BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Eighth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of KCP&L Greater Missouri Operations Company	))))))	Case No. EO-2019-0067
In the Matter of the Second Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Kansas City Power and Light Company	))))))	Case No. EO-2019-0068
In the Matter of the Application of KCP&L Greater Missouri Operations Company Containing Its Semi-Annual Fuel Adjustment Clause True-Up	))))))	Case No. ER-2019-0199

INITIAL BRIEF OF THE MISSOURI OFFICE OF THE PUBLIC COUNSEL

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Issue 1

A. Was it imprudent, or in violation of its Rider FAC tariff, for KCPL to allow 722,628 renewable energy credits ("RECs") to expire during the review period of File EO-2019-0068 rather than take action which would have allowed KCPL to generate revenues from those RECs?

Kansas City Power and Light ("KCPL")'s decision not to sell or even make an attempt to sell its Renewable Energy Credits ("RECs") before they expired resulted in the company forgoing approximately $350,000 in potential profit. *Marke Rebuttal*, pg. 1. For KCPL to just leave this money "lying on the table" is intrinsically imprudent because no prudent company should or would pass up the opportunity to generate readily available profit through the sale of unnecessary assets like these RECs. KCPL attempts to discredit this accusation by claiming that it needed to keep these RECs in order for it to meet customer expectations regarding renewable energy use and further tries to assert that being required to sell its RECs "would effectively turn the Missouri renewable energy standard into a cap on the amount of clean energy that KCP&L customers could receive." Tr pg. 47 lns. 4 – 24. Neither of these claims are true.

Before considering the arguments made by KCPL, however, let us start our examination with some background as to what a REC is. OPC witness Dr. Geoff Marke provide the following explanation of RECs in his rebuttal testimony:

> Renewable Energy Credit ("REC") is a certificate corresponding to the environmental attributes of energy produced from renewable sources. RECs can be sold within compliance markets as a means to track progress towards and compliance with states' statutorily-enabled Renewable Energy Standards ("RES") or in a voluntary market for customers who wish to claim renewable energy actions. Buying RECs allows an entity to support renewable energy without having to install solar panels or wind turbines. RECs can be purchased in one state and applied for compliance in another state. For example, a REC generating facility can be located in Florida, where the actual power produced goes to the local grid in Florida, but the credit for the "renewable attributes" of that power would be purchased by a Missouri utility and used to meet the Missouri RES. Thus, the REC represents a "societal benefit" as well as a tradeable commodity.

Marke Rebuttal, pg. 3. One of the most important facets of the REC concept is that it allows the one who purchases the REC to "'claim emissions reductions' even if they do not actually reduce their end-use at all-or even increase it." *Marke Rebuttal*, pg. 3. However, in order to avoid double counting the emission reductions, the one who sold the REC can no longer claim the emission reductions from the renewable source that produced the REC. *Marke Rebuttal*, pg. 3 n. 1. It is also important to understand that "[t]he purchase of a REC does not necessarily mean that 'new' renewable energy supply was created" because RECs can often be produced and sold based on "existing renewable energy sources and can be 'banked' for up to three years." *Marke Rebuttal*, pg. 3. With this understanding of RECs in hand, let us move on to discussing KCPL's proffered reasons for not selling or even attempting to sell its RECs before they expired.

As previously indicated, KCPL has raised two arguments for why it chose not to sell its RECs, and the OPC will address them each in turn. The first argument made by KCPL is that retaining its RECs was needed to meet its customer's

expectations regarding renewable energy use. To prove this point, KCPL's witness Jeff Martin cites several examples that he asserts show how KCPL's customers did not wish for KCPL to sell its RECs. The first of these is actually a brief overview of historical renewable energy programs offered by Missouri utilities to date. *Martin Direct* pg. 4. For example, Mr. Martin cites to Ameren Missouri's "Pure Power program" and KCPL's own "Renewable Energy Rider" and "Solar Subscription Pilot Rider" programs. *Martin Direct* pg. 4. However, the key difference between the programs that Mr. Martin cites and the decision of KCPL to not sell its RECs is that these other programs are **voluntary**. *Marke Rebuttal*, pg. 4-5. Moreover, the cost of each of these programs are borne entirely by the participants to the program and the company itself and the programs are designed to ensure that non-participants are held harmless. *Marke Rebuttal*, pg. 4-5. Thus, the programs that KCPL cites to are actually evidence of far better and more prudent means of providing renewable access to individual ratepayers as Dr. Marke points out in his testimony:

Q. Please summarize Mr. Martin's historical argument?

A. In providing some historical context for the value-added renewable energy options in Missouri Mr. Martin describes a menu of more attractive options that have been approved by the Commission in which customers can voluntarily elect to pay a premium for a more carbonfree customer experience while still adhering to the regulatory principle of cost-causation.

Q. What is your response?

A. The fact that Mr. Martin can cite at least three alternative options more favorable than the one he is arguing for is not a compelling argument for allowing cost recovery for revenues KCP&L determined it would not seek, but an argument in support of Staffs disallowance position. To be clear, the Company is seeking

> cost recovery for making the management decision to not exercise any of those articulated options in this case. Any one of those options would have been more optimal than what the Company elected to do--which was to not sell its RECs when it had the opportunity to do so.

Marke Rebuttal, pg. 6. As Dr. Marke states, the fact that KCPL had better options available to provide renewable energy access to its ratepayers just shows how KCPL's decision to not sell its RECs as a means of reaching that goal was imprudent.

The second argument raised by Mr. Martin refers to the corporate energy buyers principles. *Martin Direct* pg. 6. These principles arise from "[a] collaboration of leading companies seeking simplified access to the renewable electricity they need to meet their clean and low carbon energy goals" and are outlined in six criteria that are summarized in the testimony of Dr. Marke:

1. Greater choice in procurement options;
2. More access to cost competitive options;
3. Longer-and variable-term contracts;
4. Access to new projects that reduce emissions beyond business as usual;
5. Increased access to third-party financing vehicles as well as standardized and simplified processes, contracts and financing for renewable energy projects; and
6. Opportunities to work with utilities and regulators to expand our choices for buying renewable energy

Marke Rebuttal, pg. 7. KCPL cites to these principles hoping to show how large corporations have an interest in KCPL being able to claim increased renewable energy production and thereby justify KCPL's decision not to sell its RECs. *Martin Direct* pg. 6. However, this position is actually contrary to the stated intent of the corporate energy buyer's principles which do **not** support the non-sale of RECs as a means of adherence. *Marke Rebuttal*, pg. 8. In fact, several large companies such as

Google and Walmart have even taken positions that expressly reject the non-sale of RECs as means of meeting the companies' stated renewable energy goals. *Marke Rebuttal*, pg. 8 – 10. The corporate energy buyer's principles therefore lead to the opposite conclusion of what KCPL claims because they show how large corporate energy buyers do **not** accept the non-sale of RECs as means of demonstrating an increased use of renewable energy.

Mr. Martin also cites to the City of Kansas City's recent announcement that it had cut greenhouse gasses by 40% below year 2000 levels and claims that a "substantial portion" of this reduction can be attributed to KCPL's non sale of RECs. *Martin Direct* pg. 6. This is simply not true. To start with, "KCPL's non-sale of historic RECs **is not cited** as one of the eleven tangible actions undertaken to reduce emissions levels" by the City of Kansas City. *Marke Rebuttal*, pg. 10 (emphasis added). As Dr. Marke points out, KCPL's claim is therefore "akin to claiming that the City of Kansas City's municipal operations are, in part, responsible for the KC Royals winning the World Series in 2015." *Marke Rebuttal*, pg. 11. Dr. Marke then goes on to state:

> What **will** have an impact on the City of Kansas City's municipal operations carbon footprint is the contract entered into with KCP&L's Renewables Direct program (Rate Schedule RER). Which, to be clear**, is a voluntary action undertaken by that actor alone**. The City of Kansas City's municipal service will bear the risks/costs and can claim the requisite benefits without shifting costs onto other captive ratepayers.

Marke Rebuttal, pg. 11 (emphasis added). Clearly, it is not the failure of KCPL to sell or even attempt to sell its RECs that is providing a benefit to the City of Kansas City.

Another point that KCPL tries to make is to claim that it possesses survey data showing that its customers want the utility not to sell RECs so that it can demonstrate renewable energy is a key component of its energy portfolio. *Martin Direct* pg. 6. However, this argument is completely unsupported by the record. *Marke Rebuttal*, pg. 11. In fact, the introductory sentence of the schedule attached to KCPL witness Jeff Martin's testimony to support his contention literally states "[w]e have conducted multiple surveys among our Customer Advisory Panel, **but none have specifically addressed interest in renewable energy**." *Martin Direct*, Schedule JM-5 pg. 1 (emphasis added). Instead, the survey data that KCPL has supplied can only show that 33.8% (less than 400) of the self-selected KCP&L Customer Advisory Panel respondents have "looked at solar, don't want to invest in the upfront costs" and that "32% of panel members said they are very concerned about the environment." *Martin Direct*, Schedule JM-5 pg. 1 – 2. Contrast this with the fact that over 68,000 people had signed a Change.org petition titled "Audit KCP&L" in light of KCPL's continued increases in rates and recent budget billing failures and the fact that the most recent JD Power Survey for KCPL showed **

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Marke Rebuttal, pg. 11 – 12. If survey data tells us anything, therefore, it is that KCPL's customers would prefer the company take every available opportunity to **lower** their bills, which would obviously include attempting to offset FAC costs through the sale of RECs.

The final argument that KCPL musters out to defend its failure to even attempt to sell its RECs is a simple claim that customers can take the hit because the lost revenue would only be about $0.02 per month per customer. *Martin Direct* pg. 10 – 11. The obvious problem with this logic is quickly laid bare in the following testimony from Dr. Marke:

> KCP&L management erred in its discretion and management of ratepayer dollars by not realizing revenues from the sale of its RECs. It's as simple as that. Arguing that the costs are immaterial to its customers is frankly offensive and departs from fundamental economic regulation. It also suggests KCP&L's management has little incentive now or in the future to protect customers from incurring costs in the hundreds of thousands of dollars, since it considers those amounts immaterial to its customers. Ordering the Staff's adjustment for imprudence would not only protect ratepayers for the imprudence of this review period, but would act as a future disincentive to management to disregard such customer impacts.

Marke Rebuttal, pg. 16. To rephrase the point, KCPL was the cost causer behind this lost revenue and therefore should be the one to bear the burden. Forcing ratepayer to foot the bill for KCPL management's mistakes will only lead to further imprudence in the future.

Besides the arguments raised in Mr. Martin's testimony, several other issues arose during the evidentiary hearing. One was the concept of Environmental Social Governance ("ESG") which is how investors on Wall Street look at the carbon footprint of a company. Tr. pg. 66 lns. 5 – 15. Now, KCPL's witness Jeff Martin – who admitted that he was not familiar with how RECs are evaluated as part of the ESG process – could only say that he **assumed** RECs were involved. TR. pg. 68 lns. 2 – 7.

However, as Dr. Marke explained on the stand, this is incorrect. Tr. pg. 115 lns. 21 – 25. Specifically, Dr. Marke testified as follows:

> The risk factor under that ESG is no different for KCPL whether they retire this REC or not, the fact that they've got fossil fuel, that they've got liabilities associated with coal ash ponds and everything else still remains the same. Having more RECs out there doesn't change that -- or the sale or non-sale of RECs doesn't change that.

Tr. pg. 116 lns. 2 – 8. So not even this last issue, raised *sua sponte* by the Commission itself, can save KCPL's claim that not selling its RECs was necessary to meet customer or investor expectations regarding renewable energy.

So far, the OPC has focused exclusively on KCPL's first argument that retaining RECs was necessary to meet customer expectations about renewables. The evidence discussed shows that this is wrong. Many customers – especially large corporate customers – do **not** want a utility to rely on retained RECs to prove renewable commitment. *Marke Rebuttal*, pg. 8 – 10. Moreover, even if KCPL wanted to advertise their commitment to renewables, it could easily do so **and** still sell the RECs it was generating. The concept of RECs only limits who can lay claim to the "renewable attributes" of the energy being **consumed**. There is nothing about the RECs, however, that limits KCPL's ability to advertise the amount of renewable energy that it **produces**, for example, by advertising the degree to which renewable energy generation makes up its total generating fleet. To illustrate, KCPL would be perfectly within its right to tell its customers that say 35% of the energy it produces comes from renewable sources even if the company were to sell all of the RECs associated with the renewable energy it produced to a third party. That is because

the RECs do not change how or where the power is produced, it only changes who is permitted to claim the consumption or use of that energy for purposes of meeting a state's renewable energy standards. *Marke Rebuttal*, pg. 3.

Even if the Commission disagrees with the foregoing, there is a second important consideration regarding KCPL's desire to be able to tell customers or investors that it is focused on renewable energy, and that is the fact that the company could always just buy the RECs itself and pass those costs onto shareholders. This is how the market works for literally every other participant. For example, if a company like Walmart wants to show it is being environmentally conscious by buying RECs, then its shareholders bear the burden of those increased costs or else those costs are passed on to consumers but only at the risk of losing a competitive edge in terms of price.[1] The same should apply to a utility. If KCPL believes that maintaining its RECs is beneficial to its corporate image then it should buy the RECs itself and pass those costs onto its shareholders. KCPL's customers should not have to pay for something they do not need and did not ask for, as the testimony of Dr. Marke conclusively proves.

This is also the answer to KCPL's claim that the requirement to sell RECs will place a cap on the amount of clean energy that KCP&L customers could receive. As already shown, the sale of RECs does not actually change who is producing or receiving the renewable energy in question. *Marke Rebuttal*, pg. 3. The only thing that changes is the ability of KCPL to advertise to its captive customers the fact that

[1] A public utility by contrast cannot lose its competitive edge as it is not in competition with anyone else. It is for this very reason that the Public Service Commission exists.

a small part of the energy they are consuming could have been used to meet Missouri's renewable energy standard. *Marke Rebuttal*, pg. 3. And if KCPL **really** cares that much about being able to advertise this fact to its captive customers, then KCPL can just pay for the RECs itself and pass those costs onto its shareholders. The only reason for why KCPL's customers should ever have to pay for the RECs KCPL produces (which is the functional reality caused when KCPL does not sell its RECs) is if KCPL can show that its customers do not **want** the company to sell its RECs. The record clearly establishes that this is not the case.

B. If it was [imprudent], what if any adjustment should the Commission order?

To account for the lost revenue that KCPL could have achieved had it properly sold its RECs, the Commission should order a negative prudence adjustment of $325,969 in KCPL's next filing to change its fuel adjustment rate ("FAR"). *Mantle Supplemental Rebuttal*, pgs. 1 – 2. This amount takes into consideration both the Missouri jurisdictional allocation and the 95% limitation. *Id*. In addition, RSMo section 386.266.4(4) requires that all amounts refunded by the Commission include interest at the electric utility's short-term borrowing rate. *Id.* Therefore, interest would need to be added to this amount as well. *Id.*

Issue 2

A. Has GMO appropriately allocated the costs associated with auxiliary power between the electric operations and the steam operations at GMO's Lake Road plant?

Given the evidence presented in this case, there can be no question that KCP&L Greater Missouri Operations Company ("GMO") has not appropriately allocated the costs associated with auxiliary power between the electric and steam operations at its Lake Road plant. This is because the record clearly shows that GMO has not allocated **any** of the **fuel** costs related to auxiliary power used at its Lake Road facility to its steam operations when determining the actual net energy costs for purposes of the FAC. It is easiest to fully understand this point by breaking the issue down into several component parts.

1. All auxiliary fuel costs incurred at the Lake Road facility are currently being paid by GMO's electric customers

Let us start our analysis by considering what the term auxiliary power means. "Auxiliary power is the electricity used by [a] generating facility in the process of generating electricity or, in the case of the Lake Road generating facility, the process of generating steam for its steam operations and electricity for its electric operations [.]" *Mantle Rebuttal*, pg. 7. For this case, our concern lies with the cost associated with the production of this auxiliary power, which is primarily derived from the cost of the fuel that is burned to generate the auxiliary power. Thus, the pertinent issue before

the Commission is the allocation of the cost of the **fuel** burned to produce auxiliary power at the Lake Road facility between GMO's steam and electric operations.

There is no question that all of the costs related to fuel burned to produce auxiliary power at GMO's Lake Road facility (for both steam or electric operations) was included in the calculation of GMO's Actual Net Energy Cost ("ANEC") that was used to set the FAC rates relevant to this prudence review period. *Mantle Rebuttal*, pg. 8 ("The fuel and purchased power costs included in the FAC include fuel and purchased power costs for the auxiliary power that is used by GMO's steam operations."). There is also no question that the cost of fuel used to produce auxiliary power for the steam operations at the Lake Road facility were not included in the calculation of GMO's Net Base Energy Cost ("NBEC") during the last general electric rate case to precede this prudence review period. We know this for a fact because steam operations at the Lake Road Facility were not even modeled during that rate case, so no fuel costs related to steam operations could possibly have been included in the NBEC that was set during that rate case. *Mantle Rebuttal*, pg. 10. Because the cost of fuel burned to produce auxiliary power was not included in GMO's NBEC, "[i]f the cost to provide auxiliary power to the steam operations is not removed from the [ANEC] of the FAC, then the electric customers are paying all of the fuel costs for the auxiliary power and therefore subsidizing GMO's steam operations." *Mantle Rebuttal*, pg. 8; Mo. PSC Tariff 1, 14th revised sheet NO. 127.

The proceeding two paragraphs lay out what is basically the OPC's entire argument regarding this issue. The fuel burned to produce steam auxiliary power at

the Lake Road facility was included in the calculation of GMO's ANEC but was not included in the calculation of GMO's NBEC and thus the cost of that fuel is being paid by GMO's electric customers. It is as simple as that. Moreover, it should be very clear that GMO's electric customers should not be paying fuel costs related to GMO's steam operations, hence the problem. Fortunately, this issue can be easily resolved by simply making an adjustment to GMO's ANEC to account for the cost of fuel burned to produce auxiliary power for steam operations at the Lake Road facility. The means to calculate and ultimately make this adjustment is laid out in the rebuttal testimony of the OPC's witness Ms. Lena Mantle. *Mantle Rebuttal*, pg. 8.

As previously stated, neither Staff nor GMO argue that fuel costs used to produce auxiliary power at the Lake Roads facility have not been included in GMO's ANEC or that steam auxiliary power fuel costs have been included in the calculation of GMO's NBEC. Instead, GMO has raised an argument (which Staff has tacitly joined) that no adjustment needs to be made to its ANEC because the cost of steam auxiliary fuel was accounted for when GMO allocated other, non-fuel related costs to steam operations as part of GMO's last general electric rate case to precede this prudence review period. *Nunn Surrebuttal* pg. 3. This argument is completely preposterous, which becomes immediately obvious if one simply spends five minutes considering the logic behind what GMO is claiming.

2. <u>The allocation of non-fuel costs during GMO's general rate cases do not account for the cost of fuel burned to produce auxiliary power at the Lake Road facility</u>

GMO's whole argument on this issue is entirely dependent on the Commission believing that GMO has already accounted for the cost of **fuel** burned to produce auxiliary power used in the steam operations at its Lake Road facility because it allocated **non-fuel** costs away from the electric operations at the Lake Road facility during an electric general rate case. The problem with GMO's position should be obvious on its face: the allocation of **non-fuel costs** during GMO's general rate cases does not and cannot possibly account for the cost of **fuel** burned to produce auxiliary power at the Lake Road facility. Despite how painfully simple this fact should be to understand, the OPC will nevertheless delve into a deeper analysis of GMO's position.

To start with, GMO spends a great deal of time talking about its "seven" allocation factors, when, in reality, there is only one that the Commission needs to consider. That is the "3,13 Demand/O&M" allocation factor that GMO's own witness identified as the one supposedly allocating auxiliary power fuel costs. Tr. pg. 159 lns. 2 – 9; Ex. 10 pg. 3. This means that GMO's entire case is dependent on proving that this one allocation factor does, in fact, account for the cost of fuel burned to produce auxiliary power for steam operations at the Lake Road facility. Unfortunately for GMO, it is impossible to accomplish such a feat because this allocation factor is clearly and unambiguously concerned with allocating other costs that are not related to the cost of auxiliary power fuel, which the OPC will now demonstrate.

The first thing to understand about the 3,13 Demand/O&M allocation factor is that it is based primarily on payroll. This can be seen in the testimony GMO offered

in cases HR-2009-0092 and ER-2009-0090, which was read into the record during the evidentiary hearing:

> Q. Turning to a specific factor No. 6, and I believe this is consistent on both although you can verify that for yourself, can you please describe what allocation factor No. 6 is?
> A. They call it here both of them are electric after steam operation and maintenance allocation factor.
> Q. And what do they say regarding that?
> A. This is the ratio of allocated payroll applicable to steam business to the total generation payroll charged to O&M.
> Q. Thank you.

Tr pg. 216 lns. 11 – 21. It can also be seen in the calculation of the allocation factor itself.

The 3,13 Demand/O&M allocation factor is actually the multiple of two other factors. The first is a "Demand (Capacity) Factor" that GMO's witness acknowledged has nothing to do with auxiliary power. Tr. pg. 163 lns. 3 – 6. The second is an "Electric After Steam Allocation (O&M)" which, as the name implies, is based primarily on O&M costs attributable to the Lake Road facility. Ex. 104. The math behind this "Electric After Steam Allocation (O&M)" factor can be seen clearly in the OPC's exhibit 104, which shows that the primary driver of this factor is payroll numbers. Ex. 104 pgs. 3 & 6. Considering all of this evidence together, the truth of the matter becomes inescapable: the 3,13 Demand/O&M allocation factor is a payroll-based allocation factor. But why, you may wonder, does any of this matter?

Understanding that the 3,13 Demand/O&M allocation factor is primarily based on payroll numbers is merely the first-half of the analysis necessary to understanding why this allocation exists and what it is trying to do (and also why it does **not** allocate

auxiliary power **fuel** costs as GMO claims). The second step of the analysis is to look at the accounts (*i.e.* the costs) to which this allocation factor is being applied. GMO identified these accounts in a response to staff data request, which the OPC submitted into evidence as exhibit 103. The accounts in question are 500, 502, 505-507 and 510-514. Ex. 103 pg. 3. Let us take a moment to examine each of these accounts to see what costs are contained therein.

Going in numerical order, the first account is 500. The *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act* ("USoA")[2] characterizes this account as follows:

> For Major Utilities, this account shall include the cost of **labor** and expenses incurred in the **general supervision and direction** of the operation of steam power generating stations. Direct supervision of specific activities, such as fuel handling, boiler room operations, generator operations, etc., shall be charged to the appropriate account.

18 CFR Part 101 (1992) (emphasis added). The itemized expenses included in this account are as follows:

Boiler Room Labor:

1. Supervising steam production.
2. Operating fuel conveying, storage, weighing and processing equipment within boiler plant.
3. Operating boiler and boiler auxiliary equipment.
4. Operating boiler feed water purification and treatment equipment.
5. Operating ash collection and disposal equipment located inside the plant.
6. Operating boiler plant electrical equipment.
7. Keeping boiler plant log and records and preparing reports on boiler plant operations.

[2] The USoA as published in 1992 was made applicable to Electric Utilities operating in the State of Missouri and was incorporated by Commission Rule 4 CSR 240-20.030. The version cited to in this brief is the one in effect as of Jan 1, 1992.

8. Testing boiler water.
9. Testing, checking, and adjusting meters, gauges and other instruments in boiler plant.
10. Cleaning boiler plant equipment when not incidental to maintenance work.
11. Repacking glands and replacing gauge classes where the work involved is of a minor nature and is performed by regular operating crews. Where the work is of a major character such as that performed on high pressure boilers the item should be considered as maintenance.

Electric Plant Labor:

12. Supervising electric production.
13. Operating turbines, engines, generators and exciters.
14. Operating condensers, circulating water systems and other auxiliary apparatus.
15. Operating generator cooling system.
16. Operating lubrication and oil control system, including oil purification.
17. Operating switchboards, switch gear and electric control and protective equipment.
18. Keeping electric plant log and records and preparing reports on electric plant operations.
19. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in electric plant.
20. Cleaning electric plant equipment when not incidental to maintenance work.
21. Repacking glands and replacing gauge glasses.

Miscellaneous Labor:

22. General clerical and stenographic work at plant.
23. Guarding and patrolling plant and yard.
24. Building service.
25. Care of grounds including snow removal, cutting grass, etc.
26. Miscellaneous labor.

We can immediately see from examining this account that **all** of the costs included in account 500 are related to labor carried out at a generating facility. This point is very

important, and we will return to it in just a moment. But first, we should examine the other accounts to which the 3,13 Demand/O&M allocation factor is applied.

The second account that GMO identified is 502, which the USoA describes as such:

> This account shall include the cost of labor, materials used and expenses incurred in production of steam for electric generation. This includes all expenses of handling and preparing fuel beginning at the point where the fuel enters the first boiler plant bunker, hopper, tank or holder of the boiler-house structure.

18 CFR Part 101 (1992). This account lists eleven itemized costs related to labor (which the OPC will not restate here for the sake of brevity) and three itemized costs related to materials used and expenses incurred: chemicals and boiler inspection fees, lubricants, and boiler feed water purchased and pumping supplies. 18 CFR Part 101 (1992).

The third, fourth, and fifth accounts listed are 505, 506, and 507 respectively. The USoA defines these accounts as follows:

> 505: This account shall include the cost of labor, materials used and expenses incurred in operating prime movers, generators, and their auxiliary apparatus, switch gear and other electric equipment to the points where electricity leaves for conversion for transmission or distribution.
>
> 506: This account shall include the cost of labor, materials used and expenses incurred which are not specifically provided for or are not readily assignable to other steam generation operation expense accounts.
>
> 507: This account shall include all rents of property of others used, occupied or operated in connection with steam power generation.

18 CFR Part 101 (1992). There are fifteen labor related items in total listed under 505 and 506 as well as the following material and expense items for 505: lubricants and control system oils; generator cooling gases; circulating water purification supplies; cooling water purchased; and motor and generator brushes; and for 506: general operating supplies, such as tools, gaskets, packing waste, gauge glasses, hose, indicating lamps, record and report forms, etc.; first-aid supplies and safety equipment; employees' service facilities expenses; building service supplies; communication service miscellaneous office supplies and expenses; printing and stationery; transportation expenses, meals, traveling and incidental expenses; and research, development, and demonstration expenses. 18 CFR Part 101 (1992). Account 507 includes no itemized costs. 18 CFR Part 101 (1992).

The last five accounts to which the 3,13 Demand/O&M allocation factor is applied are accounts 510 - 514. These five accounts are all related to maintenance and include no specific itemized costs. 18 CFR Part 101 (1992). They are described in the USoA as follows:

> 510: This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of steam generation facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account.
>
> 511: This account shall include the cost of labor, materials used and expenses incurred in the maintenance of steam structures, the book cost of which is includible in account 311, Structures and Improvements.
>
> 512: This account shall include the cost of labor, materials used and expenses incurred in the maintenance of steam plant, the book cost of which is includible in account 312, Boiler Plant Equipment.

> 513: This account shall include the cost of labor, materials used and expenses incurred in the maintenance of electric plant, the book cost of which is includible in account 313, Engines and Engine-Driven Generators, account 314, Turbogenerator Units, and account 315, Accessory Electric Equipment.
>
> 514: This account shall include the cost of labor, materials used and expenses incurred in maintenance of miscellaneous steam generation plant, the book cost of which is includible in account 316, Miscellaneous Power Plant Equipment.

18 CFR Part 101 (1992). Again, it is important to see that the costs to be recorded in these accounts are going to be primarily labor costs, as they all relate to work being done at the plant.

Having now examined all of the accounts to which the 3,13 Demand/O&M allocation factor is applied, it become much easier to see the purpose behind this allocation factor. This factor allocates costs related to labor and maintenance incurred the Lake Road facility and does so using payroll as the primary allocation driver. This makes since given that there is a direct correlation between the amount of labor performed at a facility and the amount of payroll costs incurred at that facility because having payroll costs is the direct result of hiring labor. What this factor does **not** do, however, is allocate the cost of fuel being expended to produce auxiliary power at the Lake Road facility because **none** of the accounts the 3,13 Demand/O&M allocation factor is being applied to include the cost of fuel burned for auxiliary power. This is a point that even GMO's own witness admits when she acknowledge that the 3,13 Demand/O&M allocation factor is being applied to **non-fuel** accounts. *Nunn surrebuttal* pg. 4.

It is also important to understand that, while the 3,13 Demand/O&M allocation factor is not being applied to any fuel accounts, there **are** specific fuel accounts found in the USoA that **would** include the cost of fuel burned to produce steam auxiliary power. Account 501, for example, is named simply "fuel" and is defined by the USoA as follows:

> This account shall include the cost of fuel used in the production of steam for the generation of electricity, including expenses in unloading fuel from the shipping media and handling thereof up to the point where the fuel enters the first boiler plant bunker, hopper, bucket, tank or holder of the boiler-house structure. Records shall be maintained to show the quantity, B.t.u. content and cost of each type of fuel used.

18 CFR Part 101 (1992).[3] Obviously if the cost of fuel burned to produce steam auxiliary power is going to be recorded anywhere it will be recorded in this account, which is **not** one of the accounts to which the 3,13 Demand/O&M allocation factor is applied. Because the 3,13 Demand/O&M allocation factor is not **calculated** using auxiliary fuel and is not **applied to** accounts that include auxiliary fuel costs, **it does not and cannot possibly account for the cost of fuel burned to produce auxiliary power as GMO claims**.

To really drive home the OPC's point, let us consider an alternative argument that the OPC could have made. Let us imagine, for just a moment, that GMO employed a private security guard to patrol the Lake Road facility. The OPC brings a challenge similar to the one it has brought in this case by claiming that GMO's

[3] Other fuel based accounts include accounts 547 and 555 which refer to Natural gas, oil, and power purchased to meet demand which may have included the demand needed to provide auxiliary power to steam operations at the Lake Road facility. 18 CFR Part 101 (1992).

electric customers are paying all of the costs associated with this private security guard instead of splitting those costs between electric and steam customers. In **that** case, the OPC would be wrong. The costs of employing that private security guard would end up being booked to account 500, which includes miscellaneous labor costs related to "[g]uarding and patrolling plant and yard." 18 CFR Part 101 (1992). Further, because the 3,13 Demand/O&M allocation factor is being applied to account 500, those costs would end up being properly allocated between steam and electric customers. The problem is that, while this all makes sense for the hypothetical "security guard" cost, it does not work for the OPC's concern regarding the cost of **fuel** burned to produce auxiliary power because, again, the cost of fuel burned to produce auxiliary power is not included in **any** of the accounts to which 3,13 Demand/O&M is being applied.

The "security guard" hypothetical also exposes another major issue with GMO's position, which is the inability of GMO to identify **how much** cost was allocated to steam operations to account for the fuel burned to produce steam auxiliary power. The OPC asked this question of GMO's witness directly and GMO answered that this simply wasn't how allocations worked:

> A. . . .You have claimed, as we've already established, that a representative amount of auxiliary fuel costs are accounted for through the allocation factors applied when base rates are set?
> A. Correct.
> Q. What is that representative amount for this review period?
> A. If I had a direct assignment allocation methodology, I would be able to specifically point to that cost. We don't have a direct assignment allocation methodology. We have an overall general allocation methodology that we've used and that's been -- that was negotiated by each of the parties and approved by the Commission since 2009.

Q. So is it correct to say that you can't determine what that representative amount is for this case?
A. For specifically just auxiliary power, no. Overall it was 3.4 million.
Q. It was 3.4 million for overall O&M?
A. Of O&M costs, uh-huh.
Q. But you cannot say how much of that relates to auxiliary fuel costs?
A. I can't because it's not a direct assignment of cost.
Q. And you can't calculate how much that was either?
A. You can't do that for any of the cost allocations for any other kind of cost.
Q. So your belief is it's included in O&M but you just don't know how much?
A. Correct. That's how allocations work.

Tr. pg. 163 ln 10 – pg. 164 ln. 16. But GMO is simply wrong.

The surrebuttal testimony of GMO witness Linda Nunn describes how $3.4 million of non-fuel O&M costs were allocated away from the electric business and to the steam business as part of GMO's last electric rate case. *Nunn surrebuttal* pg. 4. That $3.4 million is obviously the product of multiplying the 3,13 Demand/O&M allocation factor by the total costs recorded in all the accounts to which the allocation factor is applied (given that is literally how an allocation factor works). Further, the amounts included in each account can themselves plainly be traced back to the costs that were incurred and recorded in each account. Therefore, every dollar of the $3.4 million can ultimately be accounted for and traced back to the original cost that GMO incurred. Returning to our "security guard" hypothetical, for example, we can say that if GMO spent $X keeping the security guard employed then that $X has been recorded in account 500 and can be easily located. Further, because the 3,13 Demand/O&M allocation factor allocates 7.581% of costs in account 500 to steam operations,

0.07581($X) is the direct dollar amount that was attributed to steam operations for employing that security guard.[4]

While this works for our "security guard" hypothetical, the same thing cannot be accomplished for the cost of fuel burned to produce steam auxiliary power at the Lake Road facility for the very simple reason that the cost of fuel burned to produce steam auxiliary power was not recorded in **any** of the accounts to which the 3,13 Demand/O&M allocation factor was applied. GMO has even acknowledged this very point when it stated that the $3.4 million it allocated to steam in the electric rate case was for "**non-fuel** O&M costs." *Nunn surrebuttal* pg. 4. Thus, the real reason for why GMO cannot possibly determine how much cost was allocated to steam operations to account for the fuel burned to produce steam auxiliary power at the Lake Road facility using the 3,13 Demand/O&M allocation factor is because no such costs were allocated because the 3,13 Demand/O&M allocation factor **was never applied to any fuel costs to begin with**.

At this point, the OPC has gone to a very great length to prove what should be a very simple point. The allocation factor on which GMO's entire case relies does not account for the cost of **fuel** burned to produce auxiliary power at the lake road facility. GMO may indeed have allocated $3.4 million in **non-fuel** O&M costs away from the electric operations during the last relevant rate case, but that amount did not address the cost of the **fuel** that GMO then went on to burn to keep the steam operations at its Lake Road facility going. Moreover, the cost of the fuel that was burned to produce

[4]At the same time we can say that the remaining amount of money, which is equal to 0.92461($X) has been allocated to the electric operations.

steam auxiliary power was recorded along with all the other fuel consumed at the Lake Road facility and thus has been included in GMO's ANEC. *Mantle Rebuttal*, pg. 10. Therefore, "[i]f the cost to provide auxiliary power to the steam operations is not removed from the [ANEC] of the FAC, then the electric customers are paying all of the fuel costs for the auxiliary power and therefore subsidizing GMO's steam operations." *Mantle Rebuttal*, pg. 8.

3. The OPC is not challenging the existing allocation factors that GMO has in place

This point has less to do with the OPC's argument and more to do with addressing what the OPC believes other parties to this case might argue. The OPC wants to make clear that it is not challenging any of the existing allocation factors that GMO has been employing as part of its general electric rate cases. Those allocation factors (including the 3,13 Demand/O&M factor) are working as intended to allocate costs **other than** steam auxiliary power **fuel** costs.

Moreover, the reason that those other allocation factors are not allocating steam auxiliary power fuel costs is because, at the time the factors were developed, the cost of auxiliary power fuel for the steam and electric operations at the Lake Road facility were being allocated through a different methodology. Tr. pg. 205 lns. 19 – 22. Specifically, the auxiliary fuel used in the steam and electric operation was allocated through a modeling process performed by company witness Tim Nelson, which is why

auxiliary power fuel was not include in any of the seven allocation factors that were developed.[5] Tr. pg. 217 lns. 1 – 16; pg. 205 lns. 19 – 22.

The problem now is that steam and electric operations at the Lake Road facility are no longer being modeled together (because GMO is no longer bringing steam and electric rate cases at the same time), so this deliberate allocation of auxiliary power between steam and electric is not done at the time the NBEC is set. *Mantle Rebuttal*, pg. 10. Instead, only the electric auxiliary power is estimated in the electric rate case, which is why no allocation for steam auxiliary power appears in the NBEC calculated during GMO's general electric rate cases. *Mantle Rebuttal*, pg. 10. The issue of steam auxiliary power fuel costs is therefore not a result of a failure of GMO's seven allocation factors, but rather, is distinct from those seven factors. Just applying the seven allocation factors that GMO discusses is not sufficient to resolve the allocation of the cost of fuel burned to produce auxiliary power for the Lake Road steam operations because **none** of those allocation factors were created to deal with that problem. Hence the need for a new allocation of steam related auxiliary power **fuel** costs during the FAC cases.

4. Conclusion

GMO requires a certain amount of energy (auxiliary power) to keep both the electric and steam operations at its Lake Road facility going and has included the cost of the fuel burned to produce that auxiliary power as part of its ANEC in the

[5] In actuality, they were allocated in a spreadsheet that existed outside of the model, but which was still part of the modeling process. In other words, it was a workpaper generated by GMO. Tr. pg. 217 lns. 12 – 14.

FAC costs. *Mantle Rebuttal*, pg. 8. However, because only the costs of the electric operation were modeled in the last relevant general electric rate case, there are no costs related to the fuel expended to produce steam auxiliary power included in GMO's FAC base costs: the NBEC. *Mantle Rebuttal*, pg. 10. Because the cost of the fuel expended to produce steam auxiliary power is in the ANEC but not in the NBEC and because the rates GMO charged for its FAC are those rates necessary to cover the difference between the ANEC and NBEC, GMO's electric customers have paid for the fuel used to keep GMO's steam operations going. *Mantle Rebuttal*, pg. 8; Mo. PSC Tariff 1, 14th revised sheet NO. 127. GMO's electric customers should not have to pay to keep GMO's steam operations going. To rectify this problem, GMO needs to make an adjustment to its ANEC to account for the cost of fuel burned to produce steam auxiliary power as set forth in greater detail in the testimony of OPC witness Ms. Lena Mantle. *Mantle Rebuttal*, pg. 8.

GMO's claim that it does not need to make an adjustment to its ANEC to account for the cost of **fuel** burned to produce auxiliary power because it allocated other **non-fuel** costs from the electric to the steam business during the last relevant rate case makes absolutely no sense. The fact that GMO allocated **non-fuel** costs does not change the need to allocate steam auxiliary power **fuel** costs. The OPC isn't claiming that the allocation of non-fuel costs was wrong or that the allocation factors that GMO employed in the rate case were faulty, the OPC is just stating that this allocation of non-fuel costs does not address the issue that the OPC is raising. The **only** issue before this Commission is the allocation of the cost of **fuel** used to produce

auxiliary power needed to keep the Lake Road facility's steam operations going. These steam auxiliary power **fuel** costs have not been properly allocated, have not been otherwise accounted for, and are currently being borne **in their entirety** by GMO's electric customers. This needs to change.

B. If not, what if any adjustment should the Commission order for the review period of File EO-2019-0067?

Because it was imprudent for GMO to have collected fuel costs related to the production of auxiliary power for its steam operations at its Lake Road facility from its electric ratepayers, the Commission should order a negative prudence adjustment of $469,409 in GMO's next filing to change its FAR. *Mantle Rebuttal*, pg. 5. This amount takes into consideration both the Missouri jurisdictional allocation and the 95% limitation. *Id.* In addition, RSMo. Section 386.266.4(4) requires that all amounts refunded by the Commission include interest at the electric utility's short-term borrowing rate. *Mantle Supplemental Rebuttal*, pg. 2. Therefore, interest accrued on the $469,409 would need to be added as well. *Id.*

C. Should the Commission order GMO to calculate the fuel cost of the steam operations auxiliary power that was recovered through the FAC since July 1, 2011, and return that amount plus interest at its short-term borrowing rate back to GMO's customers?

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

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

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

D. Should the Commission Order GMO to make adjustments to the method by which it allocates auxiliary power between the electric operations and the steam operations at GMO's Lake Road plant for the 23rd Accumulation Period and/or any future FAC rate change cases?

As previously stated, GMO is not currently allocating any of the fuel costs related to the production of auxiliary power used in steam operations at its Lake Road facility to its steam operations and is instead requiring electric customers to pay all those costs. This is incorrect, and needs to be fixed. Therefore, the Commission should order GMO to account for and exclude the cost of fuel used to produce auxiliary power

for its steam operations from the actual net energy cost calculated in the 23rd Accumulation Period and in future FAC rate change cases. The best method for accomplishing this is the method set forth in the testimony of OPC witness Mantle:

> **Q. How should the amount of the adjustment to ANEC be calculated?**
>
> A. The allocations manual from the E0-94-39 case states "the auxiliary power will be priced using the average system energy cost ($/MWh) for each month, which includes all Lake Road Plant and Iatan generation costs, fuel handling expenses, and all purchased power expenses." With respect to the FAC ANEC, an average system energy cost can be calculated using the FAC generation and purchased power costs. Using this average system energy cost, a cost for the auxiliary power can be calculated by multiplying the steam auxiliary power MWh by the average system energy cost. The FAC ANEC then should be reduced by the cost of the steam auxiliary power.

Mantle Rebuttal, pgs. 8.

Issue (3)

A. Was it prudent for GMO[6] to have entered into Purchase Power Agreements with the Rock Creek and Osborn Wind Projects under the terms of the contracts as executed?

It was clearly imprudent for KCPL & GMO to have entered into the Rock Creek and Osborn wind purchase power agreements ("PPAs") under the terms of the contracts that were executed. This is because KCPL & GMO either knew or should have known (at the time that they entered into these contracts) that there were

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

cheaper options for wind available and KCPL & GMO could have gotten a more economic deal had they simply performed the necessary due diligence. Unfortunately for customers, the failure of KCPL & GMO to properly identify the most economic options available has resulted in massive losses that are now being passed through the FAC and most likely will continue to grow in size as time moves on.

Before delving too deep into the facts of this prudence review, let us take one moment to consider the standard the Commission should be employing. This Commission has made clear that when considering prudence, the standard to employ requires determining whether a "utility's conduct was reasonable at the time, under all of the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight." *Report and* Order, EO-2011-0390, pg. 13. The OPC addresses this issue for a singular purpose, which is that KCPL & GMO have attempted to argue that the OPC is not adhering to this standard because the OPC is engaged in hindsight review of the issue. This is categorically untrue, as the OPC will now demonstrate.

1. KCPL & GMO should have known that the Rock Creek and Osborn PPAs were imprudent at the time those contracts were executed.

In keeping with the standard of the prudence review outlined above, we must consider what KCPL & GMO knew at the time the Rock Creek and Osborn PPAs were entered into. **At that time**, KCPL & GMO was aware of two very important things: (1) the nearly identical projected market price modeling on which the companies had based their six prior PPAs had proven incorrect leading to all six prior PPAs losing

money, and (2) the price for wind PPA contracts was steadily declining. Given these two facts, KCPL & GMO either knew or should have known that entering into the Rock Creek and Osborn PPAs and doing so at prices that were **higher** than their previous, unprofitable PPAs was an imprudent decision. Let us consider each of these two factors in turn.

The first factor mentioned is the inaccurate predictive price modeling or cost benefit analysis employed by KCPL & GMO. Before considering why this modeling was inaccurate, it is best to have a little background. The primary justification KCPL & GMO offered for entering into the Rock Creek and Osborn PPAs was that they were predicted to be economically beneficial. *Crawford Direct* pg. 4 – 5. KCPL & GMO cannot show that they needed these two PPAs to meet Missouri RES requirements, nor did they claim the PPAs were needed to ensure sufficient capacity or energy for its customers. *Mantle Rebuttal*, pg. 16 – 20. Instead, KCPL & GMO relied on the fact that their modelling predicted that, over twenty years, "these PPAs would be expected to generate more in revenue than the PPAs would cost in eight of the nine different market price forecasts made[.]" *Mantle Rebuttal*, pg. 21. But there were significant problems with the modelling that KCPL & GMO employed.

The single most uncertain input into the modelling that informed KCPL & GMO their PPAs would be profitable was the projected market prices for energy. *Mantle Rebuttal*, pg. 21. "This is because the market prices used in [KCPL & GMO]'s analysis to determine the cost/benefit of these PPAs were forecasted at a time when the new SPP day ahead and real time energy markets were being formed and hence

was very uncertain." *Mantle Rebuttal*, pg. 21. KCPL & GMO nevertheless still choose to rely on these highly uncertain projected market prices (which predicted a steady increase in the price of energy in the coming years) when it entered into its PPAs. Unfortunately for their customers, these projected market prices proved disastrously wrong.

Included below is a graph that shows the expected future energy market prices as forecasted in 2012 and 2014 (on which KCPL & GMO relied to justify their first six PPAs and the Rock Creek and Osborn PPAs respectively) compared to the actual average annual market prices from the SPP Energy Imbalance Market as provided in the SPP market monitor annual State of the Market reports for 2010 through 2013:

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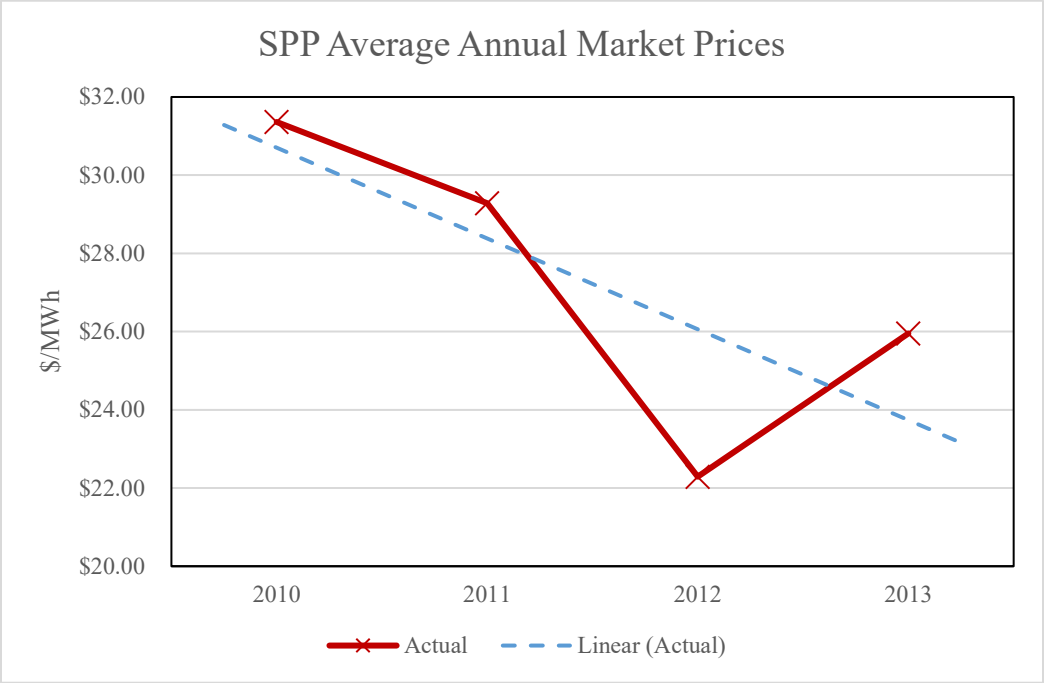
Mantle Rebuttal, pg. 25. As can plainly be seen, the actual energy market prices reported by the SPP showed that the market was **declining**, not increasing as KCPL & GMO's 2012 and 2014 forecasts predicted. This can be seen even more clearly in the following graph which applies a trend line to the actual market prices reported by SPP between 2010 and 2013:



Mantle Rebuttal, pg. 24. This level of inaccuracy in GMO's market price forecasts is not surprising, given that SPP was developing a whole new market when these forecasts were being made. *Mantle Rebuttal*, pg. 22 – 23. Unfortunately that did not stop KCPL & GMO from entering into PPAs based on these inaccurate forecasts and ultimately passing a large amount of losses on to their customers as a result.

Now, at first glance, all this talk of predictions proving untrue might seem like hindsight analysis. That would definitely have been an issue **if** the OPC had challenged the first six PPAs that KCPL & GMO entered into. This is because KCPL

& GMO could not have known for certain that the market forecasts they used to justify the first six PPAs were inaccurate until **after** those PPA contracts had been signed. But the OPC is **not** challenging the first six PPAs that KCPL & GMO entered into. Instead, the OPC is **only** challenging the decision to enter into the Rock Creek and Osborn PPAs that were executed in 2015, which was **after** the market prices forecasts used to justify the first six PPAs had been proven inaccurate. This means that, **at the time the Rock Creek and Osborn PPAs were executed**, KCPL & GMO already knew that its 2012 forecasts had been proven woefully wrong, yet still choose to enter into two **new** PPAs base on a nearly identical prediction. It is this failure to recognize that its prior market forecasts had already been proven inaccurate at the time the Rock Creek and Osborn PPAs were entered into that makes KCPL & GMO's decision imprudent.

As just stated, the 2012 market price forecasts that KCPL & GMO relied on to justify its first six PPAs were nearly identical to the 2014 market price forecasts that KCPL & GMO used to justify the Rock Creek and Osborn PPAs. This fact can be clearly observed in the following graph that matches the predicted market prices for years 1 through 20 of each forecast. [7]

[7] For the 2012 forecast, the data shown as year 1 in the graph is the market price for 2011. For the 2014 forecast it was the market price for 2015. Year 2 shows the 2012 market price for the 2012 forecast and the 2016 market price for the 2014 forecast. And so on through year 20.

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Mantle Rebuttal, pg. 25. Again, this means that by 2015 (the year Rock Creek and Osborn were entered into) KCPL & GMO had seen at least two forecasts for market prices that predicted nearly the exact same thing and one of those two forecasts had already been proven wrong. As the old adage goes: fool me once, shame on you; fool me twice, shame on me. If KCPL & GMO are the sophisticated, knowledgeable utilities that they would like the Commission to believe they are, KCPL & GMO should have known that the 2014 market price forecasts (which predicted Rock Creek and Osborn would be profitable) would end up being incorrect because that forecast was nearly identical to the 2012 forecast that the companies **already knew** was incorrect. *Mantle Rebuttal*, pg. 26. One has to wonder if KCPL & GMO would have

been so willing to jump into the Rock Creek and Osborn PPAs had they already been absorbing the losses from its first six PPAs.

KCPL & GMO's failure to recognize that its 2014 market forecasts were faulty was not the only issue with the decision to enter into the Rock Creek and Osborn PPAs though. There is also the fact that the Rock Creek and Osborn PPAs were priced **higher** than the previous PPAs that KCPL & GMO had executed at a time when the price of PPAs was steadily **declining**. This point is demonstrated quite succinctly in the following graph:

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Mantle Rebuttal, pg. 26. As OPC witness Ms. Mantle explained in her rebuttal testimony:

> What this . . . graph shows is that, other than Rock Creek and Osborn PPAs, the $/MWh prices in the contracts were steadily and predictably falling. Since KCP&L entered into its first wind PPA, wind technology costs have declined and the federal wind production tax credits have resulted in a boom in wind project investors. This graph also shows how the prices paid for the Rock Creek and Osborn wind projects are drastically out of line with the other prices paid before and after KCP&L signed the contracts for wind energy from the Rock Creek and Osborn wind projects.

Mantle Rebuttal, pg. 26. It should go without saying that paying more than is necessary for a PPA is imprudent, and this data shows quite clearly that KCPL & GMO could easily have found cheaper wind had they only bothered to look.

The importance of the fact that KCPL & GMO paid above what the data shows they could have paid for wind PPAs cannot be understated. Again, KCPL & GMO claimed that the primary reason for entering into these PPAs was that they were predicted to be profitable. *Crawford Direct* pg. 4 – 5. The profit that KCPL & GMO is referring to is the difference between the PPA price and what KCPL & GMO predicted it would receive for sale of the energy back into the market. This means that, the lower the PPA price, the more economical the PPA becomes. Therefore, KCPL & GMO should have been striving to achieve the **lowest possible price** for its PPAs, thereby increasing their earnings. The evidence provided shows that KCPL & GMO failed in that endeavor by selecting PPAs that were priced above what the companies themselves had already paid for other PPAs at a time when prices were clearly and irrefutably declining.

Neither KCPL & GMO nor Staff have offered any evidence to refute what has thus far been proven by the OPC, which is that, **at the time the Rock Creek and Osborn PPAs were executed**, KCPL & GMO knew or should have known that their

forecasted price models were inaccurate and, even if their forecasts had been accurate, that cheaper wind projects were available. Moreover, either of these factors sanding alone should be sufficient to establish that the Rock Creek and Osborn PPAs were imprudent as it is equally and independently imprudent to either enter into business decisions based on data one knows to be inaccurate or to pay more than is necessary for goods or services (especially when the purpose of buying said goods or services is to then resell them for profit). Thus, the decision to enter into the Rock Creek and Osborne PPAs under the terms as executed was undeniably imprudent.

2. Notwithstanding any of the other arguments already made, it was still imprudent for KCPL & GMO to have entered into the Rock Creek and Osborne PPAs without first receiving competitive bids through a Request for Proposals.

KCPL & GMO did not issue a request for proposal ("RFP") prior to entering into the Rock Creek or Osborn wind PPAs, as shown in the following testimony from OPC witness Ms. Lean Mantle:

> **Q. Did KCP&L issue a request for proposals prior to entering into the contracts with the Rock Creek and Osborn wind projects?**
>
> A. No. OPC data requests 8005 in case no. EO-2019-0068 and 8009 in case no. EO-2019-0067 asked for all documentation supporting KCP&L's initial decision to enter into each of the wind purchased power agreements for which costs were included in calculating the FAC actual net energy cost in the prudence time period. In response to this data request, KCP&L provided that its contracts with the Cimarron II, Spearville 3, Ensign, Waverly, and Slate Creek wind projects were all chosen from bids from KCP&L's 2010, 2012, and 2013 RFPs. Neither of KCP&L's responses to

these data requests provide an RFP or spreadsheets evaluating responses to the RFP that includes the Rock Creek and Osborn wind projects.

Mantle Rebuttal, pg. 28. This is important for several reasons. First, as further explained in Ms. Mantle's rebuttal testimony, KCPL & GMO **did** perform RFPs for all of the other PPAs they entered into:

Q. What did KCP&L provide to document its decisions to enter into contracts with the other wind projects?

A. KCP&L included reports on the RFPs issued, bids received, spreadsheets detailing the evaluation of the bids received, and reports on the selection of each wind project. The wind selection reports for the other projects all include descriptions of the RFP process, the number and types of bids received and the selection criteria that led them to enter into each of these contracts.

Q. Did KCP&L do the same due diligence for the Rock Creek and Osborn wind projects as it has for its other wind project contracts?

A. Based on the information it provided to OPC, it did not. The only analysis conducted to justify entering into contracts with the Rock Creek and Osborn wind projects was a cost benefit analysis in which KCP&L used the 2014 market prices discussed above to project the revenue streams it would receive from these wind projects. There was no comparison to other wind projects. A quick comparison of the site selection reports provided for Rock Creek and Osborn wind projects, attached as Schedules LMM-R-13 and LMM-R-14 with the site selection report for KCP&L's Waverly wind project, attached as Schedule LMM-R-16 shows the lower level of diligence conducted by KCP&L for the Rock Creek and Osborn wind projects.

Mantle Rebuttal, pg. 28 – 29. (footnotes omitted). KCPL & GMO have offered no explanation for their sudden decision to forego conducting the same due diligence for the Rock Creek and Osborne PPAs that they engaged in with regard to all of the other PPAs.

The second major issue with the failure of KCPL & GMO to perform an RFP is that it becomes impossible to know what other, cheaper wind options were available. As Ms. Mantle points out in her rebuttal testimony:

> In response to its 2013 RFP KCP&L received 30 proposals for PPAs from 16 different developers. Of those 30 proposals, 23 were priced lower than the Rock Creek and Osborn wind projects. [KCPL & GMO] should have expected similar responses in 2014 and issued an RFP accordingly, but for unexplained reasons, [KCPL & GMO] chose the Rock Creek and Osborn projects without an RFP and without determining whether these two projects were the best least cost alternatives.

Mantle Rebuttal, pg. 30. (footnotes omitted). This can also be seen in the exhibit that KCPL & GMO submitted into the record:

> The OPC cannot identify "all" of the other Missouri wind projects where KCP&L had the opportunity to enter into contracts. The OPC can instead only speak to those Missouri wind projects of which it is aware, which, incidentally, are those that were identified in KCP&L's various RFPs. This is why the testimony referenced in this DR refers back to KCP&L's 2013 RFP. Therefore, to see what Missouri wind projects that the OPC was aware of please see KCP&L's response to OPC DR 8005 in case EO-2019-0068. However, **it is important to remember that there could very easily be a large number of other Missouri wind projects that were potentially available for KCP&L to enter into that were not included in KCP&L's RFPs for various reasons (including, for example, the wind projects only becoming available after KCP&L issued its last RFP).**

Ex. 10 pg. 1. Had KCPL & GMO actually performed its proper level of due diligence, then there is strong probability that they could have discovered other, cheaper wind projects were available. This is especially true given the rapidly falling price of wind PPAs demonstrated in the testimony of both OPC and KCPL & GMO witnesses. *Mantle Rebuttal*, pg. 26; Crawford Surrebuttal pg. 11.

KCPL & GMO attempt to deflect attention from their failure to seek RFPs prior to entering into Rock Creek and Osborn by arguing that these PPAs are the result of other, older RFPs that, ironically, do not even include the Rock Creek and Osborn PPAs. *Crawford surrebuttal* pg. 8 – 9; *Mantle Rebuttal*, schedule LMM-R-16 9/15. It really should not be necessary to explain why relying on a two-year-old RFP that doesn't even list the two wind projects ultimately selected cannot be considered to be KCPL & GMO performing their necessary due diligence, but the OPC will nevertheless endeavor to do so.

To put the matter simply, KCPL & GMO rely on the fact that the developer (Element Power) of one of the projects identified in the 2013 RFP (Mill Creek) worked with another developer (Tradewind Energy) to create the Rock Creek windfarm after the Mill Creek project fell through. *Crawford surrebuttal* pg. 9. KCPL & GMO apparently believe that because they had originally entered into a PPA with Element Power for the Mill Creek project in 2013, they didn't need to consider **any other possible bidders** when entering into a completely separate project, produced by a different developer, two years later, with a higher price. *Crawford surrebuttal* pg. 9. This is plainly wrong and the Commission has even recognized as such in similar cases. For example, in case number GR-90-38 this Commission held that premiums paid on long term contracts for the purchase of natural gas that were entered into without an RFP were imprudent. *Report and* Order, GR-90-38, pg. 17. In reaching that conclusion, the Commission stated as follows:

> While recognizing that gas purchasing decision-making is an ongoing process, the Commission notes that the written proposals were obtained in 1988, at least two years before the execution of the contract with SEECO. The gas industry was in flux at this time, and to a great extent still is. **Thus a two-year time period could make a significant difference in what contract terms gas suppliers would be willing to offer**.

Report and Order, GR-90-38, pg. 14 (emphasis added). As for Osborn, KCPL & GMO just state that they were approached by an independent developer with an offer and took it. *Crawford surrebuttal* pg. 9. In other words, the companies literally just took the first offer that came their way.

Any prudent utility who wanted to enter into PPAs **with the intention of making a profit** on those PPAs would obviously endeavored to find the cheapest wind available so as to thereby maximize its profit. KCPL & GMO did not attempt to find the cheapest wind projects available, however, and instead just took the first two PPAs that were offered to them two years after their last RFP at a time when it was obvious that prices were declining. That is not the behavior of a prudent utility. KCPL and Rock Creek want the Commission to believe that Rock Creek and Osborn were the **only** options available to the company, but the company never performed the necessary due diligence to verify that fact. This imprudent decision has further resulted in significant harm to KCPL & GMO customers. The losses that KCPL & GMO have so far incurred as a result of this imprudent PPAs should therefore not be forced upon the companies' customers.

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

The OPC has taken the position that the Rock Creek and Osborn wind PPAs were imprudent in their entirety and thus all the losses that KCPL & GMO incurred because of these PPAs should be excluded. Therefore, the OPC argues that the Commission should order a negative prudence adjustment of $9,484,315 in KCPL's next filing to change its FAR and a negative prudence adjustment of $11,070,668 in GMO's next filing to change its FAR. *Mantle Rebuttal*, pg. 5. These amount take into consideration both the Missouri jurisdictional allocation and the 95% limitation. *Id*. However, the OPC also acknowledges that the Commission might find that it was prudent for KCPL and GMO to have entered into these kind of PPAs ***generally***, but not at same the prices as the Rock Creek and Osborn PPAs. To that end, the OPC has also supplied evidence showing what losses the companies could have avoided if they had entered into PPAs at prices that were consistent with the trend for their other PPAs. *Mantle Rebuttal*, pg. 33. If the Commission chooses that alternative, the Commission should order a negative prudence adjustment of $8,234,392 in GMO's next filing to change its FAR and a negative prudence adjustment of $7,656,764 in KCPL's next filing to change its FAR. Finally, RSMo section 386.266.4(4) requires that all amounts refunded by the Commission include interest at the electric utility's short-term borrowing rate. *Mantle Supplemental Rebuttal*, pg. 2. Therefore, interest accrued on any amount that the Commission disallows would need to be added as well. *Id*.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission accept this *Initial Brief* and grant the relief requested herein.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

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

/s/ John Clizer