

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of a General Investigation of)
Kansas City Power & Light Company's All) Docket No. 16-GIME-576-GIE
Electric Residential Rates.)

NOTICE OF FILING OF CURB'S REPLY COMMENTS

COMES NOW, the Citizens' Utility Ratepayer Board (CURB), and files the reply comments and accompanying affidavit of Doctor Howard J. Axelrod, attached hereto as Exhibit "A" and made a part hereof by reference, and the verified reply comments of CURB's consumer counsel, attached hereto as Exhibit "B" and made a part hereof by reference. These attachments make up CURB's Reply Comments for the purposes of this proceeding and in accordance with the Procedural Schedule issued by the Commission on September 22, 2016, and the Joint Notice of Status Update Regarding Filing Date of Reply Comments, which was filed by the parties on July 26, 2017, in the captioned docket.

The reply comments of Doctor Axelrod generally respond to the technical comments of the parties relative to the five questions posed in this docket by the Commission. Further, Doctor Axelrod's reply comments are within the scope of representation set out in the Request for Proposal and accompanying contract between the CURB and Doctor Axelrod. However, Doctor Axelrod was not retained to respond to the stated intent of KCP&L to withdraw the application which it filed in Docket No. 16-KCPE-325-TAR. Therefore, inasmuch as dismissal of KCP&L's Application in Docket No. 16-KCPE-325-TAR would thwart CURB's ability to speak to the applicability of gradualism relative to the rate design adopted in Docket No. 10-KCPE-415-RTS, CURB submits

reply comments authored by its Consumer Counsel. These later comments were intended to incorporate the need for equitable relief as very earnestly expressed by board members of the CURB.

CURB believes that the reply comments of CURB's Consumer Counsel compel the prospective imposition of gradualism relative to the rate design adopted by the Commission in Docket No. 10-KCPE-415-RTS. Thus, in reply to KCP&L's comments, CURB believes that KCP&L's Application in Docket No. 16-KCPE-325-TAR should not be dismissed.

WHEREFORE, CURB respectfully submits its Reply Comments.

Respectfully submitted,



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EXHIBIT A

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of a General Investigation of)
Kansas City Power & Light Company's All) Docket No. 16-GIME-576-GIE
Electric Residential Rates.)

AFFIDAVIT OF DOCTOR HOWARD J. AXELROD

Howard Axelrod, being first duly sworn upon his oath, states:

1. I am the President of Energy Strategies, Inc., and my business address is located at 1759 Stephanie Trail, Atlanta, Georgia 30329.


2. My qualifications and experience as an expert in the areas of utility regulatory economics and rate structures, among other aspects of utility regulation, are incorporated in The Kansas Citizens' Utility Ratepayer Board: Analysis of KCP&L All Electric Space Heating Rates.

3. I was retained by the Citizens' Utility Ratepayer Board (CURB) of Kansas to prepare, sponsor and defend a set of comments in the captioned docket on CURB's behalf and to perform other responsibilities in connection with the resolution of said docket, including but not limited to addressing five questions posed in the Procedural Order issued by the Kansas Corporation Commission ("Commission") on September 22, 2016.

4. In accordance with said Procedural Order and the Joint Notice Of Status Update Regarding Filing Date Of Initial Comments, which was filed by the parties on June 27, 2017, I have prepared and am sponsoring comments which are contained in The Kansas Citizens' Utility Ratepayer Board: *Critique of the Technical Reports Prepared by KCP&L, KCC Staff & KGS*, attached hereto and incorporated herein.

5. The Kansas Citizens' Utility Ratepayer Board Critique of the Technical Reports Prepared by KCP&L, KCC Staff & KGS was prepared by me or under my supervision. I have personal knowledge of the statements made in The Kansas Citizens' Utility Ratepayer Board: *Critique of the Technical Reports Prepared by KCP&L, KCC Staff & KGS*, and all such statements are true and correct to the best of my knowledge. I have attached the verification, in the form normally used by the Commission in its dockets, at the end of my comments.

Further affiant saith naught.


Howard J. Axelrod

Subscribed and sworn before me on the 31 day of August 2017.


Notary Public

My Commission expires



*Energy Strategies, Inc.'s
Critique of the Technical Reports Prepared by
KCP&L, KCC Staff & KGS*

*PURSUANT TO THE KANSAS CORPORATION COMMISSION
DOCKET NO. 16-GIME-576-GIE: IN A MATTER OF A GENERAL
INVESTIGATION OF KANSAS CITY POWER & LIGHT COMPANY'S
ALL ELECTRIC RESIDENTIAL RATES*

Prepared Dr. Howard Axelrod
ENERGY STRATEGIES, INC. | ATLANTA, GEORGIA

*Summary Critique of the Technical Reports prepared by
KCP&L, KCC Staff & KGS*

Four parties to Docket 16-GMIE-576-GIE¹ prepared and submitted responses to the Kansas Corporation Commission's (KCC) five (5) questions posed to address the efficacy of KCP&L's all electric space heating rate. Those four parties were:

1. The Kansas Citizens' Utility Ratepayer Board (CURB)
2. The Kansas Corporation Commission's Utility Division (KCC Staff or Staff)
3. Kansas City Power & Light (KCP&L)
4. Kansas Gas Service (KGS)

The following comments highlights the commonality and the key differentiators between the various responses.

*Comment 1: The All-Electric Space Heating Rate is Cost Based and is not
Cross Subsidized by other Classes of Residential Customers*

First and foremost, Staff, KCP&L and CURB uniformly agreed that the KCC's use of the term "incentive rate" or "discount" to describe KCP&L's residential all electric space heating rate is a misnomer. Since 2010, those rates have been cost based using standard Class Cost of Service (CCOS) analysis, while lower than General Residential rates, they are just and reasonable, and are not cross-subsidized by other non-space heating residential customers.

- Staff, (page 17) states: *"As a result, cost-plus pricing can be used to justify electric heating discounts."*
- KCP&L (page 1-3) states: *"Since 2010, KCP&L, has not provided a SH incentive rate that is lower than the cost to serve the SH class of customers."*

¹ In the Matter of a General Investigation of Kansas City Power & Light Company's All Electric Residential Rates

- CURB (page 3) states: “We are compelled to point out in our response to the five questions, the discount that the Commission refers to is in fact a causality based assessment of costs attributed to the all-electric space heating class of customers. The rates may be lower than rates paid by other customer classes, but distinctly are not discounted.”

Only KGS ignored the distinction between a subsidization and a rate derived by cost causality. As such their entire analysis is based on an “interpretation” that the space heating rate can be evaluated on the same benefit/cost framework as adopted by the Commission to evaluate demand-side management programs.² Consequently, their findings suggest that the potential benefit of, say, high efficient electric heat pumps, is a societal cost, not a competitive advantage.

The consensus of Staff, KCP&L and CURB, as they applied their own unique approaches to address the KCC’s Five Questions, was to not change KCP&L’s Residential All-Electric Space heating rate.

CURB acknowledged that the KCC, in this proceeding, sought not to re-litigate KCP&L’s prior rate cases that defined the Company’s All-Electric space heating rate. However, CURB’s consultant found, as it addressed the KCC’s five questions, that, not only as Staff and

Figure 1: CURB's Response to Staff DR 6

“Ballpark” Calculation of ~ \$.01/kwh reduction in tail block of the electric space heating rate, pages 33-34

1. Refer to Final Version 2015 Rate Case Allocation Method Production – Average & Peak 4 CP, pages 5 and 6
2. Page 6 Residential Heating (C) Total Rate of return = 6.387% (line 0390)
3. Page 5 Residential General (A) Total Rate of return = 5.364% (line 0390)
4. Difference = ~1.% suggests Electric Space heating class contributes relatively 1% more to capital recovery
5. Page 6 Residential Heating Total Rate Base = \$258,994,878 (line 350)
6. 1% of Total Rate Base = ~ 2.6 million
7. Now refer to KCPL Excel spreadsheet “KCPL KS RES-RD Settlement WN.XLSM” Rate Summaries tab, cell I85, Space Heating Winter tail block rate @ \$.06527 & Revenues = \$12,223,137
8. Substitute \$.051 in cell I85 with revised revenues of \$9,550,789, a difference of ~\$2.6 million
9. Note the typographical error on page 33 line 11 of the CURB Space Heating report: \$.0527 should be \$.051

KCP&L also found, that the current All-Electric Rate as fair and based on a cost-of-service analysis, that the Average & Peak 4 CP cost of service methodology introduced in Docket No. 15-KCPE-116-RTS, offered room for additional rate reductions for the Residential All-Electric space heating rate. To be fair, this was not a comprehensive analysis, in

compliance with the KCC’s mentioned request not to relitigate prior cases, but an observation

² KGS Report, pages 1-2.

and “ballpark” calculation of the rate impact should the Rate of Return for the Residential Heating Rate be set at the same rate for the General Residential class. We assumed that any difference in revenues was applied to the marginal or tail block resulting in a reduction from \$.065 to \$.051/kWh. While CURB is not calling for a rate reduction based on this analysis alone, it does add further support:

1. The continuation of the All-Electric Space Heating rate;
2. A recognition that the 2010 rate increase was excessive and caused Rate Shock;
3. The adoption of KCP&L’s proposed All-Electric Space Heating Rider to mitigate those prior consumer costs, and
4. A directive to KCP&L to consider among the alternative rate designs they proposed in their report, a review and re-assessment of the 2015 Cost of Service analysis.

Comment 2: Gradualism and fairness are also essential ingredients to setting electric rates which are just and reasonable. While the KCC's five questions focused on the impact of the all-electric rate "discount", a sixth and seventh questions might have been:

1) were all-electric heating customers unjustly treated when their rates were increased by sixty percent in 2010 and how can that be rectified, and

2) how will future all-electric customers be treated should this Commission entertain the elimination or consolidation of the all-electric and general residential rates or the introduction of a demand component to the residential rate structure?

CURB specifically addressed these questions as our report raised CURB's long-standing concern that all-electric heating customers were both ill-informed and ill-prepared to respond to a 60 percent rate increase. The Parties failed to grasp the full impact upon the All-Electric rate class rate structure set in the 415 Docket.

KCP&L, although it took until the end of 2015, proposed the Residential All-Electric Rider³, which recognized this unfair treatment of its space heating customers. The All-Electric Rider was *designed to provide, over a five-year period, a credit to qualifying residential all-electric customers for prospective winter season usage designed to help mitigate the potential negative ramifications of the abrupt December 1, 2010 rate change.* (page 15, emphasis added)

KCP&L All-Electric rider was a refreshing recognition that if gradualism was applied in the first instance, consumers could have adjusted their usage, invested in conservation or energy management or even selected alternative energy supplier. However, we are dismayed that the company will now withdraw its 16-325 Docket filing because there are other rates designs offered as examples in this Docket 16-GIME-576-GIE. The 16-325 Docket represent a

³ Docket No. 16-KCPE-325-TAR

correction to past injustices, while 16-576 is a prospective look at rate design alternatives. The first is not a pre-condition for the latter.

While Staff makes no direct reference to issues of rate mitigation as CURB has, it did offer some very insightful references where two regulatory commissions, Ohio and Pennsylvania, exercised the concept of gradualism when those Commissions approved the reduction or elimination of space heating discounts. On pages 15 and 16 of the Staff report, notes that as the Ohio Commission eliminated FirstEnergy's all-electric generation rates, it reserved for those customers a "grandfather" provision that allowed them to receive those discounts as long as they remained in the same residence -- over time phasing out the all-electric rate.

Similarly, in Pennsylvania, Staff reports that PECO's residential space heating customers were advised not to switch to a competitive supplier as only PECO was offering that rate, but was required by state statute to phase it out over time.

As a final point, KCP&L, while stating that the Company was encouraged by the Burns and McDonald report in referencing the optional demand rate, offered sage advice as to gradualism as the Company upgrades its automated metering infrastructure, Meter Data Management and Customer Care and Billing Systems. In this regard, it notes that it is important to assure that systems are operational, and to make sure the customers and customer support systems are in place. Finally, KCP&L warns that such a significant change would require proper transition, inclusive of training, education, and marketing. In other words, gradualism.

Comment 3: The Answers to the KCC's Questions, while responded to by the Parties, unfortunately provides little light on the core issue: Is the current all-electric space heating rate just and reasonable?

This is a critical economic and regulatory distinction as the five questions posed by the KCC do, unfortunately, suggest that the lower rates assigned to the All-Electric residential rate is a discount. This further implies that the potential competitive advantage of electric space heating is driven by such societal contributions as rebates and cross subsidization that would drive the market place to adopt a disproportionate penetration of electric heating penetration that would be considered by its competitors, like KGS, as an unfair and economically inefficient allocation of consumer resources. Of course, as Staff, KCP&L and CURB all independently found, no such market effect actually occurred.

Actually, KGS' convoluted analysis of alternative benefit/cost methodologies typically used to screen such public policy issues as Renewable Portfolio Standards or DSM incentives, when broken down into its most critical components, simply states the obvious that the benefits associated with the cost based rates associated with all electric space heating are closely aligned with the savings participants achieve based on the cost of service differential used to develop KCP&L's All-Electric heating rate. Unfortunately, KGS applied techniques that exaggerated the participant costs to made it appear as if hundreds of millions of dollars were wasted due to the claimed subsidies that KCP&L's customers would receive over the next 25 years.

On page 36 of KGS' report, its Participant test found that all-electric customers "could receive an economic gain of as much as \$540,094,818." The implication is that over half billion dollars are wasted from a societal perspective. But let's look at the numbers:

1. KGS finds that the difference between the all-electric and general results in approximately \$260.57 per all electric participant per year (pages 22 & 25)

2. KGS assumes that the number of all-electric participants is 62,851 (page 23)
3. KGS assumes 2.3% escalation rate and a 15% discount rate (page16)
4. It assumes 25 years for its analysis (page 36)

Applying these assumptions, the following Xcel spreadsheet was prepared to illustrate the fallacy of KGS analysis and findings.

First, we found that when multiplying the annual differential of \$260 escalated for inflation by the number of all electric customers, the total participant cost over 25 years was \$543,964,554 in inflated or nominal dollars which is within .7% of KGS' estimate⁴. Adding nominal or inflated dollars over a long period of inflation is both misleading and overstates the economic impact. However, when applying KGS' implied Discount Rate to adjust each year's cost to a common year, we found that the more comparable economic impact was \$121.8 million. Interestingly, when we divided this "discounted" total economic benefit by 25 years, the annual total participant benefit in Year 1 is \$4.78 million and the per customer benefit is \$77.50 per year.

Simulation of KGE's Participant test				
	Esc.			Discount Rate
	2.30%			15%
Year	Incentive	Participants	Total Incentive	
1	\$ 260.00	62,851	\$ 16,341,260	\$ 14,209,971
2	\$ 265.98	62,851	\$ 16,717,109	\$ 12,640,536
3	\$ 272.10	62,851	\$ 17,101,602	\$ 11,244,581
4	\$ 278.36	62,851	\$ 17,494,939	\$ 10,002,788
5	\$ 284.76	62,851	\$ 17,897,323	\$ 8,898,133
6	\$ 291.31	62,851	\$ 18,308,961	\$ 7,915,469
7	\$ 298.01	62,851	\$ 18,730,067	\$ 7,041,326
8	\$ 304.86	62,851	\$ 19,160,859	\$ 6,263,719
9	\$ 311.87	62,851	\$ 19,601,559	\$ 5,571,986
10	\$ 319.05	62,851	\$ 20,052,395	\$ 4,956,645
11	\$ 326.38	62,851	\$ 20,513,600	\$ 4,409,259
12	\$ 333.89	62,851	\$ 20,985,413	\$ 3,922,324
13	\$ 341.57	62,851	\$ 21,468,077	\$ 3,489,163
14	\$ 349.43	62,851	\$ 21,961,843	\$ 3,103,838
15	\$ 357.46	62,851	\$ 22,466,965	\$ 2,761,066
16	\$ 365.69	62,851	\$ 22,983,705	\$ 2,456,148
17	\$ 374.10	62,851	\$ 23,512,331	\$ 2,184,904
18	\$ 382.70	62,851	\$ 24,053,114	\$ 1,943,615
19	\$ 391.50	62,851	\$ 24,606,336	\$ 1,728,972
20	\$ 400.51	62,851	\$ 25,172,282	\$ 1,538,033
21	\$ 409.72	62,851	\$ 25,751,244	\$ 1,368,181
22	\$ 419.14	62,851	\$ 26,343,523	\$ 1,217,086
23	\$ 428.78	62,851	\$ 26,949,424	\$ 1,082,678
24	\$ 438.64	62,851	\$ 27,569,260	\$ 963,112
25	\$ 448.73	62,851	\$ 28,203,353	\$ 856,751
			\$ 543,946,544	\$ 121,770,106
			Average total discounted benefit	\$ 4,870,804.25
			Average per discounted benefit	77.4976412

Next, we compared the discounted per customer Participant Test of \$77.50 per year to CURB's estimate of annual cost comparisons based on the Kansas State University study on Comparing Fuel Costs of Heating and Cooling systems as summarized on Table 4 of the CURB report. The calculated annual heating bill using 2017 retail electric and natural gas

⁴ We assume rounding errors may account for the slight difference.

prices for a typical 2,000 square foot home that meets current efficiency building code and average efficient heating system, the annual difference was \$65.33.⁵

Recognizing the entirely different approaches used to measure the per customer, annual competitive difference between natural gas and electric heating, not only are those estimates remarkably close, but clearly indicate that for a typical home with average efficiency, electric space heating is in the order of magnitude of \$50 - \$150 per year cheaper depending on household size.

Given the fact that Staff, KCP&L, and CURB unanimously agree that the current all-electric rate differential is justified on cost of service basis and not an implied market based incentive, the Participant Costs implied by KGS is not a Societal Cost, but simply an annual savings for those who selected all electric heating systems.

⁵ The range of annual differences for the nine scenarios tested (i.e. low, average and high efficiencies) was between \$50 in favor of natural gas to \$161 in favor of electric heat pump.

EXHIBIT B

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of a General Investigation of)
Kansas City Power & Light Company's All) Docket No. 16-GIME-576-GIE
Electric Residential Rates.)

**REPLY COMMENTS OF DAVID W. NICKEL, CONSUMER COUNSEL
FOR THE CITIZENS' UTILITY RATEPAYER BOARD**

September 1, 2017

**CURB’S REPLY COMMENTS ADDRESSING KCP&L’S INTENT
TO DISMISS THE APPLICATION FILED IN THE 325 DOCKET**

1. In its initial written comments, CURB posited a rate methodology which supports the all-electric rate (summer/winter differential) which was approved by the Commission in Docket No. 10-KCPE-415-RTS (“415 Docket”). As the representative of KCP&L’s all-electric rate class in particular, CURB also requested the Commission to lift the stay in Docket No. 16-KCPE-325-TAR (“325 Docket”), anticipating that the 325 Docket would allow prospective equitable relief to be approved by the Commission relative to the rate structure adopted in the 415 Docket. CURB now understands that the 325 Docket may be dismissed by KCP&L without providing an opportunity for CURB to comment on the relief offered in that docket.

I. SUMMARY OF CURB’S REPLY COMMENTS

2. As set forth below, CURB believes that, notwithstanding the findings of the Commission relative to the five questions posed in this docket, the stay in the 325 Docket should be lifted and KCP&L’s application should proceed. The 325 Docket merely offers the all-electric rate class some prospective relief from the rate structure adopted in the 415 Docket. In the comments below, CURB will attempt to show the Commission that granting such relief is lawful and reasonable. Specifically, CURB’s comments show that the doctrines of *stare decisis* and *res judicata*, as well as the constitutional and statutory prohibitions against retroactive ratemaking and the Filed Rate Doctrine do not prohibit relief being granted in the 325 Docket.

3. Moreover, from the perspective of the all-electric customer, CURB posits below that equitable relief (in the form of prospective gradualism) is an appropriate remedy for that rate class relative to the rate structure adopted in the 415 Docket. First, the vast and sudden increase

in rates (approximately 60 percent) for some in KCP&L's all-electric rate class has resulted in rate shock which continues to date. Second, the failure to provide sufficient gradualism in the 415 Docket resulted from mere oversight by the parties rather than by a conscientious decision to cold-heartedly impose a 60 percent increase in rates upon a rate class. Third, the facts and circumstances surrounding the retention of the all-electric rate structure for over 50 years warrant correcting the parties' oversight so that gradualism is prospectively applied relative to the rate structure adopted in the 415 Docket. CURB believes that the 325 Docket was an appropriate docket for the parties to discuss the policy of gradualism and to accordingly resolve the fairness issues which arose out of the 415 Docket. CURB provides comments on these matters below out of necessity since there is now an indication that the 325 Docket may be dismissed.

II. INTRODUCTION

4. In representing KCP&L's residential all-electric rate class, CURB is compelled to reply here to KCP&L's comment that it intends to withdraw the application filed in Docket No. 16-KCPE-325-TAR ("325 Application"). CURB believes that the withdrawal of the 325 Application would eliminate valuable discussion among stakeholders about the need for an appropriate level of prospective gradualism for KCP&L's all-electric ratepayers relative to the rate design approved by the Commission in the 415 Docket ("415 rate structure"). CURB believes that it is in the public interest for the Commission to determine this issue upon hearing substantial and competent evidence. CURB believes that the 325 Docket is an appropriate place to allow stakeholders to present evidence supporting or opposing the prospective application of gradualism or other equitable remedies which may still be available to KCP&L's all-electric rate

class relative to the 415 rate structure. Thus, CURB entreats the Commission to discourage KCP&L from dismissing the 325 Application.

5. The 325 Application is important to KCP&L's all-electric rate class. The application proposes relief from the 415 rate structure prospectively upon the basis of gradualism, which KCP&L explains to be "a commonly employed tool of rate design used when cost studies indicate a large increase in a particular rate is necessary, but implementing the full increase at one time would likely have a significant negative impact on customers in that rate category."¹ This depiction of gradualism is consistent with the Commission's definition of gradualism as being equitable relief employed by public utility commissions to avoid rate shock for certain classes of customers when a cost-of-service study shows that a customer will suffer a large rate increase or decrease.²

6. The 325 Application provides a unique opportunity for KCP&L's all-electric rate class to present evidence on the issue of whether or not an appropriate degree of gradualism was applied relative to the 415 rate structure in the 415 Docket, and if not, whether or not gradualism is still an appropriate remedy at this time. It is a very narrow issue. KCP&L's all-electric rate class merely asks for its day in court on that issue alone.

7. The 325 Application does not attempt to retry the 415 rate structure, and KCP&L's all-electric rate class has no intention of retrying that rate structure in the 325 Docket. Nothing in the 325 Application questions the cost-of-service methodology approved by the Commission in the 415 Docket. The 325 Application simply recognizes that KCP&L's all-electric rate class has endured substantial rate shock as a result of the 415 rate structure and that

¹ Docket No. 16-KCPE-325-TAR. Application of Kansas City Power & Light Company for Residential All-Electric Rider Tariff, ¶ 2, p. 2 (December 31, 2015).

² Docket No. 09-WSEE-641-TAR. Order Approving Rate Consolidation, ¶ 85, p. 38 (October 26, 2009), citing the testimony of James W. Daniel at Tr.108-110.

this rate shock continues to date. CURB has been and remains hopeful that the 325 Docket will provide the Commission an opportunity to hear and evaluate substantial and competent evidence and policy arguments supporting or opposing the prospective application of gradualism for the all-electric class relative to the rate shock which that class is still enduring.

8. Yet, the Commission stayed the 325 Docket, reasoning that prior to hearing KCP&L's Application, the Commission wanted to determine whether or not granting KCP&L's all-electric customers a discounted or preferential rate is appropriate under methodologies other than traditional cost-of-service methodologies.³ In particular, this docket sprang from the 325 Docket because the Commission is “interested in reviewing alternatives to traditional cost-of-service methodology,” with respect to determining the benefits that “residential all-electric space heating customers provide to the KCP&L system and KCP&L's residential non-all-electric space heating customers.”⁴ The Commission’s approach made sense to CURB, inasmuch as gradualism may be inapplicable if there are methodologies which justify a significant rate differential upon the basis of benefits that residential all-electric space heating customers provide to the KCP&L system and KCP&L's residential non-all-electric customers.

9. CURB did not expect that, by opening this docket, the Commission intended to grant relief to the KCP&L all-electric residential rate class in the 325 Docket only if such relief is justified by the amount of benefits to KCP&L’s non-all-electric rate class caused by the KCP&L all-electric rate class, to be measured under alternative methodologies to traditional cost-of-service methodology. CURB did not comprehend that the Commission’s stay of the 325 Application was tantamount to a decision to summarily deny the prospective application of

³ Docket No. 16—KCPE-325-TAR. Order Staying Proceedings, ¶ 5, p. 2 (June 21, 2016).

⁴ Docket No. 16-GIME-576-GIE. Procedural Order, ¶¶ 4-5, p. 2 (September 22, 2016).

gradualism to a rate class which continues to suffer rate shock. If this was the intent of the Commission, it was certainly not expressed in the Order Staying Proceedings.

10. Furthermore, until KCP&L expressed its intent to withdraw the 325 Application, it appeared that KCP&L had actually concluded that the principle of gradualism could justify the Commission's approval of prospective relief for the rate shock felt by the KCP&L all-electric rate class since 2010. CURB is puzzled by KCP&L's desire now to withdraw the 325 Application. Any relief in the form of a three-part rate structure, which it may propose in a later docket (even if it is effective), is still several years ahead. The 325 Application poses immediate relief for the all-electric rate class, and it does not foreclose other appropriate future relief. CURB refuses to believe that KCP&L has simply abandoned the concern it has for the rate shock which its all-electric rate class is enduring.

11. With that conviction, CURB's written comments posited answers to the five questions which were outlined by the Commission in this docket, but CURB also confronted the unfairness of the 415 rate structure upon the KCP&L all-electric class without an appropriate degree of gradualism.⁵ With respect to whether or not there are benefits which could justify the all-electric rate, CURB's written comments answered that issue in the affirmative. Through its research and analysis on the questions outlined by the Commission, CURB determined that there are benefits created by KCP&L's all-electric rate class which justify a lower rate in the off-peak winter period.⁶ CURB concluded that a summer/winter rate differential is justified upon the basis of the benefit caused by an increased winter load, and urged the Commission to consider further decreasing the winter tail block of the all-electric Space Heating rate based on KCP&L's 2015

⁵ Docket No. 16-GIME-576-GIE. The Kansas Citizens' Utility Ratepayer Board: Analysis Of KCP&L All Electric Space Heating Rate, pp. 6-7 (July 5, 2017).

⁶ Docket No. 16-GIME-576-GIE. The Kansas Citizens' Utility Ratepayer Board: Analysis of KCP&L All Electric Space Heating Rate, p.33 (July 5, 2017).

cost-of-service analysis.⁷ Thus, CURB suggested, at a minimum, that the current KCP&L rate structure be maintained.⁸

12. Yet, in its written comments CURB also asked the Commission to lift the stay on the 325 Docket so that the parties could address KCP&L's rate mitigation proposal for those all-electric space heating customers adversely affected by 415 rate structure. CURB hoped that the Commission would utilize the 325 Application to provide guidance with respect to the amount of gradualism that can (at this time) still be applied to prospectively ameliorate the hardship caused by the 415 rate structure.⁹ Withdrawal of the 325 Application obviates that hope.

13. In these regards, there are several thousand KCP&L customers who were and still are significantly affected by the 415 rate structure, including some who took time to express to the Commission and to the Kansas legislature their dissatisfaction with the manner in which the Commission staff and CURB represented the residential all-electric rate class. Yet, nothing has been done since 2010 to ameliorate the pronounced rate shock suffered by the KCP&L all-electric rate class as a result of the 415 rate structure. There is nothing wrong in determining whether or not there is any appropriate remedy at this time for those consumers.

III. GRANTING RELIEF IN THE 325 DOCKET IS PERMISSABLE UNDER KANSAS LAW

14. There is no legal impediment to prospective relief through the 325 Docket. The legal doctrines of *Stare Decisis* and *Res Judicata* as well as the Filed Rate Doctrine and the

⁷ Docket No. 16-GIME-576-GIE. The Kansas Citizens' Utility Ratepayer Board: Analysis Of KCP&L All Electric Space Heating Rate, pp. 38-39 (July 5, 2017).

⁸ *Id.*

⁹ Docket No. 16-GIME-576-GIE. The Kansas Citizens' Utility Ratepayer Board: Analysis Of KCP&L All Electric Space Heating Rate, p. 40 (July 5, 2017).

statutory and constitutional prohibition against retroactive ratemaking do not preclude the determination of whether or not gradualism could be employed at this time to alleviate the hardship that the all-electric rate class is still enduring. CURB will discuss each and explain why these doctrines and concepts should have no impact on the requested gradualism and prospective relief.

15. *Stare Decisis* is the doctrine under which courts adhere to precedent on questions of law in order to insure certainty, consistency, and stability in the administration of justice with departure from precedent permitted for compelling reasons (as to prevent the perpetuation of injustice).¹⁰ *Res Judicata* is a matter finally decided on its merits by a court having competent jurisdiction and not subject to litigation again between the same parties.¹¹

16. Neither *Stare Decisis* nor *Res Judicata* is applicable in these circumstances as the State of Kansas, as well as the Kansas Corporation Commission has previously ruled on this issue in several cases and dockets. In *Warburton v. Warkentin* 185 Kan. 468 (1959), the Kansas Supreme Court stated:

Administrative bodies are not bound by their prior determinations or the principles or policies on which they are based. The doctrine of *res judicata* does not ordinarily apply to decisions of administrative tribunals. It is intrinsically a judicial doctrine not to be applied unwittingly to legislative or executive activities which administrative bodies are sometimes empowered to exercise in addition to the judicial one. There is present in administrative law an aspect on discretion that is absent in the strict application of *res judicata* in the judicial system, and it is this difference which permits agencies to do again what courts may not, and which therefore requires examination of particular cases.”¹²

17. The same case continues by discussing *stare decisis* and states:

¹⁰ Webster’s Dictionary Online (2016).

¹¹ Webster’s Dictionary Online (2016).

¹² *Warburton v. Warkentin* 185 Kan. 468 (1959).

[S]*tare decisis* is not, like the rule of *res judicata*, a universal, inexorable command. The rule of *stare decisis*, though one tending to consistency and uniformity of decision, is not inflexible. Whether it shall be followed or departed from is a question entirely within the discretion of the court, which is again called upon to consider a question once decided. The doctrine of *stare decisis* is a strong factor in building up internal administrative law, and in influencing the judiciary in its reviews of the administrative determinations. But an administrative agency may refuse to follow its prior ruling when its action is not oppressive or it does not act arbitrarily.¹³

18. The Kansas Corporation Commission has also held that “The Commission as an administrative tribunal is not always bound by *res judicata*.”¹⁴ The Commission further states “The Commission recognizes that the doctrine of *stare decisis* does not apply to administrative agencies...”¹⁵ It would be entirely inconsistent with these decisions for the Commission to now determine that either the principles of *Stare Decisis* or *Res Judicata* precludes granting prospective relief in the 325 Docket.

19. Clearly *res judicata* and *stare decisis* are not germane to the 325 Docket, as administrative bodies like the Commission are not bound by either doctrine. The Commission can and should be encouraged to view the 325 Application as a new and clean docket and they are not beholden to any prior rulings or decisions. Therefore, the Commission may consider the proposition of gradualism in prospective rates without violating the principles of *Stare Decisis* or *Res Judicata*.

20. CURB submits that the relief being requested in the 325 Application is prospective only and there would be no concerns that that the relief sought would in any way violate the “Filed Rate Doctrine” which states, “Under the interstate commerce act, the rate of the carrier duly filed is the only lawful charge. Deviation from it is not permitted upon any

¹³ Warburton v. Warkentin 185 Kan. 468 (1959).

¹⁴ KCC Docket 03-STMW-585-COM, Order NO. 1 Denying Motion to Dismiss Original Complaint...§17 (2003).

¹¹ KCC Docket 99-GRLG-405-GIG, Order Denying Reconsideration §18 (2001).

pretext...¹⁶ Kansas follows the Filed Rate Doctrine,¹⁷ but in this docket CURB is not requesting the Commission to retroactively change or alter the collection of currently existing rates. It is merely requesting the Commission to allow a discussion of gradualism and prospective rates in the 325 Application.

21. The prohibition against retroactive ratemaking arises from the requirement that the Commission not engage in ratemaking that violates a party's due process rights emanating from the United States and Kansas Constitutions. In Kansas, "the ban on retroactive ratemaking has both a statutory and constitutional basis."¹⁸

[W]hen a rate has been the subject of a deliberate inquiry in which the carriers, the shippers and the commission's own experts have participated...any rate so prescribed by the commission and put into effect by the carriers may be confidently collected and retained by them...without the misgiving that at some future time a further hearing of the commission may be had and more evidence taken and a different conclusion reached and those rates condemned as unreasonable...Such a method of regulating public utilities has none of the earmarks of due process of law nor the simplest notions of justice.¹⁹

22. K.S.A. 66-109 states that no utility shall charge greater or less compensation than is specified in the printed schedules. "A rate once fixed remains established until changed in some manner allowed by law."²⁰ K.S.A 66-117(d) prohibits a utility from changing a rate "without the consent of the commission."²¹

23. The Commission's power to set just and reasonable rates, however, is subject to the general rule "that a statute will operate prospectively rather than retroactively unless its language clearly indicates that the legislature intended the latter, and that retrospective

¹⁶ Louisville & Nashville R. Co v. Maxwell 237 U.S. 94, 35 S. Ct 494 (1915).

¹⁷ Kansas Corporation Commission Docket No. 04-SWBT-650-COM §16 (2005).

¹⁸ United Cities Gas Co. v. Brock Exploration Co., 995 F. Supp. 1284, (1998).

¹⁹ Kansas Gas and Electric Company v. Kansas Corporation Commission 14 Kan. App. 2d 527, 533 (quoting from State ex.rel. Boynton v. Public Serv. Comm'n 135 Kan. 491, 504 (1932)).

²⁰ Sunflower Pipeline Co. v. State Corporation Commission, 5 Kan. App. 2d 715 (1981).

²¹ Kansas Statute Annotated 66-117.

application will not be given were vested rights will be impaired.”²² The Court further states, “In Kansas the ban against retroactive ratemaking is more than a matter of policy. The KCC cannot retroactively deprive a utility of its lawfully established rates.”²³

24. Both the concepts of the Filed Rate Doctrine and the ban against retroactive ratemaking involve the idea that once a rate is set, different rates cannot be charged. However, CURB is not asking the Commission to go back in time and change rates or terms of the original 10-KCPE-415-RTS docket; CURB is simply asking the Commission to allow relief in the 325 Application, by allowing gradualism in a prospective manner, not retroactively, and therefore not in violation of either the “Filed Rate Doctrine” or the ban against retroactive ratemaking. In spite of any apprehension that parties may have concerning whether or not the relief sought in the 325 Application may not be proper due to potential violation of the “Filed Rate Doctrine” or the prohibition against retroactive ratemaking, these doctrines and concepts are clearly not applicable.

IV. GRANTING PROSPECTIVE RELIEF IN THE 325 DOCKET IS REASONABLE

25. Since there is no legal barrier to the application of prospective gradualism to KCP&L’s all-electric rate class relative to the 415 rate structure, the pertinent question is whether or not the facts and circumstances justify such equitable relief. This is the very issue which is raised in the 325 Docket. In these regards, KCP&L recognized the need for equitable relief for its all-electric rate class, but now seeks to quash that relief without compelling reason.

26. KCP&L’s argument for dismissing the 325 Application appears to be that “as significant time has passed since the Rider [providing billing credits over a five-year period] was

²² Kansas Gas and Electric Co. v. Kansas Corporation Commission, 14 Kan. App. 2d 527, 532 (1990).

²³ Kansas Gas and Electric Co. v. Kansas Corporation Commission, 14 Kan. App. 2d 527, 533 (1990).

developed and filed, **there is likely little value to implementing the proposed Rider as requested** (our emphasis).”²⁴ It is a “time heals all wounds” argument. However, KCP&L’s argument misses the fact that the all-electric rate class continues to feel rate shock relative to the 415 rate structure. Moreover, even if KCP&L were to “direct its efforts toward the rate design alternatives offered in the Burns and McDonald Report,”²⁵ and these were effective as proffered in its comments, the KCP&L all-electric rate class will continue to suffer rate shock in the interim. Contrary to KCP&L’s argument, the value of gradualism at this point in time is mitigation of rate shock in the future.

A. Gradualism is an Appropriate Remedy to Obviate Rate Shock.

27. KCP&L’s intended dismissal of the 325 Application is inconsistent with its testimony before the Missouri Public Service Commission. In Missouri Docket (MPS ER-2010-0356), Mr. Tim Rush testified on behalf of KCP&L before the Missouri Public Service Commission that “summer and winter rates for each class provide recovery of cost of service and a return on the investment.”²⁶ He further testified that “if rates are to be no longer offered... the company should allow for some time period to elapse so that customers currently committed to and installing electric space equipment based on current rates can still get the rate to justify their investment.”²⁷

28. To KCP&L’s credit, the company has posed the critical issue: Whether or not, given the passage of time from the imposition of the 415 rate structure, it is still appropriate to

²⁴ Responsive Comments and Report of Kansas City Power & Light Company Concerning its All-Electric Residential Rates, p. 16 (July 5, 2017).

²⁵ Responsive Comments and Report of Kansas City Power & Light Company Concerning its All-Electric Residential Rates, p. 15 (July 5, 2017).

²⁶ Case No. ER-2010-0364, Missouri Public Service Commission, (Exhibit GMO-34) Rebuttal Testimony of Tim M. Rush on Behalf of Kansas City Power & Light Company, p. 11 (February 15, 2011).

²⁷ Case No. ER-2010-0364, Missouri Public Service Commission, (Exhibit GMO-34) Rebuttal Testimony of Tim M. Rush on Behalf of Kansas City Power & Light Company, p. 12 (February 15, 2011).

provide some prospective relief to KCP&L's all-electric rate class in the form of prospective graduated rates. Unfortunately, there is no evidence in the record to determine that issue. The 325 Docket is the appropriate docket for the parties to present that evidence.

29. Thus, CURB respectfully requests the Commission to lift the stay in the 325 Docket and encourage KCP&L not to dismiss the 325 Application so that a full record can be obtained concerning whether or not the 415 rate structure should have been graduated, and whether or not such time has passed that gradualism is no longer an appropriate remedy to be prospectively applied. It has taken seven years and a proposal by KCP&L to finally bring this inquiry directly before the Commission. KCP&L's all-electric rate class humbly asks that it not be delayed further.

30. It may appear to KCP&L that there is no interest in the Commission staff and/or the Commission to hear the 325 Application. No doubt, KCP&L worked hard to put together and file the 325 Application, and it would be discouraging if KCP&L were informally chastised for its efforts. In addition, there may be some reluctance on the part of the Commission staff to dedicate time to the docket. CURB has the utmost respect for the Commission staff's dedication to the public interest, but believes that these fairness issues can only be efficiently and effectively resolved through the 325 Docket.

31. Importantly, the 325 Docket provides a unique opportunity to discuss, present evidence concerning, and resolve a significant issue: That is, when and legally how can a Commission afford relief in a rate case when it finds that a rate design (although lawfully approved in the past) results in unanticipated and severe rate shock. The 325 Docket provides a very appropriate fact scenario where that issue can be determined. Rather than chastise KCP&L for filing the 325 Application, KCP&L should be applauded for its consideration of the ongoing

plight of its all-electric rate class. With encouragement from the Commission, CURB hopes that KCP&L will decide to proceed with its 325 Application.

32. Mindful of the many dockets and tasks before the Commission staff, CURB does not want to require the Commission staff to spend any unjustified amount of time defending the need to bring the all-electric rates in line with costs, but CURB is very interested in soliciting Commission staff's recommendation as to whether or not it believes that the shift in rates for the all-electric rate class was sufficiently graduated in the 415 Docket and, if not, is there any equitable relief that is still appropriate at this time. If KCP&L dismisses the 325 Application, CURB fears that it has lost the only opportunity left to meaningfully discuss these issues. Hopefully, this opportunity for a hearing can be accomplished on an expedited basis so that the parties and Commission will not be unduly burdened.

33. In short, CURB requests merely an opportunity to present evidence and policy arguments to the Commission showing why gradualism can and should still be granted relative to the 415 rate structure. If, after hearing the evidence the Commission determines that no parcel of gradualism remains to be equitably applied to the 415 rate structure at this time, so be it. However, CURB implores the Commission to lift the stay in the 325 Docket so that the parties can at least present evidence on the pertinent issue. The parties could agree to an expedited procedure to address gradualism, still allowing the Commission to make an informed decision.

34. CURB is not seeking novel relief. The concept of gradualism and its application in rate cases is not new to the Commission. In Docket 03-KGSG-602-RTS, the Commission adopted a rate design which did not impose upon Large Volume Transportation customers on the Kansas Gas Service system the increase warranted by Commission staff's class cost-of-service study, but rather proposed a lesser increase in order to avoid a significant impact on those

customers.²⁸ In determining that docket, the Commission discussed *Farmland Industries, Inc. v. Kansas Corp. Comm'n*, 25 Kan.App.2d 849, 971 P.2d 1213 (1999) relative to cost-of-service studies.²⁹ The Commission noted its wide discretion in choosing the methodology for approaching the complex problems in the public utility arena. The Commission further noted that cost-of-service studies are simply tools to help set fair rates. Finally the Commission noted that the rate design upheld by the Court did not allocate rates evenly, but was designed to gradually eliminate the existing class cost-of-service disparities.³⁰ There are several other cases in which the Commission has employed gradualism in rate design.³¹

35. CURB acknowledges that an opportunity for the Commission to apply the principle of gradualism in the context of the impact of the 415 rate structure upon the all-electric rate class appeared in Docket No. 15-KCPE-116-RTS. In that docket KCP&L, Commission Staff and CURB had stipulated and agreed to a certain rate design which, more or less, adopted the alternative rate design proposed by KCP&L in the 415 Docket, subject to CURB's right to request the reinstatement of the all-electric rate as it existed prior to the 415 rate structure.³² Ms. Stacey Harden testified on behalf of CURB.

36. Ms. Harden testified that the all-electric rate as it existed prior to the 415 rate structure should be maintained, more or less, by the Commission for a period of ten years

²⁸ Docket 03-KGSG-602-RTS. Order Approving Stipulated Settlement Agreement and Adopting Staff's Rate Design, p. ¶¶ 17, 23, p. 4 (September 17, 2003).

²⁹ Docket 03-KGSG-602-RTS. Order Approving Stipulated Settlement Agreement and Adopting Staff's Rate Design, p. ¶ 18, p. 4 (September 17, 2003).

³⁰ Id.

³¹ See, for example, Docket No. 12-WSEE-112-RTS and Docket No. 09-WSEE-641-GIE.

³² Docket No. 15-KCPE-116-RTS. Order on KCP&L's Application for a Rate Change. P. 25 (September 9, 2015).

followed by the all-electric rate being moved toward the appropriate rate class.³³ She supported her recommendation on the following:

First, the notice in the 415 Docket did not provide fair notice of the all-electric rate increase, leading to a surprise impact upon them.

Second, the Commission has a long tradition of moving rates gradually, so as to not produce rate shock from unexpectedly large bill increases.

Third, the rate increase (being highly disproportionate to other rate classes) was simply unfair.³⁴

37. Significantly, the Commission determined that Ms. Harden did not possess the special knowledge, skill, experience or training that would assist the Commission in determining fairness.³⁵ Since Ms. Harden was the only witness who proposed rate relief for the all-electric rate class, the Commission concluded that there was no substantial and competent evidence which would afford any relief to that rate class.³⁶ Consequently, the Commission did not specifically address Ms. Harden's arguments directly. Rather, the Commission approved as just and reasonable the rate design agreed to by KCP&L, Commission Staff and CURB in the non-unanimous Stipulation and Agreement.³⁷

38. Commissioner Apple dissented.³⁸ Upon information and in good faith, CURB believes that Commissioner Apple's dissent was founded upon his adroit understanding of the negative impact that the 415 rate structure had on a very vulnerable rate class. Further CURB

³³ Docket No. 15-KCPE-116-RTS. Direct Testimony of Stacy Harden on Behalf of the Citizens' Utility Ratepayer Board, p. 11 (May 11, 2015).

³⁴ Docket No. 15-KCPE-116-RTS. Direct Testimony of Stacy Harden on Behalf of the Citizens' Utility Ratepayer Board, pp. 10-11 (May 11, 2015).

³⁵ Docket No. 15-KCPE-116-RTS. Order on KCP&L's Application for a Rate Change. pp. 26-28 (September 9, 2015).

³⁶ Docket No. 15-KCPE-116-RTS. Order on KCP&L's Application for a Rate Change. p. 28 (September 9, 2015).

³⁷ Id.

³⁸ Docket No. 15-KCPE-116-RTS. Order on KCP&L's Application for a Rate Change. P. 37 (September 9, 2015).

believes that the 325 Application was filed based upon the logic of Commissioner Apple's dissent.

39. CURB earnestly believes that the Commission should carefully reconsider Commissioner Apple's position on the issue of gradualism relative to the 415 rate structure. Commissioner Apple's dissent points to a failure to appropriately graduate the transition from the rate structure as it existed before 2010 to the 415 rate structure. Although this graduation cannot now be made retroactively, it does not befit a Commission which is sensitive to the residential rate class to fail to graduate rates prospectively to alleviate future rate shock. Quite the reverse, it befits a Commission so bent on being fair to the ratepayer to hear substantial and competent evidence on the issue and to pronounce utility policies that are appropriate.

40. The avoidance of rate shock is extremely important in the realm of public utility rates. Some public utility commissions hold that rate shock associated with a 10-15 percent increase over current rates warrants the imposition of the principle of gradualism. For example, the Utah Public Service Commission places a 10 percent band around the jurisdictional rate of return shown in its cost-of-service study. Only if the class rate of return exceeds that band does the PUC adjust the rate, and then on a gradual basis.³⁹ The result is that any adjustment over 10 percent is subject to the principle of gradualism.

41. The Minnesota Public Utility Commission considered a proposal by the Minnesota Energy Consumers (MEC) to limit a rate increase for the residential class to 15 percent to avoid rate shock.⁴⁰ The Minnesota PUC found that "MEC's proposed revenue

³⁹ See 1999 WL 218118 (Utah P.S.C.) 192 P.U.R.4th 289, RE PacifiCorp, dba Utah Power and Light Company, Docket No. 97-035-01. Report and Order, p. 53 (March 4, 1999).

⁴⁰ 1994 WL 777099 (Minn. P.U.C.) In the Matter of the Application of Minnegasco, a Division of Arkla, Inc., for Authority to Increase Its Rates for Natural Gas Service in Minnesota (Docket No. G-008/GR-93-1090) Findings of Fact, Conclusions of Law, and Order, P. 30 (October 24, 1994).

apportionment would be too large and abrupt a movement towards a strictly cost-based revenue apportionment.” The rationale for this decision is compelling:

“Avoiding rate shock is a primary ratemaking goal, because sudden, drastic increases in energy costs can be burdensome for residential and non-residential ratepayers alike. Avoiding rate shock is particularly important for residential ratepayers, however, because increases in the cost of basic needs can cause hardship for customers on low or fixed incomes.”⁴¹

42. In a case before the West Virginia Public Service Commission (P.S.C.), the P.S.C. found it reasonable to limit the rate increase to any rate class to two times the overall increase granted by the company.⁴² To that P.S.C., gradualism is essential to just and reasonable rates:

“The Commission notes that we have previously stated that a class cost of service study is an artful exercise which assigns or allocates costs with what appears to be scientific precision. However, because of the subjective nature of many class cost of service decisions, the Commission has long recognized that the results of the study are, at best, a scientifically produced guide to reasonable rates.”⁴³

Further, as noted by the Iowa Utilities Board:

“Just and reasonable rates means more than mathematical equality. The Board has a duty to consider all relevant factors and must balance cost of service factors with the effect of significant rate increases and the uncertainty associated with future cases.”⁴⁴

43. Consistent with the findings of these various utility commissions, the appropriate application of gradualism is essential to fair rates because of the rate shock endured by KCP&L’s all-electric rate class arising out of the 415 rate structure. In the next few sections of these reply comments, CURB will outline the pertinent facts.

⁴¹ Id.

⁴² 1994 WL 136969 (W.Va. P.S.C.) Re Mountaineer Gas Company, Case No. 93-0005-G-42T. Order on Reconsideration, p. 3 (March 30, 1994).

⁴³ Id.

⁴⁴ 2005 WL 293608 (Iowa U.B.), 239 P.U.R.4th 309, In Re: Interstate Power and Light Company (Case No. RPU-04-1). Final Decision and Order, p. 10 (January 14, 2005).

1) KCP&L's All-Electric Rate Class Continues to Suffer Rate Shock.

44. Indisputably, the 60 percent increase in rates suffered by some in KCP&L's all-electric rate class due to the 415 rate structure is very shocking. Imagine how distraught a consumer would be if he or she discovered on the next trip to the gas station that gas prices had risen from \$2.25 per gallon to \$3.60 per gallon. Such a sudden rise in prices is disruptive. It is simply beyond question that a sudden 60 percent increase in price results in price shock.

45. With respect to the 415 rate structure, it is important to reiterate that the 60 percent increase in rates for some KCP&L all-electric customers resulted from the alternative rate design sponsored by KCP&L. Consequently, one would hope that nobody would seriously assert that the 60 percent increase in rates was a fair graduation because the increase could have been worse had Commission Staff's or CURB's rate design been accepted. The undeniable truth is that all of the pertinent parties failed to grasp the impact of their rate designs upon a vulnerable rate class. Given that failure, the rate shock can and should be ameliorated prospectively.

46. It is unfathomable that someone could assert that all-electric homes stem from energy gluttony or that the all-electric consumer can avoid rate shock simply by conservation. It is not gluttony to need to reasonably heat one's home. It is unreasonable to expect the all-electric rate class to reduce their house temperatures by up to 60 percent to accommodate the abrupt change in rates caused by the 415 rate structure. Some in KCP&L's all-electric rate class are likely to be elderly and on fixed income or are low-income families.

47. It is important to remember that KCP&L's all-electric customers were caught unaware of the significant increase in their rates which would come about in the 415 Docket.

KCP&L had filed a request for across-the-board equal rate increases accompanied by a cost-of-service study done by KCP&L witness Paul Normand.⁴⁵ Tim Rush stated KCP&L's position:

“Q: Are you recommending changes to the rate design based on the CCOS filed in this case?

A: Not at this time. KCP&L is recommending across the board equal rate increases across all classes and rate components.”⁴⁶

The Commission rejected KCP&L's request for across-the-board equal rate increases, with no public notice or public hearing concerning the abrupt change in rate design.⁴⁷

48. The general public did not receive particular notice of the 415 rate structure.⁴⁸ Although there is no legal requirement that public notice be given or public hearing be held regarding the particular rate structure ultimately approved by the Commission, CURB believes that the Commission would have likely received myriad comments from all-electric customers regarding the impact of the 415 rate structure had those consumers been aware of the potential rate impact. That public input from all-electric customers probably would have resulted in the Commission slowing the timing of the rate increase to avoid rate shock for those ratepayers.

2) The Lack of Gradualism in the 415 Docket Resulted from Mere Oversight.

49. CURB does not sense that the failure to engage a slow graduation of the rate impact caused by the 415 rate structure was due to a calculated decision on behalf of the Commission. While the Commission adopted the alternative rate design offered by KCP&L in the 415 Docket, the Commission promised to revisit the rate design issue promptly after a certain

⁴⁵Docket 10-KCPE-415-RTS. Direct Testimony of Paul M. Normand for Kansas City Power & Light Company (December 17, 2009).

⁴⁶Docket 10-KCPE-415-RTS. Direct Testimony Prepared by Tim M. Rush, p.7 (December 17, 2009).

⁴⁷Docket No. 15-KCPE-116-RTS. Direct Testimony of Stacy Harden on Behalf of the Citizens' Utility Ratepayer Board, pp. 10-11 (May 11, 2015).

⁴⁸Id.

energy study conducted by Christensen Associates Energy Consulting was completed. In pertinent part, the Commission stated:

“To this end, the Commission concludes that a rate case will be opened specifically focused on rate design for KCPL. Such a proceeding will allow closer examination of KCPL's rate structure to ensure fair cost apportionment among the classes and to incorporate concepts from several emerging issues. The docket will open after Christensen Associates completes its Dynamic Pricing Study and the Commission's general investigation into fuel switching, Docket 09-160, is completed. This new docket will allow a more in depth consideration of the Commission's energy efficiency and energy conservation goals as set forth in Docket Nos. 08-GIMX-441-GIV and 08-GIMX-442-GIV. Other **issues that can be explored in the new docket include** promoting economic development through rate structure, providing revenue stability and risk mitigation, **minimizing customer dissatisfaction**, simplifying the rate structure, considering a green tariff, and considering technology issues. The Commission will identify several issues parties should take into account in preparing for that docket.”⁴⁹ (Our emphasis.)

The Christensen Associates Energy Consulting study was completed in April 2012.⁵⁰ To date, however, no in-depth study of KCP&L's rate structure and the need for gradualism to avoid customer dissatisfaction has come about.

50. Notably, the Commission's promise to take up rate design in a separate docket shows that the Commission did not view the rate design proposed by Mr. Rush as optimal regarding customer satisfaction and other important matters. Rather, it appears that the Commission approved the rate design proposed by Mr. Rush merely as an interim solution and believed that further study was warranted. The Commission has still not undertaken that study.

51. Moreover, no party contended that gradualism was inapplicable in the 415 Docket. Both the Commission Staff and CURB were aware of, and expressed the need for

⁴⁹ Docket No. 10-KCPE-415-RTS. Order: 1) Addressing Prudence; 2) Approving Application, in part; & 3) Ruling on Pending Requests, pp. 123-124 (November 22, 2010).

⁵⁰ Christensen Associates Energy Consulting, “Residential Rate Study for the Kansas Corporation Commission,” April 11, 2012. Found at: http://www.kcc.state.ks.us/electric/residential_rate_study_final_20120411.pdf.

gradualism to avoid rate shock in regard to their rate design proposals in the 415 Docket. Commission Staff witness Doctor Robert H. Glass specifically used gradualism as one of the four factors he employed in his rate design.⁵¹

52. CURB witness Brian Kalcic noted CURB's position in Docket No. 08-GIMX-442-GIV that "the Commission must also be an active participant in the creation of mechanisms or rate structures that protect the most vulnerable of our citizens,"⁵² and recommended that rate parity between all-electric and non-all-electric customers be phased in between two rate cases to avoid rate shock.⁵³ Unfortunately, these witnesses, who are both highly educated and sensitive to rate impacts, aimed at the right goal but due to the absence of public comments and/or public hearing on that particular issue may have not fully grasped the rate shock which befell the KCP&L's all-electric rate class.

53. KCP&L witness Tim M. Rush also anticipated the unfavorable impact upon the all-electric rate class which would be caused by the rate designs proposed by the Commission Staff and CURB. Mr. Rush voiced uneasiness that those rate designs would result in customer dissatisfaction and utility revenue instability; he recommended that if the Commission was to change the rate design to bring the all-electric rate closer to the non-all-electric rate, that the change be made gradually.⁵⁴ Upon that basis, KCP&L offered an alternative rate design.⁵⁵ Yet, as noted earlier, even KCP&L's alternate rate design brought about substantial rate shock which still is being felt by KCP&L's all-electric rate class.

⁵¹ Docket 10-KCPE-415-RTS. Direct Testimony Prepared by Dr. Robert H. Glass, Utilities Division, Kansas Corporation Commission, p. 17 (June 18, 2010).

⁵² Docket 10-KCPE-415-RTS. Direct Testimony of Brian Kalcic, Citizens' Utility Ratepayer Board, p. 5 (June 15, 2010).

⁵³ Docket 10-KCPE-415-RTS. Rebuttal Testimony of Tim M. Rush, Kansas City Power & Light Company, p. 23 (June 26, 2010).

⁵⁴ Docket 10-KCPE-415-RTS. Direct Testimony of Brian Kalcic, Citizens' Utility Ratepayer Board, p. 11 (June 15, 2010).

⁵⁵ Id.

54. The facts show that none of the pertinent parties in the 415 Docket fully grasped the rate shock which would occur due to the rate designs proposed in that docket. Although Commission Staff and CURB included some gradualism in their respective rate designs, these designs fell short in providing sufficient equitable relief. KCP&L's alternative rate design, although better, still resulted in a 60% increase in rates for some in the all-electric rate class. The Commission adopted that alternative rate design, promising further study in a separate docket; yet, no further study has been conducted. Fairness and equity dictate that these oversights be corrected for the benefit of the affected rate class.

3) Facts and Circumstances Justify Correction of the Oversight in the 415 Docket.

55. With respect to the applicability of gradualism, the Commission's five questions posed in this docket are extremely pertinent. From the answers to these questions, it can be drawn that KCP&L invited its customers to become all-electric, and the Commission approved all-electric rates over a long period of time, giving price signals in those regards. One could reasonably assume that a number of KCP&L customers bought electric space heaters on the basis of these advertisements and rates, and there is at least anecdotal evidence to support that assumption. Certainly, all-electric customers cannot be faulted for following these price incentives for several decades. In fact, all-electric customers helped with load growth through these years. Indeed, non-electric customers were ostensibly better off with all-electric customers in the KCP&L system than without. Thus, the answers to the Commission's five questions, while not justifying the disregard of cost-of-service, justify a slower change than the 60 percent increase in all-electric rates which was thrust upon non-aware all-electric consumers.

56. In its comments, KCP&L verifies that “KCP&L’s electric space heating rates appear to have contributed to increasing the number of space heat customers in the past.”⁵⁶ Essentially, KCP&L verifies that its electric space heating customers had responded to price signals approved by the Commission for an extended period of time. KCP&L customers had long been given a message that all-electric homes were in the public interest. Thus, the all-electric rate class had no reason to believe that an abrupt change was coming. The long-term acclimation of the all-electric residential customers to KCP&L’s all-electric rates prior to 2010 would not typically yield a conclusion that an abrupt change in rate structure is warranted.

57. Indeed, the Commission has grandfathered in certain uses/practices in rate cases, recognizing economic impacts of rate changes to certain rate classes. However, in the 415 Docket, no “grandfather” clauses or provisions were considered or adopted to protect all-electric customers from the abrupt change brought about by the 415 rate structure. Changes in appliance purchases from electric to gas cannot be accomplished economically in the short term. If the all-electric customers would have had a knowing opportunity to spread on the record their reasonable opposition to such an abrupt change in rates, the Commission clearly would not have chosen to ignore that public input and would have graduated the 415 rate structure more slowly.

58. Moreover, even though the all-electric rates were end-use driven, other utilities in Kansas and in other states provide a lower winter rate than summer rates. Current Kansas electric utilities continue to offer significant winter heating rate reductions, some approaching 60 percent. This winter rate differential reflects the legitimacy of that practice from a business perspective and from a rate-payer viewpoint.

⁵⁶ Responsive Comments and Report of Kansas City Power & Light Company Concerning its All-Electric Residential Rates, p. 6 (July 5, 2017).

59. Significantly, the devastating impact of a 60 percent increase in rates for all-electric customers was felt by some who could least help themselves. The all-electric ratepayer is made up, in part, of customers who had purchased electric space heaters on the basis of the rates existing prior to the 2010 rate case, customers in all-electric homes without the availability of gas, those in all-electric apartments, and those low-income and fixed income ratepayers who cannot easily switch heating sources in the face of significantly higher electric rates.

60. More pronounced gradualism than as occurred in the 415 Docket is also justified by the long amount of time that the “discounted” all-electric rates had been in effect prior to 2010. KCP&L has had some form of all-electric rate for over 50 years.⁵⁷ KCP&L believed these rates to be cost-justified, as noted in the testimony of KCP&L before the Kansas Senate Utilities Committee:

“In general, the lower winter heating rate reflects the lower cost to serve those customers. Encouraging demand in the winter allows for better utilization of base load generation plants, benefiting all customers.”⁵⁸

This testimony is reflective of the testimony of KCP&L witness, Tim M. Rush, before the Commission in the 415 Docket. Mr. Rush explained KCP&L’s rationale for its all-electric rate:

“KCP&L is a summer peaking utility, meaning the highest demand occurs during the summer months. This means that the electric plant installed to meet this summer demand, which is available year-round, may not be fully utilized by retail customers in the winter time.”⁵⁹

⁵⁷ Comments of Paul Snider Before the Senate Utilities Committee Regarding the All-Electric Heat Rates (January 30, 2012). Found at

http://kslegislature.org/li_2012/b2011_12/committees/misc/ctte_s_utils_1_20120130_02_other.pdf

⁵⁸ Id.

⁵⁹ Docket No. 10-KCPE-415_RTS. Rebuttal Testimony of Tim M. Rush On Behalf of Kansas City Power & Light Company, P. 5 (July 26, 2010).

61. Recognizing that the Commission Staff and CURB contested the all-electric rate, and that change was likely, Mr. Rush told the Commission that any change in those rates needed to be graduated. He testified:

“Changes [in rates] must be made in such a way as to minimize significant impacts to customers. This may require a gradual or multi-phase shift, if the impact on customers is considered too harsh for a single shift.”⁶⁰

From the fact that the Kansas Senate Utilities Committee inquired into the change in the all-electric rates accomplished in the 415 Docket, it is evident that the parties did not fully grasp the rate shock suffered by KCP&L’s all-electric rate class. Given that KCP&L’s all-electric rate class still suffers rate shock, CURB wonders why that concern has dissipated and KCP&L is intent on dismissing the 325 Application,.

62. It is also important to note that the all-electric rate class of customers is relatively small compared to the non-all-electric rate class. In 2010, the all-electric rate class represented only approximately 20% of the total KCP&L residential rate class.⁶¹ Thus, the 60 percent increase in rates for all-electric customers severely affected a very small amount of customers, but to graduate that rate change more slowly would not have had much of a fiscal impact upon non-all-electric customers by virtue of the size of that class. In other words, all-electric customers were affected by several hundred dollars due to the abrupt change in rates, while the rate impact upon non-all-electric customers caused by a slower graduation in the 415 rate structure would have been considerably less significant. Importantly, the impact upon low-income or fixed income all-electric customers caused by the 415 rate structure was and remains huge.

⁶⁰ Docket No. 10-KCPE-415_RTS. Rebuttal Testimony of Tim M. Rush On Behalf of Kansas City Power & Light Company, P.7 (July 26, 2010).

⁶¹ Docket No. 15-KCPE-116-RTS. Direct Testimony of Stacy Harden on Behalf of the Citizens’ Utility Ratepayer Board, p. 7 (May 11, 2015).

63. Therefore, CURB believes that, had the impact of the 60 percent increase in rates for all-electric customers been taken into account, the Commission would have graduated the increase to, say, a 10 or 15 percent increase in rates for all-electric customers. Given that belief, CURB recognizes that equity often attempts to place parties in the place they would have been had inequity not have occurred. CURB reiterates that the 315 Application provides an avenue for the important facts noted above to be considered by the Commission so that appropriate equitable relief could be granted prospectively.

64. Had the 325 Application not have been stayed, CURB would likely have argued that the Commission owes the originally-impacted users two things: Full acceptance of the KCP&L offer, as well as a reduction in winter rates for those users until a gradual change in rates can be examined and adopted. While the stay postponed a hearing on the issue of gradualism, KCP&L's withdrawal of the 325 Application may signal disinterest to the plight of all-electric rate class. However, if the Commission were to encourage KCP&L not to withdraw the 325 Application, the pertinent issues can still be heard.

B. The 325 Docket is a Rare Opportunity to Determine Policy in a Small Setting.

65. As noted earlier, the 325 Docket presents a rare opportunity for the Commission to explore an issue of first impression: Whether or not the Commission should impose gradualism prospectively on a rate structure which continues to present hardship on a rate class. It also presents a rare opportunity for the Commission to determine and set policy on gradualism. To weigh in on these two important issues promotes the public interest. While the Commission has employed gradualism in various rate cases, no formalized policy exists to govern when it should be considered and how it should be employed.

66. If the stay in the 325 Docket was lifted and KCP&L chose to proceed with the 325 Application, that docket may allow the Commission to begin to determine (in an incremental fashion) upon an appropriate set of facts when and how gradualism should be employed in rate cases. For instance, the Commission could determine whether or not to stair-step into higher rates for vulnerable rate classes. Moreover, the Commission could determine when gradualism is warranted. For example, the Commission could look at the following parameters:

- The amount/percentage of the impact of the new rate;
- The numbers of ratepayers affected by the new rates;
- The ability of the rate class to adjust to the impact of the new rate;
- The long-term or short-term that the prior rate has been in effect;
- The cause(s) of the adoption of the prior rate and the contribution or non-contribution of the affected rate class; and
- The effect upon the utility and other rate classes by graduating the rate increase.

These are not the only parameters that could be applicable.

67. Fortunately, the 325 Docket presents a good opportunity for the Commission to consider these above parameters and others in an analysis on whether or not a rate should be graduated in future rate cases. Indeed, the subject of the 325 Application is a substantial rate increase which caused rate shock to KCP&L's all-electric rate class. Although KCP&L proposes a certain "bill credit" structure, the parties can present alternatives or even oppose the imposition of gradualism at this time as, arguably, inappropriate.

68. CURB understands that it may be tempting for the parties to conclude that so much time has elapsed since 2010 that prospective equitable relief is no longer appropriate. Yet the delay in determining this issue has not obviated the rate shock felt by KCP&L's all-electric rate class; all the delay has accomplished is to thwart the opportunity of the all-electric rate class to be heard on the issue. Through the 325 Docket the parties can present evidence on the issue,

the all-electric customer class can have its day in court, and the Commission can decide this critical policy issue to the advantage of all ratepayers in future rate cases.

V. CONCLUSION

69. CURB believes that the 325 Application was filed because the 415 rate structure is still causing distress among KCP&L's all-electric rate class. The 415 rate structure resulted in a jump in rates for some in KCP&L's all-electric rate class of approximately 60 percent. The hearings before the Kansas Senate Utilities Committee which are referenced above are evidence of the pronounced rate shock felt by this rate class. Yet, even though the Commission promised to take up the 415 rate structure promptly after the 415 Docket, seven years have passed and the issue remains unresolved. Moreover, the Commission stayed the 325 Docket in which gradualism would have been discussed and KCP&L intends to withdraw the 325 Application.

70. All the KCP&L all-electric rate class wants is its day in court. As noted above, there is no legal impediment to the Commission hearing the regulatory concerns of and potential equitable remedies proposed by KCP&L's all-electric rate class which arise out of the 415 rate structure. *Stare decisis* and *res judicata* do not prohibit the Commission from determining whether or not the 415 rate structure was fairly imposed upon the KCP&L all-electric rate class. Since prospective relief only is being sought by this rate class, the Filed Rate Doctrine and the statutory and constitutional prohibitions against retroactive rates are not problematic.

71. KCP&L's all-electric rate class believes that, had it been heard on the 415 rate structure, the Commission would have applied gradualism in such a manner that rate shock would have been avoided. The application of gradualism is not new to this Commission or to other public utility commissions in the United States. In the states researched by CURB, a rate increase of 60 percent would have been graduated. Yet that did not occur in the 415 Docket.

72. The apparent reason why KCP&L's all-electric rate class suffered rate shock from the 415 rate structure is mere oversight. All of the parties were aware of the need for gradualism but all of the parties failed to grasp how much the 415 rate structure would impact the all-electric rate class. Since there was no actual notice of the potential for the 60 percent increase in rates, the public did not testify about the rate shock which would be brought about by the 415 rate structure. In short, due to the lack of timely information, KCP&L's all-electric rate class suffered and is still enduring rate shock.

73. The filing of the 325 Application shows that there is a belief that it is not too late to remedy the rate shock felt by that rate class. In fact, it would be proper to take up the issue in the 325 Docket. CURB believes that the 325 Docket affords the Commission an opportunity to determine the issue of whether or not to engage in prospective gradualism when (and if) gradualism was not adequately applied in a prior docket. The 325 Docket provides the Commission a case in which policy can be established (as highlighted above and on an incremental basis) regarding when and how gradualism will be applied in future rate cases before this Commission. The 325 Docket provides a means for KCP&L's all-electric rate class to finally (after seven years) have its day in court, providing procedural fairness.

74. CURB is very appreciative of the opportunity to address this important issue. KCP&L's all-electric rate class thanks the Commission for kindly considering the plight which the all-electric rate class continues to suffer. In these reply comments, CURB has only been able to highlight the fundamental fairness which is applicable to the issue of gradualism. KCP&L's all-electric rate class requests that the Commission lift the stay in the 325 Docket and encourage KCP&L not to dismiss the 325 application so that the issue can be fully heard and fairly determined by the Commission.

VERIFICATION

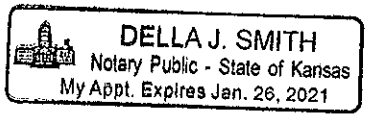
STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

I, David W. Nickel, of lawful age and being first duly sworn upon my oath, state that I am Consumer Counsel for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.

David W. Nickel

David W. Nickel, Consumer Counsel

SUBSCRIBED AND SWORN to before me this 31st day of August, 2017.



Della J. Smith

Notary Public

My Commission expires: 01-26-2021.

CERTIFICATE OF SERVICE
16-GIME-576-GIE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 1st day of September, 2017, to the following parties:

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