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-2009-0089

STATEMENT OF POSITION OF KANSAS CITY POWER & LIGHT COMPANY

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Kansas City Power & Light Company ("KCP&L" or "Company") submits this Statement of Position in accord with the Commission's *Order Setting Procedural Schedules* issued November 20, 2009.

I. STATEMENT OF THE CASE

Fulfilling the commitments that it made in the Regulatory Plan approved by the Commission as part of the 2005 Stipulation and Agreement in Case No. EO-2005-0329 ("Stipulation"), KCP&L has embarked upon a series of infrastructure and customer enhancement projects valued at over $ 1.3 billion. In this third of four rate cases contemplated by the Stipulation, KCP&L seeks a decision that appropriately reflects the risks the Company has undertaken in this endeavor, grants necessary increases in revenue, and sets a rate of return that will permit KCP&L to remain financially healthy until it files its next rate case in the fall of 2009.

In the 2007 Rate Case (No. ER-2007-0274), the second filed under the Regulatory Plan, the Commission's Report and Order allowed KCP&L to proceed with its infrastructure plans, including the construction of Iatan 1 environmental facilities, including the Iatan 1 Selective Catalytic Reduction (SCR) facility, Flue Gas Desulphurization (FGD) unit and Baghouse

(collectively "Iatan 1 Rate Base Additions"). In this case, the Company will request inclusion in permanent rates of its investment in the Iatan 1 Rate Base Additions. This is the critical issue in this proceeding.

The task of the Commission in this case is to fashion a third rate order that correctly balances the risks with the benefits as they affect customers, shareholders and creditors. Two major factors that are unique to KCP&L among Missouri electric utilities continue to be important: (1) The Company's multi-million dollar construction projects, including the coal-fired Iatan 2 unit, additional new wind generation, and numerous environmental upgrades, which will require KCP&L to generate sufficient cash earnings to meet credit ratios; and (2) The risk and uncertainty of the OSS market which in recent years have accounted for a substantial amount of KCP&L's revenues.

These two factors continue to pose major risks to the Company. However, the Company believes that if the Commission continues the policies established in the 2007 Rate Case on these issues, a proper balance will again be struck that will permit KCP&L to achieve the goals embodied in the Regulatory Plan. In this case, the Company is requesting an ROE of 11.55%, based upon the rapidly changing financial markets. The Company also believes that the OSS Margins should again be established at the 25th percentile with a continuation of the OSS tracker mechanism, as determined in the 2006 and 2007 Rate Cases. Under that mechanism any margins in excess of the 25th percentile determined in this case will be credited to ratepayers through the establishment of a regulatory liability, lowering their energy bills in the next rate case.

An 11.55% ROE will generate the necessary cash earnings for the Company, independent of other mechanisms like the Additional Amortizations permitted by the Stipulation. The Additional Amortizations (which act like accelerated depreciation, and therefore, an eventual off-set to rate base) are intended to be used as a last resort to maintain KCP&L's credit ratios in

the event that its earnings, as determined in general rate cases like this one, fail to satisfy certain financial rations. See Stipulation, § III(B)(1)(i) at 19.

Proper consideration of these issues, and the use of the tools provided in the 2005 Stipulation will lead to a decision that sets just and reasonable rates for the next twelve months, and that balances the risks of construction and the market with the benefits to be gained from the Regulatory Plan.

II. STATEMENT OF POSITION ON ISSUES

A. Rate Base

1. Iatan 1 Selective Catalytic Reduction ("SCR") facility, Flue Gas Desulphurization ("FGD") unit and Baghouse (collectively "Iatan 1 Rate Base Additions"):

a. Should the Iatan 1 Rate Base Additions be included in rate base in this proceeding?

Yes. Based upon the competent and substantial evidence that will be submitted in this case, the Commission should include the prudently incurred Iatan 1 Rate Base Additions in rate base in this proceeding. This is the most critical issue to be resolved in this proceeding. Unless the Commission includes the Iatan 1 Rate Base Additions in permanent rates in this proceeding, KCP&L's financial health and ability to complete its Comprehensive Energy Plan will be jeopardized.

b. Should the Commission presume that the costs of the Iatan 1 Rate Base Additions were prudently incurred until a serious doubt has been raised as to the prudence of the investment by a party to this proceeding?

Yes. There is an initial presumption that a public utility's expenditures are prudent. However, when some other participant in the proceeding creates a "serious doubt" as to the prudence of an expenditure, then the public utility has the burden of dispelling these doubts and

proving the questioned expenditure to have been prudent. In re Union Electric Company, 27 Mo.P.S.C. (N.S.) 183, 193 (1985)("*Callaway I*"); In re Kansas City Power & Light Company, 28 Mo.P.S.C. 228, 279-82 (1986)("*Wolf Creek*"). The prudence standard adopted in the *Callaway I* and *Wolf Creek* cases has been recognized and approved by reviewing courts. See State ex. rel. Associated Natural Gas Co. v. PSC, 954 S.W.2d 520, 529 (Mo. App. W.D. 1999).

The Commission interpreted the prudence standard in In re Missouri-American Water Co., Report and Order, Case No. WR-2000-281 (Mo. P.S.C., Aug. 31, 2000) as follows:

> In the context of a rate case, the parties challenging the conduct, decision, transaction or expenditures of a utility have the initial burden of showing inefficiency or improvidence, thereby defeating the presumption of prudence accorded the utility. The utility then has the burden of showing that the challenged items were prudent. Prudence is measured by the standard of reasonable care requiring due diligence, based on the circumstances that existed at the time the challenged item occurred, including what the utility management knew or should have known. In making this analysis, the Commission is mindful that the company has a lawful right to manage its own affairs and conduct its business in any way it may choose, provided that in so doing it does not injuriously affect the public.

In Re Missouri Gas Energy, *Report & Order*, Case No. GR-2003-0330, pp. 16-17, the Commission recognized that the prudence standard as set forth in the *Callaway I* has been generally accepted by parties before the Commission:

> The Commission established its prudence standard in a 1985 case involving the costs incurred by Union Electric Company in constructing its Callaway nuclear plant. In determining how much of those costs were to be included in Union Electric's rate base, the Commission adopted a standard for determining the prudence of costs that had been established by the United States Court of Appeals, District of Columbia, in a 1981 case. The standard adopted by the Commission recognizes that a utility's costs are presumed to be prudently incurred, and that a utility need not demonstrate in its case-in-chief that all expenditures are prudent. "However, where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling those doubts and proving the questioned expenditures to have been prudent."

> The Commission, in the Union Electric case, further recognized that the prudence standard is not based on hindsight, but upon a reasonableness standard. The Commission cited with approval a statement of the New York Public Service Commission that:
>
> > . . . the company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.
>
> Since its adoption, the Commission's prudence standard has been recognized by reviewing courts and has been accepted by all parties as the standard to be applied in this case. (*footnotes omitted*)

Consistent with its past rulings in the *Callaway I* and *Wolf Creek* cases, and appellate decisions addressing the prudence standard, the Commission should presume that the costs of the Iatan 1 Rate Base Additions were prudently incurred until a serious doubt has been raised as to the prudence of the investment by another party to this proceeding

c. Has a serious doubt regarding the prudence of the Iatan 1 Rate Base Additions been raised by any party in this proceeding?

No. In this case, the Commission Staff has not completed a construction audit, and has not raised any specific allegations of imprudence related to the Iatan 1 Rate Base Additions. (Schallenberg Surrebuttal at 5; Featherstone Direct at 35; Featherstone Surrebuttal at 2-3). By suggesting that it might be appropriate for the Commission only to reflect in the Company's permanent rates the "definitive estimate", Staff witness Featherstone merely implies that the costs incurred over and above the "definitive estimate" may not have been prudently incurred. However, Staff has not made any specific allegations of imprudence and has not raised any serious doubt regarding these expenditures.

Similarly, while the witnesses for the Hospital Intervenors and DOE/NNSA discuss increasing costs on the Iatan 1 project, they do not make any specific allegations of imprudence, and

their pre-filed testimony does not create a "serious doubt". (Giles Rebuttal at 2). Specifically, Mr. Dittmer for the Hospital Intervenors and Mr. Kumar for DOE/NNSA imply that KCP&L has not prudently managed the Iatan 1 project based on observations that the actual costs are higher than the initial estimate and because of the cumulative rate increases that KCP&L has received are greater than what the Company indicated would be the rate impact of the CEP projects. (Dittmer Direct at 7-14; Kumar Rebuttal at 43-45; Kumar Surrebuttal at 1-13) However, mere speculation does not create serious doubt and does not overcome the legal presumption of prudence. *See* Report and Order, *Re AmerenUE*, Case No. ER-2007-002 at 69, as affirmed in State ex rel. Public Counsel v. PSC, 2009 WL 68124 (Mo. App. W.D., Jan.13, 2009).

d. Should the Company's conduct be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the Company had to solve its problem prospectively rather than in reliance on hindsight? ("prudence standard")

Yes. As the Commission recognized in the *Callaway I*, *Wolf Creek*, and *MGE* decisions discussed above, the public utility's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. "In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company." *Callaway I* at 193.

In a recent AmerenUE rate case (Case No. ER-2007-0002), the Commission determined that Public Counsel did not meet its burden when it challenged the cost of a combustion turbine generator (CTG). Public Counsel in the AmerenUE rate case did not complete a construction audit. Instead the Public Counsel's economist argued that the cost in rate base should be reduced, based in part on generic cost information from 1995 and the fact that Ameren UE

delayed construction due to the promise of restructuring legislation. The Commission found that an economist's speculation about political motivations and plant costs did not create a serious doubt as to the prudence of Ameren UE's expenditures on the CTG. *See* Report and Order, *Re AmerenUE*, Case No. ER-2007-002 at 69. The Commission's decision was recently upheld by the Missouri Court of Appeals. State ex rel. Public Counsel v. PSC, 2009 WL 68124 (Mo. App. W.D., Jan.13, 2009).

e. Has KCP&L demonstrated that it properly managed this complex project and properly managed matters within its control?

Yes. In this proceeding, KCP&L does not believe that any party has raised a "serious doubt" about the prudence of these expenditures. However, KCP&L will present eight witnesses in this proceeding who will address at length the issues related to the Iatan 1 construction project, the legal standards that should be used to judge prudence issues, the extensive cost controls and management processes that were in place to control construction costs, the reasons for a review and re-forecast of the costs, and a host of other issues related to the management of this project.

The following KCP&L witnesses will address these important subjects at length in their testimony:

1. Chris Giles, KCP&L's Vice President for Regulatory Affairs, will address the Staff's "interim rates, subject to refund" recommendation, discuss the Regulatory Plan requirements, explain the extensive information that has been provided to the Staff and other Signatory Parties to the Regulatory Plan case, and explain how the Company kept the Staff and Signatory Parties updated on significant developments related to the Iatan 1 plant. He will also discuss the current Control Budget Estimate, the Project Cost Reforecast that occurred in late 2007 and mid-2008, and

how the Company's team identified and controlled the risks associated with this project. (Giles Rebuttal at 2-46)

2. William H. Downey, KCP&L's President, will: (i) identify the actions KCP&L's senior management took to plan and oversee the Company's Comprehensive Energy Plan Projects including the Iatan Project; (ii) identify the measures KCP&L's executive management took to facilitate management of the ALSTOM contract; (iii) identify KCP&L's decision-making process regarding the contracting strategy employed for the Iatan Project, including but not limited to the Balance of Plant work; and (iv) identify the methods KCP&L employed to manage the Owner's Engineer on the Iatan Project. (Downey Rebuttal at 2-34)

3. Dr. Kris Nielson, President and Chairman of the Pegasus-Global Holdings, a management consulting firm that performed an independent and objective evaluation of the effectiveness of KCP&L management regarding the Iatan 1 project, testifies regarding the prudence of the decisions made by the Project Leadership Team. Dr. Nielson explains the standards that were employed in his analysis of the KCP&L management of the Iatan 1 project, and the "prudence standard" used by regulatory agencies. After an extensive review, Pegasus-Global concluded that KCP&L's management showed a good understanding of the initial conditions and circumstance and the management effort required in regards to Iatan 1, made appropriate adjustments to the decisions as the project unfolded, and found KCP&L's management to be prudent and reasonable. (Nielson Rebuttal at 1-49)

4. Kenneth M. Roberts is an equity partner with the law firm, Schiff Hardin, LLP that specializes in construction law issues. KCP&L engaged Schiff Hardin: (i) to help the Company develop project control procedures to monitor the costs and schedule

for Iatan 1 and other Comprehensive Energy Plan ("CEP") projects; (ii) monitor the CEP's progress and costs, including the review and management of change order requests; (iii) to negotiate contracts with vendors; and (iv) to resolve disputes with vendors that might arise. He describes KCP&L's Project Controls, and concludes that the Project Controls worked quite well to monitor and manage the costs and schedule challenges imposed by a particularly challenging market environment. He also concludes that the costs of Iatan 1 would have been significantly higher if KCP&L had implemented less robust Project Controls or failed to implement and monitor the Project Controls as well as it has. (Roberts Direct at 3-8; Roberts Rebuttal at 1-24)

5. Daniel F. Meyer, a construction project consultant with the firm of Meyer Construction Consulting, has more than 40 years of construction experience. He discusses (i) the development of KCP&L's Control Budget for Iatan 1; (ii) the cost reforecast process generally and KCP&L's 2008 cost reforecast; (iii) KCP&L's external reporting and project controls systems and their effect on the project; and (iv) the balance of plant contracting method employed on the Iatan Project. (Meyer Rebuttal at 2-35)

6. Carl Churchman, KCP&L's Vice-President of Construction, describes the Air Quality Control System added to the Iatan 1 plant. He also discusses the Alstom Settlement Agreement, and the impact of the economizer casing on the unit 1 outage. He explains what steps KCP&L's management has taken to ensure that the costs incurred are reasonable and prudent. In particular, his testimony discusses: (i) the effectiveness of the settlement of certain dispute with ALSTOM related to ALSTOM's work on the Iatan 1 fall 20008 outage; and (ii) the impact of the latent

defect discovered in the Unit 1 economizer casing on the Unit 1 outage. (Churchman Direct at 2-5; Churchman Rebuttal at 2-8)

7. Brent Davis, the Iatan Unit 1 Project Director, provides an overview of the Iatan 1 air quality control systems, the in-service criteria for the project; explains how the anticipated costs to complete the projects compares to the initial control budget estimate, and identifies the portion of the Iatan 1/ Iatan 2 common facilities that should be included in rates in this case because they are necessary for the operation of Iatan 1. In addition, he explains what steps KCP&L's management have taken to ensure that the costs incurred are reasonable and prudent. In particular, his rebuttal testimony (i) describes the changes to the schedule for the fall 2008 outage at the Iatan Unit 1 and the reasons for those changes; (ii) describes the latent conditon with the existing Iatan Unit 1 economizer casing that was discovered during the unit 1 Outage and its resulting impact; and (iii) describes the issues with the Iatan Unit 1 turbine generator that have impacted Iatan Unit 1's return to service. (Davis Direct at 2-14; Davis Rebuttal at 1-24)

8. Steve Jones, a Senior Procurement Director of KCP&L, discusses (i) the process and procedures that he helped to develop to ensure timely procurement of major equipment and contractor services and resolve contractor claims, (ii) the Kiewitt Balance of plant Contract, and (iii) the ALSTOM Settlement related to the economizer delay. In addition, he explains how KCP&L derived the costs of the Common Plant Facilities. (Jones Rebuttal at 2-26)

KCP&L believes that the evidence will show that KCP&L has prudently managed the construction associated with the Iatan 1 Rate Base Additions. Based upon this competent and substantial evidence, the Commission should find that the KCP&L has demonstrated that it

properly managed this complex project and properly managed matters within its control.

f. Should the costs of the Iatan 1 Rate Base Additions that exceed KCP&L's "definitive estimate" be included in rate base on an interim subject to refund basis?

No. KCP&L contends that the Commission has an affirmative obligation to address the prudence of the Companies' investment at Iatan 1 in this case because Missouri law requires that "all relevant factors" be considered in a rate case.[1] The air quality control system ("AQCS") equipment that has been added to Iatan 1 is the principal plant addition in these cases. There can be no doubt that reflection of those costs in the Companies' rates is a "relevant factor."

In addition, KCP&L believes it has independent rights under its Regulatory Plan, which the Commission approved in Case No. EO-2005-0329, to have all issues concerning the prudence of its Iatan 1 investments resolved in this case. As noted by the Commission in its August 7, 2005 Order approving the Regulatory Plan (EO-2005-0329), "[t]he Stipulation does not limit any Signatory Party's ability to challenge KCP&L <u>when it proposes to recover its costs in future rate cases</u>. (Report and Order p.37, emphasis added). Thus, the Commission recognized that the Signatory Parties' ability to challenge the prudence of construction projects occurs when KCP&L proposes to recover the cost of its Iatan 1 investment. KCP&L, consistent with the Stipulation, proposes to recover the cost of that investment in pending Case No. ER-2009-0089, which is described as "Rate Filing # 3 (2008 Rate Case)" in the Regulatory Plan.

A Definitive Estimate is generally recognized in the industry as an estimate that is based upon a design that has progressed to the point that there is little or no ambiguity in that design.

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1 *See*, *UCCM*, at 56-57; *State ex rel. Missouri Public Serv. Comm'n v. Fraas*, 627 S.W.2d 882, 886 (Mo. App. 1982); *State ex rel. Valley Sewage Co. v. Public Serv. Comm'n*, 515 S.W.2d 845, 850 (Mo. App. 1974). *See also Section* 393.270(4).

Mr. Meyer explains in detail what a Definitive Estimate is typically based upon. (Meyer Rebuttal at 9-11)

An "indicative estimate" as this term was used by KCP&L, was intended to be a very rough cost projection used for budget and planning purposes when a project is in the early stages of concept development. Within the industry, developing an indicative estimate is a necessary first step in the development of a reliable control estimate. KCP&L was developing an "indicative estimate" during the first and second quarters of 2006. This indicative estimate is classified by industry standards as a Class 4 estimate which is based on limited information and subsequently have fairly wide accuracy ranges. (Meyer Rebuttal at 5-6) Staff's "definitive estimate" is in reality a "indicative estimate" which has an accuracy level of between -30% to +50%. It should not be used for cost comparison purposes in this proceeding.

On April 25, 2008, the KCP&L project team presented its breakdown of the reforecasted budget to the Executive Oversight Committee ("EOC") and to KCP&L's Chairman. After the reforecast process was completed, the total reforecasted amount for Iatan 1 was approximately $484 million, excluding AFUDC. This number represents the entire construction cost, without regard to KCP&L's ownership percentage or jurisdiction. In the opinion of Mr. Meyer, this was a Class 1 estimate, and should be more properly considered to be the "Definitive Estimate" as that term is used and understood in the industry, and should be within a range of -10% to +15%.

As explained by the various KCP&L witnesses, the main changes between the original Control Budget Estimate and the reforecasted Control Budget Estimate were due to (1) design maturation; (2) pricing changes; and (3) plant optimization. (Meyer Rebuttal at 21-22)

Based upon the Control Budget Estimate of $484 Million, as reforecast in May of 2008, KCP&L believes that Iatan 1 will be within budget at the conclusion of the Iatan 1 Project.

g. Does the Commission have the authority to designate a portion of the rates "interim rates, subject to refund" if the Company has not voluntarily agreed to do so?

No. An interim rate increase may be requested by a utility where an emergency need exists. See Section 393.150 RSMo.; State ex rel. Utility Consumers Council of Missouri Inc. v. PSC, 585 S.W.2d 41, 47 (1979)("UCCM"); State ex rel. Laclede Gas Co. v. Public Serv. Comm'n, 535 S.W.2d 561 568 (Mo. App. 1976). KCP&L believes that Staff witness Featherstone's recommendation (Featherstone Direct at 34) that the Commission should to order that a portion of the Company's rates be designated "interim subject to refund" is unprecedented, unreasonable and unlawful.

Staff's recommendation is contrary to Missouri law in that KCP&L did not request interim rates and no showing of emergency need has been made by Staff or any other party. *Laclede* at 568 (Mo. App. 1976) Moreover, the Commission has indicated that its discretionary authority to grant interim relief is based upon its finding that there is a threat to safe and adequate service or the financial integrity of the utility.[2] In Case No. ER-81-42, *In re Kansas City Power & Light Co.* (Mo. P.S.C., 1980), the Commission interpreted the *Laclede* case and determined that the appropriate method for filing a request for interim rate relief is the filing of interim tariffs, as a separate case, under the "file and suspend" method. The Commission noted that an interim rate proceeding under any other method would be of "very doubtful effectiveness" and rejected KCP&L's interim rate relief request because it did not make a proper tariff filing, *i.e.*, the interim tariffs at issue had no effective date and were not filed under a separate docket number separate from the permanent rate case. The Commission also held that properly filed interim tariffs should be accompanied by affidavits or suggestions setting forth the changed

[2] *See* Case No. WR-92-881, *In re Raytown Water Co.* (Mo. P.S.C., 1991).

circumstances or conditions which the public utility alleges justify the interim rates.

KCP&L questions whether it is lawful for the Commission to impose interim rates subject to refund under any circumstance without the agreement of the public utility, but it is undoubtedly unlawful to do so under these circumstances. The Commission concluded in its 1993 decision to adopt an alternative regulation plan for Southwestern Bell Telephone Company that included customer credits if specified earnings thresholds were exceeded, that the Commission did not have the authority to order credits without the agreement of the company. ("The Commission could not order the credits, but it believes that SWB may agree to make the credits as part of its acceptance of an alternative regulation plan..." Report & Order, Staff v. Southwestern Bell Telephone Co., Case No. TC-93-224 & TO-93-192, 2 Mo.P.S.C.3d 479, 585 (December 17, 1993). Similarly, the commodity rates for natural gas are routinely made "interim subject to refund", but only after the natural gas companies have voluntarily filed PGA/ACA tariffs under which the public utilities have agreed to make their PGA rates "interim and subject to refund" pending an ACA audit.

Any refund ordered in a subsequent rate case would require a finding that the rates resulting from KCP&L's currently pending rate case were not "just and reasonable". Such a finding and refund order is the very definition of retroactive ratemaking. Under Missouri law, the Commission may consider past excess recovery insofar as it is relevant to the Commission's determination of what rate is necessary to provide a just and reasonable return in the future and avoid any further excess recovery.[3] However, the Commission cannot re-determine rates already

[3] *See, State ex rel. General Tel. Co. v. Public Serv. Comm'n*, 537 S.W.2d 655 (Mo. App 1976).

established and paid without depriving the utility of its property without due process.[4]

Chris Giles explains the extensive amount of data and information regarding the Iatan 1 project that has been already been provided to Staff, making Staff's recommendation unnecessary. (Giles Rebuttal at 10-18) Michael Cline also discusses the adverse economic and financial implications of Staff's proposal to defer review of the Iatan 1 project to a future case. The adoption of the Staff's "interim subject to refund" alternative would significantly increase investor uncertainty, potentially compromise KCP&L's and Great Plains Energy's ability to raise needed capital, and in so doing, jeopardize the Company's credit rating. (Cline Rebuttal at 12-14)

h. Should the Commission adopt the in-service criteria proposed by KCP&L and Staff for the Iatan 1 Rate Base Additions?

Yes. As part of the Regulatory Plan Stipulation, KCP&L, Staff and OPC agreed to develop in-service criteria for the AQCS equipment to be installed on KCP&L's existing coal-fired generating units. In 2007, KCP&L installed an SCR on its LaCygne Generating Station ("LaCygne 1"). The LaCygne 1 SCR satisfied that criterion and was included in KCP&L rates as part of its 2007 rate case (Case No. ER-2007-0291). In this case, KCP&L and Staff in consultation with OPC have reached an agreement concerning the in-service criteria for the Iatan 1 AQCS equipment. Company witness Brent Davis discusses at length the appropriateness of the in-service criteria proposed by KCP&L and Staff for the Iatan 1 Rate Base Additions. (Davis Direct at 7-8, Schedule BCD-2; Davis Surrebuttal at 2-4)(*See also* Giles Rebuttal at 46-47)

[4] *See, UCCM* at 58. *See also Lightfoot v. City of Springfield*, 236 S.W.2d 348, 353 (Mo. 1951).

Based on the in-service criteria, the Company has to complete construction to a level that permits the operation of the equipment, successfully complete preoperational tests and achieve the emissions standards and monitoring outlined in the in-service criteria document attached to Davis Direct, Schedule BCD-2. Upon completion of successful testing, the equipment will be "fully operational and used for service" and meet the requirements of Section 393.135 RSMo.

The Regulatory Plan Stipulation provides for a true-up period. Among the items to be trued up is plant in service. The costs associated with the Iatan 1 SCR, Scrubber and Baghouse comprise the plant in service that is expected to go into service that will be considered in the True-Up proceeding. (Davis Direct at 7-8)

Contrary to the assertions of DOE/NNSA witness Jatinder Kumar, it is not appropriate to utilize the contract requirements in the ALSTOM contract regarding performance guarantees and the definition of final acceptance as the in-service criteria in this case. As explained in more detail in KCP&L witness Kenneth Roberts' Surrebuttal Testimony, the performance standards in the ALSTOM contract are more stringent than the air permit requirements. (Roberts Surrebuttal at 1-4). It is more important to both the Company and its customers to include contractual requirements that exceed the permit requirements for the project to create a margin of error or level of certainty that even if the equipment does not perform to the levels set forth in the performance guarantees, the emission levels of the permit are still achieved. The Company needs to have the flexibility with respect to determining the appropriate operational capacity of the Plant, which may include providing a longer period of time for the contractor to meet certain performance guarantees contained with the contract. Additionally, the Company needs flexibility to allow a lesser but still acceptable level of performance and then to seek contract damages from the contractor in the event that the original contract requirements are not met including performance guarantees. It is also necessary to provide the Company the necessary time to resolve commercial disputes that do not

effect the operation of the plant and may take a significant period of time to resolve before final acceptance may be achieved.

It would be unrealistic for the Company to utilize the final acceptance date as a requirement of the in-service criteria because of the duration of time necessary to achieve this milestone may extend well beyond the operation of the plant at or beyond the air permit requirements. Once the plant meets the permit requirements and the customers could receive the benefit of the new operating equipment, then the Company should be entitled to include these costs in rate base. (Roberts Surrebuttal at 3-4).

i. Have the Iatan Rate Base Additions met the in-service criteria (True-Up issue)?

KCP&L believes that the Iatan 1 Rate Base Additions will meet the in-service criteria agreed to between KCP&L, Staff, and in consultation with Public Counsel, by the end of April, 2009. The completion of the in-service criteria is expected to be confirmed by Company and Staff experts during the True-Up Proceeding.

2. Iatan Common Costs:

a. Should a portion of the Iatan Project Common Costs be included in rate base in this proceeding?

Yes. There will be a portion of the true-up proceeding that will involve a substantial investment in the Common Plant associated with both Iatan 1 and Iatan 2. The Common Plant will include: (1) facilities or structures that will be shared by both Units, including the chimney; (2) facilities that will provide operational redundancy, including portions of the reagent preparation building utilized for preparation of limestone slurry for Iatan 1 operations and start-up, though ultimately utilized to process the slurry produced by both Iatan units; (3) facilities or structures

consisting of a structure that will ultimately house equipment used for both Iatan units, including the recycle pump building. A more specific list of the Common facilities is contained in the Rebuttal Testimony of Steven Jones at 20-23. These facilities are needed for the operation of Iatan 1 and will be needed for the eventual operation of Iatan 2.

b. If so, what is the appropriate amount of Iatan Project Common Costs to be included in rate base in this proceeding?

KCP&L witness Steven Jones describes the process that KCP&L used to create its estimate value of the Common Facilities. (Jones Rebuttal at 23-25) Approximately $383 million excluding AFUDC and allocation to partners and Missouri jurisdiction is the estimate cost of the Common Facilities. (Jones Rebuttal at 25; Schedule SJ-5 (HC)). The total cost of these facilities will be addressed in the True-Up Proceeding.

c. Should a regulatory asset be established to defer carrying cost and depreciation expense associated with the Iatan 1 AQCS and identified Iatan common facilities costs appropriately recorded to Electric Plant in Service that are not included in rate base in the current rate case?

Yes. A regulatory asset be established to defer carrying cost and depreciation expense associated with the Iatan 1 AQCS and identified Iatan common facilities costs appropriately recorded to Electric Plant in Service that are not included in rate base in the current rate case. KCP&L witness John Weisensee will address this issue.

3. Surface Transportation Board Litigation:

a. What is the appropriate assignment of reparations between Missouri and Kansas retail customers and the City of Independence?

Because the City of Independence paid a portion of the litigation costs associated with this litigation, it should receive a proportionate share of the reparations that were received from the litigation. (Weisensee Rebuttal at 4-8)

b. Should the amount of Missouri jurisdictional unrecovered costs be adjusted for the amount related to the return included in the revenue requirements in the 2007 KCP&L Rate Case?

No. In the 2007 KCP&L Rate Case the Company was allowed to earn a return on its unrecovered STB Litigation Costs. Staff proposes in the current case that this return be reflected as a reduction in the unrecovered litigation costs; thereby effectively resulting in a reversal of the return allowed in the prior case. This approach is not only inconsistent but also retroactive ratemaking. (Weisensee Rebuttal at 4-8)

4. Materials & Supplies:

a. Should the rate base amount be based on a thirteen-month average or the most current balance?

(This is no longer an issue between the parties.)

5. Injuries & Damages:

a. Should Injuries & Damages be a component of Cash Working Capital?

b. If so, what are the appropriate lag days?

No. Staff utilizes a three-year average of actual cash payments for determining injuries and damages (I&D) expenses. Therefore, since normalized (I&D) expense is based on actual claims paid, customers will be reimbursing the Company for its I&D claims only after the Company has paid the claims and I&D should not a part of Cash Working Capital. (Weisensee Rebuttal at 1-3)

6. Demand-Side Management:

a. Should the return on DSM unamortized costs be based on the overall rate of return or an AFUDC rate?

The overall rate of return should be utilized, consistent with the approach utilized and not objected to by Staff in KCP&L's prior two rate cases.

b. Should the Commission require KCP&L to use a net incremental reduction in annual energy usage of at least 1% resulting from the on going implementation of demand side programs over a twenty year planning horizon as a target for KCP&L's program to meet? Should the net incremental reduction incorporated free-ridership and spill over factors?

No. Targets are already established as a part of KCP&L's IRP. The case at hand needs to focus on current programs. Future program changes should not be considered as a part of this case. The recommendations of MDNR on this issue should not be adopted by the Commission. (Dennis Rebuttal at 2)

c. Should KCP&L add its proposed Supplemental Weatherization and Minor Home Repair Program to the Affordability, Energy Efficiency and Demand Response programs established by KCP&L's Regulatory Plan?

Public Counsel witness Kind indicates that he does not believe that the Weatherization/Repair Program has been discussed at the KCP&L Customer Program Advisory Group (CPAG). KCP&L believes that he is correct.

KCP&L will work with its stakeholders, including Public Counsel, to develop the tariff and supporting information in preparation of a future Weatherization/Repair Program tariff filing. (Dennis Rebuttal at 5)

d. Should KCP&L add its Economic Relief Pilot Program to its demand side management programs?

KCP&L is generally supportive of Staff's recommendations related to the implementation of the ERP[2] (Dennis Surrebuttal at 2)

e. Should the weatherization program be modified so that KCPL's Call Center will refer customers to the program?

No. KCP&L's Call Center does not have the capability to verify income eligibility required under the tariff (at or below 185% of the current year Federal Povery Level or 60% of the state median income). (Dennis Rebuttal at 2)

f. Should LIHEAP recipients be directed to the weatherization program and required to participate in it?

The KCP&L Call Center can inform customers of the Low-Income Weatherization program. KCP&L cannot verify income eligibility, determine minimum energy consumption, or establish length-of-service requirements in an effort to only refer pre-approved customers to the City or appropriate social agencies. (Dennis Rebuttal at 2)

7. Gross Receipts Taxes:

a. Are the 6% gross receipts taxes paid to the City of Kansas City and the gross receipts taxes paid to other Missouri cities excluding Grain Valley prepayments that should be included in the Prepayments component or payments in arrears that should be included in cash working capital?

b. If the payments are considered paid in arrears what is the proper lag days for purposes of calculating cash working capital?

c. What is the proper lag days for the 4% gross receipts taxes paid to the City of Kansas City?

The 6% gross receipts taxes paid by the Company to the City of Kansas City and gross receipts taxes paid to other cities excluding Grain Valley are prepayments because they are payments to the taxing authorities in accordance with city ordinances for a license to do business in subsequent months, and accordingly should be included in the prepayments component of rate base. The proper

CWC lag for the 4% gross receipts tax paid to the City of Kansas City and the tax paid to Grain Valley is approximately 19 days. (Weisensee Rebuttal at 16-17)

B. COST OF CAPITAL

1. Return on Common Equity: What return on common equity should be used for determining KCP&L's rate of return?

The Company's outside expert witness, Dr. Samuel C. Hadaway, recommends that the Commission set the return on equity (ROE) at 11.55%. He presented this revised ROE recommendation in his March 11, 2009 Rebuttal Testimony, having previously recommended in his September 5, 2008 Direct Testimony that the ROE be set at 10.75%, the same rate that the Commission set in 2007. However, the current economic crisis has clearly made last fall's recommendation not reasonable.

In the past few months corporate borrowing costs have increased dramatically. The current borrowing costs for Triple-B companies like KCP&L are more than 100 basis points higher than they were in 2007 when the Company's last rate case was presented. Corporate lenders now require higher, not lower, rates. Corporate interest rate "spreads" (the difference between corporate borrowing costs and rates on U.S. Treasury bonds) remain almost three times as large as they were before the credit crisis began. See Hadaway Rebuttal at 3-4. Similarly, there has been a dramatic increase in the spread between public utility bond yields and long-term Treasury yields, illustrating the significantly higher borrowing costs for corporations. Id. at 5-7. Specific examples of the increases in KCP&L's cost of debt are set forth in the Rebuttal Testimony of Michael W. Cline, the Treasurer of KCP&L's owner Great Plains Energy Inc. (GPE) at page 3.

Consequently, there is no question that the economic and financial uncertainties generated by the credit crisis have significantly increased the risk premiums contained in public utilities' cost of capital. Dr. Hadaway's mid-point ROE recommendation of 11.55% (based on a Discounted Cash Flow range of 11.2% to 11.9%) is confirmed by his Risk Premium Analysis. Based on projected Triple-B utility interest rates for 2009, the Risk Premium Analysis indicates an ROE of 11.14%. An analysis of the most recent three month's average Triple-B rates leads to a risk premium ROE of 11.56%. Consequently, Dr. Hadaway's ROE opinion of 11.55% is the only reasonable recommendation before the Commission.

The other recommendations provided to the Commission are those of Staff's David Murray (9.75%, based on a range of 9.25% to 10.25%) and OPC's Michael Gorman (10.3%). They fail to reflect the current economic crisis and the effect that it has had on the financial and credit markets. Acceptance of either of their recommendations would severely and negatively affect the ability of KCP&L to finance its operations as it continues with the Comprehensive Energy Plan approved by the Commission in 2005 and its massive infrastructure projects related to wind generation, clean air environmental retrofits, and a new super critical advanced coal plant, Iatan 2.

2. Capital Structure: What capital structure should be used for determining KCP&L's rate of return?

The Company recommends the following capital structure, based upon the actual GPE capital structure as of September 30, 2008, to be trued-up as of April 30, 2009:

KCP&L Proposed Capital Structure:

Debt	48.39%
Preferred Stock	0.75%
Common Equity	50.86%

Total	100.00%

See S. Hadaway Rebuttal at 22; M. Cline Rebuttal at 5.

C. EXPENSES

1. Off-System Sales Margins:

a. Should KCP&L's rates continue to be set at the 25th percentile of non-firm off-system sales margin as projected in this case for 2009 as proposed by KCP&L, and accepted by the Staff, or at the level as proposed by Public Counsel?

Based upon the off-system sales (OSS) margin probability analysis conducted by Michael Schnitzer of the NorthBridge Group, the Commission should continue to set rates for such margins at the 25th percentile level. This would be consistent with the Commission's decisions in the past two rate cases. To the extent that KCP&L makes sales in excess of that 25% level, those margins will be credited to ratepayers, with interest, as the Commission ordered in the 2007 Rate Case.

The Commission should adhere to these decisions in light of the risks facing the Company from the volatile markets in which it sells energy and capacity not needed to serve native load. Prices in the marketplace have continued to decline in the past two years with a particularly dramatic drop in the price of natural gas. See M. Schnitzer Rebuttal at 6 & Sched. MMS-11 (Henry Hub prices declined from $11.75 in July 2008 to $5.52 in late February 2009).

The Staff has accepted Mr. Schnitzer's projection of OSS margins at the 25th percentile. See V.W. Harris Rebuttal at 3. The contrary recommendation by OPC, which is approximately $15 million higher than both recommendations by the Company and Staff, should be rejected. See Meisenheimer Rebuttal at 6. The OPC's request should be denied as it is based upon historical information which fails to reflect the forward-looking analysis of the NorthBridge

Group presented by the Company and which has been accepted by the Commission over the past three years.

Finally, the suggested changes in methodology proposed by Staff's Dr. Michael Proctor in his Rebuttal and Surrebuttal Testimony should not be adopted. Dr. Proctor's issues are either of a minor nature or are based on historical prices in a falling market which clearly overstate the probability that KCP&L will achieve the margin sales levels that Dr. Proctor proposed to establish as a new floor. See Schnitzer Surrebuttal at 1-3.

b. Should the two adjustments to Mr. Schnitzer's 25th percentile projection as recommended by Company witness B. Crawford (purchases for resale and SPP line loss charges) be included as components of the Off-System sales margins ordered in this case?

Yes. Purchases for Resale are wholesale sales from purchased power; they are not from wholesale sales supplied by KCP&L generation. The total revenue from these transactions (revenue less cost) is typically negative and is not reflected in the OSS margin analysis performed by Mr. Schnitzer. Without making an adjustment for such Purchases for Resale, the revenue and costs associated with such transactions would not be recognized for recovery.

The Company's proposal for Purchases for Resale is consistent with the 2005 Regulatory Plan Stipulation because KCP&L factors in all projected off-system sales transactions in the OSS margins included in its rate case filings. It has agreed to include all such transactions in determining the Company's actual OSS margins and any associated regulatory liability related to such margin at the time of the true-up in this proceeding. See B. Crawford Surrebuttal at 3-5. Any margins over the 25th percentile will be returned to retail customers. See B. Crawford Direct at 10-12.

Regarding SSP Line Loss charges, because they are an expense item related to OSS transactions, they should be accounted for. The model used by Mr. Schnitzer assumes that sales

are made at the generator bus, therefore, the SPP Line Loss charges are not included. As a result, it is appropriate for this adjustment to be made. See B. Crawford Direct at 14-15. Such treatment of SPP Line Losses is in accord with the Regulatory Plan Stipulation because they, too, will be part of all off-system sales transactions that are factored into the OSS margins of the Company. Without this adjustment, KCP&L would not be able to recover costs imposed by the Southwest Power Pool as part of its FERC-Approved tariff. Id. at 5-7.

c. Should non-asset-based off-system sales (also referred to as "Q Sales") be treated as a below-the-line item, or should these Q Sales be included in the revenue requirement in this case?

Q Sales are not off-system sales and are not subject to the 2005 Regulatory Plan Stipulation's requirements concerning off-system sales. See 2005 Stipulation at III(B)(1)(j) at 22. Therefore, they should not be included in the revenue requirement in this case as part of KCP&L's off-system sales margins. Q Sales are properly treated as a "below-the-line" item.

The 2005 Stipulation calls for off-system sales margins to be flowed through to customers because the assets generating those sales are in rate case. Q Sales are not generated by the Company's rate-base assets. Rather, they are transactions that originate in non-Company systems, where KCP&L only serves as a conduit. See Giles Surrebuttal at 3.

The recommendation contained in the Staff Report at page 70-71 (sponsored by Staff's V.W. Harris), as well as the positions taken in OPC's Ryan Kind Rebuttal at 6-8 and the Industrials' Greg Meyer Rebuttal at 7-8 should be rejected as they misperceive the nature of Q Sales which are not off-system sales.

2. Executive Compensation: What is the appropriate level of executive compensation to be included in cost of service for setting KCP&L's rates?

KCP&L executive compensation levels are reasonable and should be included in rates.

3. Short-term Incentive Compensation: Should short-term incentive compensation plans be included in cost of service for setting KCP&L's rates?

Yes. The use of incentive compensation benefits both shareholders and customers. The use of Earning per Share (EPS) in the incentive plans is appropriate as this is a principal indicator of performance for investor owned companies. Because KCP&L is a regulated public utility, it needs to be financially strong in order to provide efficient, clean, safe and affordable electricity. Therefore, EPS is an important first-order measuring tool that enables performance and productivity in areas related to product and service delivery. Furthermore, the Company's incentive plans are also based upon individual performance factors relating to each company's specific responsibilities and contributions to achieving divisional and overall performance objectives.

Customers benefit when the Company is strong financially as the Company is able to raise the capital it needs. A solid financial foundations means the Company receives more favorable rates on capital, reducing the overall costs that ultimately get charged to customers. KCP&L believes that incentive compensation that is triggered based on financial goals is appropriate because a financially strong company provides a direct benefit to all stakeholders including employees, customers, shareholders and the community in which it operates.

4. Supplemental Executive Retirement Pension (SERP) Costs: What level of SERP costs should be included in KCP&L's cost of service for purposes of setting rates?

SERP payments are made by annuity and lump sum. Staff's adjustment only recognizes the annuity payments. Because the Company will likely experience both annuity and lump sum SERP payments going forward, KCP&L's adjustment to also include lump sum payments, averaged over several years should be reflected in rates.

5. Talent Assessment: Should the severance costs and related costs associated with the Talent Assessment program be amortized over a five year period as authorized in Case No. ER-2007-0314, or should the amortization be terminated in this case?

In KCP&L's prior rate case, Case No. ER-2007-0291, the Commission concluded that it was appropriate for KCP&L to recover severance costs related to the Company's Talent Assessment program, and ordered the costs be deferred and amortized over five (5) years commencing in 2007. The authorized amortization should not be prematurely ended before the Company is permitted to recover these deferred costs, as advocated by Staff. (Giles Rebuttal at 49)

6. Non-Talent--Severance Costs: Should the severance costs of KCP&L employees terminated for reasons other than KCP&L's talent assessment program be included in cost of service for setting KCP&L's rates?

The payment of severance costs is a common business practice which shields the Company from significant litigation expenses and should be included in KCP&L's cost of service. In nearly all cases, KCP&L hires a new employee to replace the terminated employee and therefore, the Company does not recover its severance costs through regulatory lag.

7. Payroll Overtime: What level of payroll overtime should be included in KCP&L's cost of service for purposes of setting rates?

In order to capture an ongoing cost level, KCP&L used actual 2005-2007 overtime dollars and then applied a adders to the 2005-2006 dollars to express the costs in 2007 equivalent dollars. The Company then calculated a three year arrearage of the 2007 equivalent dollars for an annualized payroll amount. This approach is superior to Staff's method which used a 3 year average of overtime dollars but did not express the 2005 and 2006 years in 2007 equivalent dollars. (Weisensee Rebuttal at 20-21)

8. Other Benefits: How should Other Benefits transferred to joint partners be determined?

KCP&L believes that DOE's concerns will be addressed by updating the transfer percentage in the true-up process in this case. (Weisensee Rebuttal at 11-12)

9. Fuel & Purchased Power Expense:

a. How should natural gas costs be determined?

KCP&L witness Edward Blunk explains the Company's natural gas price hedging program and the Company's methodology for forecasting natural gas prices. The basis-adjusted values for natural gas for August 2008 through March 2009 and the *Inside FERC* first of the month index prices for April 2008 through July 2008 were used to develop the cost of natural gas in the cost of service. (Blunk Direct at 6-8)

b. How should Wolf Creek fuel oil expense be determined?

KCP&L recommends using a three year average of actual fuel oil consumption for computing the cost of fuel oil consumed at Wolf Creek. KCP&L believes that the Staff's approach which is based upon a ratio of fuel oil expense to the sum of nuclear fuel and fuel oil expense, understates the quantity of fuel oil consumed by the Wolf Creek nuclear unit. (Blunk Rebuttal at 5)

10. Hawthorn 5 SCR Warranty Settlement: Should a settlement payment related to Hawthorn 5 SCR warranty litigation that reimbursed KCP&L for past costs the Company incurred going back to 2001 be flowed to customers in this proceeding?

No. Consistent with the Commission's determination in KCP&L's prior rate case (Case No. ER-2007-0291) concerning the Hawthorn 5 Subrogation Proceeds and the Department of Energy Nuclear Fuel Overcharge Refund (Report and Order, pp. 45 and 56, respectively), the

inclusion of the Hawthorn 5 SCR warranty settlement in the Company's cost of service would constitute impermissible retroactive ratemaking. Staff's position is based on the incorrect assumption that KCP&L's customers "paid for the costs KCP&L incurred because of the substandard performance of the plant." Staff Report, p. 102. Although KCPL received the warranty settlement in 2007, the test year in this case, the settlement relates to costs the Company incurred from going back to 2001. KCP&L's first rate increase subsequent to incurring these additional costs went into effect in January 2007. Thus, KCP&L's customers did not pay the additional operating costs the warranty settlement was designed to cover.

The warranty settlement represents an unusual, non-recurring event. The timing of the payment of the warranty settlement during the test year in this case is happenstance. KCP&L's receipt of those proceeds has nothing to do with the Company's cost of service going forward. Consequently, the warranty settlement KCP&L received in 2007 concerning the Hawthorn 5 SCR should not be included in KCP&L's cost of service for ratemaking purposes. To include those costs would constitute impermissible retroactive ratemaking.

11. Hawthorn Transformer Settlement: Should a settlement payment related to Hawthorn 5 transformer litigation that reimbursed KCP&L for past costs the Company incurred going back to 2005 be flowed to customers in this proceeding?

No. Similar to the issue above concerning the Hawthorn 5 SCR warranty settlement, inclusion in KCP&L's cost of service of settlement proceeds arising from litigation related to the failure of a transformer at the Hawthorn Generating Station would constitute impermissible retroactive ratemaking. Again, Staff's position is premised on the incorrect assumption that KCP&L's customers "paid for the costs KCP&L incurred because of the substandard performance of the plant." Staff Report, p. 103. Although KCPL received the warranty settlement in 2007, the test year in this case, the settlement relates to costs the Company incurred

from going back to 2005. Because KCP&L did not increase its rates until January 2007, it is incorrect to claim that the Company's customers bore those costs.

The transformer settlement represents an unusual, non-recurring event. The timing of the payment of the settlement during the test year in this case is happenstance. It has far more to do with the timing of the underlying litigation than the Company's cost of service. In fact, the settlement proceeds have nothing to do with the Company's cost of service going forward. Consequently, the transformer settlement proceeds KCP&L received in 2007 concerning the failure of a transformer at the Hawthorn Generating Station should not be included in KCP&L's cost of service for ratemaking purposes. To include those costs would constitute impermissible retroactive ratemaking.

12. Current Income Tax: Should the Commission continue to compute current income tax expense on a stand-alone basis, or should the Commission change its method to compute current income tax expense on a consolidated basis?

KCP&L's computation of current income tax on a stand alone basis is reasonable and results in a lower current income tax expense than is a consolidated return was used.

13. Property Tax Expense: Should property taxes in the amount of $1,043,890 (total company amount) assessed and paid in 2008 on the new Air Quality Control System ("AQCS") at the Iatan 1 generating station be excluded from the annualized property taxes expenses in this proceeding?

No. The 2008 property taxes are appropriate for inclusion in the cost of service since they were actually paid by the Company and KCP&L will incur similar operating expenses going forward once the Iatan 1 AQCS is placed in service.

14. Fleet Fuel Costs: What is the appropriate level of fleet fuel costs to be included in KCP&L's cost of service for purpose of setting rates?

KCP&L normalized transmission and distribution expenses, including fuel, based upn a five-year average (2003-2007) indexed for inflation. (Herdegen Rebuttal at 4). KCP&L believes that Public Counsel's adjustment for fleet fuel costs should not be adopted since Public Counsel's proposed methodology does not take into account the volatility in the commodity markets, such as fuel prices. The Public Counsel's approach does not address how volatility in fuel prices affects the costs of materials used by transmission and distribution maintenance and operations. The Public Counsel's proposed adjustment for fleet fuel costs should be rejected. (Herdegen Rebuttal at 3-4)

15. Edison Electric Dues: Should 43.6% of the Company's EEI dues expenses be disallowed?

No. Approximately 20% of EEI dues should not be recovered from ratepayers, representing lobbying costs, and the Company has not sought rate recovery of these costs. KCP&L is seeking recovery of the remaining portion of EEI dues since the amounts incurred benefit customers. (Weisensee Rebuttal at 13-14)

16. Bad Debt Expense: What is the appropriate level of bad debt expense to be included in KCP&L's cost of service for purpose of setting rates?

The Company's bad debt adjustment to normalize expense should be adopted as it reflects KCP&L's experience that there is a six month lag between the time it increases rates and the time that bad debt write offs increase. Also, this same bad debt factor should be utilized in the pro forma bad debt adjustment necessary to reflect the impact of the rate increased granted in this case. (Weisensee Rebuttal at 14-16)

17. Wolf Creek Depreciation:

a. What is the appropriate level of depreciation expense to be included in KCP&L's cost of service for purpose of setting rates?

b. Should DOE/NNSA's proposed adjustment of $4,429,884 to reduce depreciation expense be adopted?

DOE's adjustment should be rejected as it does not reflect the fact that KCP&L was ordered to change to a 60 year lifespan as part of the Regulatory Plan and the Company has complied with this order in all of its Regulatory Plan rate cases. (Weisensee Rebuttal at 18-19)

18. Accumulated Depreciation: Are the concerns raised by DOE/NNSA regarding the relationship between KCP&L's accumulated depreciation adjustment and the depreciation adjustment valid concerns?

No. The concerns raised by DOE are based on incorrect calculations and assumptions.

19. Comparison of O&M Expenses**:** Should the Commission investigate the reasonableness of the increases in Account 909?

No. Customer service and informational costs have increased in this account because of KCP&L's Demand Response, Efficiency & Affordability programs, a component of the Company's Missouri and Kansas Regulatory Plans. The increases are therefore explainable and no investigation is necessary. (Weisensee Rebuttal at 10-11)

20. Forfeited Discount Revenue: Should a growth rate be used to normalize this revenue item?

DOE proposes that normalized forfeited discount revenue be adjusted to reflect recent escalations in this revenue consistent with the Company's proposed escalation of maintenance costs using the Handy-Whitman index. Since the Company has decided not to pursue maintenance indexing in this rate case, DOE's approach should be rejected. Staff has recommended that if the Company is allowed a proforma bad debt adjustment, reflecting the

impact of the rate increase authorized in the case, then it should also be required to reflect a proforma forfeited discount adjustment. KCP&L is not opposed to this approach. (Weisensee Rebuttal at 10)

21. Merger Transition Costs: What is the appropriate amount of merger transition costs to include in rates in this case?

The appropriate amount of merger transition costs is $3,710,700. This adjustment is set forth in Schedule DRI-1, attached to the Direct Testimony of KCP&L's Darrin R. Ives. This amount is subject to true-up to reflect the amortization of the amount of the actual transition costs incurred through the true-up date. Any transition costs incurred after the true-up date will continue to be deferred for inclusion in KCP&L's next rate case.

The deferred transition costs should be recovered in this case by amortizing the balance over five years, consistent with the Commission's Report & Order in Case No. EM-2007-0374. In that Order, the Commission stated: "the uncontested recovery of transition costs is appropriate and justified." The Commission went on to state: "If the Commission determines that it will approve the merger when it performs its balancing test (in a later section of this Report and Order), the Commission will authorize KCP&L and Aquila to defer transition costs to be amortized over five years." (Ives Rebuttal at 2).

The reasons supporting this figure are stated in Mr. Ives' Direct and Rebuttal Testimony, which explain in detail the process used to track transition costs and their recovery, as permitted by the Commission's decision in the Report and Order approving the acquisition of Aquila, Inc. by GPE ("Merger Order"). The Merger Order authorized KCP&L and Aquila to recover transition costs through a method of deferral and recovery over five years, as long as synergy savings exceeded the amount of amortized transition costs. See Merger Order at page 241 & n.

930. The synergy savings tracking process that the Company has employed, based upon a 2006 baseline, has measured synergies for 2008, the year of Aquila's acquisition (known as Phase 1), and for 2009 going forward (known as Phase 2).

The recommendation of the Staff Report at 145-52 (as later stated in the C.R. Hyneman Rebuttal and Surrebuttal) that regulatory lag be utilized to recover synergy savings should be rejected as it is clearly contrary to the Merger Order. Adoption of the Staff's proposed indirect rate recovery method would in effect shift the burden for all of the costs to achieve synergies (i.e. transition costs) to shareholders. (See Staff Cost of Service Study Report at 145-52) KCP&L believes that the Staff's position is inconsistent with Staff's position in other merger proceedings and rates cases in which Staff has provided testimony on transition cost recovery. (Ives Rebuttal at 6-7).

Consistent with the Commission's prior ruling in the Merger Report & Order, the Company should be allowed to recover its transition costs in rates, amortized over a five-year period.

22. Rate Case Expenses: Should rate case expenses be included in the cost of service in the proceeding? If so, how should the appropriate amount of rate case expense be determined?

Yes. Without any suggestion or indication that such costs were not prudently incurred, OPC witness Russell Trippensee recommends that the Commission not allow the Company to recover any of its rate case expenses. OPC's recommendation is premised on the overly simplistic assumption that rate cases only benefit shareholders, and therefore, a utility's customers should not be required to bear any portion of those costs. The Company disagrees.

As a regulated utility subject to the Commission's jurisdiction, KCP&L is only permitted to charge its customers rates that the Commission has deemed to be just and reasonable. A rate

case is the primary mechanism for making that determination. Customers benefit from the Commission determining that their utility's rates are just and reasonable. It is also important to note that the premise of OPC's recommendation, that rate increases always result in additional earnings for the Company's shareholders, is not accurate. The Commission should reject OPC's proposal to change the long-standing Commission policy of permitted utilities to recover in their rates prudently incurred rate case expenses, as a cost of business inherent to a regulated entity. Consistent with the ratemaking treatment of the Company's other expenses KCP&L should be permitted to recover in rates the full amount of its prudently incurred rate case expense. However, KCP&L agrees with past Commission practice that the Company's recovery of rate case expenses should be recovered over some period of time through an amortization of those costs. In this instance, the Company believes that amortizing its rate case expenses over a 2-year period is appropriate. Such an amortization is consistent with the Commission's handling of the Company's rate case expenses in its recent rate cases.

D. REVENUES:

1. Test Period Revenues: Did KCP&L properly explain the overall determination of test period retail revenues?

Yes. In Mr. Weisensee's rebuttal testimony he explains the derivation of the test period revenue amount. Staff's concern with test period revenues is not relevant since both KCP&L and Staff normalize and annualize retail revenues. Therefore, test period revenues are not used in the case. (Weisensee Rebuttal at 22-23)

E. JURISDICTIONAL ALLOCATIONS:

1. Allocation Methodology**:**

Presently, differences in the allocations methodologies utilized by this Commission and the Kansas Corporation Commission result in an under recovery of costs that the respective

commissions have deemed to have been prudently incurred. This results from the jurisdictional allocation percentages for prudently incurred costs adding up to less than 100% and the jurisdictional allocation percentages for imputed revenues such as off-system sales margins adding up to more than 100%. KCP&L proposes to close this so-called jurisdictional gap by developing jurisdictional allocation methodologies that accurately allocate costs to its Missouri, Kansas, and federal jurisdictions, irrespective of whether a particular methodology results in an increased allocation to any of the jurisdictions when compared to past practices. The objective is not to increase the allocation of a particular cost to a particular state. Rather, the ultimate goal is two fold: (i) for the Company to recover all of its prudently incurred costs and (ii) to accurately allocate costs among the Company's jurisdictions, i.e., each jurisdiction pays an allocation of the Company's cost that accurately reflects the Company's cost to serve that jurisdiction.

a. What method should be used for allocating fixed production and transmission plant and expense?

The Company's outside expert witness, Larry Loos recommends that fixed costs related to production and transmission plant and expense continue to be allocated on a demand basis using the 4 coincident peak ("4-CP") demands, exclusive of environmental costs, which are discussed separately below. First, it makes sense to allocate such costs on a demand basis because the underlying facilities in aggregate are built to serve the Company's peak load. For a predominantly summer peaking utility, such as KCP&L, a 1-CP or 4-CP demand allocation method is more appropriate than a 12-CP method. Of those two options, the 4-CP method produces more stable results than relying upon a single monthly peak.

b. What methodology should be used for allocating environmental control plant and expense?

The Company's outside expert witness, Larry Loos recommends that costs related to environmental control equipment on the Company's fossil fuel fleet be allocated on an energy basis. KCP&L incurs environmental control cost in connection with the generation of electricity from its coal-fired steam generating stations. The Company does not incur these costs to supply power to customers for 4 or 12 peaking hours a year, which is the presumption underlying the use of the 4-CP or 12-CP demand allocation methodologies, respectively.

c. What methodology should be used for allocating off-system sales margins?

The Company's outside expert witness, Larry Loos recommends allocating the margin associated with off-system sales in the same manner as the fixed costs associated with KCP&L's generating resources used to generate the energy sold off-system.

d. What methodology should be used for allocating steam plant non-labor boiler maintenance expense?

The Company's outside expert witness, Larry Loos, recommends that costs related to steam plant non-labor boiler maintenance be allocated on an energy basis. Boiler maintenance requirements tend to vary depending on the total steam produced. One of the most significant contributors to the need for boiler maintenance relates to erosion of boiler tubes from the inside by the water and steam flowing through them and from the outside by the particles of combustion and flue gas. Consequently, maintenance requirements and therefore non-labor boiler maintenance expense in large part are impacted by energy generated by the unit. In fact, boiler and turbine manufacturers typically base maintenance schedules on the number of hours the unit has operated and/or the number of times the unit has been started. For these reasons, it is appropriate to allocate non-labor boiler maintenance expense on an energy basis.

F. RATE DESIGN/TIMING OF NEXT CLASS COST OF SERVICE STUDY

1. All Electric/Space Heating for General Service:

a. Should the proposed increase to the general service all-electric winter energy rates be increased by an additional 10% above the equal percentage increase allocated to the class as a whole?

No. Increasing the general service all-electric winter energy rates by an additional 10% will result in some of the rate components for that rate schedule exceeding the corresponding rate components of the non-all electric rates. Such a result is not any parties' intent. The Company's most recent class cost of service study indicates that the general service all-electric class currently provides a positive return on the Company's investment. The study further indicates that it is not the winter rates that need increases greater than the average, but it is the summer pricing that needs adjusting. In addition, as a general rule, rate changes such as this in excess of 5% should be phased in over time. It is the Company's intent to eliminate the distinction between heat and non-heat winter rates and move to seasonal prices that do not vary by end use. However, to ensure such a change is made correctly, it should be done as part of a comprehensive rate design proceeding. A 10% increase will further distort seasonal pricing based on cost that will need to be corrected in a future rate design proceeding.

b. Should the general service separately-metered space heating classes winter energy rate and the service charge be increased by an additional 5% above the equal percentage increase allocated to the class as a whole?

Separately-metered space heating rates winter energy charges for the Small General Service, Medium General Service and Large General Service tariffs should be increased by 5% prior to any other increase in rates resulting from this case.

2. Large Power Rate Design: Should the Industrial Intevenor's proposal to selectively apply any approved increase to the billing components of the Large Power Customer Class be adopted?

No. The Industrial Intervenors' proposal places a significant part of the increase in the first energy block and fixed charges, while no increase is recommended to the rate component for the last energy block, which is for kWh beyond 360 kWh per kW ("hours use"). Using the Industrial Intervenors' rate design proposal and based on the Company's original request for a 17.5% overall increase, customers taking service under the Company's Large Power rate who use less than 180 hours use per month would see a rate increase of approximately 25%, customers who use between 180 and 360 hours use per month would see an increase of approximately 20%, and customers using more than 360 hours use per month would see an increase of less than the overall increase. Consequently, adopting the Industrial Intervenors' proposal would result in significant rate switching, as customers seeing a 20-25% increase move to different rate schedules. The impact of such rate switching has not been appropriately evaluated. For all of these reasons, the Commission should reject the Industrial Intervenors' proposal. Additionally, the lost revenues to the Company from customers switching rates will need to be made up from in the rate design or the Company will not realize the full increase in revenues.

3. Timing of Future Class Cost of Service Study: Should the Commission order KCP&L to perform a Class Cost of Service Study as a part of the next rate case or after the next rate case?

The Commission should direct KCP&L to perform a Class Cost of Service Study after the upcoming Iatan 2 rate case. Getting the class cost of service and the resulting rate design correct is extremely important. It is also very complex and could conceivably take longer than the 11 months provided by statute to complete a rate case. The complexity of the upcoming Iatan 2 case presents another reason not to include a comprehensive class cost of service in that

case. For these reasons, the Commission should direct KCP&L to perform a Class Cost of Service Study after the upcoming Iatan 2 rate case.

G. REGULATORY AMORTIZATIONS

1. What is the appropriate level of amortization (True-up Issue)?

The appropriate level of amortization, if any, will be determined at the conclusion of the case, based upon the other revenue requirement determinations and the resulting financial metrics of the Company. The Additional Amortizations (which act like accelerated depreciation, and therefore, an eventual off-set to rate base) are intended to be used as a last resort to maintain KCP&L's credit ratios in the event that its earnings, as determined in general rate cases like this one, fail to satisfy certain financial ratios. See Regulatory Plan Stipulation, § III(B)(1)(i) at 19.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 15th day of April, 2009, to all counsel of record.

/s/ James M. Fischer
James M. Fischer