BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City Power &	)	
Light Company's Request for Authority	)	File No. ER-2012-0174
to Implement A General Rate Increase	)	Tracking No. YE-2012-0404
for Electric Service	)	

STAFF'S REQUEST FOR LEAVE TO RESPOND
AND STAFF'S RESPONSE TO KCPL'S OPPOSITION TO OPC'S AND MECG'S
MOTION TO STRIKE PRE-FILED TESTIMONY AND REJECT TARIFFS OF KCPL

Comes now the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel in the Staff Counsel Department, and requests leave to respond to Kansas City Power & Light Company's ("KCPL") June 15, 2012 *Opposition To Motion To Strike Pre-Filed Testimony And Reject Tariffs* ("KCPL's June 15, 2012 pleading") to address representations by KCPL made therein and responds below. In support of Staff's request for leave to respond and Staff's response, the Staff states as follows:

Introduction

1. On June 22, 2012, the Commission issued an *Order Nunc Pro Tunc* in File No. ER-2012-0174 in which it corrected its June 20, 2012 *Order Setting Time For Reply* to set July 3, 2012 for the Midwest Energy Consumers Group ("MECG"), in addition to the Office of the Public Counsel ("OPC"), to file a reply in support of its *Motion To Strike Pre-Filed Testimony And Reject Tariffs And Motion For Expedited Treatment* in response to the June 15, 2012 pleading of KCPL. The Commission's June 20 and 22, 2012 Orders do not provide for a filing in response by the Staff.

2. There are materially incorrect statements in KCPL's June 15, 2012 pleading regarding agreements in Case No. EO-2005-0329 to which the Staff was a signatory and proceedings in which the Staff participated respecting the duration (term of years) and scope

(inclusion of one or all of KCPL's generating units) of the 2005 Regulatory Plan that warrant response. Therefore, the Staff requests leave of the Commission to file a response to provide an accurate representation of matters in the record in Case No. EO-2005-0329 that KCPL touches upon or leaves untouched.

Duration Of Off-System Sales Section Of 2005 Regulatory Plan

3. First and foremost, KCPL's June 15, 2012 pleading does not address the clear language of the Commission's *Report And Order* in Case No. EO-2005-0329, *Re Kansas City Power & Light Co*., 13 Mo.P.S.C.3d 568, 578 (2005) regarding off-system sales that follows:

> OFF-SYSTEM SALES
>
> Under the terms of the Stipulation, KCPL agrees that off-system energy and capacity sales revenues and related costs will continue to be treated "above the line" for ratemaking purposes. KCPL will not propose any adjustment that would remove any portion of its off-system sales from its revenue requirement determination in any rate case. KCPL agrees that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process. During the hearing, KCPL also stipulated that it would agree to this ratemaking treatment for off-system sales as long as the Iatan 2 costs were included in KCPL's rate base. (Tr. 1037-38).[4]

[4] Also in their July 26 Response to Order Directing Filing, the Signatory Parties memorialized KCPL's agreement that all of its off-system sales would be used to establish Missouri jurisdictional rates as long as the related investments and expenses are considered in determining those rates, and amended Section III.B.1.j. of the Stipulation and Agreement.

4. At page 2, paragraph 6, of KCPL's June 15, 2012 pleading, KCPL mentions the signatory parties to the 2005 Regulatory Plan submitted a response on July 26, 2005 to a Commission Order directing that additional language be submitted regarding the off-system sales agreement that had been reached by the parties and that was discussed at the evidentiary hearing conducted on July 12, 2005. KCPL then on pages 2 and 3 of its June 15, 2012 pleading provides its interpretation of the language provided to the Commission on July 26, 2005 by the signatory parties with the assistance, on page 8, paragraph 24, of its June 15, 2012 pleading, of a two

sentence quotation from Staff witness Robert E. Schallenberg from the July 12, 2005 evidentiary hearing respecting the 2005 Regulatory Plan. The 2005 Stipulation And Agreement and 2005 proceedings are more faithfully reflected by what KCPL left out of its June 15, 2012 pleading than the content that KCPL chose to assert to the Commission in its pleading.

5. The Commission held evidentiary hearings in Case No. EO-2005-0329 on June 23, 24, and 27, 2005 and scheduled part of July 12, 2005 for the Commission to complete its cross-examination of the Staff. The Commission in its July 6, 2005 *Order Reconvening Hearing* stated that it would question the Staff on various matters, including "the relevance of KCPL's ongoing ability to continue to participate in the market for off-system sales."

6. On July 25 2005, the Commission issued an *Order Directing Filing* regarding off-system sales in which it stated as follows:

> During the hearing, the parties to the non-unanimous stipulation and agreement state that they had reached certain agreements regarding off-system sales. But the non-unanimous stipulation and agreement does not reflect the off-system sales agreement. In order to allow the Commission to consider the non-unanimous stipulation and agreement in its entirety, the Commission will order the parties to submit language reflecting the off-system sales agreement no later than July 26.

7. On July 26, 2005, the signatory parties to the "non-unanimous stipulation and agreement," i.e., the 2005 Regulatory Plan, submitted *Signatory Parties' Response To Order Directing Filing* which KCPL refers to at page 2, paragraph 6, of its June 15, 2012 pleading. However, KCPL's June 15, 2012 pleading does not correctly represent the language of the July 26, 2005 *Signatory Parties' Response To Order Directing Filing*. There is not any indication in the *Signatory Parties' Response To Order Directing Filing* that the individual sentences of Section III(B)(1)(j) are limited by the date June 1, 2010 found in Section III(B)(12) of the 2005 Regulatory Plan Stipulation and Agreement as KCPL parses Section III(B)(1)(j).

8. As KCPL notes at page 3, paragraph 8, of its June 15, 2012 pleading, the Commission states at page 9 of its *Report And Order* in Case No. EO-2005-0329, "The Stipulation runs through June 1, 2010, unless otherwise specified in the agreement . . ." Section III(B)(1)(j) otherwise specifies that this section will continue as long as the Iatan 2 costs are included in KCPL's rate base. Paragraph 2 at pages 1and 2 of the July 26, 2005 *Signatory Parties' Response To Order Directing Filing* states in part as follows:

> 2. Under the terms of the Stipulation And Agreement filed on March 28, 2005, KCPL agrees that off-system energy and capacity sales revenues and related costs will continue to be treated above the line for ratemaking purposes. According to the Stipulation And Agreement, KCPL will not propose any adjustment that would remove any portion of its off-system sales from its revenue requirement determination in any rate case, and KCPL agrees that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process. (Stipulation And Agreement, Section III.B.1.j., p. 22). However, the length of the term of this agreement related to the ratemaking treatment of off-system sales was not formally reflected in the Stipulation And Agreement.
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> During the hearings conducted in this matter, KCPL's counsel stipulated on-the-record that KCPL would agree to this ratemaking treatment for off-system sales as long as the Iatan 2 costs were included in KCPL's rate base. (Tr. 1037-38). As a response to the Order Directing Filing, and in order to formally reflect in the Stipulation And Agreement KCPL's agreement that this ratemaking treatment for off-system sales will continue as long as the Iatan 2 costs are included in KCPL's rate base, the Signatory Parties hereby amend the Stipulation And Agreement as stated below:

9. KCPL in its June 15, 2012 pleading, while quoting two sentences of Staff witness Schallenberg's testimony at the July 12, 2005 evidentiary hearing in Case No. EO-2005-0329 fails to note Mr. Schallenberg's testimony that established for the Commissioners that the end date for the two-sentence Section III(B)(1)(j) of the 2005 Stipulation And Agreement was unresolved:

> Q. [COMMISSIONER GAW] All right. As I was listening to the reading of that provision of the agreement awhile ago, I wasn't clear about the length of time that the off-system sales portion of this agreement applies. Is there an

understanding from Staff in regard to how far into the future that provision is applicable?

A. [MR. SCHALLENBERG] There's been discussions with KCP&L since the language was fashioned and signed to clear up the matter as to the term. . . .

(Case No. EO-2005-0329, Vol. 8, Tr. 1033, lns. 9-17).

* * * *

Q. [COMMISSIONER GAW]: What is Staff anticipating a length of time for applicability of that provision will be?

A. [MR. SCHALLENBERG]: When we designed it, we didn't have a termination date with our understanding as to how long the commitment would be. In working on other regulatory plans and using that paragraph, we became aware that that was a potential liability, especially since there is a term -- there's another term language in the agreement that may be interpreted to actually define the term for it, so -- but at the time we signed it, we did not have an anticipated end date to that commitment.

Q. [COMMISSIONER GAW]: Is there -- what is the other term date in that agreement?

A. [MR. SCHALLENBERG]: I'm trying to find -- unfortunately this agreement, its predecessors -- or its successors will have a table of contents.

MR. JAMES M. FISCHER: Page 57.

THE WITNESS [MR. SCHALLENBERG]: Okay. It has a term -- it says it will expire on June 1 of 2010.

BY COMMISSIONER GAW:

Q. [COMMISSIONER GAW]: All right. Now, if that provision were applicable to the off-system sales provision of this agreement, would that -- would that mean that off-system sales from Iatan II, which is not contemplated to be constructed until 2010, would not be covered by this agreement?

A. [MR. SCHALLENBERG]: What this does is it takes away the commitment that all of the revenues would be considered as an offset to the cost of Iatan II. A party could propose that. It doesn't make it a certainty. I mean, the Commission would still rule on that, but it would allow, if you interpret it to expire in June 1, 2010, you could have that issue brought before the Commission. The Commission could decide to divert some of those off-system revenues in that case, if you take that interpretation.

(Case No. EO-2005-0329, Vol. 8, Tr. 1034, ln. 3 – Tr. 1035, ln. 12). Clearly, Mr. Schallenberg on July 12, 2005 testifies that it is the Staff's position that the Section III(B)(12) end date of June 1, 2010 does not apply to the Section III(B)(1)(j) Off-System Sales sentences and that "[t]here's been discussions with KCP&L since the language was fashioned and signed to clear up the matter as to the term." (*Id*. at Tr. 1033, lns. 15-16).

10. Mr. Schallenberg also testified in response to questions from Commissioner Gaw that the provision for the use of off-system sales as an off-set to revenue requirement was essential for the Staff being a signatory party to the 2005 Regulatory Plan:

> Q. [COMMISSIONER GAW]: How important is the off-system sales provision in this stipulation to the Staff's recommendation that this stipulation be adopted -- be -- be ruled to be in the public interest?
>
> A. [MR. SCHALLENBERG]: It's very important from the Staff's perspective in the sense that the off-system sales and the revenues from the off-system sales have a -- are a significant factor in economics of the infrastructure improvements that are contained in this agreement.
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> Q. [COMMISSIONER GAW]: Okay. So important that if -- if that weren't in the stipulation, would you have considered not signing onto it?
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> A. [MR. SCHALLENBERG]: Yes. In fact, it's important not only that they exist, but the treatment that they would be used to reduce the cost of the plant was an important consideration in the agreement.

(Case No. EO-2005-0329, Vol. 8, Tr. 1030, ln. 15 – Tr. 1031, ln. 5).

11. KCPL's June 15, 2012 pleading does not directly address various KCPL documents in the record of Case No. EO-2005-0329, which OPC and MECG noted in their *Motion To Strike Pre-Filed Testimony And Reject Tariffs And Motion For Expedited Treatment* regarding this matter, including the Direct Testimony of KCPL Vice President, Regulatory, Chris B. Giles, Ex. 1, page 21, lines 4-9; the Position Statement of KCPL at page 19, filed June 2, 2005 by KCPL; and the Prehearing Brief of KCPL at page 3, filed June 15, 2005 by KCPL.

Scope Of Off-System Sales Section Of 2005 Regulatory Plan

12. At page 7, paragraph 23, of its June 15, 2012 pleading, KCPL commences an argument that the scope of the 2005 Regulatory Plan Stipulation And Agreement respecting off-system sales does not include "non-Regulatory Plan assets." KCPL specifically states at pages 7 to 8, paragraph 23, of its June 15, 2012 pleading, "For example, any off-system sales generated by non-Regulatory Plan assets such as the Wolf Creek nuclear plant, the Hawthorn plant, the Montrose plant or any other plants are not so restricted." This position is clearly contrary to the plain language of the third sentence to Section III(B)(1)(j) Off-System Sales to which KCPL specifically agreed, which states, "KCPL agrees that *all of its off-system energy and capacity sales revenue* will continue to be used to establish Missouri jurisdictional rates as long as the related investments and expenses are considered in the determination of Missouri jurisdictional rates." (Emphasis added).

13. KCPL's argument is basically illogical. Staff witness David Elliott testified on July 12, 2005 at the Case No. EO-2005-0329 evidentiary hearing that the Wolf Creek nuclear unit is KCPL's lowest cost dispatch unit and Iatan 2 would become KCPL's lowest cost coal dispatch unit in front of Iatan 1and as a consequence they both will be run by KCPL to meet native load, not for off-system sales:

> Q. [MR. DOTTHEIM]: Would you please explain Exhibit 54HC?
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> A. [MR. ELLIOTT]: Yes. One of the questions was, I think in this hearing was, you know, where's Iatan II going to fit into -- into Kansas City Power & Light's dispatch, is it going to be strictly for sales to its off-system, or where's it going to fit. And what I'm attempting here is to show the dispatch order by unit. The top graph there, Wolf Creek, obviously is the low cost dispatch to the high cost dispatch would be -- which would be the fuel/oil combustion turbines. The bars are just their capacities. They're not energy generated or hours or anything. That's just the actual capacity of each unit.

> The lower graph is an attempt to say where Iatan II would fit in the Dispatch Order because it's Staff's belief that Iatan II has a better heat rate than Iatan I. It will be burning probably the same price coal as Iatan I, so it will move almost to the front of the line in the Dispatch Order. It will not be sitting there waiting for somebody to buy power. It will be dispatched because KCP&L is going to dispatch its units to the most economical, so we just want to get a feel for where this new coal unit would fall into the dispatch and show that -- that it is going to move up toward the front of the line if it's built.
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> And KCP&L -- of course; this is my -- my guess, where Iatan II would be, you know, it's not going to be the last unit put on. It's not going to be sitting there [idle]. It's going to be loaded up as much as the load can handle, because it is going to be the -- the cheapest coal unit that KCP&L has, and this is what it is attempting to do on that.

(Case No. EO-2005-0329, Vol. 8, Tr. 950, ln. 4 – Tr. 951, ln. 8). Mr. Elliott testified that "when you put new coal units on and they're more efficient than the older coal units, you move the older coal units down the Dispatch Order." (*Id*. at Tr. 954, lns. 7-9). At the same time, the Staff does not want to leave the Commission with the impression that the Staff is saying that a utility's most economical baseload generation would never be run to make off-system sales in addition to or while meeting load. At one of the local public hearings in Case No. EO-2005-0329, a member of the public had performed some analysis of his own regarding KCPL's sales of power, such as during peak period, and raised the question of why did KCPL need the Iatan 2 generating unit if it was making sales of significant amounts of power during peak period. The Staff reported back to the Commission in its June 15, 2005 Staff Prehearing Brief at pages 2 to 3.[1] At the June 27,

Footnote continued on page 9.

[1] The Staff stated in its June 15, 2005 Staff Prehearing Brief at pages 2 to 3:

> At the May 24, 2005, public hearing held in Downtown Kansas City, Missouri, Mr. Byron Combs, among other individuals testified. Mr. Combs stated that KCPL sold 528 MWhs to other utilities between 3:00 p.m. and 4:00 p.m. on August 21, 2003 and on that date KCPL set a new peak demand of 3,610 MWs. Mr. Combs went on to state that KCPL thus has a 33% capacity above its peak usage since it only needed 3,082 MWs (3,610 MWs less 528 MWs) in order to meet the needs of its own customers. Commissioner Steve Gaw indicated at the Kansas City local public hearing that he expected a response at the evidentiary hearing to the information provided by Mr. Combs. The Staff has reviewed the data provided by Mr. Combs at the Kansas City local public hearing which was marked as Exhibit No. 3. Mr. Warren Wood at the evidentiary hearing

2005 evidentiary hearing Staff witness Warren T. Wood testified that KCPL was a net purchaser of power on August 21, 2003 in order to serve its own system peak load. (Vol. 7, Tr. 581, ln. 16 – Tr. 582, ln. 1).

14. Given KCPL's line of argument, it should first be noted that the 2005 Regulatory Plan is not limited merely to addressing the construction of the new Iatan 2 generating unit or is it merely limited to addressing the construction of the environmental enhancements to Iatan 1. In Section III(B)(4) "Timely Infrastructure Investments," pages 44 and 45 of the 2005 Stipulation And Agreement, Iatan 1, LaCygne 1, and 100 MW of new wind generation are addressed, in addition to Iatan 2. The 2005 Regulatory Plan states that KCPL's commitment to make timely infrastructure investments, as a part of the 2005 Regulatory Plan, includes environmental investments respecting Iatan 1 and LaCygne 1 for accelerated compliance with environmental regulations, and for 100 MW of new wind generation facilities.

15. On page 8, paragraph 24, of its June 15, 2012 pleading, KCPL uses a two sentence quotation from Staff witness Robert E. Schallenberg from the July 12, 2005 evidentiary hearing respecting the duration of the agreement on off-system sales to attempt to bootstrap an argument that the off-system sales agreement in the 2005 Regulatory Plan does not include "non-Regulatory Plan assets."

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scheduled for June 23-24 will testify that Mr. Combs did not have all of the necessary information to perform the analysis that Mr. Combs sought to perform. Mr. Wood will testify he does not agree with the sales amount provided by Mr. Combs and Mr. Wood further will note that in fact, in order to serve its native load KCPL, was a net purchaser of power during the peak period identified by Mr. Combs. Mr. Wood will relate that as a general practice KCPL will purchase energy from other utilities and will sell KCPL generated energy to other utilities if KCPL can purchase energy at a cost less than the cost at which KCPL can generate the electricity itself and if there is a buyer available for KCPL energy at the price set by KCPL. Mr. Wood will further state that when the Staff determines KCPL's revenue requirement in the context of determining whether KCPL's rates should be increased, decreased or remain as is, revenues received by KCPL in sales of KCPL energy to other utilities are included in the Staff's determination. Thus, economic sales and purchases by KCPL lower KCPL's revenue requirement collected from its retail customers.

16. First of all, reference to the full question and answer from which KCPL has lifted the two sentences of Mr. Schallenberg's response that it quotes on page 8, paragraph 24 of its June 15, 2012 pleading is illuminating. Staff counsel's question to Mr. Schallenberg is in regards to duration of the agreement, not the scope of the agreement, and neither the question nor the answer indicates that the scope of the off-system sales agreement excludes "non-Regulatory Plan assets:"

> Q. [MR. DOTTHEIM]: Mr. Shallenberg, as I've indicated, Kansas City Power & Light has indicated no problem from its perspective regarding the Staff addressing what is what we believe is the understanding between Kansas City Power & Light and the Staff and other signatory parties have been involved in discussion on this matter regarding the -- the language in the stipulation agreement on off-system sales and no term being specified. Could you please provide what you understand have been the discussions and the understanding?
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> A. [MR. SCHALLENBERG]: The term would be tied to as long as the cost from Iatan were included, excuse me, Iatan II were included in rates. That would be the term of the off-system sales provision that the off-system sales would be included in rates consistent with the treatment of Iatan II costs.
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> MR. JAMES M. FISCHER: Your Honor, and I can stipulate that that is Kansas City Power & Light Company's understanding, with the proviso that it is also our understanding there will be a similar provision in the regulatory plans, and we're expecting that to come out similarly.

(Case No. EO-2005-0329, Vol. 8, Tr. 1037, ln. 11 – Tr. 1038, ln. 5).

17. KCPL next argues on page 8, paragraph 25, of its June 15, 2012 pleading that what is not in the transcript is what is significant: "25. Throughout the discussion that Mr. Schallenberg had with both Commissioner Gaw and in response to his counsel's questions, there was no discussion of any prohibition on a sharing mechanism with regard to off-system sales that might be considered once the Regulatory Plan expired in June 2010. Id., Tr. 1030-1038." Using KCPL's logic, there is no limit to what a party can "prove" by pointing out what Commissioners and counsel and witnesses have failed to address in the record. Thus, KCPL has spared the

Commission and the parties a listing in its June 15, 2012 pleading of everything else that Commissioner Gaw and Mr. Schallenberg did not discuss on questions from the Bench in Case No. EO-2005-0329 on July 12, 2005, and a listing of everything else Staff counsel and Mr. Schallenberg did not discuss on re-direct in Case No. EO-2005-0329 on July 12, 2005, and what that proves according to KCPL.

Wherefore, the Staff requests leave to respond to KCPL's June 15, 2012 *Opposition To Motion To Strike Pre-Filed Testimony And Reject Tariffs* to address representations by KCPL made therein and responds that (1) contrary to the assertions of KCPL in its June 15, 2012 pleading, the duration of the commitment of KCPL in the first two sentences of Section III(B)(1)(j) is not limited by the date June 1, 2010 in Section III(B)(12) of the 2005 Regulatory Plan, and (2) contrary to the assertions of KCPL in its June 15, 2012 pleading, the scope of the commitment of KCPL in Section III(B)(1)(j) covers any off-system sales generated by KCPL, whether by its "Regulatory Plan assets" or by its "non-Regulatory Plan assets."

Respectfully submitted,

/s/ Steven Dottheim
Steven Dottheim
Chief Deputy Staff Counsel
Missouri Bar No. 29149
(573) 751-7489 (Telephone)
(573) 751-9285 (Fax)
steve.dottheim@psc.mo.gov (e-mail)

John D. Borgmeyer
Legal Counsel
Missouri Bar No. 61992
(573) 751-5472 (Telephone)
(573) 751-9285 (Fax)
john.borgmeyer@psc.mo.gov (e-mail)

Attorneys for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Staff's Request For Leave To Respond And Staff's Response To KCPL's Opposition To OPC's And MECG's Motion To Strike Pre-Filed Testimony And Reject Tariffs Of KCPL* have been transmitted electronically to all counsel of record this 3rd day of July, 2012.

/s/ Steven Dottheim