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

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| In the Matter of Kansas City Power & Light<br>Company's Request for Authority to Implement<br>a General Rate Increase for Electric Service | )<br>)<br>) | **Case No. ER-2012-0174** |
| In the Matter of KCP&L Greater Missouri<br>Operations Company's Request for Authority<br>to Implement a General Rate Increase for<br>Electric Service | )<br>)<br>)<br>) | **Case No. ER-2012-0175** |

# INITIAL POST-HEARING BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

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## **I. INTRODUCTION**

This brief will address the following issues as identified in the List of Issues:

1. Rate Design/Class Cost of Service Study
2. Resource Planning—La Cygne and Montrose
3. Cost of Capital (including Regulatory Policy and Economic Considerations)

Many of the issues in the case were resolved through a series of agreements, and Public Counsel does not currently have the resources to delve into the remaining issues. Public Counsel reserves the right to address additional issues in its reply brief.

## **II. RATE DESIGN/CLASS COST OF SERVICE STUDY**

While there were a number of sub-issues related to rate design and inter-class revenue shifts, many of those issues settled. This brief will address two of the remaining issues, both of which pertain to Kansas City Power & Light Company (KCPL) only: 1) what revenue-neutral shifts should be made between classes; and 2) how should residential rates be designed.

### 1. Revenue-neutral Shifts:

The starting point for the first of these questions is the Class Cost of Service Study (CCOSS) performed by KCPL and filed as part of its direct testimony. KCPL witness Paul Normand developed the Company's CCOSS, which shows the rate of return results at existing revenue levels for each customer class, and submitted it as part of his direct testimony (Exhibit 38).

One of the most contested aspects of any CCOSS is the allocation of production costs.

Production costs are a very significant portion of an electric utility's cost of service,[1] and different allocation methods can produce dramatically different results in a CCOSS. Allocation methods that allocate a lot of costs based on relatively few hours of the year – sometimes based on a single hour of the year – are frequently advanced by parties that represent larger, higher-load-factor customers. Other parties that do not represent a particular constituency among customer classes (in this case, the Company and Public Counsel) advocate for allocation methods that do not rely so heavily on one or a few peak hours.

In this case, KCPL witness Normand used the Base, Intermediate and Peak (BIP) method to allocate production costs among the customer classes. Mr. Normand described the method as follows:

> KCP&L maintains supply resources that are required to provide both capacity and energy for its customers throughout the year (8,760 hours). Each of these generating resources has fixed (plant) investments along with corresponding variable (fuel) costs. KCP&L generates energy through a combination of these resources. It also acquires additional energy capability through its purchased power arrangements with other entities. In order to recognize these varied resources and associated costs in a systematic and equitable manner, a reasonable and representative dispatch order was established in order to achieve an equitable allocation of all of both fixed and variable costs to customer classes, rates and seasons.
>
> This approach resulted in grouping KCP&L's generation facilities into three major categories for allocation to customer classes:
>
> Base – First units available to meet KCP&L load. The load served by these units represents a base level of each customer's annual hourly load.
>
> Intermediate – Units that would generally be used to meet load after the dispatch of base units.
>
> Peak – Units dispatched last in order to meet load in any one hour.
>
> (Exhibit 38, Normand Direct, page 8)

In effect, Mr. Normand grouped baseload units like Wolf Creek and the two Iatan units in the

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[1] Production allocators (Production - fixed and Production – variable) comprise approximately 73% of the cost to serve. (Exhibit 233, Scheperle Rebuttal, page 9)

Base category, and the other units as Intermediate or Peak depending on their characteristics.

Staff witness Scheperle disagrees with Mr. Normand's classification of Wolf Creek, Iatan 1 and Iatan 2 as Base. (Exhibit 233, Scheperle Rebuttal, page 10) But his disagreement appears to be simply based on the **result** of this classification rather than any disagreement over the nature of the plants. If the plants are indeed baseload plants – and there is no evidence whatsoever that they are not – then it only makes sense that they be classified as Base. If that classification results in a lot of costs being classified as Base, that is not a flaw in the BIP method, it is simply a result of a lot of costs being tied up in baseload generation.

Based on the BIP and his CCOSS, Mr. Normand calculated the following indices of return for KCPL's various rate classes, where 1.0 would indicate that a class is providing exactly a system-average rate of return, a figure above 1.0 indicates that a class is contributing an above-average return, and a figure below 1.0 indicates that a class is contributing a below-average return:

- RESIDENTIAL: 0.98
- SMALL GENERAL SERVICE: 1.98
- MEDIUM GENERAL SERVICE: 1.28
- LARGE GENERAL SERVICE: 1.05
- LARGE POWER SERVICE: 0.54

(Exhibit 38, Normand Direct, page 8)

In her rebuttal testimony (Exhibit 303), Public Counsel witness Meisenheimer describes her evaluation of the Company's CCOSS:

> Q. ARE YOU SATISFIED TO USE THE CCOS 1 STUDY RESULTS PRESENTED IN THE DIRECT TESTIMONY OF KCP&L WITNESS PAUL NORMAND AS A GUIDE TO SETTING CLASS RATES IN THIS CASE?
> A. Yes. In recent cases, Public Counsel prepared and filed electric class cost of service studies that utilize Time of Use based allocations and other methods different from the Staff and Company. However, in this case, Public Counsel had insufficient internal and consulting resources available to develop the Time of Use allocators. As a result, although Public Counsel does not endorse or agree with each of the Company's allocation methods, I have reviewed the allocations and

> methods and am satisfied to use the Company's study results as a guide in setting rates. (Exhibit 303, Meisenheimer Direct Rate Design, page 3)

Based upon her evaluation and analysis of Mr. Normand's CCOSS, Ms. Meisenheimer concluded that the Commission should require a reduction in the return provided by the Small General Service and Medium General Service classes, offset by an increase in the return provided by the Large Power Service class. As it has for many years, Public Counsel in this case recommended that the Commission should impose class revenue shifts equal to one half of the revenue neutral shifts indicated by the class cost of service study. (Exhibit 303, Meisenheimer Direct Rate Design, page 4) Applying only one half of the indicated shifts in any given case means that class revenue responsibility will move closer to parity, but at a measured and reasonable pace. This policy avoids or minimizes rate shock, and recognizes that allocating costs to classes is not an exact science.

In this case, that policy led Ms. Meisenheimer to recommend the following shifts:

- Large Power Service increases by one half of the revenue neutral shifts indicated by the class cost of service study or $5,458,572 [$431,849,089* ½ *(5.539%-3.011%)];
- Small General Service decreases by approximately 61% ($3,319,366) of the $5,458,572 LPS increase; and
- Medium General Service decreases by 39% ($2,139,206) of the $5,458,572 LPS increase.

(Exhibit 303, Meisenheimer Direct Rate Design, pages 4-5)

These shifts are premised on the CCOSS prepared by Company witness Normand. Ms. Meisenheimer simply applied the shifts indicated by Mr. Normand's cost study on a revenue neutral basis to the billing units in this case to arrive at the dollar shifts. No party disputed her calculation of the requisite shifts (although several parties did challenge Mr. Normand's CCOSS).

2. Rate Design:

This brief will address two rate design issues: A) whether the initial winter blocks of certain residential rate classes should be increased (on a revenue-neutral basis) by five percent; and B) whether the customer charges for small general service and residential customers should be increased by the system average increase.

A. Winter Block Rates

Staff witness Michael Scheperle summarized Staff's proposal on the issue of adjustments to the initial blocks for winter usage as follows:

> Staff recommends the Commission in this case move rate classes closer to their costs to serve for the winter season. Staff recommends the first energy block rate of the winter All-Electric General Service rates (Small, Medium, and Large) be increased by 5%. Additionally, Staff recommends the first winter block of RESB (residential general use and space heat – one meter) and the winter season separately metered space heat rate of RESC (residential general use and space heat – two meters) each be increased by an additional 5%. (Exhibit 233, Scheperle Rebuttal, page 5)

Public Counsel concurs in this adjustment. It is strongly supported by the CCOSS performed by KCPL witness Normand. In his direct testimony, Mr. Normand summarizes the results of his CCOS in Table 3 in that testimony. (Exhibit 38, Normand Direct, page 23) That table shows that each of the classes for which Staff proposes an adjustment generate a much higher rate of return in the summer season than the winter season. This is particularly true of several of the residential categories. According to Mr. Normand's analysis, for residential all-electric, the summer season generates a return of 5.859%, but the winter season only generates 2.922%. Similarly, for residential customers with separately-metered space heating, the summer season generates a return of 4.161%, but the winter season only generates 2.284%. The general service classes all exhibit similar discrepancies, although not generally as pronounced as those of the residential class.

B. Customer Charges

Both Staff and the Company propose increasing all rate elements by the same percentage as the overall increase awarded in this case. Neither of those parties devotes any significant attention to the customer charge specifically; to them, in this case at least, it is simply another rate element that they propose treating like all other rate elements. But to many customers, particularly low usage customers, the customer charge is a significant portion of the bill. Moreover, increasing the customer charge and thereby decreasing the volumetric component tends to dilute the incentives that customers have to implement energy efficiency measures.

No party did an analysis of the rate impacts on customers of increasing the customer charge. No party even attempted to evaluate the impact of increasing the customer charge on low income customers. The Commission has recently opened an investigation to explore issues affecting low income customers. As it did in the Ameren Missouri rate case, Public Counsel urges the Commission to examine the effects of increasing customer charges on low income customers rather than raising them in a rate case without sufficient study.

## III. RESOURCE PLANNING

This is a very simple issue, and it boils down to this: should the Commission take minimal proactive steps now in order to protect its ability to properly analyze the La Cygne and Montrose investments in the next rate case? Like the rate design and class cost of service issues above, this issue is specific to KCPL and does not involve KCP&L Greater Missouri Operations (GMO).

Surely the Commission is still mindful of the interminable discovery disputes and endless

fights over information and evidence in the last case in which Iatan 2 was placed in service. Even after the Company spent millions of ratepayer dollars and the Commission's Staff spent countless hours, the record evidence about KCPL's prudence was woefully inadequate. Surely the Commission does not want to be faced with a case in which it is forced to make ratepayers pay for costly upgrades to La Cygne and Montrose simply because there is scant evidence of prudence but inadequate evidence of imprudence. Surely all concerned – ratepayers, the Company, the commission itself – will be better served by making an effort now to ensure that proper planning is being done, that proper evidence of the planning is being collected, and that proper documentation of construction prudence will be maintained.

Despite KCPL's Statement of Position and very brief testimony, there is actually little disagreement about this issue. As posed in the List of Issues filed on October 11, 2012, the issue is: "Should the Sierra Club's recommendations regarding the La Cygne and Montrose investments be adopted?" KCPL's Statement of Position, filed on October 12, gives KCPL's position as:

> No. KCP&L has not requested recovery of costs related to the La Cygne project in this rate case. Any discussions of project prudence and the associated documentation and review would be addressed in a rate proceeding after the assets are determined by Staff to be in-service and a formal request for cost recovery is filed with the Commission. This is also true with Montrose. While a recently completed capital project at Montrose is included in this case, it is not a major addition comparable to the La Cygne retrofit project.

But KCPL in its Statement of Position seems to be responding to a different question than the one actually posed, perhaps a question about pre-approval. The actual question has to do with the Sierra Club's recommendations. Those recommendations are set forth on pages 4 and 5 of the Direct Testimony of Sierra Club witness Bruce Biewald, in response to the question: "What are your recommendations?" The recommendations are quite straightforward and are excerpted

here from that testimony (the numbers and letter are added for ease of reference):

1. I recommend that the Missouri Commission insist on prudent and proper planning for the La Cygne and Montrose projects.
2. I recommend that the staff cease informal meetings with KCP&L regarding the La Cygne project. Rather, planning issues of this magnitude should be addressed in a public and transparent process with full participation from all interested parties.
3. I recommend that the Missouri Commission make it clear to KCP&L that any additional investment in La Cygne and Montrose will not be recoverable from Missouri customers unless the prudence of making those investments is justified in economic terms in a proper planning analysis, subject to ongoing examination.
4. I recommend that the Missouri Commission articulate, in its order in this rate case, that prudent planning includes an obligation for KCP&L [a] to actively seek out relevant information, [b] to conduct rigorous planning analysis, [c] to continue to monitor and re-evaluate the decision as construction proceeds, and [d] to thoroughly document and communicate the inputs, methodologies, and results of those planning analyses with the stakeholders and the Missouri Commission.

Although the prefiled Rebuttal Testimony of KCPL witness Burton Crawford (Exhibit 16) and the Statement of Position both state categorical disagreement with these recommendations, that disagreement appears to be one of form rather than substance. When asked specifically about these discrete recommendations, KCPL witness Crawford generally agreed with them, as well as agreeing with many other aspects of Mr. Biewald's testimony. Mr. Crawford's prefiled rebuttal testimony addressed Mr. Biewald's testimony only at single page. (Exhibit 16, Crawford Rebuttal Testimony, page 15)

Specifically, with respect to each of Mr. Biewald's recommendations, Mr. Crawford testified that he agreed with Recommendation 1 that the Commission should insist on prudent and proper planning. (Transcript, page 606) He also agreed with Recommendation 2 that planning issues of this magnitude should be addressed in a public and transparent process with full participation from all interested parties. (Transcript, pages 606-607) He agreed with Recommendation 3 that investment in La Cygne and Montrose should not be recovered from

Missouri customers unless the prudence of making those investments is justified in economic terms in a proper planning analysis, subject to ongoing examination. (Transcript, page 607) With respect to the four subparts of Recommendation 4, Mr. Crawford disagreed only with the form; that is, he agreed that each of the subparts are indeed obligations that the Company must fulfill, although he disagreed that the Commission should articulate them in this rate case. (Transcript, pages 613-614)

The Company also conceded that nothing prohibits the Commission from establishing a formal process to facilitate formal meetings and the filing of progress reporting. (Transcript, page 587) And the Company would not object to the Commission opening a new case to identify the type of information that should be collected to document project management and ongoing planning decisions. (Transcript, pages 589-590) And that is all that Public Counsel is asking of the Commission in this case: an order creating a new case in which interested entities like the Sierra Club can participate and in which the parties can work out, in advance of the next contested rate case, the kinds of information that should be collected and maintained.

## IV. COST OF CAPITAL

This brief will address the two contested aspects of determining an appropriate rate of return in this case: return on equity; and capital structure.

### Return on Equity

The evidence shows that the Commission should recognize an acceptable range for return on common equity (ROE) of 9.10% to 9.50%. The evidence also shows that once the Commission has determined an acceptable range for return on common equity, it is just and

reasonable for the Commission to authorize the low end of that range to promote affordability for customers.

The charge of the Commission is to set rates that are just and reasonable. (Transcript, pages 420, 465) An important part of a just and reasonable rate is an authorized return on equity that is neither excessive nor confiscatory. A reasonable return on equity, as developed by the United States Supreme Court decisions in the *Bluefield* and *Hope*[2] cases, is: (1) adequate to attract capital at reasonable terms, thereby enabling the utility to provide safe and reliable electric service; (2) sufficient to ensure the Companies' financial integrity; and (3) commensurate with returns on investments in enterprises having corresponding risks. (Transcript, page 421)

Mr. Gorman, Dr. Hadaway, Mr. Murray and Mr. Kahal are all experts in their field. (Transcript, pages 431-432, 440-441) The experts all utilized traditional tools including Discounted Cash Flow (DCF) models, Risk Premium (RP) studies, and the Capital Asset Pricing Model (CAPM) to determine their reasonable range for return on equity in these cases. (Transcript, pages 433, 457, 463) Public Counsel witness Mr. Gorman states that his calculations, based on the DCF risk premium and consideration of the CAPM studies, show that a ROE anywhere between 9.10% and 9.50% would be reasonable. (Exhibits 300 and 307, Gorman Direct Testimonies; Transcript, page 536) The Companies' witness Dr. Hadaway calculated a reasonable range for return on equity for KCPL and GMO to be anywhere between 9.8% and 10.3% and recommended that the Commission approve a ROE of 10.3% in these cases. (Transcript, pages 420, 432, 522) This is lower than his recommendation of 10.4% ROE in the original filing of this case. (Transcript, pages 421, 522) DOE, FEA, and Air Force witness

[2] Bluefield Waterworks and Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679 (1923); Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591 (1944).

Mr. Kahal went through the normal DCF, CAPM and other analyses to calculate an acceptable range of ROE of between 8.8% and 9.8%, with a recommendation of 9.5%, which is a little higher than the midpoint. (Exhibits 550 and 551, Kahal Direct Testimonies; Transcript, pages 543-544) Staff witness Mr. Murray calculated a reasonable range for ROE anywhere between 8.00% and 9.00%, with a recommendation of 9.00%. (Transcript, pages 457, 460, 463)

The Companies' recommendation does not reflect the market realities today. Dr. Hadaway utilizes a 5.7% growth rate in his DCF calculations which greatly inflates his ROE recommendation. (Transcript, pages 395-397, 445) One of the main faults he finds with the calculations of the other experts is that the growth rates they use, he believes, are too low. (Transcript, pages 443-444) However, this estimation of a GDP growth rate of 5.7% is excessive and out of line with a consensus of expert forecasters. (Transcript, pages 544, 556, 558) Dr Hadaway's estimated growth rate gives no weight to the current economic conditions and does not reflect the widely-accepted understanding that we are expected to be in a low growth, low inflation environment for the near future. (Transcript, page 501) An annual growth rate of 5.7% is greater than the 10-year average, the 20-year average and even the 30-year average for growth. (Transcript, pages 398-399) In fact, internal company information from the Board of Directors' minutes shows that even they do not expect a growth rate anywhere near Dr. Hadaway's 5.7%. (Transcript, pages 506, 512-513) This certainly should cause the Commission to question the testimony of Dr. Hadaway.

Similarly, capital market costs are much lower now than in KCPL's and GMO's last rate cases. (Transcript, pages 461, 544-545) The cost of equity is low and has also gone down since the last rate case. (Transcript, page 461) Dr. Hadaway's own models show a lowering of capital markets between this case and the previous KCPL and GMO rate cases. For example, in KCPL's

last rate case, Dr. Hadaway's analysis of the analyst growth constant growth DCF was 10.5% to 10.7% in his direct testimony and in rebuttal it was 10.2% to 10.4%. (Exhibit 314; Transcript, page 426) However, in the current case, the analyst growth rate constant growth DCF in his direct testimony was 10% both mean and median, and on rebuttal it dropped 20 basis points to 9.8%. (Exhibit 314; Transcript page 426) Arguably, these comparisons indicate that capital market costs have decreased between 40 and 80 basis points between the Companies' last rate cases and today. (Exhibit 314; Transcript, pages 425-428)

Overall Treasury bond yields have declined. (Transcript, pages 545, 530) Utility bond yields have also declined, with current observable bond yields now over 100 basis points lower in this case than they were in the last cases for the Companies. (Transcript, pages 431, 530) A comparison of Dr. Hadaway's direct and rebuttal Baa rated utility bond yields in both the current KCPL case and the previous case shows interest rates have dropped by 110 basis points in between the direct of the two cases and for rebuttal, a drop of about 7/10 of 1%. (Exhibit 315; Transcript, page 429) Similarly, a comparison of his projected interest rates between the two cases shows a decline in the direct of 120 basis points, and a slight increase of 10 basis points between rebuttals. (Exhibit 315; Transcript, page 430) Even Dr. Hadaway stated that although the forecast since July shows a slight increase in bond yields, and some may hope that they have hit bottom, the market has felt this before and been wrong, so it could continue to drop. (Transcript, page 451)

As a result of the capital market decline, average ROE awards for electric companies throughout the country have declined. (Transcript, page 545) The Regulatory Focus Report for the Regulatory Research Associates states that, excluding the Virginia surcharge/generation cases, the average authorized electric ROE was 9.97% for the first nine months of 2012.

(Exhibit 313; Transcript, page 422) Also according to the Regulatory Research Associates, the first quarter average ROE was 10.84% (which included five cases in Virginia which had abnormally high ROE awards), the second quarter was 9.92%, and the third quarter was 9.78%. (Exhibit 313; Transcript, page 423) Even the recommended ROE by the Company has gone down between the time the direct case was filed and today. (Transcript, page 421) But still the Companies have requested a ROE which far exceeds the ROE of 10% awarded in the last case. (Transcript, pages 409, 410)

Fluctuations in the economy are a normal part of the business arena, and this fluctuation is a part of doing business. (Transcript, page 462) What is relevant in this case is what the current market cost of equity is for the Companies not what their last authorized return on equity was. If the utility has a right to expect the Commission to increase its return on equity in a rate case, then customers have the right to expect the Commission to decrease the return on equity in a rate case if the evidence suggests it is the fair thing to do. Dr. Hadaway claimed that Mr. Gorman's return on equity was negatively skewed by his assumptions and the application of the models. (Exhibits 20 and 115, Hadaway Rebuttal Testimonies) In support of this claim, Dr. Hadaway offers criticisms of Mr. Gorman's constant growth Discounted Cash Flow ("DCF") study, his multi-stage growth study and his risk premium analysis. (Exhibits 20 and 115, Hadaway Rebuttal Testimonies) However, Mr. Gorman is fully aware of the implications of what is going on in the current marketplace in forming what he believes to be a balanced return on equity recommendation. (Transcript, page 532) Had Dr. Hadaway implemented the same type of procedure on that analysis in a more symmetrical and balanced way, his adjustments would not have created a material change in Mr. Gorman's recommended return on equity. (Transcript, page 536) In fact, corrections to Dr. Hadaway's own model inputs continue to show

that the Companies' current market cost of equity is approximately 9.3% to 9.5% which is well within Mr. Gorman's acceptable range for return on common equity of 9.10% to 9.50%. (Exhibits 301 and 308, Gorman Surrebuttal Testimonies; Transcript, pages 518-519, 523, 536)

The Companies would have the Commission believe that they would somehow be seen as riskier and less able to attract capital at more favorable rates if the ROE they receive is not the same or greater than they received in their previous rate case. Missouri's Regulatory Framework is balanced and supports the development of just and reasonable rates that provide a reasonable opportunity for the Companies to earn their authorized return on equity. (Transcript, pages 464-465) This is evident from credit rating analysts' findings that over the last several rate cases, KCPL's rate decisions have been constructive and credit supportive. (Exhibits 300 and 307, Gorman Direct Testimonies) S&P's current credit rating outlook for KCPL's parent company (Great Plains Energy) is BBB- and for KCPL and KCP&L GMO is BBB with a "Stable" outlook for all three entities. (Exhibits 301 and 308, Gorman Surrebuttal Testimonies; Transcript, page 365) The Companies agree that it is possible under the current regulatory environment for KCP&L and GMO to earn their authorized ROE. (Transcript, page 237) The Companies have the ability to control whether or not they earn the authorized rate of return through good business practices such as reducing costs. (Transcript, page 224) From a consumer perspective, electric utilities have received a large number of concessions including regular rate increases, reduced risk as a result of trackers and more extensive use of surcharges and other rate-making mechanisms that enhance the profit of shareholders. The IEC proposal would improve the opportunity for the Companies to earn their authorized ROE. (Transcript, page 237-238) GMO also has a fuel adjustment clause which adjusts regularly to alleviate the risk on the company due to changes in fuel prices and off-system sales. (Transcript, page 245) So, the evidence shows

that Missouri is far from a risky regulatory environment for KCPL or GMO.

In the current case the Commission should also focus on ensuring rate affordability and fairness for consumers. (Exhibits 302 and 309, Meisenheimer Direct Testimonies) In addition to cost of service, other relevant factors to consider in setting just and reasonable rates include the value of a service, the affordability of service, rate impacts, and rate continuity. Part of determining a reasonable rate is to make rates as affordable as possible without causing a detriment to the utility. Customers testifying in public hearings and customers submitting comments to the Commission have regularly voiced frustration and concern about the burden of additional rate increases given the state of the economy. (Exhibits 302 and 309, Meisenheimer Direct Testimonies; Transcript, page 465; Local Public Hearing Transcripts; Filed Customer Comments) The reality is that customers cannot get a decent rate of return on their savings accounts and their retirement funds are at risk. (Transcript, page 387)

Public Counsel urges the Commission to decide issues in a manner that recognizes the economic challenges faced by households in the Companies' service areas and reasonably minimizes the rate impact on consumers. (Exhibits 302 and 309, Meisenheimer Direct Testimonies) Once the Commission has determined a just and reasonable ROE range, Public Counsel requests that the Commission order the low end of the range in this case to promote affordability for the customers. For example, if the Commission determines that an acceptable recommended range for return on common equity is 9.10% to 9.50%, the evidence shows that it would be just and reasonable for the Commission to authorize the low end of the range, or 9.10%, for the return on common equity in this case. Similarly, if the Commission recognizes a different acceptable range for return on common equity, it would be just and reasonable for the Commission to authorize the low end of that acceptable range.

An awarded ROE that is anywhere within a just and reasonable range is neither excessive nor confiscatory. Just because the experts may have recommended a specific ROE does not mean the entire range they have supported is not reasonable. Mr. Gorman states that his calculations show that a ROE anywhere between 9.10% and 9.50% would be reasonable. (Exhibits 300 and 307, Gorman Direct Testimonies; Transcript, page 536) Similarly, Staff witness Mr. Murray has calculated a reasonable range for ROE anywhere between 8.00% and 9.00%. (Transcript, pages 457, 463) While his recommendation may be higher, Dr. Hadaway admits that the lower end of his ROE range, or 9.8%, would satisfy the Bluefield and Hope standards set by the U.S. Supreme Court for a reasonable ROE. (Transcript, pages 420, 432-433, 522) The same is reflected in the testimony of Mr. Murray and Mr. Gorman. (Transcript, pages 462-464)

As stated above, the charge of the Commission is to set rates that are just and reasonable. Part of determining a just and reasonable rate is to make rates as affordable as possible without causing detriment to the utility. (Transcript, page 465) The effect of ROE on the customers and the affordability of rates in this case is staggering. According to Staff's Reconciliation, the Total Revenue Requirement as of the August 31, 2012 update expressed by the Company at its original recommendation of 10.4% ROE is $112,547,915 for KCPL, $21,536,362 for GMO-L&P and $64,313,510 for GMO-MPS. (Exhibits 316 and 317; Transcript, pages 466-468) If the Commission approves the top of Staff's recommended range of ROE, or 9.00%[3], the Company's revenue requirement for KCPL would be reduced, saving the customers $24,393,607 (approximately 22%) while the Company's revenue requirement for GMO-L&P would be reduced by $5,436,278 (approximately 25%) and the GMO-MPS revenue requirement would be

[3] Which is very close to the bottom of Mr. Gorman's recommended range of 9.1%.

reduced by $16,592,966 (approximately 25%). (Exhibits 316 and 317; Transcript, pages 467-468) In total, if the Commission approves a ROE of 9.00%, which reflects the top of Staff's reasonable range and is close to the bottom of Public Counsel's reasonable range, the savings to the customers would be approximately $46 million each year. (Exhibits 316 and 317; Transcript, pages 468-469) If the Commission approves the bottom of Staff's recommended range of ROE, or 8.00%, the Company's revenue requirement would be reduced even further saving the customers significantly more than $46 million. (Exhibits 316 and 317; Transcript, page 469) Each of the ROE's reflected in Staff's Reconciliation have expert testimony behind them stating that they satisfy the Bluefield and Hope standards set by the U.S. Supreme Court for a reasonable ROE. The lower the approved ROE, the more affordable the rates are to the customers. Therefore, Public Counsel asks that once the Commission has determined a just and reasonable ROE range, it order the low end of the range in this case to promote affordability for KCPL and KCPL-GMO customers.

Capital Structure

The evidence shows that the Commission should use a hypothetical capital structure (50% debt/50% equity) in this case rather than the Company's projected actual capital structure at the end of August 2012. The burden of proof is on the Companies to show that the projected actual capital structure of Great Plains Energy (GPE) as of August 31, 2012, is just and reasonable. However, the evidence shows that the Companies have no justification for the proposal to increase common equity ratio from 45.51 % to 52.475 %.

The Companies' proposed capital structure reflects too much common equity and has unnecessarily inflated the claimed revenue deficiency in this proceeding. A capital structure of

50% debt and 50% equity is reasonably consistent with the 49.7% common equity ratio capital previously approved for KCPL in its 2010 rate case in Kansas.[4] (Exhibits 301 and 308, Gorman Surrebuttal Testimonies) As Mr. Gorman outlined in his surrebuttal testimony, it appeared that the Company had been building up its common equity because it was using common equity to refinance maturing long-term debt. (Exhibits 301 and 308, Gorman Surrebuttal Testimonies) However, the Companies' witness, Mr. Bryant, testified that Mr. Gorman's understanding of the funding used to retire long-term debt was in error. Mr. Bryant asserted for the first time during the hearing that the Company was relying on short-term debt to fund the refinancing of utility long-term debt maturities on an interim basis. (Transcript, page 360) The proceeds from an equity issuance were used to pay down approximately $500 million of high-cost GMO notes with the balance of that financing currently in short-term debt which the Company does not reflect as a part of the long-term capital structure. (Transcript, pages 360, 362) Mr. Bryant stated the Company planned to refinance the buildup of short-term debt after it accumulates enough short-term debt to justify a long-term debt issuance of at least $300 million. (Transcript, page 361) Mr. Bryant stated that the Company was evaluating a fall financing issuance or a first quarter of next year financing. (Transcript, page 362) Mr. Bryant testified that long-term debt issuances of $300 million and more attract a bigger market and result in lower utility debt costs. (Transcript, page 360) In spite of the fact that Mr. Bryant indicated that there was $344 million as of August 12, 2012, no refinancing has occurred through the end of the true-up period for this case. (Transcript, page 362)

Short-term debt should be included in the capital structure. However that is not how the

[4] Kansas Corporation Commission Docket No. 10-KCPE-415-RTS; Order: 1) Addressing Prudence; 2) Approving Application, In Part; & 3) Ruling on Pending Requests; Exhibit IV, page 3, November 22, 2010.

Companies have chosen to treat this amount of debt. (Transcript, page 360) The Company does not reflect the short-term debt used to fund long term debt maturities in its proposed capital structure, choosing instead to exclude the short-term debt used to finance maturing long-term debt capital from the proposed ratemaking capital structure in this proceeding. (Transcript, page 360) It is clear that the Company has not modified its actual debt and equity capital structure for funding its investment in utility plant and equipment. Rather, the Company is simply driving up its cost of service in this case by taking advantage of its policies to issue short-term debt to refund maturing long-term debt, and then later refinance the short-term debt with long-term debt after the end of the rate case. The Company's effort appears to be directed at increasing its common equity ratio which increases its overall cost of capital and income tax expense. The Company's investors directly benefit from this by growing the Company's equity base, and its earnings and dividend paying ability. The customers had no input or control over Great Plains Energy's decision to assume Aquila's remaining debt as part of that acquisition. (Transcript, page 366) Excluding this short-term debt now inflates KCPL and KCP&L GMO common equity ratios of total capital and inflates their claimed revenue deficiency all to the detriment of the customers.

The Companies used short-term debt to refinance maturing long term debt and, therefore, are using short-term debt to support the utilities' rate base investments. The maturing long-term debt at issue has been included in the Companies' ratemaking capital structure in prior rate cases. The long-term debt that matured included a $500 million note that Aquila had prior to the acquisition of GMO. (Transcript, page 362) Utility debt is usually used to finance utility assets; therefore, this long-term utility debt is tied to utility operations. (Transcript, page 363) Because KCPL's and KCP&L GMO's rate bases are not lower in this case than they were in the last case,

it is not reasonable to expect that the utilities can support their larger investments in rate base with less capital. Since the objective of this rate case is to set a revenue requirement to allow KCPL and KCP&L GMO to recover their actual and reasonable cost of service, this short-term debt must be included in the ratemaking capital structure because it represents a component of the utilities' capital that is being used to fund their rate base investments.

Excluding the short-term debt from the ratemaking capital structure, as proposed by Mr. Bryant, will unjustifiably increase the percentage of common equity and inflate the utilities' claimed revenue deficiency and cost of service in this proceeding. Therefore, the Commission should reject the Company's proposal to develop a ratemaking capital structure that excludes the short-term debt that is being used to fund rate base investments. If eh Commission does not recognize the appropriate (or actual) cost of capital, and the Company is allowed to substantially modify its actual weight of debt and equity within its capital structure, the result will be an unnecessary and unjustified increase in the common equity and an unjustified increase in the revenue deficiency.

While there is no dispute regarding the prudency of the policy to minimize the cost of long-term debt, the Company's proposal in this case to set rates using a capital structure with a temporarily inflated common equity ratio and to exclude debt capital actually being used to fund rate base investments is completely unreasonable and detrimental to the customers. Therefore, the Commission should use a hypothetical capital structure (50% debt/50% equity) in this case rather than the Company's projected actual capital structure at the end of August 2012.

WHEREFORE, Public Counsel respectfully offers this Initial Post-hearing Brief and prays that the Commission conform its decision in this case to the arguments contained herein.

Respectfully submitted,

OFFICE OF THE Public Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to all parties this 28th day of November 2012.