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	)))))))	Case No. 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	)))))))	Case No. 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	)))))))	Case No. ER-2019-0199

THE OFFICE OF THE PUBLIC COUNSEL'S STATEMENT OF POSITIONS

COMES NOW the Office of the Public Counsel ("OPC") and for its *Statement of Positions*, states as follows:

The OPC will respond to the issues identified by the jointly filed *List of Issues, Order of Witnesses, Opening Statements and Cross-Examination* in the order they are set forth.

<u>Issue 1</u>: A. Was it imprudent, or in violation of its Rider FAC tariff, for KCPL 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 KCPL to generate revenues from those RECs? B. If it was, what if any adjustment should the Commission order?

Response to A: It was most definitely imprudent for Kansas City Power & Light Company ("KCPL") to allow its RECs to expire during the review period of File EO-2019-0068 rather than taking actions that would allow KCPL to generate revenue from those RECs. *Marke Rebuttal* pgs. 1 – 2; *Mantle Rebuttal*, pg. 4. By allowing these RECs to expire, KCPL was essentially just "leaving money on the table;" money that would otherwise have mostly gone to its customers through the FAC. *Marke Rebuttal* pg. 2. KCPL attempts to justify this imprudent behavior by stating that its decision to not sell, or even attempt to sell, any of these RECs was in line with the interests of its customers. S*ee Martin Direct*. However, the OPC's witness Geoff Marke has provide extensive testimony that shows this is not the case. S*ee Marke Rebuttal*. The lost revenues that KCPL could have achieved had it made the prudent decision to sell these RECs should thus be imputed as an offset to KCPL's FAC costs.

Response to B: To account for the lost revenue that KCPL could have achieved had it properly sold its RECs, the Commission should order a negative prudence adjustment of $325,969 in KCPL's next filing to change its fuel adjustment rate ("FAR"). *Mantle Supplemental Rebuttal*, pgs. 1 – 2. This amount takes into consideration both the Missouri jurisdictional allocation and the 95% limitation. *Id*. In addition, Commission rule 4 CSR 240-20.090(11)(A) requires that all amounts refunded by the Commission include interest at the electric utility's short-term

borrowing rate. *Id.* Therefore, interest would need to be added to this amount as well. *Id.*

Issue 2: A. Has GMO appropriately allocated the costs associated with auxiliary power between the electric operations and the steam operations at GMO's Lake Road plant? B. If not, what if any adjustment should the Commission order for the review period of File EO-2019-0067? 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? 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?

Response to A: KCP&L Greater Missouri Operations Company ("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. *Mantle Rebuttal*, pgs. 3, 9 – 10. "Auxiliary power is the electricity used by [a] generating facility in the process of generating electricity or, in the case of the

Lake Road generating facility, the process of generating steam for its steam operations and electricity for its electric operations [.]" *Mantle Rebuttal*, pg. 7. "The fuel and purchased power costs included in [GMO's] FAC include fuel and purchased power costs for the auxiliary power that is used by GMO's steam operations." *Mantle Rebuttal*, pg. 8. However, those same fuel and purchased power costs were not included (or even calculated) during GMO's last general rate case (that occurred prior to the relevant review period), and thus, are not found in the net base energy costs calculated during that case. *Id.* at 11. Therefore, "[i]f the cost to provide auxiliary power to the steam operations is not removed from the actual net energy cost of the FAC, then [GMO's] electric customers [will be] paying all of the fuel costs for the auxiliary power and therefore subsidizing GMO's steam operations." *Id.* at 8.

Through its own witness, GMO has admitted that there was no allocation of auxiliary power fuel costs to the steam operations made to the actual net energy cost for this FAC case. *Nunn Surrebuttal* pg. 3. Therefore, the cost of fuel used to provide auxiliary power to the steam operations at the Lake Road plant is not being removed from the actual net energy cost of the FAC in this prudence review period and GMO's electric customers are consequently paying all of the fuel costs for the auxiliary power. GMO attempts to refute this rather obvious point by incorrectly suggesting that "[a] representative amount of overall O&M costs [were] allocated to cover a variety of costs, including the cost of auxiliary power, in the last rate case by allocating other ***non-fuel*** steam O&M costs out of the electric base rates." *Nunn Surrebuttal* pg. 4 (emphasis added). However, there is absolutely no factual,

mathematical, or even logical basis to support GMO's claim that an allocation of ***non-fuel steam O&M costs*** made when setting base rates during a general rate case has captured (or is even capable of capturing) a "representative amount" of the ***fuel*** costs related to auxiliary power used at the Lake Road facility made during an FAC rate change case.[1] In fact, there would have been absolutely no need for GMO to have even ***considered*** the allocation of auxiliary power between its electric operations and steam operations at the Lake Road facility during its last general electric rate case "because only electric operations were modeled" during that case. *Mantle Rebuttal*, pg. 11 – 12. Thus, there is no reason that GMO would have even attempted to capture a "representative amount" of auxiliary power fuel costs related to steam operations during the last general electric rate case,[2] which is consistent with the OPC's argument that no such attempt was made.

GMO's effort to avoid the obvious conclusion that its electric customers are paying for the cost of fuel used to produce auxiliary power for its Lake Road steam operations is fatally flawed. An allocation factor being applied to ***non-fuel*** O&M costs incurred at a generating plant does not allocate or otherwise account for auxiliary power ***fuel*** cost incurred at that same plant. It is as simple as that. Moreover, because

[1] Apart from there being no explanation for why allocations of ***non-fuel*** costs are being used to account for ***fuel*** based auxiliary power costs, there is no indication as to how an allocation of costs out of ***base rates*** (made during a general electric rate case) can account for the fluctuation of fuel costs that forms the entire basis of the FAC. In other words, even if GMO were correct that auxiliary power costs were somehow accounted for when base rates were set, it would still need to make ***some*** adjustments based on the changing cost of fuel and purchased power that occurred between the time when those base rates were set and when the FAC rates are set.

[2] Applying an allocation factor to account for steam auxiliary power costs that were not included in the total cost would have resulted in a double-counting of the steam auxiliary power costs.

GMO has not taken any other steps to remove steam-related, auxiliary fuel costs from the actual net energy costs calculated as part of these FAC filings, it has imprudently collected fuel costs related to the production of auxiliary power used for steam operations at its Lake Road facility from its electric ratepayers.

Response to B: Because it was imprudent for GMO to have collected fuel costs related to the production of auxiliary power for its steam operations at its Lake Road facility from its electric ratepayers, the Commission should order a negative prudence adjustment of $469,409 in GMO's next filing to change its FAR. *Mantle Rebuttal*, pg. 5. This amount takes into consideration both the Missouri jurisdictional allocation and the 95% limitation. *Id.* In addition, Commission rule 4 CSR 240-20.090(11)(A) requires that all amounts refunded by the Commission include interest at the electric utility's short-term borrowing rate. *Id.* Therefore, interest accrued on the $469,409 would need to be added as well. *Id.*

Response to C: As set forth in the testimony of OPC's witness Ms. Lena Mantle:

> The last case in which fuel was estimated for both steam and electric operations for GMO was case no. ER-2009-0090. In GMO's next rate case, case no. ER-2010-0356, only the electric operations were modeled. The tariff sheets in case no. ER-2010-0356 became effective on July 1, 2011.

Mantle Rebuttal, pg. 12. This means that "[s]ince July 1, 2011, GMO has been collecting 95% of the cost of the auxiliary power for its steam operations from its electric customers through the FAC." *Id.* The value of this amount is approximately $2 million. *Id.* It is not appropriate for GMO to have collected this amount from its electric customers, and GMO should therefore be required to return this sum, plus interest at GMO's short-term borrowing rate, to its customers.

Response to D: As previously stated, GMO is not currently allocating any of the fuel costs related to the production of auxiliary power used in steam operations at its Lake Road facility to its steam operations and is instead requiring electric customers to pay all those costs. This is incorrect, and needs to be fixed. Therefore, the Commission should order GMO to account for and exclude the cost of fuel used to produce auxiliary power for its steam operations from the actual net energy cost calculated in the 23rd Accumulation Period and in future FAC rate change cases. The best method for accomplishing this is the method set forth in the testimony of OPC witness Mantle. *Mantle Rebuttal*, pgs. 7 – 8.

Issue (3) A. Was it prudent for GMO[3] to have entered into Purchase Power Agreements with the Rock Creek and Osborn Wind Projects under the terms of the contracts as executed? B.

[3] While the list of issues states just GMO, this issue actually pertains to both KCPL and GMO as the Rock Creek and Osborne wind PPAs are joint PPAs executed by both companies. *Mantle Rebuttal*, pg. 14.

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

Response to A: It was certainly imprudent for both KCPL and GMO to have entered into the Purchase Power Agreements ("PPAs") with the Rock Creek and Osborn Wind Projects under the terms of the contracts as executed. Despite certain inconsistencies, KCPL and GMO have generally argued that the Rock Creek and Osborn wind PPAs were ***not*** entered into in order to meet renewable energy requirements, but rather, were executed for economic reasons (*i.e.* it was KCPL and GMO's opinion that the PPAs would generate more in revenue than they incurred in costs). *Mantle Rebuttal*, pg. 16 – 18. However, there is a threefold problem with this rationale. First, the market forecasts on which KCPL and GMO relied to show that these two PPAs would eventually become profitable were in clear contradiction to the actual market data available at the time KCPL and GMO entered into these PPAs, and, thus, had already been proven inaccurate. *Mantle Rebuttal*, pg. 21 – 28. Second, KCPL and GMO never issued any request for proposal ("RFP") related to their selections of either the Rock Creek or Osborn windfarms, and, hence, they forwent any opportunity to seek lower cost wind resources before entering into these PPAs. *Id.* at 28 – 30. This is especially egregious given that each of the other wind PPAs that have had their costs included in these FAC filings resulted from the issuance of an RFP which was instrumental to minimizing their costs. *Id.* Finally, the contract cost of all the previous wind PPAs that KCPL or GMO had executed showed a clear and consistent downward trend in price over time, yet the Rock Creek and Osborn

PPAs (which came later in time) were priced at or above the first PPA that KCPL or GMO executed. *Id.* at 31 – 33. Moreover, the price of the first PPA KCPL or GMO signed ***after*** the Rock Creek and Osborne PPAs is nearly half of what KCPL and GMO agreed to pay in those two PPAs. *Id.* at 31. Thus there is uncontroverted proof that KCPL and GMO ***could*** have found cheaper wind prices, had they actually bothered to look.

Based on the evidence compiled by the OPC (as described above), there is no question that KCPL and GMO have spent far more than was necessary with regard to the Rock Creek and Osborn PPAs. This makes the decision to enter into these PPAs (under the terms as executed) imprudent, ***regardless*** of whether the commission believes GMO's argument that these PPAs were expected to make money. Nor can KCPL and GMO's last minute attempt to justify these two PPAs on the basis of the proposed federal Clean Power Plan ("CPP") save the otherwise imprudent nature of these PPAs. As KCPL and GMO's own witness acknowledges, at the time that these PPAs were executed, the EPA was only ***soliciting comments*** about whether to require that only in-state renewables could be used for CPP compliance. *Crawford Surrebuttal*, pg. 3 – 4. Therefore, there was little basis for believing that these two PPAs, which were priced considerably higher than the four PPAs KCPL entered into prior to these and more than twice the price of the next PPA it would enter into, would ever be needed to meet federal requirements. In addition, even if the CPP ***had*** ultimately required in-state renewables for compliance, there was still no excuse for KCPL and GMO to not issue a RFP or otherwise engaging in the most basic due

diligence necessary to ensure they found the lowest cost means of satisfying those federally-imposed requirements.

Finally, the historical declining trend in PPA prices shows that it was imprudent for KCPL and GMO to have entered into these two PPAs ***before*** the EPA had finalized the CPP rule. Acting as prudent utilities, KCPL and GMO should have waited to see if the CPP rule would actually go into effect[4] (and what the final requirements were) before entering into these PPAs because the historical data price trend shows that the longer they waited, the lower the PPA prices would have been.

The overwhelming weight of the evidence shows that the Rock Creek and Osborn PPAs were imprudent because KCPL and GMO should have known (at the time they were executed) that the PPAs would not be profitable and that cheaper wind was available. Unfortunately, KCPL and GMO ignored these facts and instead entered into two twenty-year contracts that lost more than $20 million for Missouri customers in a short 18-month accumulation period window. It is difficult to predict just how much more KCPL and GMO will lose on these two PPAs in the more than 220 months that remain, but it is easy to see that it should not be KCPL and GMO's electric customers who bear those costs.

Response to B: The OPC recommends that the Commission disallow ***all*** of the losses that KCPL and GMO incurred with regard to the Rock Creek and Osborne PPAs by a negative prudence adjustment of $9,484,315 in KCPL's next FAR filing

[4] It did not.

and $11,070,668 in GMO's next FAR filing.[5] The OPC is taking this position because the evidence shows that KCPL and GMO had no need to enter into either of these two PPAs and, instead, were engaged in pure speculation using data that, based on actual historical experience, KCPL and GMO should have known was unreliable. KCPL and GMO, therefore, should not be permitted to pass the losses they incurred as a result of these PPAs onto their customers. However, the OPC also acknowledges that the Commission might find that it was prudent for KCPL and GMO to have entered into these kind of PPAs ***generally***, but not at same the prices as the Rock Creek and Osborn PPAs. To that end, the OPC has also supplied evidence showing what losses the companies could have avoided if they had entered into PPAs at prices that were consistent with the trend for their other PPAs. *Mantle Rebuttal*, pg. 33. The OPC offers this evidence as an alternative possibility to what costs should be disallowed, though it continues to recommend a complete disallowance of all losses incurred by both companies.

In addition, Commission rule 4 CSR 240-20.090(11)(A) requires that all amounts refunded by the Commission include interest at the electric utility's short-term borrowing rate. *Mantle Rebuttal*, pg. 5. Therefore, interest needs to be added to whatever amounts the Commission orders be refunded. *Id.*

[5] This amount takes into consideration both the Missouri jurisdictional allocation and the 95% limitation. *Mantle Rebuttal*, pg. 5.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission to accept this *Statement of Positions* and grants the relief requested herein.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this thirteenth day of August, 2019.

/s/ John Clizer