

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

In the Matter of the Application of Kansas City Power	)	
& Light Company for Approval of the Accrual and	)	
Funding of Wolf Creek Generating Station	)	File No. EO-2012-0068
Decommissioning Costs at Current Levels	)	

NON-UNANIMOUS STIPULATION AND AGREEMENT

Kansas City Power & Light Company (“KCP&L”) and the Staff of the Missouri Public Service Commission (“Staff”) (collectively, the “Parties,” and individually “Party”) hereby submit this Non-Unanimous Stipulation and Agreement (“Agreement”) to the Missouri Public Service Commission (“Commission”) in resolution of Case No. EO-2012-0068. The Office of the Public Counsel (“Public Counsel”) has advised the Parties that it will not oppose this Agreement.

INTRODUCTION

The Legislature provided, in Section 393.292 RSMo 2000,¹ that the Commission may authorize changes to the rates and charges of an electrical corporation as a result of a change in the level or annual accrual of funding necessary for its nuclear power plant decommissioning trust fund. This statute creates a narrow exception to the general requirement that the Commission must consider “all relevant factors,” prior to changing any rate charged by a utility under its jurisdiction. See *State ex. rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm’n.*, 585 S.W.2d 41 (Mo. banc 1979). Under Section 393.292, the Commission may limit its review in nuclear decommissioning trust fund cases to only those factors relevant to the

¹ All statutory references are to Revised Statutes of Missouri 2000, unless otherwise noted. Section 393.292 was enacted by the Missouri Legislature in Laws 1989 and has not been amended.

funding level or accrual rate of the trust fund when deciding matters related to the rates and charges associated with that fund. Further, Section 393.292 gives the Commission authority to adopt rules and regulations governing the procedures associated with these tariff changes as well as to ensure that the amounts contained in the trust funds will be neither “greater nor lesser than the amounts necessary to carry out the purposes of the trust.” In Case No. EX-90-110, the Commission adopted the original decommissioning rule, 4 CSR 240-20.070.

Rule 4 CSR 240-3.185(3) states, in part: “On or before September 1, 1990 and every three (3) years after that, utilities with decommissioning trust funds shall perform and file with the commission cost studies detailing the utilities’ latest cost estimates for decommissioning their nuclear generating unit(s) along with the funding levels necessary to defray these decommissioning costs.”

KCP&L established an external nuclear decommissioning trust fund as a result of its ownership interest in the Wolf Creek Generating Station (“Wolf Creek”) and the Commission’s Report and Order in the rate case authorizing KCP&L to commence recovery of the costs of Wolf Creek. Kansas City Power & Light Co., Case Nos. EO-85-185 and EO-85-224, 28 Mo.P.S.C. (N.S.) 228 (1986). KCP&L owns 47% of Wolf Creek and approximately 56% of KCP&L’s 47% ownership share is currently allocated to KCP&L’s Missouri retail operations.

On August 30, 2005, KCP&L filed an Application (Case No. EO-2006-0094) with the Commission for approval of its then-current decommissioning cost estimate and continuation of the then-current authorized funding level for its nuclear decommissioning trust fund for Wolf Creek. A Unanimous Stipulation and Agreement, settling all issues pertaining to Case No. EO-2006-0094 was filed on December 20, 2005. Among other things, said Unanimous Stipulation and Agreement maintained the annual decommissioning expense accrual and trust fund payment

at \$2,303,856 (Missouri jurisdictional amount). The parties to that agreement further agreed that KCP&L's authorized annual funding level would be addressed in the Company's Rate Filing #1, as contemplated pursuant to the terms of the Stipulation and Agreement approved by the Commission in Case No. EO-2005-0329 ("Regulatory Plan Agreement"). In Rate Filing #1 (Case No. ER-2006-0314), the Commission reduced KCP&L's authorized annual decommissioning expense accrual and trust fund payment to \$1,281,264 (Missouri jurisdictional amount). That reduction was primarily caused by recognizing the 20-year life extension of Wolf Creek.

On August 29, 2008, KCP&L filed an Application (Case No. EO-2009-0072) with the Commission for approval of its then-current decommissioning cost estimate and continuation of the then-current authorized funding level for its nuclear decommissioning trust fund for Wolf Creek. A Unanimous Stipulation and Agreement, settling all issues pertaining to Case No. EO-2009-0072 was filed on April 7, 2009. Among other things, said Unanimous Stipulation And Agreement maintained the annual decommissioning expense accrual and trust fund payment at \$1,281,264 (Missouri jurisdictional amount), with the understanding that any proposed change in the annual Wolf Creek decommissioning cost accrual would be addressed in the context of the then upcoming rate case (now known as File No. ER-2010-0355).

On June 4, 2010, KCP&L filed to generally increase its rates in File No. ER-2010-0355. As part of the overall rate increase request, KCP&L proposed to decrease the Missouri jurisdictional annual Wolf Creek decommissioning expense accrual and trust fund payment to \$1,158,417 from \$1,281,264.² In Staff's Cost of Service Report filed on November 10, 2010 in File No. ER-2010-0355 Staff recommended no change in the decommissioning expense accrual

² Gregg N. Clizer's June 4, 2010 Direct Testimony, p. 2, File No. ER-2010-0355.

and trust fund payment because Great Plains Energy, Inc. had recently reduced its return expectations for its pension plan assets. Ultimately the annual contribution amount remained at \$1,281,264 (Missouri jurisdictional amount) at the conclusion of the rate case.

THE 2011 COST STUDY

Pursuant to 4 CSR 240-3.185(3), on August 31, 2011, KCP&L filed its Application for Approval of the Accrual and Funding of Wolf Creek Decommissioning Costs at Current Levels (the “Application”). Attached to KCP&L’s Application is the required cost study detailing the latest estimate for the cost to decommission Wolf Creek (the “2011 Study”). The 2011 Study was prepared for the Wolf Creek Nuclear Operating Corporation by TLG Services, Inc. (“TLG”), a consulting engineering firm based in Bridgewater, Connecticut.³

In its Application, KCP&L requests the Commission: (i) find that the 2011 Study satisfies the requirements of 4 CSR 240-3.185(3); (ii) approve the 2011 decommissioning cost estimate of \$630.135 million; (iii) approve the continuation of the annual accrual at the current level of \$1,281,264 (Missouri jurisdictional amount); and (iv) find that the Wolf Creek decommissioning costs are included in KCP&L’s current cost of service and are properly reflected in current rates for ratemaking purposes.

In the 2011 Study, TLG examined two decommissioning options: (a) DECON,⁴ and (b) SAFSTOR.⁵ Both alternatives are acceptable to the Nuclear Regulatory Commission

³ Since 1982, TLG has provided engineering and field services for contaminated facilities including estimates of decommissioning costs for nuclear generating units. TLG also prepared the decommissioning cost estimate for Wolf Creek that was filed with and approved by the Commission in 2008.

⁴ DECON assumes decontaminating and decommissioning immediately following conclusion of power operations in 2045. Work is anticipated to be completed by 2053. DECON consists of removal of fuel assemblies, source material, radioactive fission and corrosion products, and other radioactive materials immediately after cessation of power operations. Total estimated cost to decommission in 2011 Dollars is \$630,135,000.

⁵ SAFSTOR places the facility in protective storage for deferred decontamination to levels that permit release for unrestricted use. Delayed decontamination and dismantling activities are initiated once spent fuel and source
(Footnote continued on the next page.)

(“NRC”). For the purposes of the 2011 Study, the final shutdown date of Wolf Creek is projected to occur in 2045.⁶ The calculations set forth in the 2011 Study were performed in a manner consistent with previous filings.

KCP&L analysis confirms the adequacy of the current annual funding level of \$1,281,264 (Missouri jurisdictional amount), given the current prediction of decommissioning costs from the 2011 Study of \$630.135 million. Based on this analysis, KCP&L has concluded that its current funding level should result in a final decommissioning trust amount which is sufficient to cover the costs estimated in the 2011 Study under what KCP&L believes are a reasonable set of economic, financial, and investment assumptions. Consequently, KCP&L does not seek any changes to its funding level, and asks the Commission to approve the current funding level amount. Because KCP&L is not proposing a change in the funding level, KCP&L has not filed new tariff sheets regarding its funding of decommissioning, is not requesting a hearing, and does not believe that a hearing is required respecting its decommissioning cost study filing.

STIPULATIONS AND AGREEMENTS

The parties to this case have reached certain understandings so that the Staff and KCP&L stipulate and agree as follows:

1. KCP&L’s Missouri retail jurisdictional operations annual decommissioning expense accrual and trust fund payment was initially set by the Commission at \$2,303,856, first in Case No. EO-91-84, Kansas City Power & Light Co., 1 Mo.P.S.C.3d 353 (1992), again in

material are removed, such that license termination is accomplished within the 60-year time period set by the NRC. This process is anticipated to be completed by 2106. Total estimated cost to decommission in 2011 Dollars is \$884,677,000.

⁶ If decommissioning financial assurance is provided by an external sinking fund, 10 CFR 50.75(e)(1)(ii) requires that “the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected.” Because KCP&L does not contemplate shutting down Wolf Creek prior to the end of its license life, the shutdown date used in the 2011 Study is 2045, the year in which Wolf Creek’s NRC Operating license expires.

Case No. EO-94-80, Kansas City Power & Light Co., 3 Mo.P.S.C.3d 60 (1994), again in Case No. EO-97-84, Kansas City Power & Light Co., 7 Mo.P.S.C.3d 124 (1998), again in Case No. EO-2000-210, Kansas City Power & Light Co., 8 Mo.P.S.C.3d 516 (2000), again in Case No. EO-2003-0081, and again in Case No. EO-2006-0094. As part of Rate Filing #1 of the KCPL Experimental Regulatory Plan the Commission approved in Case No. EO-2005-0329 (Case No. ER-2006-0314), KCP&L's Missouri retail jurisdictional authorized annual decommissioning expense accrual and trust fund payment was reduced to \$1,281,264. The authorized Missouri retail jurisdictional annual decommissioning expense accrual and trust fund payment has remained the same in each subsequent triennial decommissioning filing and rate case filed subsequent to Rate Filing # 1.⁷

2. On August 31, 2011, KCP&L filed its Application along with the 2011 Study. The Parties request that the Commission recognize in its Report and Order for this case that KCP&L's Application and the 2011 Cost Study meet the requirements of 4 CSR 240-3.185(3).

3. The 2011 Study estimates the decommissioning cost for the DECON alternative to be \$630,135,000 in 2011 dollars, which is 6.17% higher than the 2008 estimate of \$593,542,000, which represents approximately a 2.01% annualized escalation rate over the 3-year period.

4. The current annual contribution of \$1,281,264 (Missouri jurisdictional amount) to KCP&L's nuclear decommissioning trust fund is reasonable given the uncertainties in the numerous forecasted assumptions used to determine the contribution level. The forecasted assumptions include, but are not limited to, capital market expectations, projected decommissioning inflation rates and the costs to decommission Wolf Creek. Although the

⁷ Case/File Nos. ER-2007-0291, ER-2009-0089, EO-2009-0072 and ER-2010-0355.

Parties agree on the annual contribution level, they recognize the disparity between the expected capital market returns Great Plains Energy, Inc.'s pension plan consultants, currently Towers Watson, provided for purposes of Great Plains Energy, Inc.'s development of an assumed rate of return for its pension fund and the capital market returns KCP&L has used to estimate required annual contributions for its nuclear decommissioning trust fund.

5. The Parties agree that it is reasonable to use capital market return expectation information provided by Great Plains Energy's pension plan consultant for purposes of developing expected portfolio returns for KCP&L's nuclear decommissioning trust fund. The Parties agree that any proposed changes to the annual contribution to KCP&L's nuclear decommissioning trust fund shall be based on capital market return expectation information provided by Great Plains Energy's pension plan consultant, unless the Parties agree to use a different source and/or methodology for capital market return expectations or the Commission finds in a contested case that different source and/or methodology for capital market return expectation are more appropriate.

6. KCP&L shall continue its Missouri retail jurisdiction expense accruals and trust fund payments at current levels without any change in its Missouri retail jurisdictional rates, unless and until the Commission subsequently approves such a change.

7. Annual Missouri retail jurisdictional decommissioning costs in the amount of \$1,281,264 are, and should continue to be, included in KCP&L's cost of service and reflected in its current rates for ratemaking purposes. The Parties request that this finding be specifically recognized in the Commission's Report and Order and note that this finding is required in order for the decommissioning fund to retain its qualified tax status.

8. The Parties agree and acknowledge that this Agreement does not prevent any party from proposing changes to the annual contribution amount to the nuclear decommissioning trust fund in any subsequent rate proceeding, including the rate case recently filed in File No. ER-2012-0174.

9. The Parties agree that KCP&L shall continue to record and preserve Wolf Creek asset retirement obligation costs, as agreed to by the Staff, Public Counsel, and KCP&L, and authorized by the Commission, in Case No. EU-2004-0294.

10. Except as explicitly agreed otherwise herein, none of the Parties to this Agreement shall be deemed to have approved or acquiesced in any question of Commission authority, decommissioning methodology, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence that may underlie this Agreement or for which provision is made in this Agreement.

11. If the Commission does not unconditionally approve this Agreement without modification, and notwithstanding its provision that it shall become void thereon, neither this Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Party has to a hearing on the issues presented by the Agreement, regarding cross-examination or a decision in accordance with Section 536.080.1 RSMo or Art. V, Section 18 Mo. Const. The Parties shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any testimony or exhibits that may have been offered or received in support of or in opposition to this Agreement shall thereupon become privileged as reflecting the substantive

content of settlement discussions, and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

12. To assist the Commission in its review of this Agreement, the Parties also request that the Commission advise them of any additional information that the Commission may desire from the Parties related to the matters addressed in this Agreement, including any procedures for furnishing such information to the Commission.

13. If requested by the Commission, the Staff shall submit to the Commission a memorandum responsive to the Commission's request. Each Party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission within five (5) days of receipt of the Staff's memorandum, a responsive memorandum which shall also be served on all Parties. The contents of any memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Agreement, whether or not the Commission approves and adopts this Agreement.

14. The Staff also shall provide, at any agenda meeting at which this Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests. The Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosures, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

15. Because this is an Agreement with the sole purpose of addressing the authority requested by the Application of KCP&L, except as specified herein, the Parties to the Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (i) in

any future proceeding; (ii) in any proceeding currently pending under a separate docket; and/or (iii) in this proceeding, should the Commission decide not to approve the Agreement or in any way condition its approval of the same, except as stated herein. Because this is an Agreement for the purpose of settling matters in this case, it shall not be cited as precedent or referred to in testimony as an assertion of the particular position of any Party in any subsequent or pending judicial or administrative proceeding, except that this shall not be construed to prohibit reference to its existence in future proceedings, including proceedings to enforce compliance with its terms.

16. The 2011 Study shall be received into evidence.

17. Pursuant to Section 393.290 RSMo, the Parties agree that the Commission may review and authorize changes to KCP&L's Missouri retail jurisdictional rates and charges as a result in a change in the annual accrual of funding for the Missouri jurisdictional sub-account of the Wolf Creek decommissioning trust after a full hearing, including but not limited to any general rate increase case or excess earnings complaint case, and after considering all facts relevant to such accrual rate.

18. The provisions of this Agreement have resulted from numerous discussions/negotiations among the signatory Parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Agreement in total, it shall be void and no Party hereto shall be bound by, prejudiced, or in any way affected by any of the agreements or provisions hereof unless otherwise provided herein.

19. In the event the Commission accepts the specific terms of this Agreement, the signatories waive their respective rights: (i) to cross-examine witnesses pursuant to Section 536.070(2) RSMo; (ii) to present oral argument and written briefs pursuant to Section 536.080.1

RSMo; (iii) to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo; and (iv) to judicial review pursuant to Section 386.510 RSMo. This waiver applies only to a Commission Report and Order respecting this Agreement issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Agreement.

WHEREFORE, the signatories hereto request that the Commission issue an order:

1. Approving this Non-Unanimous Stipulation and Agreement;
2. Receiving into evidence this Non-Unanimous Stipulation and Agreement, and the 2011 Study;
3. Finding that KCP&L's 2011 Cost Study satisfies the requirements of 4 CSR 240-3.185(3);
4. Finding, pursuant to this Non-Unanimous Stipulation and Agreement, that KCP&L's Missouri retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$1,281,264;
5. Finding, in order for the decommissioning fund to retain its qualified tax status, that the current decommissioning costs for Wolf Creek are included in KCP&L's current Missouri cost of service and are reflected in its current Missouri retail rates for ratemaking purposes; and
6. Authorizing KCP&L to continue to record and preserve Wolf Creek asset retirement obligation costs, as agreed to by the Staff, Public Counsel and KCP&L, and authorized by the Commission, in Case No. EU-2004-0294.

Respectfully submitted,

/s/ Roger W. Steiner

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 16th day of April 2012.

/s/ Roger W. Steiner

Roger W. Steiner