BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service	))))	**File No. ER-2016-0285**

PUBLIC COUNSEL'S REPLY BRIEF

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April 4, 2017

TABLE OF CONTENTS

Introduction	1
Capital Structure	3
Fuel Adjustment Clause ("FAC")	5
Depreciation	11
MEEIA Cycle 1 Adjustment	15
KCPL's IBR Tracker	18
Electric Vehicle Charging Stations	19
Customer Experience	21
Conclusion	23

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COMES NOW the Office of the Public Counsel ("OPC" or "Public Counsel") and offers its Reply Brief to the Missouri Public Service Commission ("Commission") as follows:

Introduction

If the Commission finds in favor of Kansas City Power & Light Company ("KCPL") on every issue the company will receive a $65.15 million rate increase (Ex. 173 p. 1). If the Commission finds in favor of the Commission Staff ("Staff") on every issue, the company will receive a rate increase of approximately $13.7 million (Staff Br. p. 76). Among the differences between the company and Staff, the largest dollar issues are the Return on Common Equity ("ROE"), KCPL's proposal to change depreciation rates, and KCPL's attempted Missouri Energy Efficiency Investment Act ("MEEIA") Cycle 1 adjustment. For ROE, the company requests an increase to 9.9% when all other parties believe a *decrease* is warranted. Certainly the requested increase in ROE makes up a substantial portion of the company's rate increase request (Staff estimates the difference to be over $26 million[1]) (Staff Br. p. 10). KCPL's attempt to include terminal net salvage in depreciation rates will increase rates by approximately $ 10

[1] That difference is as of June 30, 2016 (Staff Br. p. 10, FN 32).

million. The Company's proposed MEEIA adjustment will increase rates by approximately $6.6 million. On each of these three issues, Public Counsel is aligned with Staff.[2]

The Company's positions on these issues would result in excessive rates and unnecessarily increase charges to customers. If the Commission authorizes an ROE that is more than required to attract capital in order to provide safe and adequate service, customers will be forced to pay more than necessary (Tr. Vol. 11 p. 760). Comparing KCPL's requested ROE (9.9%) to the testimony of either Dr. Woolridge (8.65%) or Mr. Gorman (range of 8.9% to 9.5%), it is clear that KCPL is asking its customers to pay too much. KCPL's attempt to change the depreciation rates to include terminal net salvage estimates would increase rates unnecessarily because the Company receives an opportunity to recover the costs under the current method once they occur. The Company's MEEIA Cycle 1 adjustment unnecessarily raises rates because customers have *already paid* for MEEIA Cycle 1. Requiring additional payment through this proposed adjustment is unjust and unreasonable. The Company's position on these three issues alone would require ratepayers to pay approximately $ 42.6 million more than necessary.

The positions taken by the company on these issues (as well as those discussed in Public Counsel's initial brief and those discussed below in reply) are unreasonable and will require customers to pay more than necessary for utility service. Even without the present requested increase, customers are already struggling to keep up with KCPL's numerous rate increases. From 2007 to 2015 the increase in average weekly wages for Missouri counties in the KCPL service area is about one-fourth of the increase in electric rates for KCPL customers (Ex. 200, p.

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[2] Public Counsel takes different positions from the Staff on a number of issues in this case including the treatment of Electric Vehicle Charging stations and the appropriate Fuel Adjustment Clause.

8). Any increase will further impact and burden KCPL's customers and so the Commission should guard carefully against KCPL's efforts to increase rates above what is necessary to provide safe and adequate service.

In this *Reply Brief*, Public Counsel offers responses to the other parties initial briefs on specific issues. Failure to address a specific argument does not indicate acceptance of that argument. Any issue or argument included in Public Counsel's *Post-Hearing Brief* not addressed specifically below is hereby adopted and incorporated as if set forth fully herein.

Capital Structure

The Commission should continue the practice of using Great Plains Energy's ("GPE") consolidated capital structure for ratemaking purposes. Using the consolidated capital structure to set rates for KCPL is appropriate because (1) that is how rating agencies evaluate the company and (2) GPE operates KCPL and GMO as a consolidated entity for GPE's advantage.

Rating agencies assign credit ratings based on GPE's consolidated capital structure (Tr. Vol. 14 p. 1778; Ex. 220). "Standard & Poor's does a family rating assignment based on Great Plains Energy and its consolidated capital structure." (Tr. Vol. 14 p. 1778). Moody's does provide a little more standalone consideration of financial risk at the subsidiary level, but also looks at the additional holding company debt and the pressure that puts on the subsidiaries to distribute dividends to finance both the dividends at Great Plains Energy and the new additional holding company debt (Tr. Vol. 14 p. 1779). Because of these ratings systems, the actions of GPE will impact the rating agencies evaluations of KCPL (Tr. Vol 14, p. 1779). That the rating agencies assign ratings based on the consolidated company makes sense because that is how the companies have been managed – for the benefit of GPE.

In its brief, Staff explains how GPE has managed the regulated entities for GPE's advantage. Specifically, Staff describes a series of debt issuance transactions related to GMO that had a negative impact on KCPL (*Id*). The Commission also heard testimony from Mr. Murray who explained recent instances when GPE managed the dividend payouts of GMO and KCPL disproportionately in order to benefit the holding company (Ex. 221 pp. 8-9). To be clear, the interests of GPE are not the same as the interests of the regulated entities; Staff notes GPE's past actions have put a strain on KCPL's financial health (Staff Br. pp. 42-43). Based on the management described above, it is clear that the GPE consolidated capital structure should be used for ratemaking purposes.

Both Staff and Public Counsel recommend continued use of the GPE consolidated capital structure (Staff uses June 30th and Public Counsel recommends using September 30th). KCPL seeks to use the KCPL "per book capital structure as of the true-up period ending December 31, 2016" (KCPL Br. p. 19). Importantly, no party supports using the December 31, consolidated GPE capital structure for ratemaking purposes. As the Commission heard during the true-up hearing, GPE's capital structure is in a transitional phase (Tr. Vol 14 p. 1783). This transitional phase is particularly acute if the December 31st date is used due to transactions related to the pending acquisition of Westar, Inc. by GPE. According to KCPL witness Bryant, the GPE capital structure on December 31st is in the range of 53% to 54% (Tr. Vol. 14 p. 1774). Shortly after December 31st - during the pendency of the rate case - GPE issued debt bringing the capital structure into the range of approximately 40% to 41% (Tr. Vol. 14 pp. 1774-75). Mr. Bryant agreed that the December 31st GPE capital structure is abnormal from a historical standpoint (*Id*). The capital structure for GPE is significantly different now than it was on December 31st. Staff witness Murray testified that a rating agency would not rely on a capital structure that is in a

transitional phase (Tr. Vol. 14 pp. 1784). If a rating agency would not rely on the capital structure in a transitional phase, neither should the Commission for ratemaking purposes. Because the December 31st capital structure does not reflect how GPE will be capitalized going forward the Commission should use Public Counsel's recommended capital structure offered in the testimony of Mr. Charles Hyneman (Ex. 302, p. 17). Alternatively, it would also be appropriate to use Staff's recommended capital structure.

The Commission has consistently ordered the use of GPE's consolidated capital structure in KCPL rate cases since the company's 2006 rate case, ER-2006-0314. This practice was continued in KCPL's most recent rate case in which the Commission recognized it has historically used the GPE capital structure to set rates for KCPL as has the Kansas Corporation Commission when setting rates for KCPL's Kansas operations (Report and Order, Case No. ER-2014-0370, p. 20, *Iss'd* Sept. 2, 2015). Because rating agencies evaluate the company on a consolidated GPE basis and GPE operates KCPL and GMO as a consolidated entity for GPE's advantage, the Commission should continue to use GPE's consolidated capital structure for ratemaking purposes.

FAC

Section 386.266 RSMo gives the Commission discretion to allow an electric utility to establish an FAC. "The statute does not require that the Commission approve a fuel adjustment clause. Instead, it specifically gives the Commission authority to accept, reject or modify a proposed fuel adjustment clause after giving an opportunity for a full hearing in a general rate case" (emphasis added)(Report and Order, Case No. ER-2007-0004, p. 63, *Iss'd* May 17, 2007). The company laments that OPC's modifications to the FAC are different than what its affiliate GMO has currently (KCPL Br. p. 24). There is no statutory right that KCPL have the same FAC

mechanism as its affiliate. Notably, to perpetuate a flawed model simply for the company's convenience is unjust, unreasonable, and a detriment to customers.

Beginning at page 24 of its brief KCPL claims that the Non-unanimous Partial Stipulation and agreement filed on February 10, 2017 "resolved a number of issues" related to the FAC. That is not accurate. In the stipulation and agreement the company modified only its own position. The Stipulation language states: "KCP&L agrees, for the purposes of this case, that it is not requesting to include in its FAC costs that are currently excluded." (Doc. No. 257, p. 4). That the company agreed to withdraw portions of its attempt to abuse and misuse the FAC to the detriment of its customers does not mean the company has met the filing requirements or that the Commission should not consider whether KCPL is deserving of an FAC and under what conditions, but it does demonstrate the unreasonableness of the company's initial gambit. All issues relating to the FAC remain for Commission determination.

In this case, Public Counsel proposes modifications to protect ratepayers and further the public interest as well as requests additional reporting requirements. Importantly, with the changes to the FAC recommended by Public Counsel, KCPL will continue to enjoy a reduction in risk regarding recovery of its fuel and purchased power expenses. The majority of current FAC costs are included; only the non-fuel and non-purchased power costs now included in KCPL's FAC would be impacted (Ex. 305, Mantle Direct p. 22). To be clear, the non-fuel and non-purchased power costs removed from the FAC would continue to be included in the revenue requirement for KCPL with base rates set to provide an opportunity to recover those costs. KCPL does not like OPC's proposal because the company wants to continue recovering changes to costs that are not fuel through its fuel adjustment clause (KCPL Br. p. 26).

Throughout its brief, the company demonstrates it does not understand OPC's proposed modifications and offers distorted criticism in a number of areas. First, the company attempts to argue that OPC's proposal to include only fuel costs that are eligible to be included in FERC account 151 is "contrary to FERC's Uniform System of Accounts[.]" (KCPL Br. p. 26). To be clear, Public Counsel would also include FERC account 518 nuclear fuel in the FAC. Setting that aside, the company's attempt to argue that FERC account 151 is inappropriate is perplexing because its own witness endorsed using this account to determine unit-train depreciation should be recovered in the FAC, testifying "[t]he cost of fuel shall be charged initially to account 151, Fuel Stock." (Ex. 127, Herrington Surrebuttal p. 10). Furthermore, KCPL argues that a FERC case cited in the testimony of OPC witness Mantle "actually supports the Company's position that unduly restrictive interpretations of the USoA language should be rejected[.]" (KCPL Br. p. 27). After making this claim KCPL discusses at length how that case was about whether certain costs "were properly recorded in USoA Account 151" and so could be included in the FAC (KCPL Br. p. 27). To be clear, under OPC's proposal costs fitting the definition of those in FERC account 151 could be included in the FAC. The Company's strained arguments and distorted interpretation of the application of the FERC accounts are simply an attempt to continue including non-fuel costs in the special cost recovery mechanism meant to recover the changes in the "fuel and purchased-power costs, including transportation." Section 386.266.1 RSMo. Notably, KCPL's representation that OPC's approach is different than all other utilities in the state is also inaccurate (KCPL Br. p. 27). As the Commission is aware, it recently approved the Unanimous Stipulation and Agreement in Ameren Missouri's rate case, ER-2016-0179, that will limit fuel costs to be recovered through the FAC to the fuel costs listed in the account definition of FERC account 151 and costs for nuclear fuel recorded in FERC account

518 (Order Approving Unanimous Stipulation and Agreement, Case No. ER-2016-0179, *Iss'd* Mar. 8, 2017 and effective Mar. 18, 2017).

The company argues that OPC's proposal would prevent the company from recovering SPP costs and revenues that "are all a part of making purchased power possible." (KCPL Br. p. 28). The Commission should reject this argument for at least two reasons: 1) OPC recommends including these costs in the company's revenue requirement and so it does not prevent the company from recovering these costs and 2) this argument has been rejected by the Commission in the past. In its Report and Order in ER-2014-0258, the Commission stated "Ameren Missouri leaps to its conclusion that since it sells all its power to MISO and buys all that power back, all such transactions are off-system sales and purchased power within the meaning of the FAC statute. The Commission does not accept this point of view." (Report and Order, Case No. ER-2014-0258, p. 115, *Iss'd* Apr. 29, 2015). The Commission should reject this argument in this case once again.

KCPL opposes reporting, for purposes of its FAC, purchased power costs and off-system sales in the same manner as required by FERC Order 668 (KCPL Br. p. 29). Certainly FERC Order 668 does not prescribe how KCPL should prepare or present information to the Missouri Commission. However, Public Counsel offered testimony supporting modifications requiring information be presented to the Commission (and the parties) in a certain manner. For its opposition to this reporting requirement the company offers more perplexing and incorrect information. The company claims, without support, that no other Missouri electric utility reports its purchases and sales on a net basis (KCPL Br. p. 30). Every utility is required to record these costs and revenues on a net basis in its general ledger in accordance with FERC Order 668. The issue is that KCPL chooses not to present this information in its FAC reports or its testimony in

this case. KCPL also states that no other party filed testimony advocating KCPL provide this information (KCPL Br. p. 30). Whether other parties devote testimony to a particular issue is not something OPC can control; however, MIEC witness Dauphinais offered testimony on the netting required by FERC Order 668 and why that facilitates transparency (Ex. 851, Dauphinais Rebuttal). Public Counsel's request asks for that information to be provided in that manner. Strangely, KCPL points out that OPC raised this issue with the company's FAC information "for the first time" in rebuttal testimony (KCPL Br. p. 29). Perhaps this is an attempt to discredit valid criticism by insinuating it was raised at the wrong time even though it is proper rebuttal, KCPL made no motion to strike, and the testimony was admitted into the record.[3] Importantly, as Public Counsel noted in its initial brief, and again here, the company *already* keeps this information on its books and records. Requiring the company to follow this reporting requirement is a reasonable request, will facilitate transparency, and enables parties to evaluate KCPL's true purchased power and net system sales in the future.

The company is opposed to all other additional reporting requirements of OPC, even those that simply ask that OPC be provided copies of the information provided to Staff (KCPL Br. pp. 33-36). Much of the information requested by OPC is provided by other utilities with an FAC (*See* Order Approving Stipulation and Agreement, ER-2016-0023, Iss'd Aug. 10, 2016, Attachment A (indicating that Empire agreed to additional reporting including detailed account information); Ex. 750, Barnes Surrebuttal p. 13 (indicating that Ameren Missouri provides

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[3] The company's affiliate, GMO, tried the opposite approach in its recent rate case when it moved to strike portions of Public Counsel's direct testimony as improper rebuttal (*See* Motion to Strike Portions of Direct Testimony of Public Counsel Witness Michael P. Gorman, Case No. ER-2016-0156, Doc. No. 156). In KCPL's estimation, there is no time when OPC can offer testimony.

information including detailed account information)). It is clear that KCPL's current method is the outlier.

KCPL wishes to continue to include language in its FAC tariff sheets that permit the company to add new SPP cost and revenue types (KCPL Br. p. 35). In support, KCPL asserts it is not unusual for SPP to change a schedule or charge code by giving it a new name or by reclassifying it (KCPL Br. p. 35). OPC acknowledges that KCPL's current FAC tariff appears to allow modification to the FAC components between general rate cases even though the FAC statute, Section 386.266.4 RSMo, specifically states that an FAC may be "approved, modified, or rejected only within the context of full hearing in a general rate proceeding." This is not something that should be permitted to continue. If the Commission allows SPP codes, schedules and costs in the FAC and the SPP changes its schedule or name, KCPL can ask for a revision to the tariff sheets that provides an explanation to the Commission. At that time the Commission can determine if the change is a change to the FAC which is not permitted between rate cases (*See* Order Approving Tariff To Change Fuel Adjustment Clause Rates, Case No. ER-2014-0373, p. 3).

In this case, KCPL has demonstrated persuasively in its pre-filed testimony, testimony during the hearing, and its initial brief, that it requires further guidance from the Commission on understanding and administering this special cost recovery mechanism appropriately. Public Counsel's recommended modifications achieve that by balancing the interests of the customers with those of the company in a more equitable manner and should be adopted by the Commission.

Depreciation

The Commission should reject all modifications to the company's depreciation schedule because no party recommending a change conducted a full depreciation study encompassing the changes proposed. Isolated updates made to the depreciation schedules related to generation facilities only do not take into account any other changes in distribution, transmission, or general plant that may have occurred. Because depreciation for setting rates should be viewed in the totality of all assets during a particular period, the isolated modifications should be rejected. Instead, the Commission should order KCPL to continue to use the current ordered depreciation rates set in Case No. ER-2014-0370.

The largest point of disagreement relates to KCPL's request to include terminal net salvage in depreciation rates. Doing so would be a departure from long-standing Commission practice. In support of its position, the company points to three items (1) the current method contains an intergenerational inequity, (2) the NARUC depreciation manual, and (3) the Commission's change to "life-span" depreciation method in 2010 (KCPL Br. p. 46, 40, 43). Each of these points should not persuade the Commission to change its current practice.

First, KCPL posited that the current method creates an intergenerational equity issue. As Staff points out in its brief, however, switching to the company's proposal (thereby increasing rates for current customers) does not eliminate the putative intergenerational issue (Staff Br. p. 50). Instead, the company's proposal allows the company to charge customers for a speculative and unknown cost that, if not accurate, means customers may pay too much. The current approach supported by both Staff and OPC uses known historical costs to include a potion of net salvage in rates (Tr. Vol. 8 p. 358). The unknown and speculative terminal net salvage costs are not included in the depreciation rates. To the extent that any decision on the depreciation rate

will create an intergenerational equity issue, it is preferable that the rate be determined using historical figures rather than the company's estimates.

Second, KCPL states that the NARUC Depreciation manual supports its position to include terminal net salvage (KCPL Br. p. 43). The Commission is not bound by the NARUC manual and there are good policy reasons not to adopt the practices contained therein. The Commission sets just and reasonable rates. Section 393.150 RSMo; *Utility Consumers Council of Missouri v. P.S.C.*, 585 S.W.2d 41 (Mo. 1979). Using known and measurable historical data can help ensure the rate charged to customers includes only those costs the Commission has evaluated and determined to be prudent and appropriately incurred in the provision of utility service. Using the estimated costs, as KCPL proposes, removes oversight of the actual costs and instead asks the Commission to set rates based on a "concept"; this should be rejected.

Furthermore, the NARUC depreciation manual itself presents reasons against including terminal net salvage (Ex. 319, p. 18). Under the heading "Salvage Considerations" the manual states:

> The practical difficulties of estimating, reporting, and accounting for salvage and cost of retirement have raised questions as to whether more satisfactory results might be obtained if net salvage were credited or charged, as appropriate, to current operations at the time of retirement instead of being provided for over the life of the asset. The advocates of such a procedure contend that salvage is not only more difficult to estimate than service life but, for capital intensive public utilities, it is typically a minor factor in the entire depreciation picture. The obvious exception, of course, is the huge retirement cost of decommissioning nuclear power plants. The advocates of recording salvage at the time of retirement

further contend that salvage could properly be accounted for on the basis of known happenings at the date of retirement rather than on speculative estimates of factors, such as junk material prices, future labor costs, and environmental remediation costs in effect at the time of retirement.

(Ex. 319 p. 18). The Commission's current approach, articulated in the *Third Report and Order* in Case No. GR-99-315[4] involving Laclede Gas Company and the *Report and Order* from Case No. ER-2004-0570 involving the Empire District Electric Company reflects an appreciation that terminal net salvage, including retirement, should be included in the depreciation rate only based on known and measurable costs by "dividing the net salvage <u>experienced for a period of time</u> by the original <u>cost of the property retired during that same period of time</u>." (Report and Order, Case No. ER-2004-0570, p. 52, *Iss'd* Mar. 10, 2005 (emphasis added); *see also* Third Report and Order, Case No. GR-99-315, p. 8, *Iss'd* Jan. 11, 2005). These two orders follow the long-time Commission practice of only including known and measurable expenses in rates and should continue to be followed (Ex. 315, Robinett Surrebuttal p. 12).

For its third point in support of its new method, KCPL cites the Commission's move to a "life-span" depreciation method (KCPL Br. pp. 40-41). Both Staff's witness and OPC's witness testified that using the "life-span" method does not impact application of the Commission's prior decisions to exclude terminal net salvage (Tr. Vol. 8, p. 353; Ex. 315, Robinett Surrebuttal). The Company states generally that under the "life-span" method it is appropriate to include terminal net salvage in depreciation rates by citing to a portion of the NARUC Depreciation manual indicating that "net salvage associated with final retirements must be composited with interim net salvage … in order to develop an estimate of future net salvage." (KCPL Br. p. 43). The

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[4] The *Third Report and Order* in Case No. GR-99-315 was issued on January 11, 2005.

quote cited by the company then describes that individual records of additions and retirements associated with each building and large installation should be maintained (*Id*). Certainly, it is appropriate for the company to maintain records of the costs for additions and retirements, in fact, those historical costs experienced will eventually be used to determine a future depreciation rate for the company. However, even if the NARUC manual says that the retirement portion of terminal net salvage should be included in the process for estimating future final net salvage that does not determine whether the Commission should use *estimated future costs* to set rates.

No party contests that KCPL should eventually be able to recover the retirement costs. However, the company wants to include estimates of future costs to determine depreciation rates. Both Staff and OPC oppose this change. There is no evidence that maintaining the present practice of using known and measurable costs to determine depreciation rates will negatively impact the company's earnings or diminishes its ability to recover these costs. During the hearing, KCPL's witness acknowledged that the company will recover its expenses in the existing process (Tr. Vol. 8, p. 317). Instead, the real impact from adopting the company's proposal is that ratepayers will see a significantly larger increase to their rates than if the Commission simply continued its current practice. When ratepayers are already struggling to keep up with KCPL's rate increases it would be unreasonable to adopt a new depreciation process that increases rates without justification. Here, there is no reason to depart from the Commission's current practice and so KCPL's proposal should be rejected and the Commission should order KCPL to continue to use the current ordered depreciation rates ordered in Case No. ER-2014-0370.

MEEIA Cycle 1 Adjustment

KCPL attempts to frame its violation of the MEEIA stipulation and agreements as a billing determinate issue. To do so, the company posed the question in its brief: "whether the reduction in KWH sales that occurred as a result of the MEEIA Cycle 1 Programs should be recognized, and adjusted for in the Company's rates?" (KCPL Br. p. 72). The only appropriate answer is "No".

Notably, KCPL attempts to portray its MEEIA Cycle 1 adjustment as the "baseline" and claims that Staff's position "overstates" the billing determinates (*Id*). No other parties agree with this adjustment. The reality is that KCPL's position is simply a creative attempt to double-charge its customers. The differences between the cost recovery mechanism in Cycle 1 and Cycle 2 make this clear.

Examining the differences between the cost recovery mechanism for Cycle 1 and Cycle 2 illustrates the unreasonableness of the company's adjustment and is vital to understanding why the company is wrong. The cost recovery mechanism for MEEIA Cycle 1 allowed the company to recover its program costs, TD-NSB, and a performance incentive *exclusively* through the MEEIA rate charged as a separate line-item on the customer's bills. The Company misrepresents this distinction when it argues that the "permanent reduction in KWH sales requires an adjustment to the test year sales because the test year sales do not reflect the expected sales in the year following the effective date of the new rates." (KCPL Br. p. 73). To the extent that the MEEIA Cycle 1 programs caused a reduction in KWH sales, the company has been compensated for the present value of all energy sales lost for the *life of the measure* through the TD-NSB component of the MEEIA cost recovery mechanism (Tr. Vol 13, p. 1670).

Due to the use of the lifetime energy savings in the TD-NSB mechanism, no billing determinate adjustment would be necessary to annualize energy savings caused by a Cycle 1 program measure. Consider the following example: If a light bulb is installed in Cycle 1 the Company recovers (1) the program cost, (2) the TD-NSB, and (3) the associated performance incentive *through the MEEIA surcharge*. No special adjustment is *ever* made to the billing determinates for the utility's base rates because all three cost components are recovered through the MEEIA surcharge, not through base rates.

Compare the foregoing example of a light bulb installed in MEEIA Cycle 1 with a light bulb installed during MEEIA Cycle 2. In Cycle 2, the company recovers (1) the program cost, (2) the contemporaneous "throughput disincentive", and (3) the earnings opportunity though the MEEIA surcharge. As the Commission heard during the hearing, the "throughput disincentive" component in Cycle 2 is *different* than the TD-NSB in Cycle 1 (Tr. Vol. 13, p. 1672). "Throughput disincentive" in Cycle 2 is calculated by multiplying the kWh savings for each program for the respective month times the incremental rate for the class; meaning, the company is compensated for the *contemporaneously incurred* energy savings through the new MEEIA rate component. Because of this Cycle 2 mechanism, if the light bulb is installed one day before the test year for a rate case – no adjustment is necessary because once base rates are "reset" the company is no longer accumulating contemporaneous energy savings. The annual energy savings (or, to phrase it differently, the lost marginal revenues) associated with that light bulb will have been accounted for in the billing determinates for the rate case. However, if the Cycle 2 light bulb is installed halfway through the test year of a rate case, the Cycle 2 stipulation and agreement provides for an annualization associated with that light bulb – in effect, the

annualization means that the company will recover some portion of the lost marginal revenues associated with that Cycle 2 light bulb through its base rates.[5]

Now, consider how the scenario plays out if the Commission were to adopt KCPL's billing determinate adjustment for MEEIA Cycle 1 energy savings. If the MEEIA Cycle 1 light bulb is installed halfway through a rate case test year the company would bill customers for (1) the cost of the rebate, (2) the TD-NSB, and (3) the associated performance incentive *through the MEEIA surcharge*. KCPL is able to recover everything it is owed (Ex. 225, Rogers Surrebuttal p. 7). To then apply an annualization adjustment to the billing determinates related to MEEIA Cycle 1 gives the company additional money for an annualized level of the contemporaneous energy savings even though the Cycle 1 mechanism already compensated the utility for the life of the measure. Through that lens it is clear the company is simply seeking additional profit for the *same* energy savings when it proposes to adjust billing determinates for setting base rates.

At the same time KCPL attempts to frame its position as a billing determinate issue and not as a violation of the MEEIA stipulation and agreements, it offers an alternative theory that the MEEIA Cycle 2 Non-Unanimous Stipulation and Agreement Resolving MEEIA Filings actually requires the company's adjustment because the phrase "all active MEEIA programs" is broad enough to encompass Cycle 1 (KCPL Br. pp 80-81). The company's rationale is simply not plausible. First, KCPL and the parties do not agree on what "active" program means. KCPL seems to consider MEEIA Cycle 1 programs to have been "active" through June 2016 (KCPL Br. pp. 74-75). This interpretation is in direct contrast with the Commission's *Order Approving Demand-side Programs Budget Modifications* in EO-2014-0095 (KCPL MEEIA Cycle 1) stating

[5] Even though this mechanism is an improvement from the Cycle 1 mechanism in terms of balance between customers and the utility, the annualization is a significant benefit to the utility.

"[s]ince KCP&L's Cycle 1 MEEIA programs <u>have already expired</u>, the programs do not need to be modified, only the budget needs to be increased." (Order Approving Demand-side Programs Budget Modifications, Case No. EO-2014-0095, *Iss'd* Apr. 6, 2016, p. 2) (emphasis added). Even though the Commission had determined the programs had expired, KCPL now claims the program was active so that it can double-charge its customers. The Commission need not address this inconsistency because the Cycle 2 Stipulation is clear – only Cycle 2 programs are eligible to for annualization. The arguments laid out in Staff's brief persuasively demonstrate that the Cycle 2 annualization does not apply to the Cycle 1 programs based on the plain language in the Stipulations and the company's MEEIA tariff sheets (Staff Br. pp. 55- 63). The Commission should reject the company's inappropriate attempt to double-charge its customers.

<u>KCPL's IBR Tracker</u>

In its brief, KCPL mentions that it believes a "tracker" to mitigate any earnings impact on the adoption of Inclining Block Rates ("IBR") is an intriguing proposal (KCPL Br. P. 69). No party proposes such a cost-tracker in this case and the Commission should not grant one. In its *Report and Order* in KCPL's last rate case, the Commission found that "[t]he broad use of trackers should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri." (Report and Order, Case No. ER-2014-0370, p. 51). In denying multiple "tracker" requests in that case, the Commission also rejected the inclusion of estimates of certain future costs because the "request was first submitted in surrebuttal testimony, it violates Commission Rule 4 CSR 240-2.130(7)(A), which requires that '[d]irect testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief.'" (*Id* at p. 54). Because no party has requested, and the record

does not support, the use of the disfavored tracker mechanism related to IBRs the Commission should reject any party's invitation to grant the use of this special deferral accounting.

Electric Vehicle Charging Stations

Despite the desires to the contrary articulated by certain parties to this case, electric vehicle charging is not, and should not be, a regulated service. The charging stations are not "electric plant" as defined in Section 386.020(14) RSMo used for furnishing electricity for light, heat, or power. Instead charging stations are used to charge electric vehicle batteries. Furthermore, this is not a service requiring regulation by the Commission under Chapters 386 and 393 RSMo.

The Commission's Agenda discussion related to ET-2016-0246 seemed to influence a number of positions taken by the parties relating to the treatment of electric vehicle charging stations in this case. Renew Missouri, Sierra Club, and the Natural Resources Defense Council filed a joint brief (hereinafter referred to as "Renew Missouri"). In its brief, Renew Missouri agrees that "non-utility providers of EV charging services should not be subject to Commission jurisdiction" and admits that charging stations are not electric plant (Renew Missouri Br. p. 8). However Renew Missouri then offers a variety of conflicting and unsupported reasons it believes the Commission should permit KCPL to operate the electric vehicle charging stations as a regulated service. Renew Missouri asserts the Commission should regulate charging stations owned by electric utilities – presumably side-by-side with unregulated entities – because it "*advances*, rather than hinders, the development of a competitive vehicle charging market" (Renew Missouri Br. p. 6). Renew Missouri's argument is incorrect. Permitting the regulated utility to enter the market for the competitive charging service will have a detrimental impact on other market participants whose investors will bear the risks of operating in a market without the

insulation of captive utility ratepayer to cover costs (Ex. 310, Marke Rebuttal p. 36). Further, permitting KCPL to place the charging stations in rate base will effectively create a regulatory barrier for new market entries, unfairly punish existing competition, and shift risk of cost recovery from utility shareholders to ratepayers (Ex. 310, Marke Rebuttal p. 36).

Renew Missouri also suggests "end-users of utility-provided vehicle charging services are charged fair electricity prices at charging stations that are partially or fully funded by ratepayers" (Renew Missouri Br. p. 6). Renew Missouri ignores that this charging service is a non-essential service in a speculative market. The utility has no obligation to provide customers (or people simply passing through the Kansas City area) the special opportunity to charge their electric vehicles. Certainly, electric vehicle owners have no right to force KCPL's captive ratepayers to "partially or fully" fund prices at charging stations to benefit a few electric vehicle owners as Renew Missouri believes is appropriate (Renew Missouri Br. p. 6). Rather than have ratepayers subsidize electric vehicle owners charging service price – the market should set the price for that service.

Notably, Renew Missouri demonstrates it is unfamiliar with the Commission's affiliate transaction rules at 4 CSR 240-20.015. Renew Missouri claims "limiting ownership of EVCS to non-regulated entities while allowing utility investment in supporting distribution infrastructure will not curb a utility's monopoly power" because nothing would prevent KCPL from "utilizing asymmetric access to grid information or customer connections; side-stepping burdensome or costly interconnection processes; exercising eminent domain; and purchasing stations at scale[.]"(Renew Missouri Br. p. 14). If a non-regulated affiliate of KCPL owned and operated the charging stations it is certain that the affiliate transaction rule would apply (*See* the purpose section of Commission Rule 4 CSR 240-20.015, stating "[t]his rule is intended to prevent

regulated utilities from subsidizing their nonregulated operations.") The Commission's regulations at 4 CSR 240-20.015(2) provide standards to be applied so that the regulated utility does not provide its affiliate a financial advantage. The concerns raised by Renew Missouri on this point, to the extent they are valid, are addressed by existing rules already.

Lastly, Renew Missouri explains that "without jurisdiction over the utility-provided EVCSs, the Commission would be unable to fully assess utility programs and their inclusion of competitive elements[.]" (Renew Missouri Br. p. 15). This point is a contradiction in itself. If the electric vehicle charging stations are not regulated then all elements will be competitive and determined by the market.

In its brief, KCPL focuses on attempting to explain why the Commission should permit it to include the costs associated with its electric vehicle network in rates (KCPL Br. pp. 49-56). As was indicated above, this charging service is non-essential and should not be regulated. The company's choice to purchase expensive and unnecessary equipment should not be foisted upon ratepayers in this case or at any time in the future. Including these charging stations in rate base would unreasonably and unjustly force captive ratepayers to subsidize the vehicle charging desires of a few hundred people in the KCPL service territory (*See* Ex. 328). KCPL's investment in electric vehicle charging stations, and its request to include such costs in utility rates, is an inappropriate attempt to enter the market to provide a non-essential electric vehicle charging service. The Company's requests in this case should be denied.

Customer Experience

Public Counsel asks the Commission to direct KCPL to cease asking its customers certain personal and political questions. Contrary to the assertions by KCPL, the Commission has the statutory power to issue such an order (KCPL Br. P. 86). In its Report and Order in EC-2015-

0309, relating KCPL and GMO treatment of their customers the Commission described its authority to order changes to a call transfer script and accounting practices as follows:

> Q. Section 393.130.1, RSMo (Cumm. Supp. 2013) requires every electrical corporation to "furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." Further, Section 393.140(5), RSMo 2000 provides in relevant part:
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> > [w]henever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that … the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe … the just and reasonable acts and regulations to be done and observed.
>
> R. Section 393.140(4), RSMo 2000 give the Commission authority to "prescribe by order, forms of accounts, records and memoranda to be kept by such persons and corporations.

(Report and Order, Case No. EC-2015-0309, p. 16). Under the same statutory authority, the Commission can direct KCPL to cease asking its cutomers the pointed political questions. Public Counsel also noted in its initial brief that pursuant to Sections 386.250(1) and 393.140(1) RSMo, this Commission is charged with the supervision and regulation of public utilities engaged in the manufacture and sale of electricity at retail and is authorized by Section 386.250(6) to promulgate rules which prescribe the conditions of rendering public utility service. When a utility subjects its customers to inappropriate questions not meant to benefit the regulated utility

the Commission should act to protect the captive ratepayers. In the alternative, Public Counsel asks that the Commission order an investigation into the company's compliance with the Commission's asymmetrical pricing standards for affiliate transactions.

Conclusion

Public Counsel urges the Commission to consider the impact on customers when evaluating the issues presented for determination by the parties in this case. Requests by the company that will increase rates above what is necessary to provide safe and adequate service or shift undue risk onto customers should be denied as being contrary to the public interest.

WHEREFORE Public Counsel submits its *Reply Brief* for the Commission's consideration.

Respectfully,
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 4th day of April 2017:

/s/ Tim Opitz