

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:           Chairman Mark Sievers  
  Commissioner Ward Loyd  
  Commissioner Thomas E. Wright,

In the Matter of the General Investigation into            )  
Commission Policy Regarding Pension and                )       Docket No. 07-GIMX-1041-GIV  
Retirement Costs for Investor-Owned Utilities.        )

**ORDER STATING COMMISSION POLICY FOR PENSION AND OPEB  
EXPENSE TRACKERS AND APPROVING STIPULATION AND AGREEMENT  
FOR KANSAS CITY POWER & LIGHT TRACKERS**

This matter comes before the State Corporation Commission of the State of Kansas  
(Commission) for consideration and decision. Having examined its files and records, the  
Commission makes the following findings and conclusions:

1.       Pending before the Commission is a Joint Motion to Approve Stipulation and  
Agreement that was filed April 15, 2011 (Joint Motion) by the Commission's staff (Staff), the  
Citizens Utility Ratepayer Board (CURB), and Kansas City Power & Light Company (KCPL).  
The Joint Motion recommends the Commission approve KCP&L's proposal to adopt tracking  
mechanisms for pension, postretirement and post employment expenses. In ruling on this Joint  
Motion, the Commission will adopt a statement of its policy regarding the ability of a utility to  
use trackers for pension, postretirement and other post employment benefit expenses. In  
addition, the Commission will review and approve the Stipulation and Agreement proposed for  
KCP&L, which will modify KCP&L's tracker initially adopted as part of KCC Docket No. 04-  
KCPE-1025-RTS and will allow KCP&L to adopt a tracker for contributions to trusts for  
pension, postretirement and post employment expense.

2. As explained more fully below, this general investigation arose out of KCC Docket No. 07-ATMG-387-ACT (Docket 07-387) and resulted from a request by Kansas regulated utilities asking the Commission to establish a policy to allow a regulatory asset or liability to track pension, postretirement, and other post employment benefit (OPEB) expenses. With the Commission's statement of its policy on Pension and OPEB expense trackers in this Order, the need for this general investigation has been served and it will be closed.

3. The Commission has jurisdiction over this proceeding pursuant to its rate-making authority and its jurisdiction over public utilities. K.S.A. 2010 Supp. 66-104. Because the Commission will resolve and close this docket, this Order will review some of the background that lead to its opening and filing of the pending Joint Motion.

#### **I. Background**

4. Docket 07-387 was initiated by investor-owned public utilities Atmos Energy Corporation (Atmos), Aquila, Inc. d/b/a Aquila Networks KGO, Aquila Networks (Aquila), The Empire District Electric Company (Empire), KCPL, and Westar Energy Inc. and Kansas Gas and Electric Company (collectively Westar), jointly referred to in this Order as the Utilities. In Docket 07-387, the Utilities filed an application asking the Commission to issue an accounting authority order (AAO) authorizing them to:

- (1) Establish a regulatory asset or regulatory liability to track the difference between amounts recognized in rates and the pension, postretirement and post employment expenses recorded according to Generally Accepted Accounting Principles (GAAP)

as defined in the Statement of Financial Accounting Standards (SFAS) 87, 88, 106, 112, and 132 (R) as amended.<sup>1</sup>

- (2) Recognize for rate making purposes any charges recorded against equity in compliance with SFAS No. 158 and SFAS Nos. 87, 88, 106 and 132 (R) as amended through either the establishment of a regulatory asset or an adjustment to the equity percentage in their utility's capital structure.
- (3) Recognize for rate making purposes the companies' contributions to their pension, postretirement, and post employment plans in excess of pension, postretirement, and post employment plan expense recorded in compliance with SFAS No. 87, 88, 106, 112, 132 (R) as amended, or 158.

5. In Docket 07-387, the Commission's staff (Staff) filed a Report and Recommendation (Docket 07-387 Staff Report) recommending that Request No. 2 stated above be approved and Request Nos. 1 and 3 be denied to allow additional time to fully evaluate these two options. Staff recommended the Commission open a general investigation to further explore Request Nos. 1 and 3. Docket 07-387 Staff Report, p. 7. The Commission approved Staff's recommendation by granting Request No. 2 and denying Request Nos. 1 and 3 until a general investigation could consider those two requests further. Docket 07-387 Order, issued January 24, 2007, ¶ 4.

6. The Commission initiated this general investigation to examine Request Nos. 1 and 3. All parties in Docket 07-387 were made parties to this proceeding. March 29, 2007 Order, ¶ 5 and Ordering Clauses A & B. On July 28, 2008, Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy (Black Hills), filed its entry of appearance and notice

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<sup>1</sup>As noted in the Joint Motion, n. 1, the Financial Accounting Standards Board (FASB) now designates SFAS Nos. 87, 88, 106, 112, 132(F) as amended, and 158 collectively as Accounting Standards Codification (ASC) 715, Compensation – Retirement Benefits. The Commission, like the parties, still refer to the original SFAS numbers.

of substitution for Aquila following Black Hills' purchase of Aquila's natural gas territory in Kansas.

7. Staff filed its Report and Recommendation (Staff's Report) in this proceeding on March 18, 2009. Comments responding to Staff's Report were filed as follows: CURB on April 17, 2009; Westar on April 21, 2009; KCPL on July 23, 2009; Black Hills on August 21, 2009; Atmos on August 31, 2009; Empire on September 2, 2009; and Kansas Gas Service on November 19, 2009. Both KCPL and CURB filed Reply Comments on December 10, 2009.

8. In Staff's Report, Staff recommended the Commission approve implementation of an Expense Tracker to address Request No. 1 if the utility met a mandatory minimum funding level equal to pension, post-retirement, and post-employment costs included in the utility's cost of service. Using this first tracker, referred to as Tracker 1, a utility would establish a regulatory asset or regulatory liability to record the differences between current year GAAP Pension/OPEB Expenses and Pension/OPEB Expenses in Rates. However, Staff recommended the Commission deny Request No. 3 because Staff concluded this Contribution Tracker would be asymmetrical or could possibly lead to manipulation of the timing of contributions by the utilities. Staff's Report, ¶¶ 8-9, 12-14.

9. Staff filed a Status Report on October 5, 2009, pointing out that Kansas Gas Service and Westar had filed separate dockets seeking Commission approval to develop an Accounting Order to track pension, postretirement and post employment costs. The Commission issued Orders in these dockets on September 11, 2009, approving proposals by Kansas Gas Service and Westar that were supported by Staff. Docket Nos. 10-KGSG-130-ACT (10-130), *Order Approving Application for Accounting Authority Order*, filed September 9, 2009, and 10-

WSEE-135-ACT (10-135), *Order Approving Application for Accounting Authority Order*, filed September 9, 2009.

10. A Joint Motion to Approve Stipulation and Agreement was then filed in this docket by Staff, CURB, Westar, and Kansas Gas Service on January 12, 2010 (January 12, 2010 Joint Motion), with a Stipulation and Agreement (January 12, 2010 S&A) included as Attachment A. Essentially, Staff, CURB, Westar, and Kansas Gas Service asked the Commission to adopt the terms and conditions approved in Docket Nos. 10-130 and 10-135 and apply those terms and conditions on a permanent basis for these utilities, except to the extent (1) extraordinary circumstances arise, in which case the company could apply to the Commission for temporary relief of the requirement to fund at the Required Funding Level, or (2) a material change affecting the terms of the Stipulation and Agreement occurs, including but not limited to a change in GAAP, tax or pension law affecting the deductibility of contributions to the Pension Trust or OPEB Trust or affecting the contribution requirements of the companies. January 12, 2010 Joint Motion, ¶ 8; January 12, 2010 S&A, ¶ 14.

11. In an Order issued July 14, 2010, the Commission approved the January 12, 2010 Joint Motion and attached S&A (July 14, 2010 Order). The Commission concluded the conditions reached in Docket 10-130 for Kansas Gas Service and in Docket 10-135 for Westar would be applied to these utilities on a permanent basis, subject to exceptions stated in the January 12, 2010 S&A, at ¶ 14. The Commission held the terms and conditions approved in Docket Nos. 10-130 and 10-135 would ensure these companies recover Pension and OPEB costs and expenses as incurred and assure consumers the amounts recovered in rates for these costs will be placed in separate trusts and used only for their authorized purpose. July 14, 2010 Order, ¶ 11. When one of these utilities files a rate application, a new level of costs and expenses will

be established associated for Pension and OPEB costs and expenses and the tracking mechanisms will reset to track costs and expenses incurred between rate cases, to the extent they differ from levels approved in the rate case. The Commission made clear that terms and conditions in the June 12, 2010 S&A only applied to accounting and regulatory treatment of Pension and OPEB benefits only for Kansas Gas Service and Westar. July 14, 2010 Order, ¶ 13.

12. Two other utilities, which are a party to this generic proceeding, have voluntarily entered into agreements with Staff and CURB that adopt identical or very similar procedures for treating Pension and OPEB expenses using trackers. Empire entered into a Stipulation and Agreement as part of its last rate case before the Commission that adopted these terms and conditions. Docket No. 10-EPDE-314-RTS, *Order Approving Stipulation and Agreement*, ¶ 22. Atmos also entered into a Stipulation and Agreement in its last rate case, which included trackers for its treatment of Pension and OPEB expenses that are intended to be consistent with the treatment provided those costs in Docket Nos 10-130 and 10-135. Docket No. 10-ATMG-495-RTS, *Order Approving Stipulation and Agreement*, ¶¶ 17, 45-48. If the proposal for KCP&L is approved, the only Kansas regulated, investor-owned utility not using trackers consistent with those developed initially in Docket Nos. 10-130 and 10-135 will be Black Hills, which is a party to this proceeding.

## **II. Terms Previously Approved for Pension/OPEB Cost and Expense Deferrals**

13. The pending Joint Motion addressing KCP&L's proposed Trackers summarized terms and conditions previously approved for Kansas Gas Service and Westar that include establishment of funding vehicles and funding levels required for pension and post employment costs and expenses. Tracker 1 established a regulatory asset or regulatory liability to record differences between current year GAAP Pension/OPEB Expenses and Pension/OPEB Expenses

in rates. These regulatory liabilities and assets are amortized in rates on a straight-line basis over a reasonable period of time, not to exceed five years, beginning with the effective date of new rates in each Applicant's next general rate case. Regulatory accounts under Tracker 1 are not in rate base in the company's next rate proceeding and deferred balances do not receive carrying charges in the proceeding or during the interim period. If the utility's Pension/OPEB expense is negative during a test year, the Pension /OPEB expense included in the utility's rate case is set at zero. The Pension and OPEB funding is accounted for and recognized separately so negative expense in one does not reduce a Required Funding Level of the other. Joint Motion, ¶ 7.

14. As part of Tracker 1, Applicants make separate annual contributions to their Pension/OPEB trusts equal to the utility's Required Funding Level, which was defined as an amount equal to the pension, postretirement and other post employment expense calculated under GAAP. Between rate cases, contributions are charged to appropriate expense accounts with annual minimum funding requirements limited to contributions deductible for federal income tax purposes. If a limitation exists due to federal income tax deductibility, the utilities will create a regulatory liability equal to the difference between the amount actually funded and the Required Funding Level. In extraordinary circumstances, the utilities will be allowed to apply to the Commission for temporary relief from requirements to fund at the Required Funding Level. Joint Motion, ¶ 8.

15. Tracker 2 was established to account for years between rate cases when the companies fund their Pension/OPEB trusts in excess of their GAAP costs for Pension and OPEBs. Any funding shortage in Tracker 2, due to tax deductibility limitations, is recorded as a regulatory liability; any positive balance in Tracker 2 can be used in subsequent years to meet the Required Funding Level. These tracking amounts are not included in rate base in a utility's next

general rate proceeding and these deferrals are not subject to carrying charges. Joint Motion, ¶ 9. The Commission approved an Accounting Authority Order for Pension and OPEB expenses incurred in calendar year 2009 and approved amounts recorded in Tracker 1 to be amortized in rates on a straight-line basis over a reasonable period of time not to exceed five years, beginning with the effective date of new rates in the next rate cases of Kansas Gas Service and Westar. Joint Motion, ¶ 10. The Joint Motion asserted Trackers proposed in the KCP&L S&A are consistent with these terms and conditions.

### **III. Terms in KCP&L's Previous Pension Expense Deferral in Docket 04-1025**

16. The Joint Motion sets out the background leading up to filing of KCP&L's S&A. In approving the Stipulation and Agreement for KCP&L's Comprehensive Energy Plan (CEP) in Docket No 04-KCPL-1025-GIE (Docket 04-1025 S&A), the Commission granted KCP&L's request to record a regulatory asset or liability for the differences in current year pension costs under GAAP. This included amounts expensed to the income statement and amounts capitalized, as well as pension costs recovered in rates, with rate base recognition until recovered through a five-year amortization period beginning in its next rate case. The pension costs, under GAPP and recovered in rates, were calculated using a GAAP method specified for ratemaking. KCP&L was allowed to record as a regulated asset or liability the difference between this GAAP method for ratemaking and its GAAP method used for financial statements. Provisions pertaining to pension costs were set out in Appendix C, Section E to the Docket 04-1025 S&A. In KCP&L's subsequent rate cases that were part of its CEP, the original provisions were expanded to address new circumstances related to SFAS 88 and SFAS 158. Joint Motion, ¶ 14. See Docket No. 07-KCPE-905-RTS, Stipulation and Agreement, Appendix B, filed September

12, 2007; Docket No. 09-KCPE-246-RTS, Stipulation and Agreement, Appendix A, filed June 18, 2009.

17. KCP&L filed its fourth and final rate case as part of its CEP on December 17, 2009, in Docket No. 10-KCPE-415-RTS (Docket 10-415). In its Application, KCP&L sought authority to establish a tracking mechanism for OPEB similar to the one authorized for pensions in Docket 04-1025 but modified to allow rate recovery for contributions made to its pension trust in excess of the SFAS No. 87 ratemaking costs. The Commission rejected KCP&L's proposal to modify its tracking mechanism for pension benefits previously approved in Docket 04-1025 and ordered this tracker terminated. The Commission also denied KCP&L's request to establish a tracking mechanism for OPEB similar to the one authorized for its pension benefits in Docket 04-1025. Docket 10-415, *Order: 1) Addressing Prudence; 2) Approving Application, in Part; and 3) Ruling on Pending Requests*, issued November 22, 2010 (November 22, 2010 Order), p. 134, and Ordering Clause W., p. 141. KCP&L sought reconsideration of the Commission's decision denying continuation of KCP&L's pension tracking mechanism as established in Docket 04-1025 and denying KCP&L's request to establish a similar tracking mechanism for OPEB expense. The Commission denied reconsideration of its decision on KCP&L's proposed trackers but allowed KCP&L to modify its existing pension tracker and to adopt a tracking mechanism for OPEB expense if those trackers were consistent with ones previously approved for Westar Energy and Kansas Gas Service. Docket 10-415, *Order on Petitions for Reconsideration and Clarification and Order Nunc Pro Tunc*, issued January 6, 2011 (January 6, 2011 Order), ¶¶ 107, 109.

18. Following the Commission's ruling in the January 6, 2011 Order, KCP&L entered into negotiations with Staff and CURB in an effort to modify its pension tracker and to develop

an OPEB tracker. As a result of these negotiations, KCP&L has agreed to enter into the proposed Stipulation and Agreement (KCP&L S&A), attached to the Joint Motion as Exhibit A. Joint Motion, ¶¶ 15-20.

#### **IV. Terms Proposed for KCP&L's Pension and OPEB Trackers**

19. Under its terms, the KCP&L S&A will establish two new trackers for pension and for OPEB costs that become effective as of the effective date of the Commission's November 22, 2010 Order in Docket No. 10-415 terminating the 04-1025 Pension Tracker. The KCP&L S&A begins with a definition section. KCP&L S&A, ¶ 1. The KCP&L S&A notes that SFAS 88 requires immediate recognition of certain costs arising from settlements and curtailments of defined benefit plans. These event-driven occurrences generally occur during a plan year and are not known at the beginning of a fiscal year. Instead, cost calculations for a SFAS 88 event cannot be completed until after close of the fiscal year. If any future settlements or curtailments must be immediately recognized under SFAS 88, KCP&L will include its share of these costs in Pension/OPEB Trackers 1 and 2 as an additional amount added to Current Period Pension/OPEB Expense and Cost, as defined in the S&A, based on calculations based on Great Plains Energy actuaries consolidated pension/OPEB plans. KCP&L S&A, ¶ 3. All pension/OPEB costs for these two new trackers, including the expense components thereof, will be calculated as total Company amounts on a Kansas basis. KCP&L S&A, ¶ 4.

20. Tracker 1 will use regulatory assets or liability to track between rate cases the cumulative difference between KCP&L's share of current-period pension and OPEB expenses, adjusted to include costs for SFAS 88 events described in the S&A, ¶ 3, and Pension/OPEB expense in rates as determined in the most recent rate proceeding. Joint Motion, ¶ 22-23; KCP&L S&A, ¶¶ 4-5. The capitalization factor used to compute the expense portion of current

period Pension/OPEB costs for Tracker 1 will be updated for each annual period based on the distribution between financial accounts of actual straight time labor incurred for that annual period. In future rate cases, KCP&L will amortize the cumulative Pension/OPEB Tracker 1 balance on a straight-line basis, over a reasonable period of time not to exceed five years beginning with the effective date of new rates resulting from the next rate proceeding. The regulatory account established for Tracker 1 will not be included in rate base in subsequent rate cases and deferred balances will not receive carrying charges. KCP&L S&A, ¶ 5. If a Current Pension/OPEB Cost is negative during a test year, the expense portion of Pension/OPEB costs will be set at zero. If actual Current Pension/OPEB Expense is lower than the corresponding Pension/OPEB expense in rates, KCP&L's customers will benefit from a decrease in future rates. KCP&L S&A, ¶ 6. If actual Current Pension/OPEB Expense is higher than the Pension Expense in Rates, KCP&L will recover that increased expense in its rates in the future. KCP&L S&A, ¶ 7.

21. KCP&L agreed, as a condition of implementation, to make contributions to its Pension/OPEB Trusts at least equal to the Required Funding Level to provide assurance the Pension/OPEB Trusts will be funded annually in an amount equal to or greater than the Current Pension/OPEB Expense. KCP&L will place OPEB funds in a VEBA trust<sup>2</sup> or other irrevocable trust fund and will continue to place pension funds in its Pension Trusts. KCP&L's Pension and OPEB rate recovery and funding will be accounted for and recognized separately so that negative cost in either Pension or OPEB expenses does not reduce the Required Funding Level of the other. S&A, ¶ 8. KCP&L will fund less than the Required Funding Level only if the tax code or

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<sup>2</sup> For a Voluntary Employees' Benefits Association (VEBA) to be a tax exempt entity, requirements imposed by the Internal Revenue Code and the Treasury Regulations must be met. A VEBA trust upon termination must purchase benefits for its members. Treasury Regulation 1.501(c)(9)-3 & 1.501(c)(9)-4(d). The VEBA cannot distribute cash to its members. This paragraph also prohibits the VEBA from distributing the association's assets to the employer. If the VEBA did distribute its assets to the employer, the association would not be a tax exempt entity under IRC Section 501(c)(9).

regulations limit deductibility of Pension or OPEB contributions, in which case KCP&L will create a regulatory liability equal to the difference between the amount actually funded and the Required Funding Level. KCP&L S&A, ¶ 9. KCP&L will continue to account for its Pension and OPEB expenses as set forth in the S&A with the understanding that, “for good cause, KCP&L may apply to the Commission for temporary relief of the requirements to fund at the Required Funding Level.” KCP&L S&A, ¶ 10.

22. Tracker 2 will track KCP&L’s share of cash contributions made to its Current Pension/OPEB Trusts that are greater than or less than its Pension/OPEB Cost, as defined in the KCP&L S&A, at ¶ 1.c., and adjusted to include cost for SFAS 88 events as described in the S&A, at ¶ 3. KCP&L S&A, ¶ 11; Joint Motion, ¶¶ 22-24. The S&A stated, “The symmetrical nature of Pension/OPEB Tracker 2 ensures the cumulative gross Pension/OPEB cost will be funded, including amounts charged to capitalized assets and amortization of regulatory assets and liabilities established in the S&A.” KCP&L S&A, ¶ 11. The method for calculating KCP&L’s share of cash contributions by applying a labor allocation factor for each Great Plains Energy affiliate is described. KCP&L S&A, ¶ 12. KCP&L will use its share of any cumulative excess in Tracker 2, reflecting contributions made in excess of its Current Pension/OPEB Costs, adjusted for SFAS 88 events, to meet the Required Funding Level. KCP&L S&A, ¶ 13. The regulatory amount established for Tracker 2 as a result of this S&A will not be included in rate base in KCP&L subsequent rate cases and will not receive carrying charges. KCP&L S&A, ¶ 14. The Pension/OPEB Tracker 2 amount will be reflected on a continuing schedule maintained outside the financial system, which schedule will be included in KCP&L’s annual report. KCP&L S&A, ¶¶ 14, 20.

23. KCP&L currently has five pension-related regulatory assets established in Docket 04-1025 and subsequent rate cases; three are currently being amortized for ratemaking. One OPEB-related regulatory asset related to SFAS 158 is also currently being amortized. The KCP&L S&A specifically addresses how the regulatory assets and liabilities established in Docket 04-1025 will be treated under the Trackers proposed here. Unamortized balances identified in Docket 04-1025 will continue to be amortized and funded as authorized in current and prior rate case dockets consistent with treatment authorized in those proceedings, and this amortization will be recognized in cost of service until fully amortized. Pre-existing regulatory assets will be maintained in separate accounts from newly established regulatory assets and liabilities resulting from this S&A. The unamortized balance of these prior regulatory assets will be removed from rate base as of the effective date of rates for KCP&L's next Kansas rate case. The S&A describes in detail how each of the five regulatory assets established under the Pension Tracker in Docket 04-1025 will be converted to the Trackers proposed here. KCP&L S&A, ¶¶ 15-18; Joint Motion, ¶ 25.

24. The S&A lists several General Terms and Conditions. Trackers 1 and 2 proposed in the KCP&L S&A will be established retroactively to December 1, 2010, the effective date of the November 22, 2010 Order that terminated KCP&L's previous trackers. KCP&L S&A, ¶ 19. An annual report will be established in which KCP&L will provide Staff and CURB with information substantiating changes in the general ledger accounts for Trackers 1 and 2. In addition, KCP&L agrees to provide sample accounting entries to Staff and CURB upon request. Initial amounts for pension and OPEB used to establish these trackers are based on these costs as authorized in Docket 10-415. KCP&L S&A, ¶ 20.

25. The parties note one issue was not resolved in negotiations and, therefore, is not addressed in the KCP&L S&A. KCP&L is a multi-jurisdictional utility with significant rate jurisdictions in both Kansas and Missouri. As a result, many regulatory issues, such as pension and OPEB tracking and recovery, involve an additional layer of complexity. Although several options were discussed during negotiations, an agreement was not reached on the amount of pension costs charged to construction work in progress (CWIP). KCP&L, therefore, has reserved its right to address this issue before the Commission in a future proceeding, and Staff and CURB have reserved their rights to oppose any such proposed changes. Joint Motion, ¶ 26.

26. The Commission notes the following statement contained is in the KCP&L S&A: “The Signatories are agreed that the terms and conditions set forth below adequately protect consumers with the assurance that those cash amounts recovered in rates for Pension/OPEB expenses will be placed into separate trusts and used only for their authorized purposes.” KCP&L S&A, ¶ 2.

## **V. Findings and Conclusions**

27. The Commission must separately state findings of fact, conclusions of law, and policy reasons for its decision. Any findings of fact must be based exclusively upon evidence in the record and matters officially noticed in this proceeding. K.S.A. 77-526(c) & (d). 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. 2010 Supp. 77-621(d).

### **A. Policy Regarding Pension and OPEB Trackers**

28. In this Order, the Commission expressly recognizes that, through its actions in this docket, the Commission has developed a policy for investor-owned public utilities to establish mechanisms for tracking pension, postretirement and post employment costs and

expenses. In this Order, the Commission has reviewed the terms and conditions that have been previously approved for Kansas utilities using Trackers for these costs and expenses. The Commission has recognized that use of these trackers provides assurance to both a company and its customers that the utility is recovering Pension and OPEB costs and expenses as incurred and that ratepayers will be better protected with these Trackers because amounts recovered in rates for Pension/OPEB costs will be placed in separate trusts used only for their authorized purpose. Under this policy, the Commission will approve Trackers a utility proposes that are consistent with the terms and conditions approved for Kansas Gas Service, Westar, and now KCP&L. If a company believes that terms and conditions of those trackers do not adequately serve its needs regarding the establishment of mechanisms for tracking pension, postretirement and post employment expenses, the utility will have an opportunity to offer a proposal that varies from these terms and conditions and to show why its proposal should be adopted instead. The Company, when making such a request, will need to specify how Trackers being proposed differ from those approved in this Order and what unique circumstances justify their adoption.

29. The Commission notes that in Docket 10-415, KCP&L asked the Commission to modify its Tracker for pension costs and expenses previously approved in Docket 04-1025 and to allow it to adopt a new tracker for OPEB costs and expenses, neither of which were consistent with Trackers previously approved for Kansas Gas Service and Westar. The Commission reviewed characteristics of the Trackers KCP&L proposed and considered evidence presented in favor of and objecting to their approval. In deciding to reject KCP&L's proposed Trackers in Docket 10-415, the Commission pointed to testimony by CURB Witness Andrea Crane that concisely articulated the reasons why the Commission found Trackers proposed by KCP&L not acceptable and instead preferred Trackers approved for Kansas Gas Service and Westar. A

summary of these reasons is appropriate here to support adopting the policy announced in this Order. Docket 10-415, November 22, 2010 Order, page 133, *citing Crane Direct*, pp 104-05.

30. First, the utilities should actually be required to fund amounts collected in rates as 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 amounts collected from ratepayers are actually used for Pension and OPEB costs and expenses. Second, no rate base treatment should be afforded the regulatory asset or liability resulting from the difference between pension and OPEB amounts collected in rates and amount booked under GAAP. The regulatory asset or liability generated will not have a cash impact on the utility, and therefore should not be included in rate base because funding requirements will match the amount collected in rates. Third, Tracker 2, which allows a utility to record a regulatory asset related to excess contribution, has no ratemaking implications and should not be afforded rate base treatment or carrying costs. A utility can apply these “excess” contributions to meet its regulatory funding requirements in future years, which avoids the possibility that the utility will base funding decisions on discretionary factors that may not benefit ratepayers. The Commission notes that under the KCP&L S&A, KCP&L will place its OPEB funds in a VEBA trust<sup>3</sup> or other irrevocable trust fund and will continue to place pension funds in its Pension Trusts. The Commission orders that all trusts established for Pension and OPEB funds under the Stipulation and Agreements approved in this docket must be irrevocable by the utility so that all funds collected in these trusts are used to purchase benefits for the employees intended and not distributed to the employer.

31. The Commission notes that Black Hills is the only investor-owned utility in Kansas that has not sought to use trackers for pension, postretirement and post employment costs

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<sup>3</sup> See *infra*, note 2.

and expenses. The Commission directs that Black Hills, in its next rate case, propose Trackers consistent with the terms and conditions set forth in Trackers 1 and 2 as approved for Kansas Gas Service, Westar, and KCP&L. The Commission recognizes that other reasons may exist for a utility to deviate from adopting all terms and conditions contained in Trackers 1 and 2 as approved for Kansas Gas Service, Westar, and KCP&L. Therefore, if Black Hills claims such a situation applies to it, the utility will need to establish circumstances justifying approval of alternative terms and conditions, in light of the reasons stated above.

### **B. Evaluation of KCP&L S&A**

32. Having reviewed the Joint Motion, the KCP&L S&A, and the rulings in Docket 10-415, the Commission concludes that the terms and conditions contained in KCP&L's S&A are consistent with those terms and conditions approved in Docket 10-130 for Kansas Gas Service and in Docket 10-135 for Westar and made permanent for Kansas Gas Service and Westar in this generic proceeding. July 14, 2010 Order, ¶¶ 11, 26. The Commission further finds that the KCP&L S&A meets the requirements arising from the decisions made on these issues in Docket 10-415, as discussed in this Order.

33. Generally, the law favors compromise and settlement of disputes when parties enter into an agreement intelligently and in good faith. *Bright v. LSI Corp.*, 254 Kan. 853, 858, 869 P.2d 686 (1994). When adopting a settlement, the Commission must make an independent finding that the settlement is supported by substantial competent evidence in the record as a whole and that the settlement will establish just and reasonable rates. *Citizens' Utility Ratepayer Board v. Kansas Corporation Comm'n*, 28 Kan. App. 2d 313, 316, 16 P.3d 319 (2000). To meet this requirement, the Commission has articulated five factors to consider in evaluating settlement agreements. First, has each party had an opportunity to be heard on its reasons for opposing the

settlement? Second, is the agreement supported by substantial evidence in the record as a whole? Third, does the agreement conform to applicable law? Fourth, will the agreement result in just and reasonable rates? Fifth, are the results of the agreement in the public interest, including the interests of customers represented by any party not consenting to the agreement? The Commission concludes that each factor has been met in this proceeding, as discussed below.

34. *Has each party had an opportunity to be heard on its reason for opposing the settlement?* The history of this docket reflects that each company involved in this generic proceeding has had an opportunity to comment and be heard on its reasons for not participating in this settlement. The Joint Motion was filed on April 15, 2011; no party has objected to this agreement. The Commission finds that each party in this docket has had an opportunity to be heard on its reasons for not joining in or for objecting to KCP&L's S&A.

35. *Is the S&A supported by substantial evidence in the record as a whole?* Because this generic proceeding involves an investigation of policy-setting issues, parties set forth their positions and arguments in comments and did not file testimony of witnesses. Numerous parties filed comments on the two issues identified for investigation before the Joint Motion was filed. No parties have argued against the Commission approving this agreement reached by KCP&L, Staff, and CURB regarding how this company will treat Pension and OPEB expenses. The Commission finds that a review of the record as a whole establishes that substantial support exists in the record to approve this S&A.

36. *Does the agreement conform to applicable law?* The terms of the S&A approved for Kansas Gas Service and Westar adopted procedures discussed in this proceeding on a permanent basis. These procedures ensure that companies recover Pension and OPEB costs and expenses as incurred and assure consumers the amount recovered in rates for Pension/OPEB are

placed in separate trusts used only for their authorized purpose. The terms and conditions in KCP&L's S&A have been previously approved in Commission Orders for other utilities. The agreement reached by KCP&L, Staff, and CURB conforms to applicable law.

37. *Will the agreement result in just and reasonable rates?* The Commission must evaluate whether a company's rates resulting from an S&A are within the "zone of reasonableness," which requires taking into account various interests of all parties involved. *Farmland Industries, Inc. v. Kansas Corp. Comm'n*, 24 Kan. App. 2d 172, 195, 943 P.2d 470, *rev denied*, 263 Kan. 885 (1997). See *Kansas Gas & Electric Co. v. State Corp. Comm'n*, 239 Kan. 483, 488-90, 720 P.2d 1063 (1986), *appeal dismissed at* 481 U.S. 1044 (1987). This proceeding does not directly impact customer rates. Tracker 1 allows a utility to meet its mandatory minimum funding level equal to pension, postretirement, and post employment costs included in the utility's cost of service. The regulatory account established with Tracker 1 will not be included in rate base in the company's next general rate proceeding and will not receive carrying charges. Tracker 2 will allow KCP&L to fund its Pension/OPEB Trusts in excess of GAAP costs for Pension and OPEBs in years between rate cases and to use a positive balance in subsequent years to meet the Required Funding Level. When KCP&L files a new rate case, the Commission will establish a new level of costs associated with Pension and OPEB. Then, the tracking mechanisms will be reset to track costs incurred between rate cases to the extent the costs differ from the levels approved in the last rate case. The Commission finds use of Trackers 1 and 2 will provide assurance to both KCP&L and its customers that the utility is recovering Pension and OPEB costs as incurred and that customers are being protected because the amounts recovered in rates for Pension/OPEB costs will be placed in separate trusts used only for their authorized purpose. The Commission finds that approval of the KCP&L S&A will allow

establishment and use of Trackers 1 and 2, which will facilitate setting just and reasonable rates in subsequent rate cases.

38. *Are results of the agreement in the public interest, including the interest of customers represented by any party not consenting to the agreement?* As noted above, the S&A addressed in this Order was reached by KCP&L, CURB, and Staff and no party contests it. Nonetheless, the Commission must take into account the total effect of the KCP&L S&A terms and conditions and a broad range of factors in deciding if it is in the public interest. Bonbright, *Principles of Public Utility Regulation* (1988), p. 33. Trackers 1 and 2 will ensure that Pension and OPEB costs are being recovered through rates as incurred and that these amounts will be placed in separate trusts used only for their authorized purpose. The Commission finds that utilizing Trackers 1 and 2 for Pension and OPEB expenses will protect the interests of ratepayers and KCP&L. The Commission concludes the KCP&L S&A is in the public interest.

39. In the Joint Motion, the parties note that agreement was not reached on the issue of the amount of pension costs charged to CWIP due to the multi-jurisdictional nature of KCP&L's business, which adds complexity to many of its regulatory issues. KCP&L has reserved the right to address this issue in a further proceeding, and Staff and CURB reserved their rights to oppose any changes proposed by KCP&L. The Commission recognizes that this issue has not resolved in the KCP&L S&A and may be raised in a future proceeding.

40. Notwithstanding the unresolved issue involving CWIP, the Commission finds the KCP&L S&A is supported by substantial evidence in the record as a whole and is in the public interest. The Commission finds terms of this S&A providing for Trackers 1 and 2 will further establishment of just and reasonable rates for ratepayers. The Commission concludes that parties to this proceeding have had an opportunity to oppose the agreement and that the S&A conforms

to applicable law. The Commission grants the Joint Motion and approves the KCP&L S&A in its entirety, as set forth in Attachment A to the Joint Motion.

41. Having approved the KCP&L S&A, the Commission notes that, under the General Terms and Conditions, KCP&L has agreed to work with Staff to establish an annual report, which will be provided to Staff and CURB to substantiate changes in the general ledger accounts for Pension/OPEB Trackers 1 and 2. KCP&L S&A, ¶ 20. This annual report shall be a compliance filing connected to this docket, and shall be submitted using Docket No. 07-GIMX-1041-GIV-CPL-1. The report shall be filed once a year, on a date determined by the parties, until an Order is issued, in this or in a subsequent proceeding, that relieves KCP&L of this requirement. After reviewing this annual report, Staff shall notify the Commission if substantial changes are reported that Staff finds are significant in nature.

**IT IS THEREFORE BY THE COMMISSION ORDERED:**

(A) The Commission expressly adopts a policy that investor-owned public utilities establish mechanisms for tracking pension, postretirement and post employment costs and expenses. The Commission directs Black Hills to propose in its next rate case Trackers consistent with the terms and conditions in the Trackers 1 and 2 as approved for Kansas Gas Service, Westar, and KCP&L. Alternatively, Black Hills must establish why it should not be required to adopt these Trackers, as discussed at ¶¶ 30-31.

(B) The Commission grants the Joint Motion to Approve Stipulation and Agreement and approves, in its entirety, the Stipulation and Agreement for KCP&L as set out in Attachment A to the Joint Motion, as discussed in ¶¶ 32-40. KCP&L will submit an annual report to substantiate changes in its general ledger accounts for Pension/OPEB Trackers 1 and 2 as a

compliance filing connected to this docket, using Docket No. 07-GIMX-1041-GIV, as set forth in ¶ 41.

(C) Parties have fifteen days, plus three days if service of this Order is by mail, from the date of service of this Order in which to petition the Commission for reconsideration. K.S.A. 66-118b; K.S.A. 2010 Supp. 77-529(a)(1). Service of this Order will be by United States mail or hand delivery, but a courtesy copy will be sent to counsel of record by electronic mail.

(D) The Commission finds that the purpose for which this general investigation was opened has been served and this docket is closed

(E) The Commission designates this Order as precedent that will be relied upon in future adjudications.

(F) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn; Loyd, Com.; Wright, Com.

Dated: AUG 17 2011



\_\_\_\_\_  
Patrice Petersen-Klein  
Executive Director

mjc

ORDER MAILED AUG 18 2011

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
JAMES G. FLAHERTY, ATTORNEY ANDERSON & BYRD, L.L.P. 216 SOUTH HICKORY PO BOX 17 OTTAWA, KS 66067		
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MARGARET A (MEG) MCGILL, REGULATORY MANAGER BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC D/B/A BLACK HILLS ENERGY BLACK HILLS ENERGY 1102 EAST 1st STREET PAPHILLION, NE 68046		
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DAVID SPRINGE, CONSUMER COUNSEL CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604 ***Hand Delivered***		

ORDER MAILED AUG 18 2011

The Docket Room hereby certified that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

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ORDER MAILED AUG 18 2011

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PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

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