BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of	)	
Kansas City Power & Light Company to	)	**Docket No. 10-KCPE-415-RTS**
Modify its Tariffs to Continue the	)	
Implementation of its Regulatory Plan	)	

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE CITIZENS' UTILITY RATEPAYER BOARD

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COMES NOW the Citizens' Utility Ratepayer Board (CURB), and submits its Proposed Findings of Fact and Conclusions of Law in the above-captioned proceeding.

A. OVERVIEW OF CURRENT CASE

1. This is the fourth rate case in the series of four rate applications that were contemplated in the Stipulation and Agreement ("1025 Stipulation" or "Regulatory Plan") that was approved by the State Corporation Commission of the State of Kansas ("Commission" or "KCC") in Docket No. 04-KCPE-1025-GIE (the "1025 Docket").

2. This rate case addresses the recovery of KCPL's share of Iatan Unit 2, a new 850 megawatt coal-fired generation facility, which is also referred to herein as the "Iatan 2" or "Project.". This case also includes recovery of KCPL's remaining investment in Iatan common plant and environmental upgrades to Iatan Unit 1, which went in service on April 19, 2009, as well as the remaining common plant investment which will go in service with Iatan Unit 2. Also included are continued investments in system reliability focused transmission and distribution ("T&D") projects, which are also provided for in the Regulatory Plan.

3. KCPL initially filed schedules showing a gross revenue deficiency of approximately $55.225 million, based on a test year that ended September 30, 2009, with adjustments made for known and measurable changes as of August 31, 2010 (September 30, 2010 for plant).[1] Staff initially recommended a $9.122 million decrease. CURB initially recommended a $7.38 million increase.

B. PARTIAL SETTLEMENT

4. As noted in the List of Contested Issues filed by KCPL on July 23, 2010, as well as the Lists of Contested Issues filed by both Staff and CURB on August 2, 2010, and the Errata to KCPL's List of Contested Issues filed on July 27, 2010, the parties are requesting that the Commission decide numerous issues in this case. However, as discussed during the evidentiary hearing, the parties recently agreed to settle multiple issues (the "Partial Settlement"), which is further discussed below.

5. On August 16, 2010, the first day of the evidentiary hearing, the parties to the current docket submitted a settlement document to the Commission noting that they had unanimously agreed to settle multiple issues that were raised during the course of the rate case, including: (1) various income statement items, (2) various rate base items, (3) the regulatory asset for Iatan Unit 1 and Common costs, (4) uncontested income statement issues, (5) various uncontested rate base issues, and (6) other non-contested issues, including the Wolf Creek decommissioning cost accrual, asset retirement obligations and cost of removal, and language changes to KCPL's Rules and Regulations as proposed by KCPL witness Tim Rush. The terms of the partial settlement were specifically set forth in Exhibit 4.

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[1] As noted in KCPL's List of Contested Issues, as agreed to in the Joint Report, KCPL included in this case its share of budgeted costs for Iatan Unit 2. KCPL proposes to true-up its actual expenditures as part of an abbreviated case.

6. After reviewing the terms of the document later that day, the Commission made the finding that because Exhibit 4 constituted a reasonable uncontested settlement, that it would be approved without briefing by the parties. (Tr. Vol. 1, p. 150). Because the Commission has approved this settlement, only a few issues remain that require a Commission determination.

7. Based on its review of the pre-filed testimony submitted by the parties in this proceeding, KCPL subsequently made several adjustments to its request. The changes to KCPL's requested revenue requirement are summarized in the following chart:[2]

(in thousands)	**Rate Base**	**Revenue Requirement**
Updates & errors		
ROE- modified from 11.25% to 10.75%		(6,862)
Rate base items, net	(2,981)	(378)
Pension expense update		2,715
Revenue error		2,665
Income tax formula error		2,214
Other income statement items		(619)
		(265)
Settlement items		
Rate base	(3,839)	(487)
Income statement		(610)
		(1,097)
Staff items not rebutted		
Cost of capital		2,266
Rate base	(2,466)	(313)
Payroll		(3,158)
Incentive compensation		(1,693)
Other pre-tax income statement items		(1,654)
Deferred income taxes- nuclear amtz.		1,606
		(2,946)
Revised case		**50,892**

[2] This also includes amounts that have been deducted from KCPL's filed case based on the Partial Settlement.

8. All Parties reserved the right to consider, adopt, or reject the positions of all Parties in their final positions, based on the filings, of any Party's cross exam, or review of filed Exhibits. By way of example, a Party that did not file a Depreciation Study, may elect to adopt one or the other Depreciation Studies presented in this Case

9. Staff and CURB also have made various adjustments to their recommendations throughout this proceeding. The following chart provides a summary of Staff's and CURB's recommended adjustments on these remaining issues (after taking into account changes to their filed position, as well as the items that were addressed in the Partial Settlement), and the impact that their adjustments would have on KCPL's requested revenue requirement:

(in thousands)	**STAFF**	**CURB**
Cost of capital		
ROE	15,491	19,517
Equity units	2,838	2,743
	18,329	22,260
Rate base items (and related expenses)		
Iatan 2 disallowance, incl. depr. & AFUDC	9,008	4,955
Iatan 1 disallowance, incl. depr.	776	
ADIT-PTPP		2,778
	9,784	7,733
Income statement		
Capitalization rate (payroll and various other benefits)	4,634	
Incentive compensation- cash- executives		505
Incentive compensation - cash – non-executives		3,276
Incentive compensation equity		1,276
Generation/Production maintenance	513	1,326
Distribution maintenance		504
Iatan 2 O&M	1,147	
Iatan Common O&M	1,281	
SO_2 emission allowances		3,697
Pension- SERP		512
Pension funding status adj., incl. Asset	621	
Other benefits	1,584	1,208
Property tax expense	3,258	

Depreciation study	12,694	
Rate case expense	370	353
Weather normalization	4,978	
	31,080	12,657
Total Contested Issues	59,193	42,650
Revised Case	(7,299)	9,632

Evidentiary Hearing, Exhibit 3.

10. As discussed below in this Proposed Findings of Fact and Conclusions of Law, KCPL has failed to demonstrate that: (i) KCPL's actions and decisions concerning the Iatan Projects were reasonable and prudent; (ii) KCPL's actions and decisions concerning the Iatan Unit 1 environmental upgrade project and Iatan common plant were both reasonable and prudent; (iii) KCPL's requested return on equity and proposed capital structure of 46.17 percent equity were reasonable; (iv) KCPL's requested revenue requirement is just and reasonable; and (v) KCPL's proposed rate design is just and reasonable.

C. LEGAL PRINCIPLES

1. The Kansas Administrative Procedures Act

11. An order of the Commission is lawful if it is within the statutory authority of the Commission and if the prescribed statutory and procedural rules are followed in making the order. *Central Power Co. v. State Corp. Comm'n,* 221 Kan. 505, 561 P.2d 779 (1977).

12. The standard of evidence the Commission must meet for its decisions to be lawful and valid was considered in *Zinke & Trumbo Ltd. v. Kansas Corp. Comm'n,* 242 Kan. 470, 749 P.2d 21 (1988). In *Zinke*, the Court held that to be lawful and valid, the Commission's decision must be supported by substantial competent evidence, and must not be unreasonable, arbitrary, or capricious. 242 Kan. at 474.

13. Substantial competent evidence is evidence which "possesses something of substantial and relevant consequence and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved." *Jones v. Kansas Gas & Electric Co. v. Kansas Corp. Comm'n,* 222 Kan. 390, 565 (1977).

14. Matters concerning public utilities are highly complex and the Commission is recognized to have vast expertise and broad discretion in carrying out its ratemaking function. *Kansas Gas & Electric Co. v. Kansas Corp. Comm'n*, 239 Kan. 483, 495 (1986); accord *Citizens Utility Ratepayer Board v. Kansas Corp. Comm'n*, 28 Kan. App. 2d 313, 329 (2001) (rev. denied)).

15. However laudable its motives may be, the KCC is still controlled by the rule of law. *See Williams Natural Gas v. State Corp. Comm'n.*, 916 P.2d 52, 60 (1996).

16. As noted in ¶ 12 of the Commission's September 8, 2010 Order in this Docket, the parties should be mindful of the amendment to the Kansas Administrative Procedures Act ("KAPA") contained in K.S.A. 2009 Supp. 77-621 (c) (7) & (d). These provisions state:

> (c)(7) "[T]he agency action is based on a determination of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed *in light of the record as a whole,* which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this act [.] (Emphasis added.)"
>
> (d) "'[I]n light of the record as a whole' means that the adequacy of the evidence in the record before the court to support *a particular* ***finding of fact*** shall be *judged in light off all the relevant evidence in the record* ***cited*** *by any party that detracts from such finding as well as all of the relevant evidence in the record. compiled pursuant to K.S.A. 77-620, and amendments thereto,* ***cited*** *by any party that supports such finding,* including any determinations of veracity by the presiding officer who personally observed the demeanor of the witness and the agency's explanation of why the relevant evidence in the record supports its material findings of fact. In reviewing the evidence in light of the record as a whole, the court shall not reweigh the evidence or engage in de novo review".

17. As noted above, pursuant to KAPA, the Commission must separately state findings of fact, conclusions of law, and why the evidence in the record supports its decision. Agency action must be based upon evidence that is substantial when viewed in light of the record as a whole, as defined in K.S.A. 77-621 (d).

D. SUBSTANTIAL COMPETENT EVIDENCE STANDARD

1. Test for Substantial Competent Evidence Generally

18. The Kansas Supreme Court has previously enunciated the standard of evidence the Commission must meet for its decisions to be lawful and valid. In *Zinke & Trumbo, Ltd. v. Kansas Corp. Comm'n*, 242 Kan. 470, 749 P.2d 21 (1988), the Court held that the Commission's actions must be supported by substantial, competent evidence, and must not be unreasonable, arbitrary or capricious. *Zinke & Trumbo,* 242 Kan at 474. An order is "lawful" if it is within the statutory authority of the Commission, and if the prescribed statutory and procedural rules are followed in making the order. *Central Kansas Power Co. v. State Corp. Comm'n.*, 221 Kan. 505, Syl. Para. 1, 561 P.2d 779 (1977).

19. "Substantial competent evidence" has been defined by the Kansas Supreme Court as "evidence which possesses something of substantial and relevant consequence and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved." *Jones v. Kansas Gas & Elec. Co.,* 222 Kan. 390,565 P.2d 597 (1977); *see also Williams Natural Gas Co. v. Kansas Corp. Comm'n*, 22 Kan. App. 2d 326, 334-35, 916 P.2d 52 (rev. denied 260 Kan. 1002) (1996).

2. Test for Substantial Competent Evidence by an Expert

20. When addressing the issue of "substantial competent evidence" from an expert, the Kansas Court of Appeals has held that an opinion of an expert, founded upon mere

speculation and his "long years of experience" and not upon essential underlying data, is not sufficient as the sole factual support for a money judgment under the rule requiring damage awards to be supported by substantial competent evidence. *See Unified School Dist. No. 285 v. St. Paul Fire and Marine Ins. Co.*, 6 Kan.App.2d 244, 249-50, 627 P.2d 1147, 1152 (1981) (overruled on other grounds in *Thomas v. American Family Mut. Ins. Co.*, 233 Kan. 775, 666 P.2d 676 (Kan. Jul 15, 1983)). .

E. ISSUES REQUIRING COMMISSION DETERMINATION IN THE CURRENT CASE

1. Iatan Unit 2 Prudence

21. Proposed Finding: KCPL's actions and decisions were unreasonable and imprudent. The proper prudence disallowance related to Iatan Unit 2 is $230,955,466 (Kansas Jurisdictional $57,676,971). In making this finding, the Commission relied on the following:

22. With respect to Iatan Unit 2, Staff has recommended that the KCC order a $230,955,466 disallowance of the total cost of Iatan Unit 2 and Common Plant (or $57,676,971 KCPL's Kansas jurisdictional share) based upon the recommendation of its prudence expert, Mr. Drabinski. CURB has recommended a disallowance of $134,433,833 for the total plant ($33,565,958 for KCPL's Kansas jurisdictional share). (Crane D., p. 32, lines 11-18; Hearing Exh. 98, Schedule ACC-11)

23. Staff's disallowance amount of $231 million related to Iatan Unit 2 is based upon an assumed budget of $1.988 billion (total project), which reflects a re-forecasted cost estimate of the Project in April 2010 after KCPL had filed its case in December 2009. The original cost estimate for Iatan Unit 2 was $733 million (Kansas Jurisdictional). The Commission finds both the original cost estimate contained in the 1025 Stipulation, as well as the April 2010 Budget estimate of Iatan 2, to constitute a definitive cost estimate as defined by K.S.A. 66-228g. The

April 2010 Budget re-forecasted estimate substantially exceeds the cost estimates submitted to and relied upon by the parties and the Commission in the 1025 Docket.

24. Contrary to KCPL's assertions, the Commission finds that Mr. Drabinski cited to and relied upon substantial underlying data to form a factual foundation for his opinion. As a result, Mr. Drabinski's opinion is admissible under K.S.A. 60-456(b)(1) and the Supreme Court decision in *Pullen v. West*, 278 Kan. 183, 209-11, 92 P.3d 584, 602-03 (2004).

25. Staff has met the burden to prove imprudence on the part of KCPL. Both Staff and CURB have demonstrated their proposed prudence disallowances are supported by facts and a competent analysis as required by Kansas law. Staffs and CURB have established the required causation between the imprudent acts committed by KCPL and the costs recommended to be disallowed.

(a) Prudence Test

26. In determining prudence, the Commission should consider the definition of prudence as defined by K.S.A. 66-128g (12) and interpreted by the Kansas Supreme Court (*"prudence or lack thereof" means as that term is commonly used.* Black's Law Dictionary 1104 (5th ed. 1979) defines *"prudence" as "[c]arefulness, precaution, attentiveness and good judgment.*").[3] This definition should then be applied in light of and in conjunction with the nonexclusive factors the Commission is required to consider under K.S.A. 66-128g.

27. Staff and CURB have met their burden of proving imprudence.

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[3] *Kansas Gas & Electric Co. v. Kansas Corporation Commission*, 239 Kan. 483, 495, 720 P.2d 1063 (1986) ("*Wolf Creek*").

(b) After Applying the Prudence Test to Iatan Unit 2, the Commission finds KCPL acted unreasonably and incurred imprudent costs in the development, management, and construction of Iatan Unit 2

28. Based on the standard for prudence and the K.S.A. 66-128g factors, as well as previous Commission decisions, the Commission finds that KCPL has acted unreasonably and incurred imprudent costs in the development, management, and construction of Iatan Unit 2. The Commission further finds these costs may not be charged to KCPL's customers.

(c) Staff has Met its Burden to Prove Imprudent Actions and Staff's Proposed Iatan Unit 2 Disallowance should be Adopted

29. Based on the analysis of Mr. Drabinski, Staff recommends a decrease to pro forma test year plant in-service by $57,676,971 (total plant recommended prudence disallowance was $230,955,466), which reflects Staff's recommended prudence disallowance associated with certain Iatan Unit 2 and Common plant in-service costs. *See* Rohrer Direct Testimony Schedule GDR-7. KCC Staff also recommended a decrease of $7,960,324 to KCPL's pro forma test year plant in-service, which reflects the allowance for funds used during construction ("AFUDC") applicable to Staff's disallowance of certain Iatan Unit 2 plant in-service costs. *See* Rohrer Direct Testimony Schedule GDR-8.

30. Staff's recommended prudence disallowance is supported by facts and competent analysis, and complies with the Commission's prior decisions concerning prudence.

31. The KCC adopts, as if fully set forth herein the proposed Findings of Fact and Conclusions of Law on the issue of Imprudent Costs, as set forth in the Post Hearing Briefs of KCC Staff.

32. With respect to Staff's recommended prudence disallowance, the Commission specifically finds the following:

a. KCPL made "promises" regarding the cost of the Plant in the 1025 Stipulation Agreement that were not kept;

b. There were increases in the Project's estimates from the 2004 PDR until the Control Budget Estimate was established in December 2006;

c. KCPL's failure to select EPC as the Project's contracting methodology increased the Project's cost (i.e. EPC vs. Multi-Prime);

d. KCPL made an untimely decision to hire Kiewit as the primary Balance of Plant ("BOP") contractor at a premium price;

e. The development and implementation of the PEP and other project tools such as SKIRE were untimely and increased Project costs;

f. The inability from both a quality and quantitative standpoint of KCPL's management and project team to administer a multi-prime project;

g. The contracts used for the major contractors did not adequately shift risk to the contractors and did not contain a formulaic basis for calculating loss of efficiency change orders;

h. KCPL failed to timely implement expert advice;

i. KCPL's planned construction schedule was compressed and was made worse by KCPL's failure to timely hire Burns & McDonnell as the Owner's Engineer;

j. Based on Mr. Drabinski's three alternate analyses, Staff's proposed $231 million disallowance is conservative, reasonable, and based on substantial competent evidence;

k. Mr. Drabinski's analysis is supported by the underlying data and facts in the record and by the proper analysis required under Kansas law, and therefore is adopted by Commission;

l. Mr. Drabinski's proposed $231 million disallowance amount is not supported by substantial competent evidence. KCPL's Experts, Dr. Nielsen and Mr. Meyer demonstrate the many flaws in the analysis of Mr. Drabinski's Proposed Disallowance;

33. The Commission is not persuaded by the testimony of KCPL witness Mr. Meyer that Mr. Drabinski must identify individual purchase orders for each finding of imprudence.

(d) CURB's Proposed Disallowance for Iatan Unit 2 is Based on Substantial Competent Evidence and K.S.A. 66-128g, and is adopted by the Commission

34. CURB's witness, Andrea Crane recommended a prudence disallowance of 25% of the difference between the cost of Iatan Unit 2 and the original cost estimate ("definitive") provided to ratepayer groups, parties, Staff, and the Commission in the 1025 docket that was derived from KCPL's Project Definition Report. Ms. Crane relied upon the authority contained in K.S.A. 66-128g (a)(4) factor, in making this calculation. Her recommended prudence disallowance was a $33,565,958 reduction to KCPL's plant-in-service (Kansas-jurisdictional).

35. With respect to CURB's recommended prudence disallowance, the Commission specifically finds the following:

a. KCPL made "promises" regarding the cost of the Plant in the 1025 Stipulation Agreement that were not kept;

b. KCPL made representations in oral and sworn testimony to ratepayer groups, Intervenors, Staff, CURB, and the Commission parties, many forums including hearings before the Commission about:

(1) the cost estimates that were included in the 1025 Stipulation regarding Iatan 2 (with a 95% or $85 million contingency) and other Regulatory Plan projects,

(2) the projected impact on rates, and

(3) the amount of the CIAC required during the five year construction period of Iatan 2.

c. There were increases in the Project's estimates from the 2004 PDR until the Control Budget Estimate was established in December 2006;

d. KCPL incurred material capital expenses beyond those approved by the KCC for Iatan 2, yet failed to seek explicit approval from the Commission before voluntarily incurring material capital investments or expenses beyond those contemplated by the 1025 Stipulation and the resource plan as required by Section II.B.2 of the 1025 Stipulation; and

e. KCPL failed to monitor the reasonableness or adequacy of the Resource Plan as required by the 1025 Stipulation.

36. While CURB's prudence disallowance recommendation is not based on a detailed review of KCPL's management of the Iatan Unit 2 construction project, but specifically on the K.S.A. 66-128g (a)(4) factor, the Commission finds CURB'S prudence disallowance both supported by, and consistent with, Staff's more detailed prudence review.

37. CURB's recommended prudence disallowance is supported by substantial competent evidence and K.S.A. 66-128g (a)(4). The Commission makes the following additional findings with respect to CURB's prudence disallowance:

a. CURB's recommended prudence allowance is shown in Schedule ACC-11 (Hearing Exh. 98). CURB witness Andrea Crane began with the Company's claim in this case for Iatan Unit 2, based on its currently budgeted costs. She then reduced those costs by the property tax adjustment, then calculated the difference between the current adjusted Iatan Unit 2 budgeted cost and the Iatan Unit 2 estimate included in the Regulatory Plan. CURB's adjustment is based on 25% of that difference, resulting in a $33,565,958 reduction to KCPL's plant-in-service on a Kansas-jurisdictional basis. (Crane D., p. 39, lines 1-6).

b. The Company contention that the cost estimate for Iatan Unit 2 should not have been relied upon by the parties, that it was "conceptual" or just an informed guess, is not credible. Long after it provided those original cost estimates, KCPL now attempts to tie the validity of the original Iatan 2 cost estimate to the estimate classification system provided by the Association for the Advancement of Cost Engineers ("AACE"). Company witness Daniel Meyer now attempts to characterize the original cost estimates that the parties and the KCC relied upon in the Regulatory Plan were simply "conceptual phase estimates, which Mr. Meyer describes as "merely providing a cost order of magnitude for a project." (Crane D., p. 34, lines 15-20, p. 35, lines 1-13).

c. The Regulatory Plan was approved based on the Company's representations with regard to cost. That Regulatory Plan provided for extraordinary ratemaking

treatment over a five-year period in order to assist the Company in completing the construction of Iatan Unit 2, while maintaining its financial integrity. The KCC had the right to expect that the cost estimate provided by the Company was more than just an "order of magnitude" estimate. At no time during that process did the Company reveal that this estimate should be interpreted as a Class 4 or Class 5 estimate pursuant to the AACE Cost Classification system discussed in Mr. Meyer's testimony. In fact, Mr. Meyer acknowledges on page 5, lines 11-14 of his testimony that the AACE Cost Classification system, which he now proposes to utilize to defend the Company's original cost estimate, was not specifically used for the Iatan Unit 2 project. (Crane D., p. 36, lines 15-21, p. 37, lines 1-8).

d. In this case, not only was a cost estimate for a new generating facility presented to the KCC, but the KCC approved a comprehensive Regulatory Plan to support the Company's proposed construction activities based upon those cost estimates. In CURB's view, the Regulatory Plan resulted in a regulatory compact between shareholders and ratepayers. The Regulatory Plan contained several ratemaking provisions that went above and beyond the normal ratemaking framework. It provided for a series of annual rate filings during the construction period. It provided for payment of CIAC, which was to be used to maintain the Company's financial integrity during the construction period. It permitted the Company to retain proceeds from the sales of SO_2 emission allowances until after construction of Iatan Unit 2 was complete. It provided for a true-up of pension costs during this period and permitted carrying costs on the resulting regulatory asset or liability. In approving the Regulatory Plan, the KCC relied upon the cost

estimates contained in the plan, especially the cost estimate for Iatan Unit 2.[4] (Crane D., p. 34, lines 2-14).

e. In addition, the Company claims that one of the reasons for the higher than anticipated costs is that the Regulatory Plan contemplated an 800 MW unit generating station while an 850 MW station was actually constructed.[5] However, the Company ignores the fact that KCPL's share of Iatan Unit 2 is much less than projected in the Regulatory Plan. The Regulatory Plan envisioned that KCPL would acquire 500 MWs of generation, or 62.5% based on an 800 MW facility. However, KCPL actually owns 54.7% of Iatan Unit 2, or 465 MWs. Thus, Kansas ratepayers are not only paying more, but they are paying more for less capacity. (Crane D., p. 37, lines 9-16).

f. CURB's disallowance recommendation recognizes that there would be some variation between the actual costs of Iatan Unit 2 and the estimates contained in the Regulatory Plan. However, given the preferential ratemaking treatment afforded to shareholders by the Regulatory Plan, it is reasonable to have this risk shared 50/50 between ratepayers and shareholders. CURB's disallowance recommendation allocates more than 50% of this variance to ratepayers, given the fact that some of these cost overruns may have been outside of the Company's control. (Crane D., p. 37, lines 18-20, p. 38, lines 1-5).

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[4] Order Approving the Stipulation and Agreement, KCC Docket No. 04-KCPE-1025-GIE, August 5, 2005, ¶¶ 9, 11.

[5] KCPL's Summarized Comparison of Regulatory Plan Estimates to Current Forecasted Total Project Costs, submitted May 4, 2010, paragraph 13.

g. Regardless of the factors that are ultimately found to be responsible for these costs overruns, shareholders should bear a portion of these costs, given the fact that the Company entered into a regulatory compact through the Regulatory Plan. Similarly, while the scope of the final Iatan Unit 2 project may have changed somewhat from what was included in the original estimate, those scope changes were made by KCPL after the plan was approved based on the original cost estimates, so the actual costs should still be compared with the original cost estimates reflected in the Regulatory Plan. Since rates were established over the past five years based on the Regulatory Plan, then the costs in the Regulatory Plan should be the foundation to which actual costs are compared when determining if some or all of any cost overruns should be disallowed. (Crane D., p. 38, lines 7-19).

h. Chris Giles criticized the prudence disallowance made by CURB witness Andrea Crane, yet didn't even know whether Ms. Crane relied upon K.S.A. 66-128 (g)(4). (Tr. Vol. 2, p. 424, lines 8-25, p. 425, lines 1-9).

i. Chris Giles didn't first become aware of the Association for Advancement of Cost Engineers (AACE) cost classification system until after the original cost estimates were provided to the parties in the 1025 docket, and after the 1025 Stipulation. (Tr. Vol. 2, p. 425, lines 12-25, p. 426, lines 7, p. 428, lines 10-25).

j. Chris Giles testified that he didn't describe the cost estimates presented to the Commission in the 1025 docket as conceptual construction cost estimates. (Tr. Vol. 2, p. 430, lines 4-6).

k. Chris Giles testified that he updated his prior testimony, including an update of the construction cost estimates and a range of possible rate impacts to the Commission in the 1025 docket on April 1, 2005. (Tr. Vol. 2, p. 430, lines 4-6; Hearing Exhibit 29).

l. In his April 1, 2005 testimony, Mr. Giles confirmed KCPL's prior estimate of total additional capital for the Regulatory Plan projects to be approximately $1.1 billion. He indicated that the amount had not changed significantly, but that "[i]f the second unit is not built, obviously the overall capital expenditures under the plan will be reduced accordingly." (Tr. Vol. 2, p. 430, lines 7-25, p. 431, lines 1-20).

m. The $734 million cost estimate in the 1025 Stipulation came from the cost estimate contained in the Project Definition Report. (Tr. Vol. 6, p. 1332, lines 8-17).

n. The Project Definition Report was a substantial document that Burns & McDonnell prepared over a two-year period with significant interchange between KCPL and Burns & McDonnell. Burns & McDonnell utilized their experience on other projects, reference projects, and costs from other projects that they built up for this KCPL-specific project (Iatan 2). Burns & McDonnell obtained estimates from vendors of major plant components and made adjustments for things such as labor, productivity, and site specific activities. Burns & McDonnell charged KCPL nearly a quarter of a million dollars to prepare the Project Definition Report. (Tr. Vol. 6, p. 1330, lines 2-25, p. 1331, lines 1-2; Hearing Exh. 44, p. 31).

o. The Project Definition Report contained a 95 percent confidence level, which include an 8 percent or $85 million contingency. (Tr. Vol. 6, p. 1333, lines 4-23; Tr. Vol. 11, p. 2505, lines 21-25; p. 2506, lines 1-20).

p. The Project Definition Report was in place from September 9, 2004 through sometime in 2006, when it was first modified for the scale up. (Tr. Vol. 5, p. 1100, lines 3-10; Tr. Vol. 6, lines 19-25, p. 1332, lines 1-7).

q. The cost estimate in the Project Definition Report is a valid cost estimate. (Tr. Vol. 7, p. 1440, lines 11-21).

r. The Project Definition Report was used by KCPL to obtain regulatory approval with the Kansas and Missouri Commission, obtain air permits for Iatan 2, and to get the joint owner agreements finalized. (Tr. Vol. 5, p. 1101, lines 6-25).

s. Nothing in the Project Definition Report would lead stakeholders such as CURB, Staff, other interveners, or the Commission to question the confidence level provided in the Project Definition Report. (Tr. Vol. 6, p. 1333, lines 24-25, p. 1334, lines 1-11).

t. The 2005 Commission specifically relied upon the original cost estimates in approving the 1025 Stipulation, finding: KCPL planned to build an 800 to 900 MW coal powered plant, KCPL planned on owning 500 MW of the plant, the cost of the plant was projected to be approximately $733,666,000, or $1,467 per KW. (Hearing Exh. 24, Order Approving Stipulation and Agreement, KCC Docket No. 04-KCPE-1025-GIE, ¶ 11).

u. The 2005 Commission determined the total company cost of the investment planned by KCPL amounted to $1.2 billion, including $734 million for KCPL's

500 MW share of Iatan 2, $131 million for the 100 MW of wind generation, $272 million for environmental investments through 2010, and $52.8 million for demand side management and energy efficiency investments. (Hearing Exh. 24, Order Approving Stipulation and Agreement, KCC Docket No. 04-KCPE-1025-GIE, ¶ 9).

v. The $1.2 billion total project cost and $734 million for Iatan 2 relied upon by the 2005 Commission in the 1025 Docket was specified in Appendix D to the 1025 Stipulation. (Hearing Exh. 23, Appendix D).

w. It was KCPL's duty to seek "explicit approval" from the Commission before voluntarily incurring material capital investments or expenses beyond those contemplated by the 1025 Stipulation and the Resource Plan. (Hearing Exh. 23, Stipulation and Agreement, pp. 9-10, ¶ B. 2);

x. KCPL never sought explicit approval from the Commission before incurring those cost increases. (Tr. Vol. 1, p. 219, lines 10-17; Tr. Vol. 2, p. 393, lines 5-9, p. 420, lines 12-16).

y. While Mr. Giles didn't know if the changes in labor costs, material costs, and energy market changes that occurred since the cost estimates were given to the Commissioners in 2005 when they approved the 1025 Stipulation were material, but the increases were material enough that he brought them to the attention of Staff. (Tr. Vol. 2, p. 396-97).

z. Mr. Giles agreed there were material changes in the cost of power generation technologies for the Iatan 2 plant. (Tr. Vol. 2, p. 399, lines 9-13).

aa. Although Mr. Giles claims to have written the 1025 Stipulation, he didn't believe there was a definition for "material" in Section D (2), pages 9 and 10 of the 1025 Stipulation. (Tr. Vol. 2, p. 451, lines 14-25, p. 452, lines 1-6, 13-16).

bb. The escalating capital costs associated with Iatan 1 and 2 increased KCPL's CIAC calculation in the 246 rate case from the Company's request for $11.2 million to over $280 million, an amount nearly four times the rate increase requested by the Company. (Tr. Vol. 2, p. 384, lines 13-25, p. 385, line 1; Tr. Vol. 8, p. 1802, lines 19-25, p. 1803, lines 1-9, p. 1813, lines 7-22, p. 1818, lines 15-25). KCPL's initial forecast of $11.2 million in CIAC in the 246 docket was not just wrong, it was "an economic disaster." (Tr. Vol. 8, p. 1819, lines 1-3).

cc. KCPL's credit rating was in distress in 2009, contemporaneous with the last rate case (246 docket). (Tr. Vol. 8, p. 1810, lines 10-21).

dd. The cost estimates contained in the 1025 S&A were made prior to KCPL unilaterally making major scope changes to the overall project. (Tr. Vol. 2, p. 391, lines 16-20).

ee. The major scope changes made by KCPL resulted in cost increases from the amounts contained in the 1025 Stipulation. (Tr. Vol. 2, p. 392, lines 20-24).

ff. The major scope changes to the overall project were made by KCPL. (Tr. Vol. 2, p. 392, lines 12-19).

gg. There were changes in labor costs, material costs, and the energy market since the Regulatory Plan was approved in 2005. (Tr. Vol. 2, p. 396, lines 3-13).

hh. There were material changes in the cost of the power generation technologies for the Iatan 2 plant during the course of the Regulatory Plan. Some of these cost

changes were related to KCPL's decision to change the steam temperatures from 150 degrees to 180 degrees. (Tr. Vol. 2, p. 399, lines 4-13).

ii. Those increased costs were material to Chris Giles, at least to the degree that KCPL believed it needed to point it out to Staff and other signatories. (Tr. Vol. 2, p. 397, lines 1-24).

jj. There is no testimony or any mention in the 1025 Stipulation regarding the word conceptual with respect to Iatan 2 or the entire project. (Giles, Tr. Vol. 2, p. 403, line 25, p. 404, lines 1-4).

kk. KCPL's current Senior Director of Regulatory Affairs does not recall any place in the 1025 docket where any witness from KCPL described these cost estimates as conceptual or informed guesses. (Tr. Vol. 1, p. 227, lines 16-25)

ll. KCPL's Director of Regulatory Affairs Chris Giles testified before the Commission on July 19, 2004 in the 1025 docket, that KCPL represented to customers in individual customer meetings and broader customer meetings that KCPL was estimating "rate increases over the 10-year time frame no greater than the rate of inflation over that same time frame." (Tr. Vol. 2, p. 408, lines 17-20; Hearing Exh. 27, p. 99, lines 18-25, p. 100, lines 4).

mm. Mr. Giles further represented to the Commission on July 19, 2004 in the 1025 docket, that in response to KCPL's representations that rate increases would be no greater that the rate of inflation over a 10-year time frame, it did not cause "any particular grimace or opposition" by customers. (Hearing Exhibit 27, p. 99, lines 18-25, p. 100, lines 4).

nn. KCPL further represented to ratepayers groups in the 1025 docket in April 2005 that KCPL had projected rate increases on average of 3 to 4 percent annually, or 15-20% for the 5-year period. (Tr. Vol. 2, p. 411, lines 1-25, p. 412, lines 1-6; Hearing Exhibit 29, p. 8, lines 13-17).

oo. KCPL former director of regulatory affairs Chris Giles testified in support of the 1025 Stipulation on June 17, 2005, and again confirmed that the Company estimated that consumer rates would increase 3 to 5 percent or roughly 20 percent over the 5-year regulatory plan. (Tr. Vol. 2, p. 415, lines 12-25, p. 416, lines 1-25, p. 417, lines 1-21; Hearing Exhibit 30, p. 44, lines 3-25, p. 45, lines 1-4).

pp. In his testimony in support of the 1025 Stipulation, KCPL former director of regulatory affairs Chris Giles made the specific point that the 15-20 percent rate increase KCPL projected over the 5-year regulatory plan was not just related to the incremental regulatory project investments, but related to all costs that KCPL anticipated over the 5-year period: "everything including pensions, fuel costs, everything over that 5-year period." (Tr. Vol. 2, p. 417, lines 22-25, p. 418, lines 13; Hearing Exhibit 30, p. 44, lines 3-25, p. 45, lines 1-4).

qq. The total rate increase over the 5-year Regulatory Plan will total 40% if the 11 percent requested in this rate request is granted by the Commission. (Tr. Vol. 2, p. 419, lines 1-10).

rr. Chris Giles refers to the best estimate KCPL had in 2004 as the "5-year budget of 2004." (Tr. Vol. 2, p. 419, lines 22-25).

ss. The fiscal year ending December 31, 2005 Form 10-K for Great Plains Energy, filed February 7, 2006, references "budget estimates" with respect to the Iatan 2

construction project and risks that "actual costs may exceed budge estimates." (Hearing Exh. 53, p. 16 of 214). The 2005 Form-K further states that "KCPL will make energy infrastructure investments as detailed in the orders and summarized in the table below," and specifies for Iatan 2, KCPL will build and own 465 MW of an 850 MW coal fired plant for an estimated capital expenditure of $733 million. (Hearing Exhibit 53, p. 68 of 214).

2. Application of K.S.A. 66-128g factors

38. K.S.A. 66-128g sets forth multiple factors that the Commission is required to consider when determining whether the Company was prudent in its construction of Iatan Unit 2. After careful consideration of each of these factors, the Commission finds that acted imprudently in its construction of Iatan Unit 2.

39. The Commission adopts the proposed Findings of Fact and Conclusions of Law of the KCC Staff regarding each of the K.S.A. 66-128g factors.

40. With respect to Factor 4 (K.S.A. 66-128g (a)(4) - comparing the original cost estimates made by the owners of the facility under consideration with the final cost of such facility), the Commission finds:

a. The Project Definition Report cost estimate and the cost estimates specified in the 1025 Stipulation were "original cost estimate" as defined by K.S.A. 66-128g.

b. The Commission finds the AACE cost classification system to be irrelevant to these proceedings since it was not shared with the stakeholders, parties, and Commission in the 1025 docket when the original cost estimates were provided. Since KCPL representatives, particularly those representatives providing the

original cost estimates in the 1025 docket, were not even aware of the system when the original cost estimates were provided to the stakeholders, parties, and the Commission in the 1025 Docket, applying the cost classification system after the fact is unreasonable. This is because:

(1) The intent of the AACE Cost Estimate Classification System is designed to:

a. "improve communications among all the stakeholders involved with preparing, evaluating, and using project cost estimates"

b. "help those involved with project estimates to avoid misinterpretation of the various classes of cost estimates and to avoid their **misapplication and** misrepresentation."

c. "Improving communications about estimate classifications reduces business costs and project cycle times by avoiding inappropriate business and financial decisions, actions, delays, or disputes caused by misunderstandings of cost estimates and what they are expected to represent. (Meyer D., Schedule DFM2010-2, p. 2.

(2) The intent of the system described above cannot be realized if the system is not provided "to those involved with project estimates," such as the stakeholders, parties and Commission in the 1025 docket when the original cost estimates for Iatan Unit 2 and the other regulatory projects were provided.

41. The Commission finds the following facts are applicable to the Commission's consideration of Factor 12:

a. KCPL'S failure to seek explicit approval from the Commission before voluntarily incurring material capital investments or expenses beyond those contemplated by the 1025 Stipulation and the resource plan as required by Section II.B.2 of the 1025 Stipulation; and

b. KCPL failed to monitor the reasonableness or adequacy of the Resource Plan as required by the 1025 Stipulation.

3. **Iatan Unit 1 and Common Prudence Analysis**

c. Proposed Finding: The KCC adopts the proposed Findings of Fact and conclusions of Law of the Commission Staff.

4. **1025 Stipulation Compliance**

42. Proposed Finding: KCPL failed to seek explicit approval from the Commission before voluntarily incurring material capital investments or expenses beyond those contemplated by the 1025 Stipulation and the Resource Plan.

43. The Commission adopts the following Findings of Fact in support of this finding:

a. KCPL had an obligation to seek "explicit approval" from the Commission before voluntarily incurring material capital investments or expenses beyond those contemplated by the 1025 Stipulation and the Resource Plan (Hearing Exh. 23, Stipulation and Agreement, pp. 9-10, ¶ B. 2);

b. Despite the significant and material increased costs related to Iatan 2 and other regulatory plan projects, KCPL never sought explicit approval from the

Commission before incurring those cost increases. (Tr. Vol. 2, p. 393, lines 5-9, p. 420, lines 12-16, p. 396-97, p. 399, lines 9-13).

c. Although Mr. Giles claims to have written the 1025 Stipulation, he didn't believe there was a definition for "material" in Section D (2), pages 9 and 10 of the 1025 Stipulation. (Tr. Vol. 2, p. 451, lines 14-25, p. 452, lines 1-6, 13-16). However, material is defined by the 1025 Stipulation as, "an amount that could affect the financial rating of the company and the amount of CIAC that may be needed." (Hearing Exh. 23, pp. 9-10, Section B.2.).

d. The definition for material under the 1025 Stipulation was easily met, given the escalating capital cost overruns on the Iatan projects as well as the ballooning CIAC calculated to be needed according to the metrics contained in the 1025 Stipulation. The escalating capital costs associated with Iatan 1 and 2 increased KCPL's CIAC calculation in the 246 rate case from the Company's request for $11.2 million to over $280 million, an amount nearly four times the rate increase requested by the Company. (Tr. Vol. 2, p. 384, lines 13-25, p. 385, line 1; Tr. Vol. 8, p. 1802, lines 19-25, p. 1803, lines 1-9, p. 1813, lines 7-22, p. 1818, lines 15-25). KCPL's initial forecast of $11.2 million in CIAC in the 246 docket was not just wrong, it was "an economic disaster." (Tr. Vol. 8, p. 1819, lines 1-3). Since the original projected amount of CIAC over the regulatory plan was estimated to be approximately $60 million, it should be undisputed that the over $280 million calculation made during the last rate case rises to the level of "material" defined by the 1025 Stipulation.

e. In addition, KCPL's credit rating was in distress in 2009, contemporaneous with the last rate case (246 docket). (Tr. Vol. 8, p. 1810, lines 10-21).

f. KCPL's argument that Staff was required to challenge the Resource Plan is without credibility. While Staff may have the ability to request that KCPL seek explicit approval to incur material capital investments or expenses beyond those contemplated by the 1025 Stipulation, it was not Staff's obligation to do so, that obligation belonged to KCPL.

g. Even had Staff chosen to file some sort of challenge with the Commission rather than begin a comprehensive prudence review, what would that have accomplished at that point in time? It lacks credibility to suggest the Commission would have ordered KCPL to abandon the construction of a billion-plus dollar coal plant after:

   (1) Well over ½ of the project cost (confidential) in contracts had been secured as of May 2007 (Tr. Vol. 4, p. 769, lines 14-25, p. 770, lines 1-3, p. 774, lines 16-25, p. 775, lines 1-9 (KCPL claims the specific amount is confidential); and

   (2) Nearly 10 percent of the projected costs had actually been expended by February 2007. (Tr. Vol. 4, p. 767, lines 5-19 (KCPL claims the specific amount is confidential).

h. Staff did the reasonable thing when it realized KCPL was allowing costs to escalate – it hired Mr. Drabinski and the Vantage Group to begin a comprehensive prudence review, something the 1025 Stipulation gave Staff the right to perform.

i. Under the 1025 Stipulation, it was:

   (1) KCPL's duty to seek "explicit approval" from the Commission before voluntarily incurring material capital investments or expenses beyond those contemplated by the 1025 Stipulation and the Resource Plan (Hearing Exh. 23, Stipulation and Agreement, pp. 9-10, ¶ B. 2);

   (2) KCPL's duty to monitor the reasonableness and adequacy of the Resource Plan until the capital investments described therein

were completed; (Hearing Exh. 23, Stipulation and Agreement, p. 19, ¶ B. 3); and

(3) KCPL's duty, on its own or at the request of any non-KCPL parties, to re-assess the reasonableness and adequacy of the Resource Plan if changed circumstances arose that impacted the reasonableness and adequacy of the Resource Plan during the initial and ongoing implementation of the primary elements of the Resource Plan. (Hearing Exh. 23, Stipulation and Agreement, ¶ B. 3).

j. KCPL places great reliance on the fact that it provided quarterly reports to Staff, the signatory parties, and CURB. However, when Staff realized the costs were escalating, Staff hired the Vantage Group to begin a prudence review. The 1025 Stipulation gave Staff the right to challenge the prudence of the costs, and Staff began exercising that right when the information provided by KCPL gave them reason to believe imprudent costs were being incurred.

k. At no time did Staff ever approve any of the increased costs; to the contrary, Staff began its prudence review when it realized the costs were greatly exceeding the original cost estimates.

5. Resource Plan Compliance.

44. Proposed Finding: KCPL failed to comply with the requirements of the 1025 Stipulation throughout its duration. In making this finding, the Commission relied on the following:

a. t was KCPL's duty to monitor the reasonableness or adequacy of the Resource Plan.

b. Throughout this docket, KCPL has attempted to shift its responsibility clearly delineated under the 1025 Stipulation to Staff or other parties. Section B. 3 of the 1025 Stipulation is clear and unambiguous:

(1) "KCPL agrees to monitor the reasonableness and adequacy of the Resource Plan until the capital investments described therein are completed. KCPL will on its own or upon request of any non-KCPL parties re-assess the reasonableness and adequacy of the Resource Plan if changed circumstances arise that may impact the reasonableness and adequacy of the Resource Plan during the initial and ongoing implementation of the primary elements of the Resource Plan. Such changes in circumstances would include, but not be limited to:

a. f) material changes in the cost and/or reliability of power generation technologies;
b. g) material changes in energy market conditions;
c. j) material changes in the projected rates and costs to ratepayers resulting from the resource plan. (Hearing Exh. 23, p. 10, Section B. 3.) (emphasis added).

c. KCPL failed to comply with its duty to monitor the reasonableness of the resource plan. Material changes in the cost of power generation technologies, energy market conditions, and the projected rates and costs to ratepayers clearly occurred during the initial and ongoing implementation of the Resource Plan. (Tr. Vol. 2, p. 393, lines 5-9, p. 420, lines 12-16, p. 396-97, p. 399, lines 9-13). These changed circumstances clearly impacted the reasonableness of the Resource Plan, yet

KCPL failed to seek modification of the Resource Plan as required by Section B.3. of the 1025 Stipulation.

d. Finally, KCPL again ignores the fact that Staff hired Walter Drabinski and the Vantage Consulting to perform a comprehensive prudence review when Staff became concerned that the cost estimates were repeatedly revised upward from the original cost estimates.

e. KCPL had the duty to monitor the reasonableness of the resource plan, and when material changes in the cost of power generation technologies, energy market conditions, and the projected rates and costs to ratepayers occurred, KCPL failed to seek modification of the Resource Plan as required by the 1025 Stipulation. Because of this, KCPL, and its shareholders, are responsible for the escalated costs of Iatan 1 and 2.

6. Cost of Capital Issues

(a) Return on Equity

45. Proposed Finding: The appropriate return on equity for KCPL is 9.39%, as recommended by CURB witness Dr. Crane.

46. In making this finding, the Commission relied on the following:

a. CURB is recommending a return on equity of 9.39%. This recommendation is based on a discounted cash flow model and on a CAPM model, with the DCF receiving a 75% weighting and the CAPM receiving a 25% weighting.

b. Because the KCC has traditionally relied upon the Discounted Cash Flow Model ("DCF") as the primary mechanism to determine cost of equity for a regulated

utility, CURB witness Andrea Crane relied primarily upon the Discounted Cash Flow Model ("DCF"). (Crane D., p. 19, lines 16-20).

c. Ms. Crane's recommendation under the DCF methodology and the CAPM methodology suggests that a return on equity of 7.67 % to 9.96% would be appropriate. Since Ms. Crane recognizes that the Commission has generally relied primarily upon the DCF, she weighted her results with a 75% weighting for the DCF methodology and a 25% weighting for the CAPM methodology. This results in a cost of equity of 9.39%, as shown below:

(1)	DCF Result	9.96% X 75% =	7.47%
(2)	CAPM	7.67% X 25% =	1.92%
(3)	Total		9.39%

(4) This weighting methodology is consistent with the methodology that Ms. Crane has used in prior cases before the KCC, as well as in other jurisdictions that have expressed a preference for the DCF model. (Crane D., p. 27, lines 9-21).

d. The most significant difference between Ms. Crane's recommendation and the Company's recommendation is the growth rate assumption. Ms. Crane assumes 5% growth. The Company assumes 6% growth. CURB believes a 5% growth is more reasonable, and the Company's 6% growth rate is simply too high, given current economic conditions. (Tr. Vol. 8, p. 1719, lines 1-13).

e. Moreover, while the Company contends that its GDP growth rate is forward looking, the Company's estimated GDP growth consists entirely of historic results

over the past 60 years. In fact, the Company ignored future long term estimates of GDP growth, which were well under the 5% used by Ms. Crane.

f. KCPL places emphasis on the fact that Staff and CURB recommendations are lower than reported ROEs in recent years, and below the reported 10.48 average ROE authorized by public utility commissions for vertically-integrated public utilities in the first and second quarters of 2010 as reported by Regulatory Research Associates ("RRA").[6] However, these are unique times, and the evidence established that ROEs are trending downward for vertically-integrated utilities, from the 11% received by Detroit Edison, to the 10% received by Florida Power and Light on March 17th and 10% received by MDU Resources on May 26th. (Hearing Exh. 139).

g. And while Dr. Hadaway may not have an experienced an "an integrated electric utility company that has had a 9.7 percent ROE imposed on it in my career in the United States,"[7] Staff witness Adam Gatewood testified that an ROE of 9.9% was granted to a vertically integrated utility in Indiana during the course of the hearing in this docket. (Tr. Vol. 12, p. 2778, lines 12-25, p. 2779, lines 1-7, p. 2811, lines 23-25, p. 2812, lines 1-15, p. 2835, lines 11-24).

h. The Kansas economy, while slightly better than the U.S. economy as a whole, experienced a significant downturn in 2009. Personal income decreased 2.7%, and the unemployment rate was 7% in 2009. (Hearing Exh. 51, p. 12).

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[6] KCPL Brief, ¶ 286.

[7] KCPL Brief, ¶ 286.

i. As Ms. Crane indicated during the hearing, the fact that her recommended ROE is lower than has been authorized for a G&T utility in the past few years isn't something that should prevent the Commission from considering her recommendation. By definition, the current declining trend in ROEs means Commissions have been authorizing lower ROEs than those authorized historically. (Tr. Vol. 11, p. 2477, lines 4-15).

j. The most recent 30-year Treasury rate, as of August 26, 2010, was 3.53 percent, well below the rate used by Andrea Crane in calculating ROE. (Vol. 11, p. 2543-2544).

k. One difference between Ms. Crane's recommendation and Mr. Gatewood's recommendation is that Mr. Gatewood uses an arithmetic mean, where Ms. Crane utilized a geometric mean. Mr. Hadaway used the geometric mean for one of his risk premium models in last year's rate case (246 docket). (Tr. Vol. 11, p. 2489, lines 2-25, p. 2490, lines 1-6).

l. The Ibbotson Associates Yearbook discusses both, depending on how you are using the mean. Ibbotson says the geometric mean is more appropriate to use for a backward look, to see what actually happened, as Ms. Crane used it - to get the historic relationship between stocks and long-term U.S. Government bonds. (Tr. Vol. 11, p. 2490, lines 7-25, p. 2491, lines 1-5). Arithmetic is the best estimate of future return, given certain possible outcomes and probabilities (which we do not have here). Mr. Hadaway used the geometric mean for one of his risk premium models in last year's case (246 docket). (Tr. Vol. 11, p. 2489, lines 2-25, p. 2490, lines 1-6).

m. The Company's initial filed position requested an 11.25 percent ROE, which was then reduced to 10.75 percent. In addition, the revised position of the Company requests a 25 basis point adder if the Commission accepts CURB or Staff's rate design proposals, although Mr. Hadaway didn't perform any analysis to come up with the 25 basis points. (Tr. Vol. 8, p. 1733, lines 16--25, p. 1734, lines 1-4, Tr. Vol. 11, p. 2435, lines 3-6).

n. It is convenient that the Company seeks a 25 basis point adder for rate design modifications, but never proposed reductions in its ROE due to risk mitigation measures, such as those provided under the regulatory plan, the ECA mechanism, etc.

o. While Ms. Crane's ROE recommendation may be the same (9.39%) in this case as in the last rate case (246 docket), it arrived there for totally different reasons. In the 246 docket, Ms. Crane's dividend yield was higher (5.44%) due to depressed stock prices and her growth rate (4.5%) was lower. (Tr. Vol. 11, p. 2486, lines 3-25, p. 2487, lines 1-3). Ms. Crane has been consistent with the methodology she uses from case to case. (Tr. Vol. 11, p. 2487, lines 4-22).

p. Ms. Crane also adopted KCPL witness Samuel Hadaway's comparable group. (Crane D., p. 20, lines 7-9).

q. Relying on authorized returns is not a reasonable manner to set ROE. Authorized returns include settled cases. In settled cases, the parties may adopt an ROE that is higher than the commission would allow, as a trade off. Consumer advocates care about revenue requirements while companies care about ROE (for investment community). (Tr. Vol. 11, pp. 2547-49).

r. CURB's use of CAPM is appropriate

s. KCPL complains that "under present market conditions, all three of the CAPM inputs tend to produce unreasonably low estimates of ROE."[8] However, utilities always claim that various methods produce "inappropriately" low results – this is because the method at issue varies depending on what that result is. CURB would submit that consistency in methodology is important - which is why CURB witness Andrea Crane continues to consistently recommend a 75/25 weighting between the DCF and the CAPM methodology.

t. Contrary to KCPL's argument that the Commission shouldn't consider the CAPM methodology because the FERC does not utilize it, but instead relies solely on DCF calculations, Dr. Hadaway used other risk premium approaches in his analysis as well, not solely the DCF. (Tr. Vol. 8, lines 5-10).

u. KCPL provides no basis for its argument that CURB's CAPM analysis is, on its face, unreasonable. Simply because it results in the lowest ROE does not make it unreasonable. Consistent with her past recommendations, Ms. Crane assigned her CAPM result a 25% weighting in determining her final ROE recommendation. (Tr. Vol. 11, p. 2487, lines 8-22). KCPL would have the Commission conclude, for no other reason than it's the lowest ROE calculated, that it is therefore unreasonable. CURB isn't making this argument, but KCPL's logic could be equally be applied to Mr. Hadaway's ROE calculations – that relative to "all the other data on rate of return presented in this case," Mr. Hadaway's ROE result is

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[8] KCPL Brief, ¶ 289.

above the range of reasonableness and is therefore, on its face, unreasonable and should be excluded.

v. CURB's discounted cash flow analysis is appropriate and should be adopted by the Commission.

w. The calculation of the proper growth rate in a DCF analysis is a highly contentious issue for three reasons: (1) because of the one-for-one affect on the allowed rate of return; (2) because of the element of subjectivity in selecting the growth rate due to uncertainty in future earnings; and (3) because it is difficult to uncover what growth rate estimates investors rely on when they value a stock and where they obtain that information. (Gatewood D., p. 32, lines 1-11).

x. CURB witness Andrea Crane testified that a growth rate of no greater than 5.0% should be utilized. This recommended growth rate is greater than the ten year growth rates in earnings, dividends, or book value. It is also higher than either the five-year growth rates or the projected growth rates in dividends and book value per Value Line. (Crane, D., p. 23, lines 13-19).

y. With respect to the DCF model, the most significant difference between Dr. Hadaway's recommendation and Ms. Crane's recommendation is the growth rate. Ms. Crane recommends a 5% growth rate, and Dr. Hadaway initially used growth rates of 6.1% to 6.2%. Mr. Hadaway revised his growth rates in his rebuttal testimony to 6.0%. (Tr. Vol. 8, p. 1719, lines 1-14, 1723, lines 2-22).

z. KCPL states that Andrea Crane failed to consider consensus analysts' forecasts of future growth, instead choosing to rely upon historical rates as an indicator of future growth. This is completely untrue. Ms. Crane considered both historic and

future growth. In fact, the 5% growth rate Ms. Crane utilized is higher than Value Line's projected growth in dividends or book value, which is reflected in Ms. Crane's schedules. (Hearing Exh. 98, Schedule ACC-6).

aa. KCPL further mischaracterizes Andrea Crane's testimony when it states she argued that "the use of historical rates to determine future growth is more appropriate than relying upon growth forecast estimates prepared by professional securities analysts, because she feels that securities analysts experience a conflict of interest as they both value and sell securities, and this causes them to present overly optimistic forecasts of future growth.[9]

bb. What Ms. Crane actually said is that "historic growth rates should be considered because security analysts have been notoriously optimistic in forecasting future growth in earnings. At least part of this problem in the past has been the fact that firms that traditionally sold securities were the same firms that provided investors with research on these securities, including forecasts of earnings growth." (Crane, D., p. 22, lines 5-11 (emphasis added)).

cc. KCPL argues that had Ms. Crane considered Value Line's earnings estimates and the Thomson/Reuters earnings estimates, her DCF analysis would have increased from an ROE of 9.96% to 10.28%, an increase of 32 basis points. This is simply not true. Ms. Crane did consider Value Line's earnings estimate as well as its dividend and book value estimate. The Value Line dividend growth rate,

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[9] KCPL Brief, ¶ 301.

considered and reflected in Ms. Crane's Schedule ACC-6, was 4.3%, lower than the 5% growth rate utilized by Ms. Crane. (Hearing Exh. 98, Schedule ACC-6).

dd. Further, on cross-examination Ms. Crane stated again that both of these companies over a ten-year period, consistently overstate future earnings when you look at their projections, then go back and look at what actually happened. (Tr. Vol. 11, p. 2499, lines 15-25, p. 2500, lines 1-8).

ee. KCPL criticizes Ms. Crane for using historical growth rates, yet KCPL's own witness, Samuel Hadaway, uses entirely historic data for his GDP, and gives it different rates depending on the variant of time. So two of Dr. Hadaway's three DCFs are completely or heavily weighted historically. (Tr. Vol. 11, p. 2502, lines 6-19).

(i) The Commission is required to set a rate of return that will result in "just and reasonable" rates

47. Ratemaking is not an exact science. *Federal Power Comm'n v. Conway Corp.*, 426 U.S. 271, 278 (1976). Under Kansas law, the Commission is given full power, authority and jurisdiction to supervise and control electric utilities doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. K.S.A. 66-101. The Commission is also empowered to set "just and reasonable rates." K.S.A. 66-101f. However, the term "just and reasonable" is not defined in statutes, but instead by case law.

48. The Commission is granted broad discretion by the legislature in weighing the competing interests involved in utility rate cases. *Western Resources, Inc v. State Corporation Commission.*, 30 Kan.App2d 348, 352, 42 P.3d 162 (2002). The Commission's decisions involve

issues of policy, accounting, economics and other special knowledge that go into fixing utility rates. It is aided by a staff of assistants with experience as statisticians, accountants and engineers, while courts have no comparable facilities for making the necessary determinations. *Southwestern Bell Tel. Co. v. State Corporation Commission*, 192 Kan. 39, 48-49, 386 P.2d 515 (1963). It is only when the Commission's determination is so wide of the mark as to be outside the realm of fair debate that the court may nullify it. *Kansas-Nebraska Natural Gas Co. v. State Corporation Commission*, 217 Kan. 604, 617, 538 P.2d 702 (1975).

49. Additionally, the appropriateness of rates is not determined by the individual components of the revenue requirement, but by the reasonableness of the end result. *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 US 591,603 (1944); *see also Kansas Gas and Electric Co. v. State Corp. Comm'n*, 239 Kan. 483, 488-489 (1986) (citing to the *Hope* standard).

50. These holdings by the U.S. Supreme Court and Kansas Supreme Court require that the return authorized by a regulatory body should be sufficient to: (i) fairly compensate the utility for its invested capital; (ii) enable the utility to compete for new capital on equal terms with other businesses in the same geographic area having similar risks; and (iii) maintain the utility's financial integrity.

(ii) Overview of Recommendations

51. In his Direct Testimony, KCPL witness Dr. Hadaway used the Discounted Cash Flow ("DCF") method, and a bond-yield-plus-equity risk premium analysis to recommend an ROE of 11.25%.

52. Based on the same analysis in Dr. Hadaway's Rebuttal Testimony, but with updated data through the second quarter of 2010, KCPL reduced its requested ROE from 11.25% to 10.75%. Hadaway Rebuttal Testimony, p. 22.

53. KCC Staff Witness Gatewood recommended an ROE of 9.70% for KCPL in this case. Gatewood Direct Testimony, p. 5. To arrive at this ROE, Mr. Gatewood performed a DCF analysis, as well as a Capital Asset Pricing Model ("CAPM") analysis, and averaged the two results. *Id.* Mr. Gatewood's DCF analysis resulted in an ROE of 10.34% and his CAPM analysis resulted in an ROE of 8.91%. *Id.*

54. CURB Witness Crane recommended that the Commission authorize a ROE of 9.39%. Crane Direct Testimony, p. 27. To arrive at this ROE, Ms. Crane performed a CAPM analysis, which yielded an ROE of 7.67%, and a DCF analysis, which yielded an ROE of 9.96%. *Id.* Ms. Crane weighted the CAPM and DCF results 25% and 75%, respectively, in developing her final recommendation. *Id.*

(iii) CAPM Analysis

55. After examining the parties' arguments regarding the use of CAPM in estimating KCPL's ROE in this case, the Commission does not agree with KCPL that the current economic conditions cause all three of the CAPM inputs to tend to produce unreasonably low estimates of ROE. CAPM is an accurate measure of ROE in this case and has been an accepted element in many cases in this Commission, and by public service commissions throughout the country. The Treasury Rates for U.S. Debt support use of CAPM analysis.

(iv) DCF Analysis

56. Mr. Gatewood's DCF analysis resulted in an ROE of 10.34%. Gatewood Direct Testimony, p. 5. He assigned this DCF result a 50% weighting to determine his final ROE recommendation. Mr. Gatewood utilizes the following growth rates in calculating his DCF recommendation: Earnings per Share, Dividends per Share and an Intrinsic Growth Rate.

57. Ms. Crane's DCF analysis resulted in a ROE of 9.96%. Crane Direct Testimony, pg. 27. She assigned this DCF result a 75% weighting when determining her final ROE recommendation. Ms. Crane utilizes the following growth rates in calculating her DCF recommendation: Past 5 Year Earnings; Past 5 Year Dividends; Past 5 Year Book Value; Past 10 Year Earnings; Past 10 Year Dividends; Past 10 Year Book Value; Estimated Next 5 Year Earnings; Estimated Next 5 Year Dividends; and Estimated Next 5 Year Book Value.

58. Dr. Hadaway's DCF analysis initially resulted in a ROE of 11.25%. KCPL subsequently reduced the Company's requested ROE from 11.25% to 10.75% based upon updated data from the second quarter of 2010. Dr. Hadaway divides his DCF analysis into three calculations. The first calculation utilizes a traditional constant growth DCF calculation and utilizes an Estimated Next 5 Year Earnings growth rate. The second calculation utilizes a traditional constant growth DCF calculation and utilizes an Estimated Long-term GDP growth rate. The final calculation utilizes a two-stage growth approach, with stage one based on *Value Line*'s three-to-five-year dividend projections and stage two based on long-term projected growth in GDP.

59. The Commission notes that, as a result of their partial reliance on CAPM methodology, Mr. Gatewood's proposed 9.70% ROE and Ms. Crane's proposed 9.39%. The resulting ROE are consistent with the methodology used at this Commission and other public service commissions, and reasonably reflect current economic conditions in this region and in the United States, as reflected by the yield on U.S. Treasury debt.

(b) Equity Units

60. Proposed Finding: The Commission finds, consistent with the testimony of Staff and CURB witnesses, that the issuance of equity units was more expensive than traditional

common stock, that the issuance of equity units went to pay for other debts which are prohibited by previous agreements by KCPL, and that KCPL could have utilized CIAC or a common stock offering for such capital-raising as opposed to such equity units. The equity linked convertible debt units will be excluded from the Company's capital structure.

61. In support of this finding, the Commission relied upon the following:

a. The Commission to exclude the equity linked convertible debt units from the Company's capital structure. This debt is included in the capital structure at 13.59%, higher than any other component in the capital structure. (Crane D., p. 16, lines 9-10).

b. KCPL used this financing was used in part to retire high cost Aquila debt. (Tr. Vol. 8, p. 1832, lines 6-14). The Company issued these convertible units because it could not issue regular debt, and it did not want to issue additional equity which would further dilute the equity of existing shareholders, given the fact that the Company's stock was selling under book value. (Tr. Vol. 8, p. 1801, lines 18-25, p. 1802, line 1).

c. The Company also issued the equity-linked convertible debt to keep KCPL's credit rating up, as its credit rating was in distress. (Tr. Vol. 8, p. 1810, lines 10-13; Crane D., p. 16, lines 9-13). Finally, the inability of the Company to issue additional vanilla debt is the result, in part, of the Company's assumption of over $1.3 billion of debt when it acquired Aquila. (Tr. Vol. 8, p. 1805, lines 1-3).

d. The escalating capital costs associated with Iatan 1 and 2 increased KCPL's CIAC calculation in the 246 rate case from the Company's request for $11.2 million to over $280 million, an amount nearly four times the rate increase requested by the

Company. (Tr. Vol. 2, p. 384, lines 13-25, p. 385, line 1; Tr. Vol. 8, p. 1802, lines 19-25, p. 1803, lines 1-9, p. 1818, lines 15-25). KCPL's initial forecast of $11.2 million in CIAC in the 246 docket was not just wrong, it was "an economic disaster." (Tr. Vol. 8, p. 1819, lines 1-3). Staff was critical of KCPL for not utilizing the CIAC methodology and requesting less CIAC than the amount calculated by the 1025 metrics. (Tr. Vol. 8, p. 1817, lines 4-16).

e. The Regulatory Plan made it clear that if the Company's investment grade rating was jeopardized in spite of the CIAC or prepayments collected from ratepayers, then the parties "are under no obligation to recommend any further cash flow or rate relief to satisfy the obligations under this section. KCPL also recognizes and agrees that Kansas is only responsible for and will only provide cash flow for its share of the necessary cash flows as set out in this section. Therefore, if KCPL is unable to meet the BBB+ credit ratio guidelines because of inadequate cash flows from its Missouri operations, because of imprudent or unreasonable costs, because of inadequate cash flows from the non-regulated subsidiary of GPE or any risk associated with GPE that is unrelated to KCPL's regulated operations, KCPL will not argue for or receive increased cash flows from Kansas in order to meet the BBB+ credit ratio guidelines." (Crane D., p. 17, lines 15-21, p. 18, lines 1-2; Hearing Exh. 23, p. 8-9).

f. Thus, the Regulatory Plan suggests that, apart from providing for CIAC, it is incumbent upon the Company and its shareholders to take the appropriate steps necessary to maintain its investment grade rating. As acknowledged by KCPL in the Regulatory Plan, "KCPL further understands that it is incumbent upon the

Company to take prudent and reasonable actions that do not place its investment grade debt rating at risk and that this Agreement heightens rather than lessens such obligation. KCPL further understands that its Kansas jurisdictional customers will not support any negative impact from KCPL's failure to be adequately insulated from the Great Plains business risks as perceived by the debt rating agencies." (Crane D., p. 17, lines 3-14; Hearing Exh. 23, p. 5).

g. In order to calculate a pro forma capital structure for KCPL, Andrea Crane eliminated the equity-linked convertible debt and recalculated the capital ratios based on the projected balances at August 31, 2010, per the Company's work papers. As shown in Schedule ACC-2, this results in the following capital structure:

	Percent
Common Equity	48.37%
Preferred Stock	0.64%
Long Term Debt	50.99%
Total	100.00%

(Crane D., p. 19, lines 4-12; Hearing Exh. 98, Schedule ACC-2).

7. Rate Base Adjustments

(a) Accumulated Deferred Income Tax ("ADIT")

62. Proposed Finding: KCPL's reflection of the PTPP amount in the Reserve for Depreciation and the ADIT asset in its Revenue Requirement Model is not proper, and CURB's

argument that these costs should be incurred by the Company are correct and entirely consistent with the manner in which the parties previously-agreed how the mechanism would be utilized to benefit KCPL's customers.

63. In making this finding, the Commission relies on the following:

a. The Company's claim that the rate base impact of the pretax payment on plant (PTPP) should be reduced by accumulated income taxes clearly violates the agreement and understanding reduced to writing in the settlement of the last rate case (246 docket). In its filing, the Company included an adjustment to increase its depreciation reserve by $66.25 million, consistent with the terms of the Regulatory Plan. This adjustment has the effect of decreasing rate base by $66.25 million. However, the Company also included an adjustment to reduce its deferred income tax reserve by $25,134,888, which has the effect of increasing rate base by this amount. Therefore, the net impact on ratepayers is that they are effectively only receiving the benefit of a prepayment of $41.12 million. (Crane D., p. 47, lines 1-16).

b. The record is clear that the Company has claimed as far back as CURB's Petition for Reconsideration in the 1025 docket that ratepayers would receive a dollar for dollar rate base reduction for the PTPP. In an abundance of caution, in the last rate case (246 docket) CURB and the other intervenors demanded that the Company provide a detailed description of how the accounting would work before we agreed to a stipulation in the last case, a stipulation that added an additional $18 million annually to the PTPP. (Tr. Vol. 11, p. 2556, lines 20-25, p. 2557, lines 1-25, p. 2558, lines 1-25, p. 2559, lines 1-9).

c. That example was incorporated into settlement testimony by Mr. Giles in that docket. (Hearing Exhibit 34, Schedule CBG-2). The description negotiated by the parties and provided by Mr. Giles is clear and unambiguous as described below:

(1) As part of the negotiations to pay an additional $18 million annually in pretax payment on plant (PTPP), the parties to the 246 docket demanded the description contained in Schedule CBG-2 attached to Chris Giles testimony in support of the 246 docket Stipulation. (Tr. Vol. 2, p. 389, lines 14-21; Hearing Exh. 34, Schedule CBG-2).

(2) Schedule CBG-2 contains a description requested by the parties of how KCPL believes the pre-tax payment on plant on behalf of customers which has been identified in each of the first three cases under the 1025 Stipulation and Agreement "will affect rate base and overall revenue requirements within the context of KCPL's fourth rate case under the 1025 stipulation." (Tr. Vol. 2, p. 387, lines 2-25, p. 388, line 1; Hearing Exh. 34, Schedule CBG-2; Crane D., p. 48, lines 15-21, p. 49, lines 1-13) (emphasis added).

(3) Schedule CBG-2, attached to Chris Giles testimony in support of the 246 docket Stipulation, does not mention accumulated deferred income taxes (ADIT). (Tr. Vol. 2, p. 385, lines 16-25, p. 386, lines 1-25, p. 387, line 1; Hearing Exh. 34, Schedule CBG-2).

(4) Schedule CBG-2 states that "The accumulated CIAC amounts will be treated as increases to the depreciation reserve and be deducted from rate base in any future KCPL rate proceedings, beginning with the 2009 rate case (Iatan 2 case)." (Hearing Exh. 34, Schedule CBG-2, p. 1; Crane D., p. 48, lines 15-21, p. 49, lines 1-13).

(5) Schedule CBG-2 states that "In the estimated example above, the total cumulative amount of pre-tax payment on plan on behalf of customers of $74 million would be added to the accumulated depreciation reserve as of the date rates resulting from the fourth rate case under the Regulatory Plan are effective (January 1, 2011). The effect of this would be to lower rate base as if the customers had already paid for this amount of plant investment, and therefore no return on this $74 million would be forthcoming to the Company as part of rates going forward. In addition, there would be no depreciation expense related to this customer-paid plant amount ($74 million in this example) included in KCPL's future revenue requirement." (Hearing Exh.

34, Schedule CBG-2, pp. 1-2; Crane D., p. 48, lines 15-21, p. 49, lines 1-13) (emphasis added).

(6) Schedule CBG-2 further states "This is a permanent addition to the depreciation reserve and so will have the impact of never allowing the Company to earn a return on or a return of (depreciation expense) a portion of its rate base equivalent to the amount of accumulated pre-tax payment on plan on behalf of customers." (Hearing Exh. 34, Schedule CBG-2, p. 2; Crane D., p. 48, lines 15-21, p. 49, lines 1-13) (emphasis added).

(7) Schedule CBG-2 states, "In addition to this rate base effect, revenue requirements in the next rate case will be reduced by the removal of the annual level of pre-tax payment built into rates as of August 1, 2009, or $33 million." (Hearing Exh. 34, Schedule CBG-2, p. 2).

(8) While John Weisensee testified that Mr. Giles "should have" discussed the ADIT (Weisensee R., p. 7, line 21), the fact is that Mr. Giles never mentioned ADIT in his description of how PTPP would "affect rate base and overall revenue requirements within the context of KCPL's fourth rate case under the 1025 stipulation."

d. Now, the Company is attempting to go back on its word and deny ratepayers the benefit of $25.1 million of that prepayment. The Company has attempted to link this $25.1 million to a reduction in depreciation expense. KCPL states that, "Mr. Giles also did not reference this future depreciation expense effect in his Direct Testimony, and if one were to utilize CURB's apparent rationale, customers should also not be granted this benefit since it wasn't mentioned."[10]

e. This statement is simply not true, as every document relating to the PTPP states that the Company will not recover depreciation expense associated with these amounts. Schedule CBG-2, attached to Mr. Giles testimony in support of the 246 docket Stipulation, specifically states, "In addition, there would be no depreciation expense related to this customer-paid plant amount ($74 million in

[10] KCPL Brief, ¶ 454.

this example) included in KCPL's future revenue requirement." (Hearing Exh. 34, Schedule CBG-2, p. 2 (emphasis added)). As a result, the depreciation expense issue is simply a red herring to distract the parties from the Company's attempt to go back on its word with regard to the rate base treatment of PTPP.

f. Ms. Crane demonstrated in Hearing Exhibit 132 that the $3.41 million depreciation expense effect shown in the "revised" column of Exhibit 115, should also be in the first column, as reflected in Hearing Exh. 132. This demonstrates that the depreciation expense effect is the same, with or without KCPL's attempt to offset ratepayer PTPP benefits with ADIT.[11]

g. At one point in time, CURB suspected that customers wouldn't get a dollar for dollar credit for the PTPP paid by ratepayers because the Commission would have to tax-up the CIAC payment. CURB argued this point to the Commission in its Petition for Reconsideration in the 1025 docket. However, KCPL's Response to CURB's Petition for Reconsideration indicated there was no basis for CURB's suspicion. (Hearing Exh. 107, p. 11; Hearing Exh. 106, pp. 11-12, footnote 22).

h. In addition, KCPL may or may not pay the income taxes it is attempting to offset from the PTPP benefit to ratepayers. To the extent any income taxes were paid, it certainly was not at the statutory rate used by the Company in its deferred tax adjustment. While the Company calculated the ADIT at a composite tax rate of 39.58%, the 2009 10-K indicates the composite tax rate actually paid by GPE was only 16.3% in 2009, 34.8% in 2008, and 27% in 2007 and the composite tax rate

[11] Tr. Vol. 11, p. 2554, lines 7-25, p. 2555, lines 1-3.

actually paid for KCPL was only 26.7% in 2009, 30.3% in 2008, and 27.4% in 2007. Income tax calculations are very complex, but the rate used for ratemaking purposes is generally not the rate the Company actually pays in income taxes. (Tr. Vol. 11, p. 2552, lines 17-25, p. 2553, lines 1-25, p. 2554, lines 1-3; Hearing Exh. 57, pp. 125-126).

i. Even if income taxes were paid, the Company repeatedly said that ratepayers would receive the full value for the CIAC. They said from the beginning that the Company would forego a return ON and OF these amounts. If there was a tax liability, it should be absorbed by shareholders, who had the benefit of the CIAC cash flow.

j. While the 1025 Stipulation and the description given by Mr. Giles in the 246 docket clearly do not allow an offset for ADIT, the Company has clearly failed to provide substantial competent evidence that it did, in fact, pay the amount of taxes it is attempting to offset from the PTPP.

k. Just because the Company may have to record a deferred asset for financial reporting purposes, it does not follow that a deferred tax asset should be included in rate base. (Tr. Vol. 11, p. 2559, lines 9-15).

l. KCPL's claim that CURB's argument "seemingly came from nowhere" is disingenuous and contradicted by the very description KCPL's own witness sponsored in the last rate case describing the treatment of PTPP. It is also contrary to the positions of other intervenors (Sprint, the Hospital Association, MUUB) in this case, who all believe KCPL's proposed offset is contrary to what has been agreed to between the parties.

m. Whether Staff disputes KCPL's position on this issue is irrelevant – the parties demanded a detailed description and agreement on how the PTPP was going to be applied, and the description agreed to and provided by Mr. Giles does not even mention accumulated deferred income taxes.

n. KCPL claims that the failure of Mr. Giles and the documentation in the 1025 Stipulation[12] to reference the ADIT treatment is a simple "oversight."[13] It is difficult to understand how anyone can consider a $25.1 million offset to the $77 million, or 1/3 of the PTPP benefit rightfully belonging to ratepayers, as an "oversight." Mr. Weisensee's statement that Mr. Giles' written description[14] of the PTPP treatment "should have" referenced the ADIT offset[15] is an understatement, but an admission nonetheless.

o. If KCPL believed it was entitled to offset $25.1 million, or 1/3 of the PTPP paid by ratepayers, as ADIT, KCPL would have made that abundantly clear in both the 1025 Stipulation documentation and Mr. Giles' description of how the pre-tax payment on plant would affect rate base and overall revenue requirements within this rate case. KCPL's failure to specify this material issue ($25.1 million) prevents them from denying ratepayers the full benefit, dollar-for-dollar, of the PTPP ratepayers paid over the past four years.

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[12] KCPL Brief, ¶ 448. "The documentation in the 1025 Stipulation also focused on this same plant-related portion. This oversight …"

[13] KCPL Brief, ¶ 448.

[14] Hearing Exh. 34, Schedule CBG-2.

[15] Weisensee R., p. 7, line 21.

64. As a result, the Commission rejects the Company's adjustment to the deferred income tax reserve, and accepts CURB's adjustment shown in Hearing Exh. 98, Schedule ACC-16.

8. Income Statement/Expense Adjustments

(a) Known and Measurable Requirement

65. KCPL cites the Kansas Court of Appeals decision of *Gas Service Co. v. Kansas Corporation Commission*, 4 Kan. App. 2d 623, 635- 36, 609 P.2d 1157, rev. denied 228 Kan. 806 (1980) quoting with regard to certain adjustments made by CURB and Staff because certain of KCPL's proposed post-test year adjustments are not known and measurable.

66. The *Gas Service Co.* decision cites *Narragansett Elec. Co. v. Harsch*, 117 R.I. 395, 416, 368 A.2d 1194 [1977]) in summarizing the applicable law on adjustments outside the test year. The quotation taken from the *Narragansett* decision states, "A satisfactory resolution of this conflict is that when known and measurable post-test-year changes affect **with certainty** the test-year data, the commission may, within, its sound discretion, give effect to those changes. [Citation omitted.]" The important part of this decision is the known and measurable post-test-year change must affect the test year data with certainty before the Commission should even consider using its discretion to give effect to those changes.

(b) Capitalization Rate

67. CURB is taking no position on this issue.

(c) Incentive Compensation- Non-Executive

68. Proposed Finding: 100% of KCPL's Non-Executive Incentive Compensation programs are disallowed, as it has not been shown by KCPL that ratepayers benefit from KCPL's non-executive incentive program. In making this finding, the Commission relies on the following:

a. The Company included costs for several incentive compensation plans in its filing. These amounts include what the Company characterizes as short-term incentive plans, including: $1,929,000 for the Rewards Plan available to union employees, $10,284,421 for the ValueLink Plan available to management employees, and $3,092,150 for short-term incentives for officers. In addition, the Company has included $3,875,375 for long-term incentives for officers, mostly in the form of restricted stock. Thus, over one-third of the Company's total claim for incentive compensation costs is related to incentives for a small group of officers and key executives. (Crane D., p. 57, lines 2-12).

b. The Company's work papers show that average base salaries included in this case for non-executive employees average $89,278 for management employees and between $55,355 and $73,582 for bargaining unit employees. (Crane D., p. 57-64, Hearing Exh. 98, Schedule ACC-22; Hearing Exh. 128, p. 2)

c. The maximum weight given to individual achievement when determining incentive compensation is only 20% for management employees. Incentive for union employees is not even based on any individual performance matrix. The company expects 100% payout, as every employee in a division gets the same payout. The best union employee receives the same incentive compensation

award as the worst performing employee in that division. (Tr. Vol. 11, p. 2415, lines 8-25).

d. CURB doesn't understand how these plans can provide any incentive when the best performing union employee in a division will receive the same compensation as the worse performing employee in that division. How can that be called an incentive? Employees are getting incentive compensation for simply performing the job they were hired to do. Why should ratepayers be required to pay for incentive compensation to employees for simply performing their basic job requirements, such as providing good customer service, safety and reliability, etc.? Since 100 percent of the target level is basically "acceptable" performance, employees will receive an "incentive" for simply doing what is required as part of the job!

e. KCPL non-executive employees are very well compensated apart from the incentive compensation. KCPL's non-union employees received 3.8 percent raises in 2007 and 2008, and a 3% raise in 2009. Union employees received pay raises ranging between 3.0% and 3.75% between 2007 and 2009. (Tr. Vol. 11, p. 2407, lines 11-25, p. 2408, lines 1-8). The average salaries for these non-executives as of September 30, 2009, are listed below:

Management	$89,278
Local 1613	$55,355
Local 1464	$70,902
Local 412	$70,972
Iatan 1	$73,582

Iatan 2	$67,317

(1) (Hearing Exh. 128, p. 2. Average salaries computed by taking total compensation, including merit increases, divided by the number of employees in each non-executive job category).

f. These incentives are over and above these salaries – so if the Company thinks they are necessary, even though these incentives are paid just for doing the job the employee was hired to do, then shareholders bear this cost, not ratepayers.

g. While the Company claims that the specific parameters of each plan are confidential, there are similarities among the plans. The Rewards Plan has both a Company component and a Division component. The Company component is comprised of financial goals, customer-service goals, internal goals (which also include a financial component), and safety goals. The Division component is based on similar goals but does not contain a customer-service component. (Crane D., p. 57, lines 13-18).

h. The Value Link plan also includes Company and Division goals, comprised of financial, customer-service, internal and safety components, as well as an individual factor. The short-term incentive plan for officers is similar in that it is composed of financial goals, key business objectives, and an individual performance factor. The long-term incentive plan for officers appears to be based solely on financial objectives. (Crane D., p. 57, lines 19-21, p. 58, lines 1-3).

i. It is not appropriate to recover all of these incentive compensation costs from regulated ratepayers. Most of these types of programs are based, at least in part, on a utility's ability to achieve certain financial goals. (Tr. Vol. 11, p. 2409, lines

19-25). Providing employees with a direct financial interest in the profitability of the Company is an objective that benefits shareholders, but it does not benefit ratepayers. Incentive compensation awards that are based on earnings criteria may violate the principle that a utility should provide safe and reliable utility service at just and reasonable rates. This is because these plans require ratepayers to pay higher compensation costs as a consequence of higher corporate earnings, generating an upward spiral that does not directly benefit ratepayers, but does directly benefit shareholders, as well as the management personnel responsible for establishing such programs -- to whom much of the incentive compensation is granted. (Crane D., p. 58, lines 5-17).

j. Incentive compensation plans tied to corporate performance result in greater enrichment of company personnel as a company's earnings reach or exceed targets that are predetermined by management. It should be noted that it is the job of regulators, not the shareholders or company management, to determine what constitutes a just and reasonable rate of return award to shareholders in a regulated environment. Regulators make such a determination by establishing a reasonable rate of return award on rate base in a base rate case proceeding. (Crane D., p. 58, lines 18-21, p. 59, lines 1-3).

k. It is patently unfair to allow a utility to charge ratepayers for additional return that is then distributed to employees as part of a plan devised to divide extraordinary profits. This results in burdensome and unwarranted rates for its ratepayers, and also violates the principle of sound utility regulation, particularly with regard to

the requirement for "just and reasonable" utility rates. (Crane D., p. 59, lines 4-9).

l. KCPL employees are well compensated, separate and apart from the incentive plans. Over the past several years, the Company's non-union employees have consistently received increases ranging from 3.0% to 3.8%. Union employees have also experienced wage increases in the 3.0% to 3.75% range. Moreover, there is no indication that KCPL is having difficulty attracting quality employees to its workforce. The Company's salary and wage levels appear reasonable, even if the incentive compensation plans are not taken into account. In fact, the 2009 and 2010 salary and wage increases included in the Company's filing are generous given the difficult economic environment experienced in 2009 and the fact that employees in many companies are being forced to take pay cuts or to forgo payroll increases altogether. (Crane D., p. 59, lines 11-21; p. 60, line 1).

(d) Incentive Compensation – Executive

69. Proposed Finding: 100% of KCPL's Executive Incentive Compensation Programs are disallowed, as it has not been shown by KCPL that ratepayers benefit from KCPL's executive incentive program. In making this finding, the Commission relies on the following:

a. The base pay for executive officers is more than adequate; in fact it greatly exceeds the base compensation for officers of Westar Energy, KCPL's most comparable peer group. (Hearing Exhs. 52, 56, 125, 126, 127; Tr. Vol. 10, pp. 2343-2357). While KCPL is entitled to pay its executive officers salaries far in

excess of its comparable peer group, ratepayers are only required to pay in rates those amounts the Commission deems reasonable. Amounts above the reasonable threshold become the responsibility of shareholders.

(e) Generation/Production Maintenance

70. Proposed Finding: KCPL should not be permitted to recover the normalized amount of its generation and production maintenance expense costs based on the 7-year average that was subsequently increased by the Handy Whitman Index factors, as set forth by KCPL.

71. In making this finding, the Commission relies on the following:

a. To normalize production maintenance expense, KCPL utilized a 7-year average adjusted by the Handy Whitman Index ("H-W Index") without any support that historic costs should be increased by the H-W Index. (Crane, D., p. 8, lines 11-13, p. 9, lines 1-9).

b. The actual test year level of production maintenance costs should be used for all accounts, including steam production maintenance, to determine the Company's revenue requirement is this case, based on two factors.

(1) First, while the Company's historic steam maintenance costs have fluctuated from year-to-year, the actual test year costs appear reasonable in light of these fluctuations. Historic costs decreased from 2003 to 2004, increased in 2005, declined again in 2006, increased in 2007 and 2008, and declined in the test year. As shown below, the actual test year cost was actually below the level of costs experienced in 2003.

(2) Second, the actual test year cost was relatively close to the seven-year average for steam maintenance costs.

Test Year	
2008	$26,517,598
2007	$29,753,040
2006	$27,086,136
2005	$22,860,355
2004	$25,367,568
2003	$24,690,941
Average	$26,145,144

(Crane D., p. 81, lines 17-21, p. 82, lines 1-9).

c. Given the fact that these costs have fluctuated over the past seven years, that the test year costs were close to the seven-year average, and that the Company has not supported its proposal to adjust historic costs by the Handy Whitman Index factors, CURB recommends that the actual test year costs be used as the basis for the Company's revenue requirement. Ms. Crane's adjustment is shown in Schedule ACC-32. (Crane D., p. 83, lines 4-9).

d. Ms. Crane also pointed out that the purported study the Company references improperly included labor (the Company's production maintenance adjustment does not include a labor component), which makes the information inapplicable. She also emphasized that it wasn't a study but a sample, without providing any of

the parameters of the sample. The historical record of the Company's production maintenance costs have fluctuated up and down. (Tr. Vol. 11, pp. 2514-2516).

(f) Distribution Maintenance

72. Proposed Finding: The Commission finds that KCPL is limited to recovery of distribution maintenance expense costs as calculated based on the test year.

73. In making this finding, the Commission relies on the following:

a. KCPL included a post-test year adjustment of $1,114,843 in its filing relating to distribution maintenance costs. The Company utilized a five-year average, adjusted by a price escalation indexing adjustment, not based on the H-W Index, but an escalating indexing adjustment KCPL calls the "KCPL-specific vegetation management contractor rates." The Company's claim for distribution maintenance expenses does not include costs associated with storm damage, which has been accounted for separately. (Crane D., p. 83-84).

b. The actual test year costs are reasonable relative to actual historic costs over the past five years.

Test Year	$15,192,700
2008	$15,444,941
2007	$14,476,932
2006	$12,968,707
2005	$16,973,764
Average	$15,011,409

(1) (Crane D., p. 84-854).

c. The actual costs incurred since 2005 already reflect actual contractor rates, to the extent that contractors are used for vegetative management services. The Company's methodology, whereby another price escalation factor would be included in its revenue requirement, is a speculative inflation adjustment that is neither known nor measurable. This adjustment would sever the relationship between the historic test year costs and prospective rates. For all these reasons, Commission is rejecting the Company's proposal to utilize a price-escalated historic average and instead reflect the actual test year costs in the Company's revenue requirement. (Hearing Exh. 98, Schedule ACC-33; Crane D., p. 84-854).

d. The historic maintenance costs have not increasing over time due to increases in contractor rates. (Crane D., 83-85).

(g) Iatan 2 O&M

74. Proposed Finding: Commission finds that the Iatan 2 O&M costs are not sufficiently known and measurable and predictable and therefore accepts KCC Staff's proposed 50% disallowance. This amount, as calculated by KCC Staff is $1,146,863.

75. In making this finding, the Commission relies on the following

a. KCC Staff Witness Grady recommended a reduction to KCPL's operating expense by $1,146,863, which represents a 50% reduction of the budgeted O&M expense amount for Iatan 2, based on the fact that these future expenses are not known and measurable, or even predictable. (Grady D., pp. 25-31).

b. When KCPL developed its proposed O&M projection, it relied upon both KCPL personnel, and outside engineering concerns for advice. The forecasted costs,

however, were not known and measurable, or predictable with certainty. (Tr. Vol. 10, p. 2313, line 24, to p. 2314, line 11).

(h) Iatan Common O&M

76. Proposed Finding: The Commission accepts the proposed disallowances of the Iatan Common expenses and the Iatan Unit 2 O&M expenses identified in KCC Staff income statement adjustment IS-6. KCPL will not be allowed to recover its proposed Iatan Common O&M expense.

77. In making this finding, the Commission relies on the following:

a. KCPL projected the O&M expenses for Iatan Common because Iatan Common does not have a full test year operating history. The test year in this case reflected 5 ½ months (April 19 through September 30, 2009) of new Iatan Common O&M costs associated with the 75.62% of Common assets completed and in service. As noted above, this includes the water treatment facility, ammonia storage, limestone handling facility, gypsum de-watering, vacuum compressor facility, coal handling facility, and transformers. (Tr. Vol. 10, p. 2241, lines 4-17). Expenses beyond such time and amount are not predictable, known or measurable.

b. KCC Staff Witness Grady recommends a reduction to KCPL's operating expense by $1,281,445, which represents a 100% disallowance of the "budgeted" O&M expense accounts applicable to Iatan Common plant. Mr. Grady proposed a 100% disallowance of the Iatan Common plant expense "budget" amounts, in part due

to his determination of a potential double counting of Common O&M expenses. (Grady D. pp. 25-31; Hearing Exh. JTG-6).

c. While KCPL agrees that some Iatan Common O&M costs were included in the test year in this case, KCPL contends that the Iatan Unit 2 costs included in the case are reasonable and that any double-counting of Iatan Common plant would be immaterial and of a negligible amount. Klote Rebuttal Testimony, p. 30; Tr. (Vol. 10, p. 2243, lines 14, to p. 2244, line 16).

(i) S02 Emission Allowances

78. Proposed Findings: KCPL's proposed 22-year amortization period for accumulated proceeds from SO_2 emission allowance sales is not appropriate and this amortization should flow through base rates over a ten (10) year amortization period, more appropriately matching time period they were collected from Kansas retail ratepayers. In addition, recovery through base rates is most likely to return these amounts to those whose usage created the allowance sales. This results in a $3,696,978 decrease (Kansas jurisdictional) to KCPL's operating expense.

79. In making this finding, the Commission relies on the following:

a. CURB recommends a $3,696,978 decrease (Kansas jurisdictional) to KCPL's operating expense based on two primary adjustments to KCPL's proposed treatment of SO_2 emission allowance proceeds. The reasons for this decrease in operating expense are: (1) the current regulatory liability should be returned to customers over 10 years instead of 22 years recommended by the Company; and (2) the regulatory liability should be returned through base rates, not through the

ECA. (Crane D., p. 78, lines 9-21, p. 80, lines 1-11; p. 5-16; Hearing Exh. 98, Schedule ACC-31).

b. While the Regulatory Plan originally specified that the regulatory liability would be returned over the period used to depreciate environmental assets, that provision was changed in subsequent stipulations where the parties agreed to determine an appropriate amortization period in this case. KCPL's response to CURB-59 shows that the overwhelming majority of the SO_2 emission allowance proceeds included in the regulatory liability were received in 2005-2007. It is unreasonable to ask ratepayers to wait for up to 22 years for the return of these proceeds. Therefore, Ms. Crane recommends that the regulatory liability associated with the SO_2 emission allowance proceeds be amortized over a period of ten years. The ten-year amortization period provides a better balance between the period of time over which the majority of these proceeds were received and the period over which the proceeds will be returned to ratepayers. Crane D., p. 78, lines 9-21, p. 79, lines 1-3).

c. In addition, the use of a ten-year period will provide greater rate relief to ratepayers now, when it is most needed. The revenue requirement associated with the investment in new plant is at its highest during this time because there is virtually no depreciation reserve to offset the investment in the new generating facility. The use of a ten-year amortization period will not only provide a better match with the period of time over which most of the emission allowance proceeds were received, but it will also provide a significant financial benefit to ratepayers by returning these proceeds more quickly. Ms. Crane's adjustment is

shown in Schedule ACC-31. (Crane D., p. 79, lines 3-11; Exhibit 98, Schedule ACC-31).

d. CURB is not opposed to the Company returning future sales proceeds relating to SO_2 emission allowances through the ECA. However, the Company is requesting approval to continue the regulatory treatment authorized pursuant to the Regulatory Plan and to continue to defer future sales proceeds. If these sales proceeds are deferred, then Ms. Crane believes they should be returned to ratepayers through base rates. If however, the Company decides to return any future sales proceeds immediately to ratepayers, then CURB would not object if such proceeds were returned through the ECA. (Crane D., p. 80, lines 18-21, p. 81, lines 1-4).

e. The alleged $7 million "benefit" (Hearing Exh. 117) touted by KCPL depends on the discount rate used in the net present value analysis. The Company argues that it is more beneficial to ratepayers to return these over 22 years. That is only because of the discount rate used in the net present value calculation. The discount rate can be manipulated to provide a result that is more/less than the 10 year option, depending upon the relationship between the discount rate and the cost of capital. (Tr. Vol. 11, pp. 2528-2530).

f. There is a greater benefit to ratepayers to getting this refund into their hands now, rather than later. First, they need it now, especially given current economic conditions. (Hearing Exh. 51, p. 12). Second, there is a greater likelihood of returning it to the same customers that were receiving service when the proceeds were being received by KCPL.

g. The amortization of the regulatory liability should not flow through the ECA, instead of being returned through base rates. The regulatory liability has been a rate base component of the Company's distribution rates since the Regulatory Plan was initially approved. In addition, the regulatory liability will continue to be a component of the Company's rate base, and therefore a component of its distribution rates, until the amortization is complete. Accordingly, it would be unreasonable to reflect the amortization credit through the ECA while the regulatory liability continues to be reflected in base rates. (Crane D., p. 80, lines 5-16).

h. Amounts accrued during the regulatory plan should be returned in base rates, as they will be in Missouri. While the Company argues that these amounts should be booked to accounts (Account 509) that flow through the ECA, the fact is that there is nothing preventing KCPL from returning these amounts in base rates. KCPL has no ECA in Missouri, and still manages to flow these to ratepayers through base rates. (Tr. Vol. 11, pp. 2549-50).

i. With respect to what happens when the amortization period ends if these amounts are returned in base rates, amortizations are included in base rates all the time, and there are ways of handling any over/under recovery. In fact, the Company will have this exact situation in Missouri and CURB has no doubt KCPL will find an appropriate way to address it there.

j. Because the revenue requirement for Iatan 2 is greater in the earlier years (when the depreciation reserve is small), returning SO_2 proceeds over 10 years will

provide ratepayers a greater offset to rates when they need it the most. (Crane D., p. 79, lines 3-11).

(j) Pension- SERP

80. Proposed Finding: KCPL is denied recovery its Pension SERP costs.

81. In making this finding, the Commission relies on the following and accepts the CURB position:

a. CURB witness Andrea Crane eliminates all Supplemental Executive Retirement Plan ("SERP") costs embedded in the Company's revised pension expense claim ($512,219) (Kansas jurisdictional). These costs relate to supplemental retirement benefits for officers and key executives that are provided by the Company. These SERP benefits are in addition to pension benefits received by officers and key executives pursuant to the normal pension plan benefits offered to all other employees. These additional retirement benefits generally exceed various limits imposed on retirement programs by the Internal Revenue Service ("IRS") and therefore are referred to as "non-qualified" plans. According to the Company's Proxy Statement, its SERP provides,

> (1) ...an amount substantially equal to the difference between the amount that would have been payable under the Pension Plan in the absence of tax laws limiting pension benefits and earnings that may be considered in calculating pension benefits, and the amount actually payable under the Plan...Messrs. Chesser and Marshall are credited with two years of service for every one year of service earned under our Pension Plan. (Crane D., p. 68, lines 1-20).

b. As shown in the revised work papers for its pension expense adjustment, KCPL has included $1,174,964 of GPE SERP costs in its filing, a portion of which are

capitalized. None of the GPE SERP costs have been allocated to entities other than KCPL. The Company has also included WCNOC SERP costs of $496,778, 47% of which are allocated to KCPL. (Crane D., p. 68, lines 23-25, p. 69, lines 1-3).

c. The SERP costs should not be recovered from the ratepayers. As noted above, the officers of the Company are already very well compensated. (Hearing Exhs. 52, 56, 125, 126, 127; Tr. Vol. 10, pp. 2343-2357). Moreover, these officers and key executives that receive SERP benefits also receive pension benefits pursuant to the Company's regular pension plan. Ratepayers are already paying for retirement benefits for these officers and executives through the FAS 87 pension costs included in the Company's revenue requirement for the regular pension plan. If KCPL wants to provide further retirement benefits to select officers and key executives, then shareholders, not ratepayers, should fund these excess benefits. Therefore, the Company's claim for SERP costs should be disallowed. This adjustment is shown in Schedule ACC-25. (Crane D., p. 69, lines 5-16).

d. The Company cites the IRS restrictions as the reason it set up a non-qualified SERP plan that would make the affected individuals whole.[16] The IRS restrictions are there because the IRS doesn't think other taxpayers should be funding these programs! That is why the tax deductibility of retirement contributions must meet the criteria for qualified plans. Yet KCPL thinks Kansas ratepayers should fund these excessive programs.

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[16] KCPL Brief, ¶ 383.

(k) Pension Funding Status Adjustment, including asset

82. Proposed Finding: KCPL's inclusion of an additional $1.5 million of pension expense as the result of the merger with GMO, specifically as it relates to St. Joseph Light and Power ("SJLP"), is not reasonable or appropriate. The pension funding adjustment as proposed by KCC Staff Witness Hall is accepted consistent with her testimony.

83. In making this finding, the Commission relies on the following, and accepts KCC Staff testimony:

a. KCPL's pension expense reflects an allocation to KCPL. Using the wage factor included an adjustment of $1.5 million ($545,513 Kansas O&M jurisdictional amount based on KCPL's allocation and capitalization factors).

b. KCPL contends that this adjustment is necessary because St. Joseph Light and Power ("SJLP") historically funded its pension funds at a higher level than KCPL.

c. KCC Staff Witness Karen Hull recommended disallowing KCPL's funding status adjustment. Ms. Hull's prefiled testimony indicated that this adjustment was $2.5 million, however, she recognized at hearing that the correct number is actually $1.5 million. (Tr. Vol.12, p. 2845, lines 25, to p. 2846, lines 3).

d. Ms. Hull argued that by proposing this adjustment, KCPL is negating any cost benefits realized as a result of the merger with Aquila. (Hull D., pp. 12-13).

e. KCPL Witness Vogl contends that KCPL's merger with Aquila resulted in a number of benefits, and from a pension perspective, it is expected that the cost of pension benefits earned in the future will be less as it relates to reduced payroll being allocated to Kansas subsequent to the merger. However, it was not

anticipated that future pension costs would be lowered after the merger for any affiliate as a result of the pension funded status of another affiliate at the time of the merger. (Vogl R., p. 5).

(l) Other Benefits

84. Proposed Finding: KCPL's proposed use of a three-month annualized level ending March 31, 2010 for its Other Benefits expense is not proper.

85. In making this finding, the Commission relies on the following, and accepts the KCC Staff position:

a. Other benefits include medical expense costs, educational assistance, long-term disability costs, and group and accident insurance costs. Medical costs accounts for the vast majority of costs included in Other Benefits Expense. According to page 56 of Mr. Weisensee's direct testimony, the Company "annualized those costs based on projected costs included in the 2010 Budget." (Crane D., p. 70, lines 18-21, p. 71, lines 1-3).

b. KCPL is self-insured for its health care costs. The health insurance plans are funded through contributions by both KCPL and its employees, and actual costs depend on the number and magnitude of claims made during the year. In its filing, the Company included projected 2010 costs of approximately $23.0 million in its claim, including its share of costs for employees at the WCNOC facility. This claim reflects an increase of more than 15% over the actual test year costs of $19.9 million. (Crane D., p. 71, lines 4-9).

c. The Company's claim is based on budgeted 2010 amounts, which do not represent known and measurable changes to the test year. As noted, the Company is self-insured for a large portion of its medical benefit costs. Therefore, to a large extent, actual costs will depend upon the level of services required in any given year and the unit cost of those services. The actual amount of claims paid will not only be impacted by the general level of health care costs, but it will also be impacted by the degree to which employees seek medical care and the severity of the illnesses experienced by employees. For these reasons, the Company's post-test year claim does not represent a known and measurable change to the test year. (Crane D., p. 71, lines 11-21).

d. Since the Company is largely self-insured, the projected costs included by KCPL in its claim are speculative and do not represent known and measurable changes to the test year. As a result, the Commission should utilize the actual test year costs to determine pro forma Other Benefits Expense costs in this case. CURB's adjustment, resulting in a proposed reduction in operating expense of $1,444,857, is reflected at Schedule ACC-27. This adjustment reflects the actual test year costs for Other Benefits Expense. (Crane D., p. 72, lines 1-8).

e. Staff witness Justin Grady agreed that actual costs for other benefits will depend on the level of services required in any given year. (Tr. Vol. 11, p. 2612).

f. The Company has not supported its adjustment to Other Benefits and therefore recommends that the actual test year costs be adopted.

(m) Property Tax Expense

86. Proposed Finding: The $620,784 property tax expense adjustment proposed by CURB and consented to by KCPL is reasonable.

(n) Depreciation Study

87. Based on KCC Staff witness Dunkel's depreciation analysis, KCC Staff witness Mr. Rohrer recommended an additional decrease in annual depreciation expense of $14,553,885 (Rohrer Direct Testimony, Adjustment GDR-20), in addition to the amount proposed by KCPL. This adjustment was revised slightly to $14,469,969 in KCC Staff's revised Schedules admitted as Exhibit 64, Tr. Vol. 5, at p. 943. Of KCC Staff's adjustment, $12,694,347 is represented by the depreciation rate issue.[17]

88. No other party filed a depreciation study in this docket.

89. The primary arguments that KCC Staff made regarding KCPL's depreciation expense involved the following issues: (1) KCC Staff recommended a different net salvage percentage for Account 356 Overhead Conductors and Devices-Transmission than the Company; (2) KCC Staff recommended a 60-year lifespan for Iatan Unit 2, while KCPL used a 50-year lifespan; (3) KCC Staff recommended a life span of 44 to 45 years for KCPL's combustion turbines installed after the Northeast units, whereas KCPL recommended 33 to 35 years; (4) KCC Staff argued that KCPL's inclusion of "terminal net salvage" in its calculations is inconsistent with the Kansas Court of Appeals decision in the Westar case, whereas KCPL contends that it did not use terminal net salvage in its calculations; and (5) KCC Staff

[17] The remaining amount is related to the Iatan Unit 1 AQCS, Iatan Unit 2 and Iatan Common plant issues addressed separately.

recommended that the Commission order KCPL to treat property damage and relocation third party reimbursements differently than KCPL has treated it. (Tr. Vol. 9, p. 2022, lines 14, to p. 2023, line 18; p. 2055, lines 21, to p. 2056, lines 6).

(i) Transmission Net Salvage

90. Proposed Finding: KCPL's proposed negative 20% factor for overhead conductors and devices is not proper and is not accepted. The Commission adopts and accepts the Dunkel recommendation of positive net salvage of 30%.

91. In making this finding, the Commission relies on the following, and the testimony of KCC Staff Witness Dunkel:

a. KCPL Witness Mr. Spanos recommended a negative 20% factor for overhead conductors and devices, meaning that the cost of removal is expected to exceed the gross salvage for the plant assets retired. (Spanos R., p. 2).

b. KCC Staff Witness Mr. Dunkel recommended a positive net salvage of 30. (Dunkel D., p. 7).

(ii) Production Depreciation – Iatan 2 Life Span

92. Proposed Finding: KCC Staff's proposed 60-year life span for Iatan 2 is proper.

93. In making this finding, the Commission relies on the following, and accepts the KCC Staff position:

a. KCPL is recommending a 50-year life span for Iatan Unit 2, which was supported by the testimony of John Spanos, and is his best estimate of the future assets going into service at Iatan Unit 2 based on both physical and economic factors. (Spanos R., p. 5).

b. Mr. Dunkel proposes a 60-year life span based on the averages of other steam production life spans, as well as the direct operating experience of KCPL. .

c. The Commission adopts Mr. Dunkel's 60-year life span for Iatan 2 based on the Dunkel testimony.

d. The life spans Mr. Spanos recommended for KCPL's production plant are based on his judgment, not empirical support or economic studies. (Tr. Vol. 9, p. 1926, lines 7-18).

(iii) Production Depreciation – Other Plant Life Spans

94. Proposed Finding: KCC Staff's proposed life spans for other production plant is proper.

95. In making this finding, the Commission relies on the following:

a. Mr. Spanos recommended the industry average life span of 30 to 35 years for other production plant. (Spanos R., p. 6).

b. KCC Staff recommended different life spans for other production plant, which are 10 years longer for comparable units. (Spanos R., pp. 7-8). The Dunkel recommended life spans is based on the experience of KCPL, and are adopted.

(iv) Production Net Salvage

96. Proposed Finding: KCC Staff's proposed Production Net Salvage component is proper.

97. In making this finding, the Commission relies on the following, and accepts the testimony of KCC Staff Witness Dunkel as most appropriate:

a. KCC Staff, and other parties through cross examination at the hearing, showed that terminal net salvage, which was disallowed in the Westar case, was in essence the interim net salvage component used by KCPL.

b. KCPL contends that it did not include terminal net salvage in its depreciation analysis or calculations. (Spanos R., p. 10; Tr. Vol. 9, p. 1971, line 17, to p. 1972, line 21).

c. KCC Staff Witness Dunkel focused on the most important and relevant experience regarding depreciation, the direct experience of KCPL.

d. All parties agree that KCPL's existing depreciation rates are excessive. The Company filed for a $12.2 million reduction and Staff filed for an additional reduction of $13.6 million. (Dunkel D., Schedule WWD-1; Blanc R., p. 24, lines 1-11). Mr. Blanc states that "The level of annual depreciation expense largely dictates what a utility can spend prospectively on capital improvements absent issuing debt or equity. By restricting that amount to such a severe degree, the Company's ability to self-fund capital projects will be limited." (Blanc R., p. 24, lines 1-11).

e. As a depreciation expert, Staff witness Dunkel could have recommended, a greater reduction – and has in past proceedings. However, for policy reasons, Staff elected to concentrate on the large dollar and really offensive issues such as the inclusion of inappropriate net salvage. Mr. Dunkel admitted he could have recommended a larger reduction, could have challenged the Iowa curve applied to distribution services, etc. In prior proceedings, Mr. Dunkel has advocated reducing such ratios to their present value. Here, he picked six key issues, but

probably could have picked twenty. (Tr. Vol. 12, pp. 2682-84, p. 2686, lines 2-25).

f. Mr. Spanos cites to the U.S. Supreme Court's definition of depreciation in its landmark 1934 decision in *Lindheimer v. Illinois Bell Telephone Company*, 292 U.S. 151, 167 (1934). Mr. Spanos acknowledged at the hearing that in *Lindheimer*, the Supreme Court held that excessive depreciation recorded in the balance of a reserve account was built up by excessive annual allowances for depreciation charged to operating expenses. Mr. Spanos further acknowledged that the *Lindheimer* decision also held that the depreciation reserve in that case "to a large extent represents provision for capital additions over and above the amount required to cover capital consumption." (Tr. Vol. 9, p. 1933, lines 17-25, p. 1934, lines 1-25, p. 1935, lines 1-25, p. 1936, lines 1-8).

g. KCPL depreciation witness John Spanos appears to be repeating the difficulties he encountered with his net salvage depreciation calculations at the Court of Appeals in *Kansas Industrial Consumers Group, Inc. v. Kansas Corporation Comm'n,* 36 Kan. App.2d 83, 138 P.3d 338 (2006), rev. denied, 282 Kan. 790 (2006).

(1) In *Kansas Industrial Consumers,* Mr. Spanos ascertained net salvage values to determine depreciation by estimating the dismantling costs at all steam generation stations based upon costs derived from dismantling studies of "other similar stations." 36 Kan. App.2d at 105. In rejecting inclusion of Westar's terminal net salvage depreciation calculated by Mr. Spanos, the *Kansas Industrial Consumers* Court stated that it wasn't rejecting the inclusion of terminal net salvage depreciation if and when it is supported by evidence before the Commission. However, in order to uphold an order permitting terminal net salvage depreciation, the Court concluded there

must be *some evidence* that the utility has a reasonable and detailed plan to actually dismantle a generation facility upon retirement. The *Kansas Industrial Consumers* Court noted that there was no evidence of even tentative plans – instead, "Spanos' testimony was based upon case studies from other areas and was completely speculative as to the realities of Westar's operations." 36 Kan. App.2d at 108.

(2) Here, Mr. Spanos' methodology in estimating net salvage is even more speculative. In determining the net salvage for the "lock the door" retirement type costs, Mr. Spanos is referring to the retirement of a plant that's not being taken to green field condition. In determining those salvage costs, Mr. Spanos relied upon his own knowledge drawn from his experience in reaching his best estimate. The knowledge he utilized is not based on any specific plans or studies with respect to the "lock the door" costs, but only from his knowledge and experience. (Tr. Vol. 9, p. 2037, lines 1-25, p. 2038, lines 1-6) (emphasis added).

(3) Mr. Spanos also stated that in ascertaining these costs, he didn't base them on historical information with KCPL, but on "information that I'm aware of from other utilities as well as this utility that there will be some costs incurred to retire the facility once it's taken out of service and some additive costs that I have not included for dismantling." (Tr. Vol. 9, p. 2032, line 25, p. 2033, lines 1-8) (emphasis added).

(4) Mr. Spanos stated he gained some information from the Hawthorn 4 plant, but acknowledged that it was a repair of a plant that had an explosion, not a "lock the door" retirement. (Tr. Vol. 9, pp. 2037, lines 24-25, p. 2038, lines 1-13) (emphasis added).

(5) This situation is nearly indistinguishable from Mr. Spanos' testimony in the *Kansas Industrial Consumers* case. In *Kansas Industrial Consumers*, there was no reasonable and detailed plan to actually dismantle a generation facility upon retirement. Here, there was no plan at all to incur "lock the door" costs associated with retiring any of KCPL's production plants. His testimony is completely speculative as to the realities of KCPL'S operations, as he did not review any written plans to formally retire any of KCPL's production plants, didn't request any written plans, isn't aware of any, and doesn't know whether any exist. (Tr. Vol. 9, p. 1924, lines 13-25, p. 1925, lines 1, 13-25, p. 1926, lines 1-26).

(6) Similar to the *Kansas Industrial Consumers* case, Mr. Spanos calculations were based on "information that I'm aware of from other utilities" as well as "his knowledge and experience.

(7) Mr. Spanos did not review any KCPL economic studies that support the estimated final retirement dates KCPL provided to him. Mr. Spanos didn't ask for any, and isn't aware of any. (Tr. Vol. 9, p. 1926, lines 7-18).

(v) Unrecovered Reserve Amortization for General Plant

98. Proposed Finding: KCPL's amortization of unrecovered reserve over 10 years is unreasonable and inappropriate. The Commission adopts the KCC Staff position.

99. In making this finding, the Commission relies on the following:

100. KCC Staff agreed with KCPL's amortization rates, but proposed the elimination of $16.6 million of unrecovered reserve that is to be amortized over 10 years (this has an annual effect of $1.66 million).

(vi) Distribution Depreciation – Third Party Reimbursement

101. Proposed Finding: The Commission adopts Staff's position on this issue.

(o) Rate Case Expense

102. During the last three rate cases under the CEP, KCPL has been permitted to amortize its Kansas rate case expenses for each case over a four year amortization period beginning with the effective date of new rates applicable to that case.

(i) Staff's Amortization Argument

103. Proposed Finding: The balance of deferred costs from prior rate cases will be amortized under the process proposed by KCC Staff. However, this issue will be deferred to a separate Docket for the reasons set forth below.

104. In making this finding, the Commission relies on the following:

a. KCC Staff Witness Hull recommended a decrease in KCPL's annual cost of service of $370,026 based on a re-amortization of the balance of deferred costs from prior rate cases over a longer period. Ms. Hull then proposed to consolidate the projected December 31, 2010 unamortized balances from prior cases over the four-year prospective period that would begin with the effective date of new rates in this case. (Hull D. pp. 3-4).

b. KCPL disagrees with KCC Staff's approach. Under the current process, costs incurred during the second, third, and current cases will not be fully amortized until December 2011, July 2013, and November 2014. Each is amortized as a separate "vintage." (Weisensee R., pp. 33-34).

105. The Commission agrees with KCC Staff on this issue. However, the Commission orders a separate Docket be opened to consider all aspects of Rate Case Expense in this Docket. These costs are extremely large and must be further reviewed in great detail. No Rate Case Expense in this Docket and no further Rate Case Expense in the 246 Docket shall be amortized and expensed to Kansas ratepayers until further Order of the KCC.

(ii) CURB's Proposed Rate Case Disallowances

106. Proposed Finding: KCPL shall not be permitted to recover the rate case costs related to the 246 Docket and this Docket, until and unless so ordered by the KCC in the separate Docket described above.

107. In making this finding, the Commission relies on the following:

a. The Company's claim includes amortization costs for three rate cases, including the current case. As shown in the work papers to Adjustment CS-80, KCPL has

included the annual amortization of the following rate case costs: $871,309 for costs incurred in KCC Docket No. 07-KCPE-905-RTS, $2,313,299 for costs incurred in KCC Docket No. 09-KCPE-246-RTS, and $2,020,307 for the current case. Each of these cases is being amortized over a four-year period. The Company has not included costs for KCC Docket No. 06-KCPE-828-RTS in its claim, since these costs will be fully amortized by December 31, 2010. KCPL incurred rate case costs of $1,224,160 in that proceeding. These amounts are the Kansas-jurisdictional share of the Company's rate case costs. Since KCPL has filed concurrent cases in Kansas and Missouri, it is also recovering significant rate case costs in the Missouri jurisdiction. In addition to claims for Kansas rate cases, the Company has also included costs relating to a transmission rate case at the Federal Energy Regulatory Commission ("FERC"). KCPL is proposing to amortize costs associated with the FERC case over one year. (Crane D., p. 85, lines 10-21, p. 86, lines 1-6).

b. With regard to rate case costs, CURB recommends that any amounts over $1.157 million for KCC Docket No. 09-KCPE-246-RTS (246 docket) be borne by shareholders. The Company's original rate case cost estimate in that case was $800,000. The estimate when the stipulation was signed was $1 million. Now, the Company is seeking $2.3 million from ratepayers relating to that case. Much of the complexity of that case was due to the fact that the Company had not appropriately allocated its budget for common plant between Iatan 1 and Iatan 2, and therefore this allocation needed to be made in the middle of the case, complicating the analysis significantly. However, the Company was well aware

of this complexity when the $1 million cost estimate was included in the stipulation. CURB believes that shareholders should be responsible for ½ of the Company's actual costs of $2.3 million. CURB's adjustment results in recovery of rate case costs for that proceeding of $1,157,150, which is still 44% higher than the Company's original cost estimate. CURB's adjustment is shown in Schedule ACC-34. (Crane D., p. 86, lines 8-21, p. 87, lines 15-20; Hearing Exh. 98, Schedule 34).

c. In the last rate case (246 docket), the Stipulation permitted the Company to establish a regulatory asset for its rate case costs, and noted that "KCPL currently estimates the Kansas jurisdictional regulatory asset will be approximately $1.0 million at July 31, 2009...." As a result, Ms. Crane's recommended allowance of $1,157,150 is 15.7% higher than KCPL's estimate reflected in the Stipulation, lending further support for the reasonableness of her recommendation. (Crane D., p. 88, lines 1-8; Tr. Vol. 11, p. 2531).

d. In addition, while CURB did not make any adjustment to the Company's claim of $2.1 million for costs of the current case, CURB would oppose any attempt by the Company to recover more than this amount from ratepayers in this case. The Company should be limited to recovering its claim of $2.1 million unless CURB has the opportunity to review any additional actual charges, conduct discovery, and prepare additional testimony on this issue. Any additional costs should be examined in some future proceeding, such as the upcoming abbreviated case. During the hearing, CURB requested additional review of any rate case expense

in the current docket that exceeded the $2.1 million amount included in KCPL's application. (Tr. Vol. 1, p. 117, lines 5-14).

e. The issue isn't whether costs for this case will be higher than they have been historically. The issue is whether costs will be substantially higher than the Company estimated when it filed this case. The Company knew this would be a difficult case with a lot of issues. Supposedly, it factored this into its estimate when it put its case together. The Company estimated $2.1 million, and what we are hearing now is that it could be well beyond that amount. Of course, we don't know because the Company hasn't updated those costs, and we don't have any ability to investigate the amount or why they may be as much as twice the amount the Company estimated when it filed this case. If any rate case expenses above the amount above the amount estimated in the filing could be deferred to the abbreviated rate case, parties would have an opportunity to review them, conduct discovery, etc. (Tr. Vol. 11, pp. 2542-2544).

f. Ms. Crane also recommends that the Company's claim for recovery of certain FERC-jurisdictional costs be denied. According to page 60 of Mr. Weisensee's testimony, "FERC does not allow a deferral and amortization of these costs; rather, costs must be expensed as incurred. Therefore, we included the 2010 budgeted FERC transmission rate case expense in this rate proceeding." The fact that FERC does not permit the Company to defer and amortize these costs is no reason to require Kansas-jurisdictional customers to pay these costs. If the Company attempted to recover Missouri rate case costs from Kansas ratepayers, that claim would undoubtedly be denied. Whether or not the Company can

recover costs that are incurred for the benefit of another jurisdiction in that other jurisdiction is irrelevant in determining whether the costs should be recovered in Kansas. KCPL has not provided any rationale for why these costs should be recovered in Kansas-jurisdictional rates, other than its claim that such costs cannot be recovered elsewhere. Accordingly, the Company's claim should be denied. Ms. Crane's adjustment to eliminate these FERC transmission costs from the Company's Kansas-jurisdictional revenue requirement is also shown in Schedule ACC-34. (Crane D., p. 88, lines 10-21, p. 89, lines 1-7).

(p) Weather Normalization

108. Proposed Finding: The Commission finds that a 30-year standard should continue to be used by KCPL to normalized weather.

109. In making this finding, the Commission relies on the following:

a. CURB witness Andrea Crane consistently recommends that the KCC continue to use a 30-year standard for normal weather. Established by the National Oceanic and Atmospheric Association (NOAA), the government organization charged with establishing and recording the climatic conditions of the United States, the thirty-year standard is the objective standard, established by the government body responsible for determining normal weather conditions. Moreover, the thirty-year standard is the international standard adopted by the United Nation's World Meteorological Organization (WMO). The thirty-year normal is used for a wide range of applications and it has served as the standard in utility regulation for some time. (Crane C/A, p. 3; Tr. Vol. 11, pp. 2642-43).

b. Longer times are preferable over shorter times because longer time periods tend to average out weather and temperature extremes much better than shorter periods. One particularly cold or warm winter with many or few heating/cooling degree days will have a much greater effect upon a ten-year average than it does upon a thirty-year average. In fact, a single data point has a 10% impact on a ten-year average, but only a 3.3% impact on a thirty-year average. Therefore, the effect of a single data point is three times greater with a ten-year average than with a thirty-year average. Second, a shorter time period such as ten years may fail to include extreme weather in computing average degree days. It is normal and customary to have a very cold or a very warm year every so often, and the data base should include these extremes. (Crane C/A, pp. 4-5; Tr. Vol. 11, p. 2644).

c. In addition, the NOAA standard has a long history of use and acceptance. The use of the NOAA thirty years as "normal" is based upon an international agreement and is commonly used to reflect normal weather conditions in a variety of industries and applications. (Crane C/A, p. 5).

110. Finally, the Kansas Commission has traditionally used a 30-year normal, and very little research has been conducted to support changing such an important and long-standing precedent. (Crane C/A, p. 5; McCollister R., p. 2; Tr. Vol. 10, p. 2293 ln. 24 to p. 2294 ln. 9.).

9. Class Cost of Service, Rate Design and Other Issues

(a) Environmental Cost Recovery Rider ("ECR Rider")

111. Proposed Finding: The Commission denies KCPL's request for an ECR Rider.

112. In making this finding, the Commission relies on the following:

a. KCPL is requesting an ECR rider to recover the capital and operating costs associated with environmental improvement projects undertaken by the Company between base rate cases. KCPL is proposing to recover the return on incremental investment, depreciation expense, related operating and maintenance costs, and income taxes through an annual ECR rider. When new rates are established, these costs would be rolled into base rates. (Crane D. p. 107, lines 10-18).

b. CURB does not support the establishment of an ECR for KCPL. The Company is at the end of a five-year Regulatory Plan during which rates to Kansas customers were increased by $116 million, not including any increases that may be approved as a result of this case or the abbreviated case to be filed next year. This Regulatory Plan was intended to provide the Company with sufficient revenue to acquire additional generating capacity and to undertake various environmental projects, some of which were never completed in spite of the significant rate increases borne by Kansas customers. Now that ratepayers are nearing the end of the Regulatory Plan, it is unreasonable to require them to continue to fund annual rate increases for additional environmental projects. (Crane D. p. 108, lines 1-10).

c. While the Company may be required to undertake additional environmental investments over the next few years, this investment should be handled like any other investment that is required to provide safe and adequate electric utility service. Between base rate cases, the risk of recovery should be on shareholders, who are given a premium return on equity for taking on such risk. The Company does not begin to recover other types of investment until it files for new base rates

and investment in environmental projects should be given the same regulatory treatment. Requiring the Company to recover these costs in a base rate case also provides a better forum for CURB, KCC Staff, and other intervenors to review these costs and to determine whether the costs are just and reasonable. While the Company will argue that parties have the ability to review these costs in an ECR proceeding, the reality is that such proceedings are conducted in a relatively short period of time and many intervenors to not have the resources to undertake a comprehensive review outside of a base rate case. (Crane D. p. 108, lines 11-21, p. 109, lines 1-3).

d. The Company's proposed mechanism would shift risk from shareholders, where it properly belongs, onto ratepayers without any commensurate reduction in the Company's return on equity. In addition, the Company's proposal would result in single-issue ratemaking and would allow KCPL to increase rates even if the Company was earning its authorized rate of return. (Crane D. p. 109, lines 5-11).

e. Permitting these costs to be recovered between base rate cases will also reduce the Company's incentive to control and manage these costs. If the Company is required to file a base rate case to recover these costs, it is likely to work harder to keep costs down between base rate cases by investing in the most efficient projects and by managing construction of such projects effectively. (Crane D. p. 109, lines 12-16).

f. An ECR rider also results in rate uncertainty for ratepayers. Ratepayers are nearing the end of a Regulatory Plan where they have seen significant annual increases. Adopting an ECR for KCPL would continue the trend of annual rate

increases for Kansas ratepayers. These constant rate changes make it difficult for customers to anticipate their electric charges or to assess the accuracy of their bills. Rate stability can be especially important to residential and small commercial customers. Adoption of an ECR rider also puts the KCC in the position of approving rate increases without any idea of the potential magnitude of those increases. The KCC has not examined important issues such as gradualism, rate stability, and the avoidance of rate shock, issues which should be thoroughly explored prior to implementing the adjustment mechanism proposed by KCPL. (Crane D. p. 109, lines 17-21, p. 110, lines 1-6).

g. Westar does have a similar ECR rider, and it should be noted that CURB opposed the adoption of an ECR rider for Westar as well, for some of the same reasons outlined above. However, one difference with KCPL is that this utility has had rate increases each year since the Regulatory Plan was adopted. Ratepayers have the right to expect some rate relief from these annual increases at the end of the Regulatory Plan. (Crane D. p. 110, lines 8-13).

h. CURB recommends that the KCC reject the Company's proposal. The ECR rider results in single-issue ratemaking, provides a disincentive for utility management to control costs, and shifts risk from shareholders to ratepayers. Given the increases that KCPL ratepayers have experienced under the Regulatory Plan, and will continue to experience in 2010 and possibly in 2011, now is not the time to implement a new mechanism that will result in further annual rate increases. Instead, investment in environmental projects should be treated no differently from other investment that is necessary to provide safe and adequate utility

service, and should be recovered only through a base rate case where all parties can undertake a thorough review of the costs. Accordingly, the Company's request for an ECR rider should be denied. (Crane D. p. 110, lines 15-21, p. 111, lines 1-4).

i. KCPL asserts that the ECR Rider process is sufficient to review the prudence of such investments, but this is contrary to the testimony of Staff and CURB witnesses. There is much less scrutiny in a rate rider proceeding than in a base rate case.

j. There is not the same level of scrutiny in an ECR filing. It is an informal filing with no opportunity for parties to intervene. Because they are informal filings, only summary reports and limited information are required, which places a significant burden on Staff's resources to request information and make determinations in approximately 30 days. Again because they are informal, they often get pushed to the back burner, so it is difficult for Staff to consistently put the time and effort into an informal docket like they should. The informal filings do not provide a sufficient opportunity for a full and complete evaluation of prudence and cost. (Tr. Vol. 14, pp. 3272-73, 3297; McClanahan D., p. 12).

k. Staff has reexamined the position it took in recommending the ECR for Westar, since experiencing the magnitude of the kind of costs that are now contemplated with environmental upgrades in an informal filing. (Tr. Vol. 14, pp. 3273-74; McClanahan D., p. 12).

(b) Class Cost of Service ("CCOS") Study

113. Proposed Finding: The Commission finds that KCPL's CCOS provides more reasonable results, is more realistic, and more closely matches the planning and operations of KCPL's power system for all functional cost levels than Staff's methodology. Therefore, the Commission approves KCPL's CCOS study. CURB adopts the factual support for the CCOS provided by the Company.

(c) Rate Design

114. Proposed Finding: The Commission denies the Company's rate design proposal.

115. In support of this finding, the Commission relies upon the following:

a. The Company serves residential customers via six (6) rate schedules: 1) General Use (RES-A); 2) General Use and Water Heat – One Meter (RES-B); 3) General Use and Space Heat – One Meter (RES-C); 4) General Use and Space Heat – Two Meters (RES-D); 5) General Use and Water Heat and Separately Metered Heat – Two Meters (RES-E); and 6) Time of Day Service (TOD). (Kalcic D., p. 2).

b. The majority of KCPL's residential customers (i.e., 71.6%) take service under RES-A. The RES-A rate schedule contains a customer charge, a declining-block winter energy charge, and a flat rate summer energy charge.[18] Approximately 20.6% of residential customers take service on the Company's RES-C space heating rate schedule. The RES-C rate schedule contains a pronounced declining block winter energy charge, with all winter rates reflecting a substantial discount from RES-A. Water heating customers on RES-B and RES-E receive a discount

[18] The Company has one (1) summer energy charge that is applicable to all residential customers except those taking service on the Residential TOD rate schedule.

on the first 1,000 kWh of winter consumption, but pay different first-block rates. Finally, the Company offers a discounted space-heating rate to customers on RES-D and RES-E, where space-heating equipment must be connected to a separate meter. Any summer usage that is registered on such separate meters (e.g., air conditioning load from a heat-pump) is billed using KCPL's summer energy charge. (Kalcic D., p. 3).

c. In KCPL's application, the Company requested that its proposed 11.5% rate increase be applied to all rate classes, and that these uniform class increases be implemented via an across-the-board increase of 11.5% to each tariff, with each rate schedule. As such, KCPL's filed case includes no changes to its existing residential rate structure. (Kalcic D., p. 3).

d. Based on KCPL's filed COSS, the current water and space heating discounts that KCPL provides to RES-B, RES-C, RES-D and RES-E customers are *not* cost justified. In other words, all existing discounts exceed their cost-based levels in amounts ranging from 9.6% to 20.0%. (Kalcic D., p. 10).

e. Since KCPL proposes to assign a uniform increase to all residential tariff components, the Company's filed rate design would do nothing to address the excess discounts currently provided to the residential water and space heating subclasses. In other words, the Company's filed residential rate design would simply continue the discriminatory subsidies provided to the water and space heating subclasses. Such subsidies are unfounded, inequitable, and unduly discriminatory. They encourage rather that discourage electricity consumption.

(Tr. Vol. 14, pp. 3145 & 3180). Accordingly, the Commission should reject KCPL's filed residential rate design.

f. The discriminatory nature of KCPL's subsidized water and space heating discounts is illustrated in Hearing Exhibit 154. This exhibit shows two customers who use the exact amount of electricity (1500 MW per month), but are changed significantly different rates. Customer B has a heat pump to qualify for KCPL's Rate C – General Use with Space Heat tariff. Customer A pays 8.037 cents per kWh for the first 1,000 kWh. For the first 1,000 kWh used each month, Customer B pays 5.211 cents per kWh, or 64.8% of what Customer A pays. For usage over 1,000 kWh each month, Customer A pays $8.003 cents per kWh, but Customer B pays 3.908 cents per kWh, or 48% of what Customer A pays. For the identical amount of electricity purchased from KCPL, Customer A pays $389.84 more over an 8-month period than Customer B, or $48.73 a month more. (Hearing Exhibit 154; Tr. Vol. 13, pp. 3008-3015).

(i) Staff's Proposed Rate Design

116. The Commission rejects Staff's proposed rate design in this case.

(ii) CURB's Proposed Rate Design

117. Proposed Finding: The Commission adopts CURB's rate design proposal.

118. In support of this decision, the Commission relied upon the following:

a. CURB recommends certain revisions to KCPL's residential rate design in order to simplify the Company's existing rate structure and to provide stronger price signals to consumers to conserve electricity. The conservation policy of the State of Kansas, as expressed by the current sitting Governor of the State of Kansas on

January 13, 2009, is: "We must change our outdated rate structure, which currently rewards consumption, instead of conservation, and fully engage Kansas consumers in reducing their energy usage." (Tr. Vol. 13, pp. 3042-43; Hearing Exh. 155, p. 6). It is CURB's position that the Commission can, and should, encourage conservation by revising existing rate structures now to provide stronger conservation-oriented price signals. Many Kansas electric utilities (such as KCPL) are currently involved with extensive capital expenditure programs. Greater conservation, if achieved, will help consumers manage rising electric utility bills in the coming years and delay the need for additional generation units. (Kalcic D., p. 4).

b. As currently configured, the Company's tariff provides various discriminatory discounts for increased consumption, beginning with the 1,001st kWh consumed by a customer during the winter. Such discounts encourage rather than discourage consumption, send the wrong price signal to customers, and are unduly discriminatory. Summer energy charges should be redesigned to provide a flat rate for the first 1,000 kWh of consumption, with a higher price applying to all consumption in excess of that level (i.e., a two-step inclining block rate structure) so as to encourage conservation. (Kalcic D., p. 6).

c. Consistent with the Company's proposal to assign an across-the-board increase to all rate classes, CURB assigned a system average increase of 1.54% to KCPL's (aggregate) residential rate class, based on Ms. Crane's filed revenue requirement recommendation. CURB's recommended residential rate design adopts the Company's approach of assigning a system average increase to customer charges.

However, as shown in column 4 of Schedule BK-2, CURB's recommended rates would establish a uniform rate of $0.08037 per kWh covering: a) usage up to 1,000 kWh per month in the summer; and b) all winter usage that is not water heating or space heating related.[19]

d. During the winter season, CURB recommends a *flat* space-heating rate of $0.05768 per kWh for all RES-C consumption, and distinct space heating rates for separately metered space-heating customers on Rates RES-D and RES-E. In addition, CURB would establish a uniform water-heating rate of $0.06189 per kWh for the first 1,000 kWh of winter usage for RES-B and RES-E customers. In contrast, the Company's existing winter energy charges exhibit no such internal consistency (with respect to general use, water heating or space heating service) across the residential subclasses. Finally, column 4, line 5 of Schedule BK-2 shows a summer consumption charge for usage in excess of 1,000 kWh of $0.09726 per kWh. This equates to a conservation-oriented price differential of approximately 1.7¢ per kWh (or a 21.0% increase) over CURB's recommended rate for the 0-1,000 kWh block.[20]

e. Unlike CURB's proposal, the Company is proposing to maintain a *uniform* energy charge applicable to all summer usage rather than move toward a conservation-oriented rate design. (Kalcic D., p. 8-9).

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[19] See lines 4, 7, 8, 11, 16, 17, and 22 of column 4 in Schedule BK-2. The rate for the first 1,000 kWh of usage on the RES-B and RES-E rate schedules (as shown on lines 10 and 21 of Schedule BK-2) reflects CURB's recommended water heating discounts.

[20] CURB's recommended rates are based on Ms. Crane's recommended rate increase of $9.631 million. As noted earlier, CURB has adopted several Staff adjustments, resulting in a recommended rate decrease of approximately $8.468 million. The Commission should apply CURB's rate design principles to the final revenue requirement it approves in this case.

f. CURB's recommended winter residential consumption charges were derived by comparing: a) the average consumption charge paid by each of the Company's residential subclasses at present rates; to b) each class' cost-based consumption charge, as given by the Company's COSS. The difference between these two (2) values is the *excess* discount received by water and space heating customers. In order to mitigate customer rate impacts, CURB recommends that 50% of the Company's excess discounts be eliminated in this case. However, CURB also recommends that the Commission require KCPL to eliminate all remaining excess space heating and water heating discounts in KCPL's next rate proceeding. (Kalcic D., p. 9-11).

g. CURB's requests the Commission to direct KCPL to: a) establish a uniform residential consumption charge that would apply to the first 1,000 kWh of usage per month in the summer, and all winter usage that is not water heating or space heating related; b) reduce the *excess* water heating and space heating discounts currently available to RES-B, RES-C, RES-D and RES-E customers by 50%; c) implement a uniform water-heating rate for all water heating (i.e., RES-B and RES-E) customers; and d) set the consumption charge for summer usage in excess of 1,000 kWh at a level high enough to encourage conservation. The above rate structure guidelines should be implemented after the Commission has determined both the Company's overall revenue requirement, and individual customer class revenue targets. (Kalcic D., p. 14).

h. With respect to SGS rates, the Company maintains four (4) secondary SGS rate schedules: a) General Use (SGSS); b) Space Heating – All Electric (SGSSA); c)

Separately Metered Space Heat (SGSSH); and d) Unmetered Service (SGSSU). The SGSS and SGSSA rate schedules contain a customer charge (based on the size of the customer's load in kW), a demand charge and a seasonally differentiated, demand-based declining block energy charge.[21] The SGSSU rate schedule reflects a (single) customer charge and seasonally differentiated, declining block energy charges (i.e., the same seasonal energy charges that apply to SGSS customers). The Company maintains one set of summer energy charges that applies to all SGSS, SGSSA and SGSSH customers. Space heating customers receive non-uniform discounts from the winter energy charges paid by SGSS customers. (Kalcic D., p. 14-15).

i. The Company is proposing to assign an across-the-board increase of 11.5% to all of its SGS tariff charges. CURB opposes the Company's proposed SGS rate design since it would exacerbate the levels of the discounts currently received by SGS space heating customers in the winter season. (Kalcic D., p. 15).

j. Based on KCPL's filed COSS, the current SGSSA and SGSSH winter energy charge discounts are *not* cost justified. In other words, all existing discounts exceed the levels wherein the applicable SGS subclass would provide an equalized (or system average) rate of return, in amounts ranging from 15.0% to 22.3%. (Kalcic D., p. 15-16).

k. In order to mitigate customer rate impacts, CURB recommends that one-half of the excess SGSSA discounts, and one-third of the SGSSU discounts be eliminated

[21] The Company's declining block energy charges are defined according to "hours use" breakpoints, rather than fixed kWh usage levels. As a result, the higher the SGS customer's load factor, the greater the percentage of the customer's usage that is billed at a lower rate per kWh.

in this case. CURB recommends that a slower approach be used for the SGSSH subclass because the magnitude of the excess discount (i.e., 22.3%) currently provided to SGSSH customers is too large to reduce by half in this proceeding. All remaining excess SGSSA discounts should be eliminated in KCPL's next base rate case, and the remaining SGSSH excess discounts should be eliminated over the next two (2) rate proceedings. (Kalcic D., p. 17; Tr. Vol. 14, pp. 3189-3190).

l. KCPL argues CURB's proposal is not supported by any study that was prepared or presented that would justify such changes.[22] To the contrary, CURB's winter rate design for KCPL's residential and SGS subclasses is based upon eliminating 33%-50% of the excess discounts identified in KCPL's COSS. Even Mr. Rush agrees that Mr. Kalcic's rate design proposal moved the residential subclasses toward cost utilizing the principle of gradualism, to reduce the percentage differences by approximately 50%. (Tr. Vol. 13, pp. 3018, 3020). .

m. One of the fundament policy questions before the Commission is whether it would be appropriate to modify KCPL's existing flat residential energy charge for summer usage. Mr. Rush objects to a summer inclining or inverted block rate design proposed by Staff and CURB, even though he recognizes the Commission has previously approved a summer inclining block rate design for Westar Energy's residential customers, and that an inclining rate would encourage customers to use less energy. (Tr. Vol. 13, pp. 3025, 3037).

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[22] KCPL Brief, ¶ 500.

n. CURB's recommended residential rate design includes an inverted block rate, which is intended to provide a conservation price signal. That same rate design would complement KCPL's energy efficiency programs. In the normal course of events, customers must replace air conditioning or other appliances. If KCPL's rate structure were to be adjusted such that the savings associated with higher efficiency A/C units is greater, then the customer will have a greater incentive to spend more money up front for that higher efficiency unit. (Tr. Vol. 14, pp. 3186-87).

o. CURB's recommended rate design is intended to provide stronger price signals to encourage consumers to conserve electricity. (Kalcic D., p. 4). It is not designed to "force" customers to reduce annual energy consumption, it simply provides a reasonable price signal to encourage conservation, and quite likely encourage energy efficiency decisions as well. (Tr. Vol. 13, pp. 3061-3062; Tr. Vol. 14, pp. 3186-87).

p. CURB's rate design is not intended to eliminate KCPL's heating rates. Rather, it would continue to treat the subclasses as separate rate schedules. CURB's rate design would move residential subclasses towards parity based upon the Company's filed COSS, i.e., it would eliminate a portion of KCPL's (existing) excess water and space heating discounts, which are currently priced well below the system average. Staff, KGS, and Atmos recommend that the Commission eliminate the residential water and space heating subclasses. (Tr. Vol. 14, pp. 3173-3174; 3188-3189) As acknowledged by KCPL witness Tim Rush, Mr.

Kalcic's rate design proposal utilized the principle of gradualism, similar to Mr. Rush's alternative rate design proposal. (Tr. Vol. 13, pp. 3018).

q. KCPL also argues that no analysis was done in order to understand the impact of Staff and CURB's proposed rate designs.[23] However, the Company's COSS provides no guidance with respect to the appropriate price of the first versus second residential rate block in the summer, so it is the Company's CCOS that is lacking depth of analysis. (Tr. Vol. 13, pp. 3019, 2915-16). CURB's rate design would establish a 21% summer price differential across those summer rate blocks, which is a reasonable starting point for introducing a conservation-oriented price signal. (Tr. Vol. 14, pp. 3168-3169).

r. KCPL contends that a dedicated rate design case is the best forum to advance significant rate design changes, including the integration of rate designs that will complement energy efficiency.[24] KCPL simply seeks to delay the inevitable. As a result of KCPL's last rate case, all the cost of service evidence necessary to address an alternative rate design for the Company's residential subclasses is available. Furthermore, there is no issue with respect to rate switching within the residential class. Therefore, it is not necessary to invoke a separate rate design proceeding in order to address residential rate design. (Tr. Vol. 14, p. 3190).

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[23] KCPL Brief, ¶ 488.

[24] KCPL Brief, ¶ 490.

(d) Off-system sales allocator

119. Proposed Finding: The Commission determines to maintain the current unused energy allocator to allocate off-system sales.

120. The Commission relies upon the following:

a. KCPL's off-system sales margins are currently allocated based on an unused energy allocator. Such margins are returned to customers through the ECA mechanism. This allocation was agreed to by the Company when it received approval to implement an ECA. KCPL is proposing to change the allocation factor from unused energy to an allocation based on the allocation of steam production plant. (Crane D., p. 111, lines 6-14).

b. The Company now claims that the unused energy allocator is not an appropriate allocator. Instead, KCPL claims that the off-system sales margins should be allocated in proportion to the fixed costs of the generating units used to generate the electricity sold, which the Company claims primarily comes from its coal-fired steam generating stations. (Crane D., p. 111, lines 16-21).

c. While the coal-fired steam generating stations may be the source of much of the energy used for off-system sales, the Company's proposed allocator does not provide any meaningful information about the availability of this energy to be used for off-system sales. If a particular unit is producing at full capacity but if its output is being used entirely to serve native load, then there is no opportunity for that unit to participate in the off-system sales market. Accordingly the use of the unused energy allocator provides a better measure of the degree to which energy

is available to be sold in the off-system sales market. (Crane D., p. 112, lines 1-10).

d. Moreover, it appears that the Company's real concern is that different allocators for off-system sales margins are used by regulatory agencies in Kansas vs. Missouri. Thus, KCPL could find itself allocating more (or less) than 100% of its off-system sales margins. However, instead of proposing to adopt an unused energy allocator in Missouri, KCPL is proposing to put the burden on the KCC to change the allocation methodology previously approved in Kansas. (Crane D., p. 110, lines 11-16).

e. The unused energy allocator was a condition of approving the Company's ECA mechanism. While CURB initially opposed the Company's proposal to adopt an ECA, CURB did sign the Stipulation and Agreement in KCC Docket No. 07-KCPE-905-RTS, which provided for the implementation of an ECA. However, an integral part of that agreement was the use of an unused energy allocator for off-system sales. Specifically, the Stipulation and Agreement in that case provided that "KCPL agrees to utilize its UE1 [Unused Energy Allocator] to allocate off-system margins to Kansas retail ratepayers within the context of its ECA tariff." Now that the ECA is in operation, KCPL is attempting to change the rules agreed upon by the parties. (Crane D., p. 112, lines 18-21, 113, lines 1-6).

f. The change in the allocation methodology would reduce the percentage of the credit allocated to Kansas, yet the Company provides no quantifiable information on exactly how this proposal would impact ratepayers. Based on data from KCC Docket No. 09-KCPE-246-RTS, Kansas would be allocated 44.32% of off-system

sales margins if the steam production allocator is used, instead of the 47.11% resulting from the unused energy allocator. (Crane D., p. 113, lines 8-14).

g. CURB recommends that the Company's proposal be rejected, and that off-system sales margins continue to be allocated on the basis of unused energy. This is the allocator that was agreed to as part of the implementation of the ECA. If the Company wants to reexamine the conditions of that settlement, then the parties should also be free to reexamine the ECA and to recommend that it be terminated and determine what the impact on Kansas ratepayers will be.

h. CURB believes that the unused energy allocator properly measures the extent to which there is energy available for off-system sales. Moreover, CURB believes that the Company should live up to the agreement made in the stipulation that these margins would be allocated based on the unused energy allocator, unless the Company is willing to change other provisions of the settlement agreement, such as the ECA itself.

i. The Company's proposal would significantly reduce the benefit received by Kansas ratepayers from off-system sales. Moreover, the Company's proposed allocator provides no meaningful information about the extent to which specific units are available to make off-system sales. The KCC should not take second place to regulatory agencies in Missouri. If the Company requires uniform allocators in each state, then it should propose to adopt the unused energy allocator in Missouri for off-system sales margins, instead of putting the burden on Kansas ratepayers. Therefore, the KCC should maintain the current allocation

methodology for off-system sales margins. (Crane D., p. 114, lines 16-21, p. 115, lines 1-9).

(e) Streetlight Tariffs

121. CURB takes no position on this issue.

(f) Pension and OPEB Trackers

122. Proposed Finding: The Commission denies KCPL's request for a tracking mechanism for OPEB costs.

123. Alternative Proposed Finding: The Commission adopts a tracking mechanism for OPEB costs, but adopts CURB's recommendation that it be consistent with the mechanisms adopted for Westar, KGS, and Empire.

124. In support, the Commission relies on the following:

a. CURB urges the Commission to deny the Company's request to establish a tracking mechanism for OPEB costs, for the reasons stated by CURB in Docket No. 07-GIMX-1041-GIV, referenced in Andrea Crane's direct testimony. However, if the KCC decides to adopt a tracking mechanism for OPEB costs, CURB recommends that the Commission order that it be consistent with the mechanisms adopted for Westar, KGS, and Empire. (Crane D., p. 107).

b. Until a few years ago, pension costs were generally treated the same way as other components of a utility's revenue requirement. When the KCC approved new rates for a utility, it included test year pension costs, subject to known and measurable adjustments, in the utility's revenue requirement. (Crane D., p. 98).

c. As part of the Regulatory Plan, the KCC approved a new approach for KCPL. In order to reduce the Company's risk during the period of the Iatan Unit 2

construction, the KCC approved a mechanism that has allowed the Company to defer the difference between its actual pension costs each year and the amount recovered in rates. This regulatory asset or liability, which has received rate base treatment, is being amortized over a five-year period. (Crane D., p. 98).

d. The Regulatory Plan also permitted KCPL to establish a regulatory asset for contributions to the pension fund made in excess of the FAS 87 expense for one of the following reasons: (1) if the minimum required contribution is greater than the FAS 87 expense level, (2) to avoid Pension Benefit Guarantee Corporation ("PBGC") variable premiums, and (3) to avoid the recognition of a minimum pension liability. The Regulatory Plan provided for rate base treatment of this regulatory asset. (Crane D., p. 98).

e. The Regulatory Plan stated that "non-KCPL parties reserve the right to propose a different methodology for addressing FASB 87 pension expense in the first KCPL rate case proceeding after 2010. In the event that the Commission addresses FASB 87 pension expense in a general investigation, KCPL agrees to cooperate in such investigation and be bound by the results thereof in rate proceedings subsequent to 2010." (Crane D., pp. 98-99).

f. KCPL has proposed to expand the situations whereby KCPL would be granted rate recognition of contributions in excess of the FAS 87 expense. Therefore, the Company is seeking rate recognition for excess contributions for the following reasons, in addition to those listed in the Regulatory Plan: (i) to avoid pension benefit restrictions under the Pension Protection Act of 2006 ("PPA") that would cause an inability of the Company to pay pension benefits to recipients according

to the normal provisions of the plan; (ii) to avoid at-risk status under the PPA that would result in acceleration of minimum contributions; and (iii) to reduce Pension Benefit Guarantee Corporation variable premiums. (Crane D., p. 99).

g. The Company has also proposed to implement a tracking mechanism for Other Post Employment Benefit (OPEB) costs. Specifically, it is proposing to establish a regulatory asset or regulatory liability for the difference between the actual annual OPEB expense and the annual amount recovered in rates. (Crane D., pp. 99-100).

h. Since the Regulatory Plan was approved, there has been a major development with regard to the recovery of these costs by the KCC. On March 29, 2007, the KCC initiated a generic docket (KCC Docket No. 07-GIMX-1041-GIV) to examine the appropriate ratemaking treatment for pension and OPEB costs. This docket was initiated in response to a request by several utility companies, including KCPL. Specifically, the utilities requested KCC authorization to:

> Establish a regulatory asset or regulatory liability to track the difference between the amounts recognized in rates and the pension and OPEB costs recorded for financial reporting purposes pursuant to Generally Accepted Accounting Principles ("GAAP"), and
>
> Recognize for ratemaking purposes the companies' contributions to their pension and OPEB plans in excess of costs recorded for financial reporting purposes.

(Crane D., p. 100).

i. On March 18, 2009, Staff filed its Report and Recommendations in the generic proceeding. Staff recommended that the KCC permit the utilities to establish a regulatory asset or liability for the difference between pension and OPEB costs

recovered in rates and amounts recorded for financial reporting purposes. KCC Staff also recommended that the utilities be required to fund the amount of pension and OPEB costs recovered annually in rates. The KCC Staff recommended that any deferrals be amortized over a five-year period without carrying costs. Moreover, the KCC Staff recommended that the KCC reject the utilities' request to establish a regulatory asset for the difference between the annual amount of pension and OPEB contributions and the amounts booked pursuant to GAAP. (Crane D., pp. 100-101).

j. On April 17, 2007, CURB filed Initial Comments in the generic docket. CURB recommended that the KCC deny the utilities' request to establish regulatory assets or liabilities relating to pension and OPEB costs. As noted in CURB's comments, "[p]ermitting the establishment of a regulatory asset or regulatory liability would constitute single-issue ratemaking, would provide a disincentive for the companies to control these costs, would weaken regulatory oversight, would shift risk from the companies completely to ratepayers, and has not been justified by Staff." However, CURB also recommended that if the KCC adopted Staff's recommendation to permit a regulatory asset or liability to be established for the difference between amounts collected in rates and the amounts booked pursuant to GAAP, then it should also adopt Staff's recommendation to require the utilities to fund the amount collected in rates. In addition, CURB argued that if such a mechanism was adopted, the KCC should also adopt Staff's recommendation that the KCC reject the utilities' request to include any regulatory asset or liability in rate base. (Crane D., pp. 101).

k. Discussions were subsequently held between Staff, CURB, and the utilities to determine if resolution of these issues was possible. As a result of those discussions, Applications for Accounting Orders were subsequently filed by KGS and by Westar Energy, Inc. and Kansas Gas and Electric Company (collectively "Westar"), on August 13, 2009 and August 14, 2009 respectively. These utilities requested authorization to implement a tracking mechanism for the difference between the pension and OPEB costs included in rates and the costs booked pursuant to GAAP, but agreed that any resulting regulatory asset or liability would not accrue carrying costs and that the associated unamortized balances would not be included in rate base in the companies' next rate proceeding. Both utilities also agreed to fund the amount of pension and OPEB costs reflected in rates, to the extent such funding was deductible for federal income tax purposes. Both KGS and Westar also agreed to establish a regulatory liability for any amounts not funded due to IRS limitations with regard to tax deductibility. (Crane D., p. 102).

l. In addition, in their Applications for Accounting Orders, both parties requested authorization to establish a second regulatory asset if the amounts actually funded exceeded the annual costs booked pursuant to GAAP. However, KGS and Westar agreed that this second regulatory asset would not accrue carrying costs or be included in rate base in a future case, but would only be used to meet the funding requirements for its first tracker. On September 11, 2009, the KCC issued orders approving the Applications for Accounting Orders submitted by KGS and Westar. On January 12, 2010, CURB, Staff, Westar, and KGS filed a Stipulation and

Agreement proposing that the KCC adopt the terms and conditions outlined in the KGS and Westar Accounting Orders on a permanent basis. (Crane D., pp. 102-103).

m. Moreover, in the recent Empire District Electric Company ("Empire") base rate case, KCC Docket No. 10-EPDE-314-RTS, Empire proposed a tracking mechanism for its pension and OPEB costs that contained some of the components being requested by KCPL in this case. Specifically, Empire's proposal: 1) did not require any specific level of funding in order to record a regulatory asset for the difference between pension and OPEB amounts collected in rates and amounts booked pursuant to GAAP, 2) included rate base treatment for the regulatory asset or liability resulting from the difference between pension and OPEB amounts collected in rates and amounts booked pursuant to GAAP, 3) provided for ratemaking recovery of a second regulatory asset related to the difference between amounts funded and the annual pension and OPEB costs booked pursuant to GAAP, and 4) provided for rate base treatment of this second regulatory asset. In the Stipulation and Agreement in KCC Docket No. 10-EPDE-314-RTS, Empire agreed to modify its proposal to be consistent with the mechanisms approved for Westar and KGS. (Crane D., p. 103).

n. CURB continues to oppose pension and OPEB tracker mechanisms, for the reasons expressed in the Initial Comments and Reply Comments filed by CURB in KCC Docket No. 07-GIMX-1041-GIV. However, if the KCC determines that some tracking mechanism is appropriate, then it should adopt the mechanisms approved for KGS, Westar, and Empire. These mechanisms have substantial

ratepayer safeguards that are not found in KCPL's current or proposed mechanisms. First, the KGS, Westar, and Empire mechanisms require that utilities actually fund amounts collected in rates in order to record a regulatory asset for differences between pension and OPEB amounts collected in rates and amounts booked pursuant to GAAP. This is an important safeguard and will ensure that amounts collected from ratepayers for pension and OPEB costs are actually used for that purpose.[25] Second, the KGS, Westar, and Empire mechanisms do not include rate base treatment for the regulatory asset or liability resulting from the difference between pension and OPEB amounts collected in rates and amounts booked pursuant to GAAP. Since the funding requirement will match the amount collected in rates, the regulatory asset or liability generated will have no cash impact on the Company and therefore there is no rationale for including any such regulatory asset or liability in rate base. Third, the KGS, Westar, and Empire mechanisms do permit the recording of a second regulatory asset relating to excess contributions, but this regulatory asset has no ratemaking implications and therefore receives no rate base treatment or carrying costs. This provision allows the companies to apply "excess" contributions to meet their regulatory funding requirements in future years, but avoids the possibility of utilities basing funding decisions on discretionary criteria that may not benefit ratepayers. Therefore, if the KCC revises the pension tracker that was adopted for the duration of the Regulatory Plan, and adopts an OPEB tracking mechanism for

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[25] While the Regulatory Plan has a funding requirement for pension costs, the Company's proposal does not appear to have a funding requirement for OPEB costs.

KCPL, it should adopt the same mechanisms as those approved for KGS, Westar, and Empire. Given the KCC's generic investigation, which was initiated by the utilities including KCPL, it would be reasonable to implement uniform tracking mechanisms for all Kansas utilities. (Crane D., pp. 104-105).\

o. The language of the Regulatory Plan states that non-KCPL parties may propose changes in the pension tracker with the first rate case proceeding after 2010. That may be interpreted as this current case or the next case, depending on the interpretation of "after 2010". However, the Regulatory Plan does not bind non-signatory parties, including CURB, from proposing changes in the ratemaking treatment for pension and OPEB costs at any time, which CURB has done in this case. Moreover, the KCC itself is not bound by the terms of the Regulatory Plan, and may make changes to specific aspects of the Regulatory Plan at any time. (Crane D., p. 105).

p. In its Order Approving Stipulation and Agreement in KCC Docket No. 04-KCPE-1025-GIE, the KCC noted that the Regulatory Plan does not bind the Commission, and noted that even "KCPL acknowledged that the Commission's approval of the Agreement would not require the Commission to make any specific determinations or grant any approvals in subsequent dockets."[26] In approving the Regulatory Plan, the KCC noted that "[t]he proposed treatment regarding the specific matters contained in the Agreement appears reasonable at this time, but is subject to future Commission review to ensure that they result in

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[26] Order Approving Stipulation and Agreement, KCC Docket No. 04-KCPE-1025-GIE, paragraph 32.

just and reasonable rates and reflect the provision of efficient and sufficient service. K.S.A. 66-101b."[27] In addition, the KCC itself was not a signatory party to the Regulatory Plan and therefore would not be bound by language addressing the "non-KCPL parties." Thus, the KCC has the authority in this case to extend the pension tracking mechanism recently approved for Westar, KGS, and Empire to KCPL, or to find that no tracking mechanism is appropriate. (Crane D., p. 106).

q. However, if for any reason the KCC decides that no change to the pension tracker should be made in this case, then the KCC should reject the revisions being proposed by KCPL in this case and instead adopt, as part of the abbreviated rate case to be filed subsequent to this case, the uniform pension tracking mechanism adopted for the other utilities in Kansas. It should be noted that CURB has not made any quantitative adjustment to the Company's claims in this case for pension expense or for the associated regulatory asset associated with changes in the tracking mechanism, as Ms. Crane presumed that any changes would only be effective prospectively. (Crane D., pp. 106-107).

(g) Abbreviated Rate Case

125. Proposed Finding: The Commission grants CURB's request that additional and substantial rate case expenses must be subject to a full and fair review by all parties, to be addressed in the abbreviated rate case.

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[27] Id., paragraph 61.

(h) Other Specific Actions Requested in the Commission's Order

126. The Commission denies the following:

- rate recovery for contributions made to the pension trust in excess of the Financial Accounting Standard No. 87;
- request that off-system sales margins included in the ECA rider be allocated based on Kansas' allocation of steam production plant as a percentage of total KCPL steam production plant ("steam production plant allocator");
- request that net SO_2 emission allowance proceeds be amortized back to customers over 22 years and through the Energy Cost Adjustment mechanism;
- request for authority to establish a tracking mechanism for Other Post-employment Benefits.

(i) Joint Report

127. On the same day the parties filed the Joint Report, they also filed a Joint Motion to Approve Modifications Contained in the September 9, 2009 Report ("Joint Motion"). In that Joint Motion, the parties requested approval of the terms of the Joint Report that differ from the 1025 S&A. The Commission now makes the following findings based on the remaining issues from that Joint Motion:

128. That Joint Motion is still pending before the Commission, although some of the modifications have been addressed by previous Commission orders.

129. Paragraph 4 of the Joint Motion listed seven terms of the 1025 Stipulation which the Joint Report modifies. The first two terms, filing date and procedural schedule for the fourth rate case, have already been addressed. The Commission now issues the following findings on the following items:

130. The Commission authorizes the filing of an application for a transmission cost ride as part of the abbreviated case;

131. The Commission will modify the termination dates for collection of CIAC (PTPP) and the termination date of the 1025 S&A as of the effective date of new rates set in this case;

132. The Commission authorizes KCPL to file an abbreviated rate case that will be filed following this rate case to "true-up" budgeted costs with actual costs and deal with potential overcollection or undercollection by KCPL. (See issues for abbreviated case in the section above.); and

133. The Commission will extend the deadline for SO_2 emissions allowances as of the effective date of new rates set in this case.

(ii) Rate Application

134. CURB proposes the Commission deny all aspects of the rate application that that relate to the issues CURB has opposed in its Brief.

(iii) Partial Settlement

135. During the first day of the evidentiary hearing, the Commission was presented an uncontested settlement agreement which settled many but not all of the contested issues in this case. That settlement was admitted into evidence as Exhibit 4. The Commission approved the settlement later that day during the proceeding. (Tr. Vol. 1, p. 150) A copy of that settlement agreement as an attachment to this Order.

(iv) Other Items Requiring Commission Action

136. CURB proposes the Commission deny all other items proposed by KCPL that relate to the issues CURB has opposed in its Brief.

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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.

C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 28th day of September, 2010.

DELLA J. SMITH
Notary Public - State of Kansas
My Appt. Expires January 26, 2013

Notary Public

My Commission expires: 01-26-2013.

CERTIFICATE OF SERVICE

10-KCPE-415-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, electronic service, or hand-delivered this 30th day of September, 2010, to the following:

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