accordingly, Public Counsel will reserve argument about capital structure until the true-up brief.

OFF-SYSTEM SALES MARGINS

In Case No. ER-2006-0314 (KCPL's last rate case), the Commission created a mechanism through which a certain base level of off-system sales margins would be included in rates, and any margins over that base level would be flowed back to ratepayers in this case. In ER-2006-0314, the Commission set the base level at the 25th percentile of the probability curve presented by KCL witness Schnitzer. In that case, the Commission had two choices[2] about how to use Mr. Schnitzer's curve: the 25th percentile and the 50th percentile. The Commission, based on its judgment that KCPL should not face the risk of coming up short on the level of off-system sales margins, chose to shift much of the risk to ratepayers and so set the level at the 25th percentile.

Public Counsel argued in that case and still believes, given the actual net margins KCPL has achieved in recent years, and the evidence of the level of off-system sales margins to date in

[2] The Staff took a different approach. It totally rejected Mr. Schnitzer's probability analysis and instead recommended the use of an off-system sales margin level based on historical data.

2007, that by using the 25th percentile the Commission has lowered the risk to which KCPL is exposed to a level that is far too low. In recognition of the Commission's desire to shield KCPL from some of the market risk with respect to off-system sales, Public Counsel in this case has proposed that the Commission set the base level of off-system sales margins at the 40th percentile.

There are a number of reasons, discussed by Public Counsel witness Robertson, why the 40th percentile is more appropriate than the 25th – even with a mechanism to flow back amounts over the baseline. The first of these is the incentive (or lack thereof) to achieve a higher level of off-system sales margins. Mr. Robertson testified that:

> Public Counsel believes that Company's incentive is unreasonably limited by the utilization of the 25th percentile baseline margin. There may be a small incentive to exceed the 25th percentile due to an immediate cash flow benefit for Company in the short-term. However, that benefit would be offset by any refund of the excess margin it has to credit back to ratepayers in the future. Besides, the utility likely already has in place a cadre of financing resources for the normal utility investments or costs this additional cash flow would support.
>
> Furthermore, if every dollar of additional non-firm off-system sales margin above the baseline is to be refunded to ratepayers Company may perceive higher levels of margins to be contrary to its interest because they would help parties argue in future cases for a higher baseline or normalized amount. (Exhibit 205, Robertson Direct, pp. 9-10).

KCPL witness Giles acknowledged that KCPL could achieve higher levels of off-system sales margins if it had the incentives to do so. (Exhibit 8, Giles Direct, p. 12).

Another concern with setting the baseline at such a low level is that it increases the likelihood of substantial intergenerational inequity. Current ratepayers who leave the system will not receive credits for excess margins achieved by KCPL, and new ratepayers who come on the system may receive credits even though they had not overpaid in the first instance. Increasing the harm to one group of ratepayers while benefiting another, who deserve no benefit, just to dramatically lower KCPL's risk is not a reasonable policy.

Public Counsel witness Robertson explained why the 40th percentile is a more equitable point at which to share the risk:

> Public Counsel is acutely aware of, and shares, the Commission's concern that KCPL's operations not be unduly burdened while it is in the current construction mode. In fact, this was the reason why Public Counsel helped construct and agreed upon the regulatory plan that was approved by the Commission in KCPL Case No. EO-2005-0329. However, it is our belief that a baseline net margin set at the 25th percentile is unreasonably low in light of the extensive risk-sharing between ratepayers and shareholders that has already been effectuated in the KCPL regulatory plant.
>
> …
>
> [I]n order to more fairly allocate the associated risks involved and to create incentive for the Company to seek and achieve a level of sales margins that is not based on an abnormally low level of likely outcomes, Public Counsel recommends that the baseline going forward be increased slightly and set at the 40th percentile level forecasted by the Company for year 2008.

KCPL witness Giles conceded that there is nothing magic about the 25th percentile; other levels could achieve similar benefits. (Transcript, pp526-527).

There will be additional evidence adduced about off-system sales margin levels in the true-up phase of this proceeding, and Public Counsel will address additional facets of this issue in the true-up brief.

CLASS COST OF SERVICE / RATE DESIGN

The aspect of this issue of the greatest concern to Public Counsel is the proposed interclass shifts of revenue requirement responsibility. Both the Staff and DOE/NNSA have proposed to increase – on a revenue neutral basis – the share borne by the residential class. Much of the relevant argument with respect to this aspect of the issue has been presented to the Commission in pleadings and objections on the record about the testimony of Staff witness Pyatte and Public Counsel witness Meisenheimer, and several of those motions are still pending. The arguments about the appropriateness of revealing privileged settlement discussions and

whether the Stipulation and Agreement in Case No. EO-2005-0329 precludes interclass shifts will not be repeated here. This section of this brief will instead address the question of whether such shifts **should** be made if the Commission finds (incorrectly) that they are permitted by the Stipulation and Agreement in Case No. EO-2005-0329 and supported by competent and substantial (*i.e.*, non-privileged and non-parol) evidence.

Public Counsel witness Meisenheimer testified that:

> If implemented, DOE's proposals [to shift costs to residential customers] would be detrimental if not fatal to the balance struck by the signatory parties to the Stipulation and Agreement in EO-2005-0329. As described by OPC witness Mr. Trippensee in response to Commission questions at hearing in EO-2005-0329, a key element of the Stipulation and Agreement is that it provides certainty to the parties in the process of bringing Iatan2 online. DOE, like other customers, benefited by avoiding the litigation risk of the Company's original regulatory plan proposal being adopted by the Commission. In addition, I would encourage the Commission to recall that although DOE was not a signatory to the Stipulation and Agreement in EO-2005-0329, DOE participated extensively in the case and at a minimum did not oppose the Stipulation…
>
> DOE also participated in ER-2006-0314 and joined as a signatory party to the Stipulation and Agreement resolving class cost of service and rate design. Undermining continuation of the Regulatory Plan process by considering DOE's updated class cost of service study and approving DOE's proposals based upon its new updated CCOS study would be detrimental to the public interest and I encourage the Commission to reject DOE's recommendations. (Exhibit 204, Meisenheimer Rebuttal, pp. 5-6).

And as Public Counsel witness Trippensee testified, there are significant problems with "updating" the results of cost studies performed before the rate increase in the last case went into effect. Mr. Trippensee testified about the complications that the rate increase and especially the amortizations resulting from Case No. ER-2006-0314 cause in trying to "update" outdated class cost of service studies:

> These revenue requirement associated with the Regulatory Plan Amortization does not fit the rate design models used under traditional regulation and it is a significant change that has occurred since the cost studies that Staff relies upon

were conducted. These cash flow metrics are calculated based on all cash inflows and outflows from the Company, imputed debt not used in traditional regulation, and investments not considered in traditional regulation. Staff's attempt to change class cost responsibility during the Regulatory Plan period does not recognize this reality. The Regulatory Plan correctly recognized this reality and prohibited the signatories from presenting any new or updated studies during filings #2 and 3. (Exhibit 208, Trippensee Rebuttal, pp. 5-6).

Public Counsel submits that the Commission should spread any increase awarded in this case on an equal percentage basis.

Respectfully submitted,

OFFICE OF THE Public Counsel

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 6th day of November 2007.

By:_____