**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

REPLY BRIEF OF STAFF

Respectfully Submitted,

Jeffrey A. Keevil
Deputy Counsel
Missouri Bar No. 33825
Deputy Counsel

Alexandra L. Klaus
Senior Counsel
Missouri Bar No. 67196

Travis J. Pringle
Legal Counsel
Missouri Bar No. 77128

Attorneys for Staff of the
Missouri Public Service Commission

October 4, 2019

TABLE OF CONTENTS OF
REPLY BRIEF OF STAFF
KANSAS CITY POWER AND LIGHT COMPANY
KCP&L GREATER MISSOURI OPERATIONS COMPANY
CASE NOS. EO-2019-0067, EO-2019-0068, & ER-2019-0199

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

REPLY BRIEF OF STAFF

Introduction

COMES NOW the Staff of the Missouri Public Service Commission and submits the following Reply Brief in reply to the initial briefs of Kansas City Power & Light Company ("KCPL" or "Company"), KCP&L Greater Missouri Operations Company ("GMO" or "Company") (KCPL and GMO filed a joint initial brief), and the Office of the Public Counsel ("OPC"). The purpose of a Reply Brief is for a party to respond to the opposing arguments made by the other parties to a proceeding. Rather than replying to every individual statement made by the other parties in their initial briefs, having presented and argued its positions in its initial brief, Staff is limiting its replies to those matters which Staff believes will most aid the Commission in its determinations. Therefore, the failure of this Reply Brief to address any matter raised in the initial briefs of the other parties should not be construed as agreement in any way therewith unless otherwise stated herein.

Argument

Issue (1)

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?

Staff would initially note that it generally agrees with the initial brief of OPC on the first question posed under Issue (1), which does an admirable job of refuting the alleged excuses given by KCPL for its imprudence regarding its excess RECs. Therefore, this reply will focus on the initial brief of KCPL concerning the first question posed under Issue (1).

In the Background section of its initial brief KCPL claims that KCPL and GMO only knew of Staff's position on this issue upon the filing of Staff's Report in this case. The fallacy of this claim is shown in Staff's initial brief because, as stated therein, in the Commission's Report and Order in Case No. ER-2012-0175, issued January 9, 2013, the Commission found on page 63 that "If GMO has more RECs than it needs to satisfy the requirements of law ("excess RECs"), **it is prudent practice to sell them**" (Emphasis added). The Commission explicitly found that it was prudent for GMO to sell excess RECs rather than hoard them until they expire – the same is true for KCPL.

KCPL's initial brief on this issue attempts to excuse its imprudence based on alleged "customer desires" or "historical representations" made by KCPL. When KCPL refers to "customer desires" it really means *large* customer desires, as reflected in the Renewable Corporate Buyers' Principles Guide, rather than smaller customers such as residential customers. However, KCPL's actions – or inactions – on this issue even fail to follow the Renewable Corporate Buyers' Principles Guide. As testified by Ms. Boustead, those principles state that "In order to claim the benefits of our [*i.e.,* the customers] renewable energy purchases to satisfy our public goals and reduce our carbon footprint, current US rules require that we [*i.e.,* the customers] retain ownership of the RECs or that they **are retired on our behalf**."[1] (Emphasis added) However, KCPL did not and is not retiring the RECs at issue "on behalf of" these corporate customers, or on behalf of any customers; rather, KCPL is simply holding the excess RECs in a sub-account in the North American Renewables Registry ("NAR") (the Commission-approved tracking system) as expired.[2] Furthermore, KCPL's treatment of these RECs creates concerns regarding double-counting because the RECs are not retired but are simply held in an account as expired, which is also a violation of the principles KCPL claims to be sacrosanct.[3] Apparently, KCPL's adherence to the "principles" depends on whether or not those "principles" can be claimed to justifyits imprudence.

In addition, it should be noted that KCPL has designed a program, through its Renewable Energy Rider, to provide non-residential customers an option to meet their renewable energy goals by allowing either transfer of RECs to customers or retirement of RECs on their behalf.[4] Therefore, KCPL has a way to accomplish its alleged purpose – but not the way KCPL attempts to justify in this case.

Further, even if one were to assume that KCPL's alleged justifications for its imprudence were in line with the desires of, or possibly of benefit to, its large customers, KCPL has provided no evidence of any value of its actions for its remaining

[1] Ex. 200, Boustead Rebuttal, p. 6 lines 19-21.
[2] *Id.* at p. 7 line 6 through p. 8 line 4.
[3] *Id.* at p. 6 line 21 through p. 8 line 4.
[4] *Id.* at p. 5 line 20 through p. 6 line 3.

(*i.e.,* residential) customers. Although those customers paid the money that generated the RECs, due to KCPL's imprudence those customers receive nothing.

As for KCPL's "historical representations" excuse, Staff addressed this in its initial brief. KCPL's claim basically boils down to the allegation that if KCPL was to sell the expired RECs, KCPL could no longer claim that the power was generated from a renewable source. As stated in Staff's initial brief, KCPL bases this excuse on nothing more than the Renewable Corporate Buyers' Principles Guide.[5] However, Mr. Martin of KCPL admitted that FERC Form 1 does *not* consider renewable energy resources as defined by the Renewable Corporate Buyers' Principles Guide.[6] Therefore, what claims or historical representations one can make about the power depends on the source of one's definition.

It should also be remembered that the RECs which expired during the FAC prudence review period at issue – January 1, 2017 through June 30, 2018 – were actually generated in 2013 and 2014. These 2013 and 2014 vintage RECs have nothing to do with the amount of renewable generation generated by KCPL in 2018.[7]

One other excuse of KCPL for its decision to not pursue the sale of RECs is what it refers to as a "limited revenue opportunity." Although Staff's proposed adjustment may be only $357,308 for this FAC prudence review period, there is the potential for larger adjustments in the future. Starting in 2021, the company will be producing RECs in excess of what it needs to comply with the renewable energy standard, resulting in the

[5] Hrg. Tr. Vol. 1, 74:7-74:8.
[6] Hrg. Tr. Vol. 1, 75:21-25.
[7] Ex. 200, Boustead Rebuttal, p. 8 lines 19-22.

potential for an even larger number of RECs to expire annually; furthermore, the market value of RECs does change over time.[8]

B. If it was [imprudent or a violation of tariff], what if any adjustment should the Commission order?

As stated in Staff's initial brief, the Commission should order an adjustment in the amount of $357,308, which is equal to 722,628 expired RECs times $0.48483 per REC, plus interest at KCPL's short-term borrowing rate.[9] OPC's initial brief recommends an adjustment of $325,969, which takes into consideration what it refers to as "the 95% limitation." While Staff's and OPC's recommended adjustments are fairly similar, KCPL's initial brief recommends no adjustment in this case and that the Commission's decision should only apply prospectively, due to its claims that no such requirement has been imposed on other electric utilities and that this is the first time KCPL has been made aware of Staff's and OPC's position on this issue. Staff will briefly address the initial briefs of OPC and KCPL on this point, starting with KCPL.

First, KCPL cannot legitimately claim to have been surprised by Staff's (or OPC's) position on this issue, given the GMO case quoted above. As stated earlier, in the Commission's Report and Order in Case No. ER-2012-0175, issued January 9, 2013, the Commission found on page 63 that "If GMO has more RECs than it needs to satisfy the requirements of law ("excess RECs"), **it is prudent practice to sell them.**" If it is prudent practice for GMO to sell excess RECs it is likewise prudent practice for KCPL, GMO's affiliate, to sell them. Furthermore, both KCPL's Rider FAC Tariff[10] and the

[8] Ex. 200, Boustead Rebuttal, p. 3 lines 13-18.
[9] Ex. 200, Boustead Rebuttal, p. 2 lines 11-14; Ex. 201, Boustead Cross-Rebuttal, p. 2 lines 13-16.
[10] *See* KCPL's Second Revised Sheet Nos. 50.11 and 50.14, Ex. 202.

Commission's rule on fuel adjustment mechanisms[11] provide for revenues from the sale of excess RECs. Even KCPL's initial brief admits at the top of page 7 that "KCP&L's Rider FAC tariff contemplates revenues from REC sales flowing through the FAC."

Second, as for KCPL's claim that no such requirement has been imposed on other electric utilities, Staff would disagree. All regulated utilities – electric, natural gas, water, sewer, steam – are required to act in a prudent manner. Also, unlike KCPL, other Missouri utilities sell their unneeded RECs.[12] If other utilities are acting prudently, by selling unneeded RECs, this could explain why those utilities are not subject to a recommended prudence adjustment like KCPL.

Finally, as to OPC's calculation of the recommended adjustment, the primary difference[13] between Staff's recommended adjustment and OPC's is what OPC refers to in its initial brief as "the 95% limitation." Staff witness, Ms. Boustead, addressed in her cross-rebuttal testimony why the recommended adjustment should not be calculated using "the 95% limitation."[14] In summary, KCPL's Rider FAC tariff contains a 95%-5% sharing mechanism; this sharing mechanism is designed to incentivize KCPL to provide its customers with the least cost fuel and purchased power options.[15] Staff's proposed adjustment is recognition that KCPL failed to act prudently in the selling of RECs.[16] Therefore, if the 95% were to be applied, it would send the wrong signal to KCPL and

[11] *See, i.e.,* 20 CSR 4240-20.090(M) (previously 4 CSR 240-20.090(M)).
[12] Ex. 200, Boustead Rebuttal, p. 3 lines 19-20.
[13] Another small reason for the difference in recommended adjustment amounts is OPC's reduction for certain fees that OPC claims would have been incurred to sell the RECs. As stated in Staff's testimony, Staff's proposed adjustment is deemed to be net of any transfer or broker fees so no further reduction is needed. *See* Ex. 201, Boustead Cross-Rebuttal, p. 1 lines 19-22.
[14] Ex. 201, Boustead Cross-Rebuttal, p. 2 lines 1-12.
[15] *Id.*
[16] *Id.*

actually *reward* KCPL for its imprudence.[17] The FAC Rider tariff is neither designed nor intended to reduce a prudence adjustment amount by the sharing mechanism percentage.[18]

Issue (2) – Allocation of Auxiliary Power

While OPC's Brief on this issue goes into great detail to describe OPC's position, there are two items for the Commission to have front and center as it makes its decision on this issue – first, both OPC and the Company recognize that there is no perfect method regarding the allocation or assignment of costs.[19] Thus, there is room for improvement and the parties can discuss that improvement when they work out, as agreed, a methodology before GMO's next rate case.

Second, OPC makes no mention of one very important aspect of this issue – Stipulations and Agreements describing how the parties have agreed to proceed. The importance of respecting Stipulations and Agreements cannot be understated; after all, this Commission has stated:

> For public policy reasons, all sides have a vested interest in maintaining trust in the settlement process. Parties must be confident that when they enter into a settlement agreement, each party can be relied upon to comply with the terms included, and that the Commission will indeed enforce all conditions. Should trust in the settlement process falter, the ultimate victims

[17] *Id.*
[18] *Id.*
[19] Hrg. Tr. Vol. 1, 199:16-24:

Q. Okay. That's fair. Based on your years of experience around these allocation issues, wouldn't you agree that there can be different methods of allocating costs?
A. Yes.
Q. And do you agree that there's no perfect method for allocating costs between services?
A. There's some that are better than others. No perfect.

See Ex. 4, Nunn Surrebuttal, 3:14-16:

Q. Is any method of sharing costs without problems?
A. No allocation or direct assignment method is perfect, and there may be improvements that can be made.

will be the ratepayers who will be forced to pay for the resulting lengthy litigation.[20]

Here, OPC has misguidedly set aside the Stipulations and Agreements between the parties. The Commission should not be persuaded by this and should instead recognize the settlement and continue to foster trust in the settlement process.[21]

Issue (3) – Purchased Power Agreements ("PPAs")

OPC's Brief spends a great amount of time describing the myriad ways in which they are properly applying the legal standard employed by the Commission in determining imprudence, and not conducting a hindsight analysis. However, they do so without ever actually addressing whether, when taken as a whole, the Company's "conduct was reasonable at the time, under **all the circumstances**."[22]

OPC simply disregards the reasonableness standard embraced by the Commission in favor of disparaging the Company's decision to enter the PPAs with the gift of hindsight, akin to a Monday morning quarterback. Even then, OPC refuses to entertain the whole of the circumstances surrounding the Company at the time the Osborn and Rock Creek PPAs were entered into.

OPC fails to take into consideration that, if the Clean Power Plan were not to allow Kansas wind to be utilized to meet Missouri state implementation goals, the need to add significant Missouri wind resources would raise costs for the Company's Missouri customers.[23] OPC also stresses the failure of the Company in conducting any due

---

[20] *Midwest Energy Consumers Grp. v. Great Plains Energy, Inc.*, No. EC-2017-0107, 2017 WL 766082, at *12 (Feb. 22, 2017).
[21] *Id.*
[22] *State ex rel. Associated Natural Gas Co. v. Public Service Com'n State of Mo.*, 954 S.W.2d 520, 529 (Ct. App. W.D. 1997).
[23] Ex. 9.

diligence to locate cheaper wind inside Missouri;[24] however, when asked by the Company as to what cheaper alternatives existed at the time the Company executed the contracts with Osborn and Rock Creek, OPC was unable to identify even one project with a lower price.[25]

Staff is not saying that the Company's action were perfect in entering the Osborn and Rock Creek PPAs; both continue to create "a significant amount of additional costs compared to the revenue received."[26] However, because of the long-term, 20-year focus of these PPAs, Staff continues to stress that they must "be viewed on a long-term basis and not just from the results during this Review Period."[27] Staff will continue to review the prudency of the Osborn and Rock Creek PPAs in future prudence reviews, but Staff did not find any instances of imprudence as it relates to these wind contracts as a result of this prudence review.

WHEREFORE, for the reasons set forth herein and in Staff's initial brief, Staff prays that the Commission will issue an order finding in its favor on each issue in this case and granting such other and further relief as the Commission deems just in the circumstances.

[24] Ex. 100, Mantle Rebuttal, p. 34.
[25] Ex. 10.
[26] Ex. 200, Boustead Rebuttal, Schedule KJB-r2 pages 31 - 32 of 46 & pages 35 - 36 of 46.
[27] *Id*.

Respectfully submitted,

/s/ Jeffrey A. Keevil
Jeffrey A. Keevil
Deputy Counsel
Missouri Bar No. 33825
P. O. Box 360
Jefferson City, MO 65102
Phone: (573) 526-4887
Email: jeff.keevil@psc.mo.gov

/s/ Alexandra (Lexi) Klaus
Senior Counsel
Missouri Bar No. 67196
P. O. Box 360
Jefferson City, MO 65102
Phone: (573) 751-1854
Email: lexi.klaus@psc.mo.gov

/s/ Travis J. Pringle
Legal Counsel
Missouri Bar No. 71128
P. O. Box 360
Jefferson City, MO 65102
Phone: (573) 751-4140
Email: travis.pringle@psc.mo.gov

Attorneys for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record this 4th day of October, 2019.

/s/ Jeffrey A. Keevil