BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

POST HEARING BRIEF OF THE CITIZENS' UTILITY RATEPAYER BOARD

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COMES NOW the Citizens' Utility Ratepayer Board ("CURB"), and submits its Post Hearing Brief ("Brief") in the above-captioned proceeding.[1]

1. CURB's prudence disallowance, rate base adjustments, and revenue requirement adjustments are reflected in the Revised Schedules of Andrea Crane, Hearing Exhibit Nos. 98 and 99. CURB incorporates herein the testimony and revised schedules of Andrea Crane, which support a rate increase of no more than $9.63 million.

2. In addition to the recommendations made by its own witnesses, CURB also recommends that the Commission accept several recommendations offered by other parties. CURB recommends that the Commission accept Staff's prudence disallowance as well as Staff's depreciation expense adjustments.

3. Staff's prudence disallowances and its depreciation expense adjustment will reduce the Company's revenue requirement by $22.478 million ($9.784 million prudence disallowance, $12.694 million depreciation study adjustment), while Ms. Crane's prudence disallowance reduces the Company's revenue requirement by $4.955 million.[2] While these

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[1] CURB will attempt to follow the order of issues contained in the KCPL Brief, per the Commission's September 8, 2010 Order, ¶ 9.

[2] KCPL Brief, ¶ 26; KCPL Findings of Fact and Conclusions of Law, ¶ 9.

impacts are not strictly comparable because Staff and CURB have slightly different recommendations for rate of return, the impact on CURB's recommendation of adopting the Staff prudence and depreciation expense adjustments will be significant. While the actual impact will depend on the overall rate of return adopted by the KCC, CURB estimates that adopting Staff's prudence and depreciation expense adjustments will reduce CURB's recommendation by approximately $18.1 million, from a recommended rate increase of $9.632 shown in Hearing Exhibit 98, Schedule ACC-1, to a recommended rate decrease of approximately $8.468 million, assuming CURB's recommended rate of return.

4. Because of the partial settlement on minor issues presented to and approved by the Commission on August 16, 2010, the revenue requirement issues that remain in dispute have been narrowed considerably. (Hearing Exh. 4; Tr. Vol. 1, p. 150).

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

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

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

I. INTRODUCTION

8. This is the fourth and final rate case contemplated in the Stipulation and Agreement ("1025 Stipulation" or "Regulatory Plan") agreed to by certain parties[3] in Docket No. 04-KCPE-1025-GIE ("1025 Docket").

9. KCPL's brief mischaracterizes the 1025 Stipulation or Regulatory Plan as "a transparent, long-term process *requiring* KCPL, Staff, *CURB*, and other parties to this proceeding to work collaboratively over a five-year period to strengthen the energy infrastructure needed to reliably serve Kansas consumers."[4]

10. First, CURB was not a signatory party to the 1025 Stipulation and therefore isn't bound by or required to do anything under the terms of the settlement. (Hearing Exh. 23, 1025 Stipulation, p. 1; Hearing Exh. 24, Order Approving 1025 Stipulation, ¶ 2).

11. It is also important to note that neither the Commission nor CURB are bound by the 1025 Stipulation. (Hearing Exh. 24, Order Approving Stipulation and Agreement, KCC Docket No. 04-KCPE-1025-GIE, ¶¶ 32, 41, 48).

12. More importantly, the Company's approach has been far from transparent. The Company's first major decision after the 1025 Stipulation was reached in 2005 was to hire the law firm of Schiff Hardin, LLP ("Schiff"), to guide it through the regulatory plan. Even if one were to ignore the unprecedented $20 million paid to Schiff (over $20 million) over the course of the regulatory plan[5] (demonstrating KCPL's complete lack of spending restraint), the practical

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[3] Signatory parties to the 1025 Stipulation included: KCPL, Staff, Sprint, and the Kansas Hospital Association.

[4] Post Hearing Brief of Kansas City Power & Light Company ("KCPL Brief"), ¶ 3.

[5] Tr. Vol. 5, p. 1118, lines 16-21).

affect of hiring a law firm has resulted in the polar opposite of transparency – KCPL has chosen to conceal substantial portions of the advice and analysis provided to KCPL by Schiff from the parties to this docket under the guise of the attorney-client privilege.[6] (Tr. Vol. 5, pp. 951-958; Hearing Exh. 60, 61, 62, 63).

A. THE 1025 DOCKET AND RESULTING STIPULATION

13. In Docket 04-KCPE-1025-GIE, KCPL sought and ultimately obtained Commission approval to deviate from the normal way power plants have been financed, built, and brought into rate base in the State of Kansas. Power plants have traditionally been financed and built by the utility, at which time the utility files a rate case to seek to have the prudent costs of the new plant placed into rates.

14. In the 1025 docket, KCPL sought to have the financing of the plant partially paid by ratepayers before the plant was placed in service (CIAC). This mechanism was aptly described by the parties to the 1025 Stipulation as "extraordinary": "The parties further recognize and agree that the use of the CIAC is extraordinary and is reasonable only in light of the facts and circumstances of this proceeding." (Hearing Exh. 23, 1025 Stipulation, p. 6).

15. During the course of the 1025 docket, KCPL made representations to ratepayer groups, the parties in the docket, and the Commission about the cost of the total capital projects, Iatan 2, and rate increases to be expected over the 5-year regulatory plan. The Commission and signatory parties to the 1025 Stipulation relied upon those representations.

16. The cost estimates provided to the stakeholders and the Commission in the 1025 docket were not described as conceptual or informed guesses, as KCPL now wants to

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[6] The attorney-client privilege belongs to the client and may be waived. KCPL chose not to waive the privilege.

characterize them. KCPL didn't tell the parties to the 1025 docket anything about the Association for Advancement of Cost Engineers (AACE) cost classification system at the time the cost estimates were provided. In fact, KCPL personnel weren't aware of the AACE cost classification system until long after the 1025 Stipulation was reached.

17. Instead, the cost estimates provided to the stakeholders and the Commission in the 1025 docket were based on the cost estimates contained in the Project Definition Report that KCPL paid Burns & McDonnell nearly a quarter million dollars to prepare. There was nothing in the Project Definition Report that would lead stakeholders, Staff, other Intervenors, and the Commission to question the 95% confidence level expressed by Burns & McDonnell regarding the cost estimate provided for Iatan 2. There was no mention of these estimates being "informed guesses", "conceptual", or class IV or V AACE cost classification estimates during the 1025 docket.

B. KCPL FAILED TO COMPLY WITH THE 1025 STIPULATION

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

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

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

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

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

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

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

23. Rather than admit it didn't fulfill its own obligations under the 1025 Stipulation, KCPL seeks to blame Staff, by arguing Staff was required to challenge the Resource Plan:

> The 1025 Stipulation gave Staff the ability to challenge the Resource Plan in the agreement if a change in circumstances occurred, including increased costs of Iatan Unit 2, that Staff believed affected the reasonableness and adequacy of the Regulatory Plan, or if Staff believed that KCPL had failed to comply with the Regulatory Plan. *See* Tr. Vol. 2, p. 333, ln. 10, to p. 334, ln. 21. No such action was ever taken by Staff, even in light of the increasing costs for Iatan Unit 2. This is not because Staff failed to do its job—but rather, because Staff had no basis to do so. KCPL had met all of its obligations under the 1025 Stipulation and the Resource Plan continued to be reasonable and adequate.[7]

24. KCPL fails to support this erroneous interpretation of the 1025 Stipulation with any reference to the 1025 Stipulation, and the hearing testimony of Chris Giles cited by KCPL fails to provide any support for the argument that Staff had any obligation to challenge the Resource Plan. While Staff may have the ability to request that KCPL seek explicit approval to incur material capital investments or expenses beyond those contemplated by the 1025 Stipulation, it was not Staff's obligation to do so, that obligation belonged to KCPL.

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

- Well over ½ of the project cost (confidential) in contracts had been secured as of May 2007 (Tr. Vol. 4, p. 769, lines 14-25, p. 770, lines 1-3, p. 774, lines 16-25, p. 775, lines 1-9 (KCPL claims the specific amount is confidential); and
- Nearly 10 percent of the projected costs had actually been expended by February 2007. (Tr. Vol. 4, p. 767, lines 5-19 (KCPL claims the specific amount is confidential).

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[7] KCPL Brief, ¶ 11.

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

27. Contrary to what KCPL argues, under the 1025 Stipulation, it was:

- KCPL's duty to seek "explicit approval" from the Commission before voluntarily incurring material capital investments or expenses beyond those contemplated by the 1025 Stipulation and the Resource Plan (Hearing Exh. 23, Stipulation and Agreement, pp. 9-10, ¶ B. 2);
- KCPL's duty to monitor the reasonableness and adequacy of the Resource Plan until the capital investments described therein were completed; (Hearing Exh. 23, Stipulation and Agreement, p. 19, ¶ B. 3); and
- KCPL's duty, on its own or at the request of any non-KCPL parties, to re-assess the reasonableness and adequacy of the Resource Plan if changed circumstances arose that impacted the reasonableness and adequacy of the Resource Plan during the initial and ongoing implementation of the primary elements of the Resource Plan. (Hearing Exh. 23, Stipulation and Agreement, ¶ B. 3).

28. The only duty falling upon non-KCPL signatory parties was triggered only in the event KCPL filed notice with the Commission that its Resource Plan should be modified because changed circumstances had impacted the reasonableness and adequacy of the Resource Plan. (Hearing Exh. 23, Stipulation and Agreement, p. 11 ("If any non-KCPL party has concerns regarding KCPL's new proposed resource plan, it shall file notice with the Commission and notify KCPL and all other parties within 30 days of KCPL's written notification to the parties.") (emphasis added)). Since KCPL never filed written notice with the Commission that the Resource Plan should be modified, no corresponding duty was ever imposed on Staff or any other signatory party to contest a proposed modified Resource Plan.

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

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

2. KCPL's Quarterly Reports are irrelevant to the Commission's prudence determination on the Iatan projects

31. The quarterly reports provided by KCPL as required by the 1025 Stipulation are irrelevant to the Commission's prudence determination on the Iatan projects.[8]

32. Indeed, Staff hired Walter Drabinski and Vantage Consulting to conduct a prudence investigation of the costs that were exceeding the original cost estimates, a fact acknowledged in paragraph 14 of KCPL's brief.

33. KCPL also acknowledges that Section II.B.1. of the 1025 Stipulation requires the quarterly status update reports on the infrastructure commitments contained in Appendix A, including information regarding **actual expenditures in comparison to planned expenditures**:

> [KCP&L] will provide quarterly status updates on the infrastructure commitments contained in **Appendix A and Appendix A-1**. Such updates will include detailed information regarding actual expenditures in comparison to planned expenditures and a description of any and all efforts by [KCP&L] to efficiently and reasonably procure equipment and services related to the investments.

(KCPL Brief, ¶ 12; Hearing Exh. 23, 1025 Stipulation, p. 9, ¶ B. 1 (emphasis added).

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[8] KCPL Brief, ¶¶ 12-15.

34. Appendix A to the 1025 Stipulation specifies the "infrastructure investments" to be made by KCPL, and further states that "[t]hese investments, including those subject to further evaluation, total approximately $1.3 billion, as set forth in **Appendix D.**" (Hearing Exh. 23, 1025 Stipulation, Appendix A, p. 1 (emphasis in original text)).

35. Appendix D to the 1025 Stipulation specifies the original cost estimates, or "planned expenditures", for each of the regulatory initiatives contained in the 1025 Stipulation. (Hearing Exh. 23, 1025 Stipulation, Appendix D).

36. The 1025 Stipulation, therefore, required KCPL to provide quarterly status updates on the infrastructure commitments, including detailed information regarding "actual expenditures in comparison to the planned expenditures."

37. KCPL goes to extraordinary lengths to revise history and move what it considers the original cost estimate later in time and increased in amount from the original cost estimates provided to the stakeholders and Commission in the 1025 docket. However, the March 9, 2006 Schiff Hardin report is particularly noteworthy at one of the few pages not redacted and concealed from the parties to this docket under the attorney-client privilege. At page 12 of 18, Section C) 1) of the March 9, 2006 report, Schiff Hardin addresses the "Project Cost Estimate" and the "Burns & McDonnell Estimate Summary." (Hearing Exh. 60, p. 12 of 18). In section C) 1), Schiff Hardin presents a chart that specifies the "initial cost estimate" of $1.146 billion total cost estimate for Iatan 2 (and $1.435/KW cost) contained in the August Project Definition Report relied upon by CURB and other Intervenors. The Schiff Hardin chart further specifies the $1.310 billion total cost estimate for Iatan 2 (and $1.542/KW cost) contained in the November 2005 Revised Estimate relied upon by Staff. (Hearing Exh. 60, p. 12 of 18).

38. Notably, after specifying the differences between the August 2004 and November 2005 cost estimates, Schiff Hardin's chart goes on to state:

> Major Revisions to Budget
> Project Definition Report (August '04) to
> Revised Estimate (November '05)

(Hearing Exh. 60, p. 12 of 18).

39. The foregoing demonstrates that KCPL considered both the August 2004 Project Definition Report cost estimate and the November 2005 Revised Estimate as budgeted cost estimates.

3. It was KCPL's duty to monitor the reasonableness or adequacy of the Resource Plan and KCPL failed to fulfill its duty

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

> KCPL agrees to monitor the reasonableness and adequacy of the Resource Plan until the capital investments described therein are completed. KCPL will on its own or upon request of any non-KCPL parties re-assess the reasonableness and adequacy of the Resource Plan if changed circumstances arise that may impact the reasonableness and adequacy of the Resource Plan during the initial and ongoing implementation of the primary elements of the Resource Plan. Such changes in circumstances would include, but not be limited to:
> ...
> f) material changes in the cost and/or reliability of power generation technologies;
> g) material changes in energy market conditions;
> ...
> j) material changes in the projected rates and costs to ratepayers resulting from the resource plan.

(Hearing Exh. 23, p. 10, Section B. 3.) (emphasis added).

41. KCPL failed to comply with its duty to monitor the reasonableness of the resource plan. Material changes in the cost of power generation technologies, energy market conditions,

and the projected rates and costs to ratepayers clearly occurred during the initial and ongoing implementation of the Resource Plan. (Tr. Vol. 2, p. 393, lines 5-9, p. 420, lines 12-16, p. 396-97, p. 399, lines 9-13). These changed circumstances clearly impacted the reasonableness of the Resource Plan, yet KCPL failed to seek modification of the Resource Plan as required by Section B.3. of the 1025 Stipulation.

42. Instead of acknowledging its own duties and responsibilities, KCPL argues that the alleged failure of Staff or other parties to question or dispute the Company's present value of revenue requirements ("PVRR") analysis and results, constitutes acceptance of the PVRR analysis. KCPL also appears to argue that the alleged failure by Staff or other participants to question or dispute the estimates of the capital cost of Iatan 2 likewise constitutes acceptance of the increased cost estimates.[9]

43. First, KCPL has failed to demonstrate where the 1025 Stipulation placed a burden on Staff or any party to the 1025 Stipulation to question or dispute the PVRR or estimated costs of Iatan 2. Because CURB wasn't a party to the 1025 Stipulation, CURB certainly had no obligations under the 1025 Stipulation.

44. Further, KCPL fails to explain how the PVRR analysis and results have any relevance to the Commission's prudence determination of the Iatan projects.

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

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[9] KCPL Brief, ¶ 18.

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

II. ANALYSIS OF ISSUES IN THIS RATE CASE

A. FILED AND AMENDED POSITIONS OF PARTIES

47. KCPL's Application originally sought to recover a gross revenue deficiency of approximately $55.225 million, based on a test year that ended September 30, 2009, with adjustments made for known and measurable changes as of August 31, 2010 (September 30, 2010 for plant). KCPL has since reduced its requested rate increase to $50,892,000, which includes amounts deducted from KCPL's filed case as a result of the partial settlement. However, KCPL has not reduced its requested rate increase by any amount related to the $20.4 million amount KCPL's own expert admitted was imprudent.[10] (Nielsen R., at p. 8, lines 11-23, p. 9, lines 1-2; Downey, Tr. Vol. 4, p. 791, lines 1-25, p. 792, lines 1-2).

48. KCPL correctly notes that Staff and CURB have also made adjustments to their initial recommendations. However, what the chart at pages 12-13, paragraph 12 of KCPL's Brief doesn't show is that CURB has adopted Staff's adjustments for Iatan 1 and 2 disallowances as well as Staff's adjustment for the depreciation study, which CURB indicated may occur in the prefiled testimony of Andrea Crane. (Crane, D., at 8, lines 2-6). The impact of those adjustments

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[10] KCPL Brief, ¶25; KCPL Findings of Fact and Conclusions of Law, ¶ 8.

on CURB's recommended revenue requirement reduces CURB's recommendation by approximately $18.1 million, from a recommended rate increase of $9.632 shown in Hearing Exhibit 98, Schedule ACC-1, to a recommended rate decrease of approximately $8.468 million, assuming CURB's recommended rate of return.

B. PRUDENCE ANALYSIS

49. While the prudence disallowance recommended by Andrea Crane is reasonable, CURB recommends that the Commission accept the larger prudence disallowance recommended by Staff witness Walter Drabinski. On the ultimate issue of KCPL's imprudent management of the Iatan Unit 2 Project (and common plant), CURB adopts Staff's recommended disallowance of $231 million (Kansas Jurisdictional $57.7 million). In addition, CURB adopts Staff's associated AFUDC adjustment of $7.96 million (Kansas Jurisdictional). CURB also adopts Staff's recommended disallowance of $4.78 million (Kansas Jurisdictional, including AFUDC) on the issue of KCPL's imprudent management of the Iatan 1 project.

50. Mr. Drabinski's recommendation is consistent with the methodology utilized by Ms. Crane and is also supported by an in-depth and detailed analysis of KCPL's management of the Iatan construction projects. Staff's analysis was comprehensive and thorough. KCPL's attempt to characterize Mr. Drabinski's analysis as mathematically and substantively incorrect is simply without merit.

51. CURB's witness Andrea Crane has recommended a disallowance of $134 million for the total plant ($33.6 million for KCPL's Kansas jurisdictional share). (Crane D., p. 32, lines 11-18; Hearing Exh. 98, Schedule ACC-11)

52. Interestingly, KCPL even disagrees with the paltry prudence disallowance determined by its own expert witness, Dr. Kris R. Nielsen. Dr. Nielsen recommended a total prudence disallowance of $20,469,050 ($5,110,791 Kansas jurisdictional), consisting of the engagement of Welding Services Inc. ($12,714,596) and KCPL's removal and subsequent decision to include (after removing) an auxiliary boiler to the Iatan Unit 2 Project ($7,754,454). (Nielsen R., at p. 8, lines 11-23, p. 9, lines 1-2; Downey, Tr. Vol. 4, p. 791, lines 1-25, p. 792, lines 1-2).

1. The applicable prudence standard

53. In determining prudence, the Commission should consider the definition of prudence as defined by K.S.A. 66-128g (12) and interpreted by the Kansas Supreme Court (*"prudence or lack thereof" means as that term is commonly used.* Black's Law Dictionary 1104 (5th ed. 1979) defines *"prudence" as "[c]arefulness, precaution, attentiveness and good judgment.*").[11] This definition should then be applied in light of and in conjunction with the nonexclusive factors the Commission is required to consider under K.S.A. 66-128g.

54. KCPL incorrectly states that there is no disagreement among the parties regarding the applicable standards of prudence. The briefs filed and argued by the parties contain different interpretations of how the factors under K.S.A. 66-128g should be applied, and whether these factors alter the legal standard of prudence in Kansas. Because the Commission ordered the parties not to re-argue the prudence standards in these briefs,[12] CURB will simply incorporate by reference the arguments made in its briefs and during oral argument in the 1025 docket.

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

[12] Order, September 8, 2010, KCC Docket No. 10-KCPE-415-RTS, ¶ 9.

2. Staff has demonstrated that KCPL's actions and decisions in the construction of Iatan Unit 2 were not prudent.

55. CURB supports the prudence disallowance made by Staff witness Walter Drabinski for the reasons set forth in Mr. Drabinski's testimony. As a result, CURB opposes the positions set forth in KCPL's Brief, paragraphs 27-206.

56. Staff has demonstrated that KCPL's management of the Iatan Projects was imprudent, and that imprudent actions caused $231 million in increased and avoidable costs to the Iatan Unit 2 project.

57. Staff recommends a decrease to pro forma test year plant in-service by $57,665,851 (total plant recommended prudence disallowance was $230,955,466), which reflects Staff's recommended prudence disallowance associated with certain Iatan Unit 2 and Common plant in-service costs. (Rohrer D, Schedule GDR-7). Staff also recommended a decrease of $7,960,324 to KCPL's pro forma test year plant in-service, which reflects the allowance for funds used during construction ("AFUDC") portion of the Staff's disallowance of certain Iatan Unit 2 plant in-service costs. (Rohrer D., Schedule GDR-8). Staff's recommended prudence disallowance is supported by substantial competent evidence, and should be accepted by the Commission.

58. Contrary to KCPL's assertions, Mr. Drabinski's analysis is supported by and based upon the underlying data or facts in the record and likewise supported by the proper analysis required under Kansas law, and should therefore be accepted by the Commission. It is not, as KCPL assets, based solely upon mere speculation and Mr. Drabinski's years of experience.

59. As correctly stated by KCPL, the Commission's actions must be supported by substantial, competent evidence, and must not be unreasonable, arbitrary or capricious. *Zinke & Trumbo, Ltd. v. Kansas Corp. Comm'n*, 242 Kan. 470, 474, 749 P.2d 21 (1988).

60. "Substantial competent evidence" is evidence which "possesses something of substantial and relevant consequence and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved." *Jones v. Kansas Gas & Elec. Co.,* 222 Kan. 390, 565 P.2d 597 (1977).

61. KCPL's reliance on *Unified School Dist. No. 285 v. St. Paul Fire and Marine Ins. Co.*, 6 Kan.App.2d 244, 249-50, 627 P.2d 1147, 1152 (1981) (overruled on other grounds in *Thomas v. American Family Mut. Ins. Co.*, 233 Kan. 775, 666 P.2d 676 (Kan. Jul 15, 1983)) is misplaced. Unlike the expert in *Unified School Dist. No. 285,* Mr. Drabinski's conclusions are not based on speculation and his experience alone. To the contrary, he cited to and relied upon substantial underlying data forming a factual foundation for his opinion.

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

63. If KCPL believed Mr. Drabinski was not qualified to render expert testimony, KCPL had the duty to timely and contemporaneously object to his testimony at the hearing.

64. The detailed analysis provided by Mr. Drabinski demonstrates that his proposed $231 million disallowance amount is supported by substantial competent evidence. CURB will defer to Staff's Brief for further argument and references relating to Mr. Drabinski's testimony and recommendations.

65. KCPL argues that disallowances based on excess capacity and excess economic capacity, like those made in the Wolf Creek Order, are not relevant to this case because the 1025 Stipulation states that the Iatan investments are necessary and constitute a reasonable and adequate resource plan. CURB disagrees. This argument is contrary to the finding made by the Commission in the Order Approving Stipulation and Agreement in the 1025 docket, where the Commission specifically held: "The proposed treatment regarding the specific matters contained in the Agreement appears reasonable at this time, but is subject to future Commission review to ensure that they result in just and reasonable rates and reflect the provision of efficient and sufficient service." (Hearing Exh. 24, Order Approving Stipulation and Agreement, KCC Docket No. 04-KCPE-1025-GIE, ¶ 61).

66. The Order Approving Stipulation and Agreement in the 1025 Docket also specifically noted KCPL's representations addressing concerns that its regulatory plan shifted all the risk from shareholders to ratepayers, including "shareholders run the risk that the new generation capacity may be deemed no longer used and useful, thereby making it not properly included in rate base." (Hearing Exh. 24, Order Approving Stipulation and Agreement, KCC Docket No. 04-KCPE-1025-GIE, ¶ 63). On this issue, the Commission concluded that "it should also be noted that the agreement does not restrict Staff or any party from addressing the prudence of the costs expended for the projects or whether the resources are 'used and required to be used' under K.S.A. 66-128." (Hearing Exh. 24, Order Approving Stipulation and Agreement, KCC Docket No. 04-KCPE-1025-GIE, ¶ 65).

3. The 1025 Stipulation and the Project Definition Report establish the Definitive Estimate against which the costs of the Project should be measured

67. The cost estimates and rate impact projections provided in the 1025 docket were, contrary to KCPL's assertions, definitive and relied upon by the parties and the Commission in the 1025 docket. Moreover, the 1025 Stipulation cost estimates formed the basis for the rate impacts KCPL projected and represented to ratepayer groups, stakeholders, and the Commission in seeking approval of the Regulatory Plan.

68. Appendix D to the 1025 Stipulation is a chart that listed the 2005 estimated costs for each of the major investments anticipated during each year of the Regulatory Plan (2005-2009). Evidentiary Hearing, Exhibit 15. While the Company attempts to characterize these cost estimates as conceptual or an "informed guess, the evidence in the record shows differently:

- There is no testimony or any mention in the 1025 Stipulation regarding the word conceptual with respect to Iatan 2. (Giles, Tr. Vol. 2, p. 403, line 25, p. 404, lines 1-4).
- KCPL's current Senior Director of Regulatory Affairs does not recall any place in the 1025 docket where any witness from KCPL described these cost estimates as conceptual or informed guesses. (Tr. Vol. 1, p. 227, lines 16-25)
- The $734 million cost estimate in the 1025 Stipulation came from the cost estimate contained in the Project Definition Report. (Tr. Vol. 6, p. 1332, lines 8-17).
- The Project Definition Report was a substantial document that Burns & McDonnell prepared over a two-year period with significant interchange between KCPL and Burns & McDonnell. Burns & McDonnell utilized their experience on other projects, reference projects, and costs from other projects that they built up for this KCPL-specific project (Iatan 2). Burns & McDonnell obtained estimates from vendors of major plant components and made adjustments for things such as labor, productivity, and site specific activities. Burns & McDonnell charged KCPL nearly a quarter of a million dollars to

prepare the Project Definition Report. (Tr. Vol. 6, p. 1330, lines 2-25, p. 1331, lines 1-2; Hearing Exh. 44, p. 31).

- The Project Definition Report contained a 95 percent confidence level, which included an 8 percent or $85 million contingency. (Tr. Vol. 6, p. 1333, lines 4-23; Tr. Vol. 11, p. 2505, lines 21-25; p. 2506, lines 1-20).
- The Project Definition Report was used by KCPL to obtain regulatory approval with the Kansas and Missouri Commission, obtain air permits for Iatan 2, and to get the joint owner agreements finalized. (Tr. Vol. 5, p. 1101, lines 6-25).
- The cost estimates contained in the 1025 Stipulation were described by KCPL witness Chris Giles as "the best estimate KCPL had at that point in time, which was our 5-year budget of 2004." (Tr. Vol. 2, p. 419, lines 22-25).
- The fiscal year ending December 31, 2005 Form 10-K for Great Plains Energy, filed February 7, 2006, references "budget estimates" with respect to the Iatan 2 construction project. (Hearing Exh. 53, p. 16 of 214). The 2005 Form 10-K further states that "KCP&L will make energy infrastructure investments as detailed in the orders and summarized in the table below," and specifies for Iatan 2, KCPL will build and own 465 MW of an 850 MW coal fired plant for an estimated capital expenditure of $733 million. (Hearing Exhibit 53, p. 68 of 214).

69. A cost estimate that (1) the company paid nearly a quarter million dollars for, (2) contains a 95 percent confidence level (including an 8% or $85 million contingency), (3) was utilized by the Company to obtain regulatory approval with the Kansas and Missouri Commission, obtain air permits for Iatan 2, and to get the joint owner agreements finalized, and (4) was titled "Project **Definition** Report," is, by "definition," a definitive estimate.

70. The Company would have the Commission believe the cost estimates contained in the 1025 Stipulation had no meaning, and that in the words of KCPL's former Director of Regulatory Affairs, could have just as well been a "banana." This is simply part of the spin the

Company paid over $20 million to Schiff Hardin to develop when the Company failed to stay within the budgets established for the regulatory projects.

71. The Company's position that the original 1025 cost estimates were just informed guesses, or AACE class IV or V estimates that could be understated by as much as 50% was not even developed until after the 1025 Stipulation was approved. In fact, the Company was not even aware of the AACE cost classification system until after the 1025 Stipulation was approved. (Tr. Vol. 2, p. 426, lines 12-25, p. 427, lines 1-13, p. 428, lines 10-25).

72. KCPL's assertion that Staff and CURB erroneously "imply that rates would only go up a specific percentage or total amount"[13] completely disregards the testimony of KCPL's own witnesses who represented, on numerous occasions, that rates would only go up a specific percentage:

- KCPL's Director of Regulatory Affairs Chris Giles testified before the Commission on July 19, 2004 in the 1025 docket, that KCPL represented to customers in individual customer meetings and broader customer meetings that KCPL was estimating "rate increases over the 10-year time frame no greater than the rate of inflation over that same time frame." (Tr. Vol. 2, p. 408, lines 17-20; Hearing Exh. 27, p. 99, lines 18-25, p. 100, lines 4).
- Mr. Giles further represented to the Commission on July 19, 2004 in the 1025 docket, that in response to KCPL's representations that rate increases would be no greater that the rate of inflation over a 10-year time frame, it did not cause "any particular grimace or opposition" by customers. (Hearing Exhibit 27, p. 99, lines 18-25, p. 100, lines 4).
- KCPL further represented to ratepayers groups in the 1025 docket in April 2005 that KCPL had projected rate increases on average of 3 to 4 percent annually, or 15-20% for the 5-year period. (Tr. Vol. 2, p. 411, lines 1-25, p. 412, lines 1-6; Hearing Exhibit 29, p. 8, lines 13-17).

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[13] KCPL Brief, ¶ 139.

- KCPL's former Director of Regulatory Affairs Chris Giles testified in support of the 1025 Stipulation on June 17, 2005, and again confirmed that the Company estimated that consumer rates would increase 3 to 5 percent or roughly 20 percent over the 5-year regulatory plan. (Tr. Vol. 2, p. 415, lines 12-25, p. 416, lines 1-25, p. 417, lines 1-21; Hearing Exhibit 30, p. 44, lines 3-25, p. 45, lines 1-4).
- In his testimony in support of the 1025 Stipulation, KCPL's former Director of Regulatory Affairs Chris Giles made the specific point that the 15-20 percent rate increase KCPL projected over the 5-year regulatory plan was not just related to the incremental regulatory project investments, but related to all costs that KCPL anticipated over the 5-year period: "everything including pensions, fuel costs, everything over that 5-year period." (Tr. Vol. 2, p. 417, lines 22-25, p. 418, lines 13; Hearing Exhibit 30, p. 44, lines 3-25, p. 45, lines 1-4).

73. Amazingly, KCPL ignores the overwhelming evidence cited above, and asserts that one exchange between CURB Consumer Counsel David Springe and former Chairman Brian Moline during the hearing on the 1025 Stipulation somehow demonstrates differently:

> MR. SPRINGE: One final point I want to highlight, at the end of the day, too, very little in this case is said about consumer rates, and you're looking at what the company has admitted to is about 20 percent. The reality is nobody quite knows what consumer rates would be.
> CHAIRMAN MOLINE: But that, that is because we are building a new plant.
> MR. SPRINGE: Sure.
> CHARIMAN MOLINE: That would be true, assuming the plant would be built, regardless of whether this plan is approved or not that that is going to be the case?
> MR. SPRINGE: Oh, absolutely.

(Evidentiary Hearing, Exhibit 50, p. 32, lines 14, p. 33, lines 3),

74. CURB has recognized that some cost variations would occur, which is why our adjustment is only 25% of the cost overruns. However, KCPL wants no accountability to the cost estimates provided in the 1025 docket.

75. KCPL, which has presented a revisionist version of the 1025 docket throughout this case, and has presented testimony describing the original 1025 cost estimates in terms never presented to the stakeholders, parties, or the Commission, now asserts that Staff and CURB are taking a position that "rewrites the history of the 1025 Docket and is entirely inconsistent with their prior stances and actions." This is simply untrue.

76. The Company argues "the PDR was never intended to be a budget for the Project and this was obvious during the proceeding before the Commission in the 1025 Docket", yet during the time the Company was attempting to convince ratepayer groups, Staff, and the Kansas Commission that it should receive extraordinary treatment for its proposed Regulatory Plan projects, the company referenced the PDR cost estimate as the budget on numerous occasions:

- Company representative Chris Giles refers to it as the "5-year budget of 2004." (Tr. Vol. 2, p. 419, lines 22-25).
- The Company referred to its "budget estimates" in reference to the PDR cost estimate of $733 million for Iatan 2, as well cost estimates for other Regulatory Plan projects, in the Company's 2005 10-K filing dated February 7, 2006. (Hearing Exh. 53, pp. 16 & 68 of 214).
- A March 9, 2006 memorandum from the Company's legal consultant, Kenneth Roberts with Schiff Hardin, references both the Project Definition Report and the November 2005 Revised Estimate as budgeted cost estimates in a chart that shows "Major Revisions to Budget," and lists the Project Definition Report (August '04) and the Revised Estimate (November '05) immediately below, showing both of these items were the original budgeted cost estimates. (Hearing Exh. 60, p. 12 of 18).

77. Contrary to the Company's assertions, the 1025 cost estimates were never described as conceptual; they were specifically included in the 1025 Stipulation and relied upon

by the Commission in approving the Stipulation. (Tr. Vol. 1, p. 227, lines 16-25; Tr. Vol. 2, p. 403, line 25, p. 404, lines 1-4; Tr. Vol. 11, p. 2505, lines 21-25, p. 1506, lines 1-12).

78. The 1025 cost estimates were published in the Company's 10-K reports, press releases, and in the PDR. (Tr, Vol. 11, p. 2519, lines 9-23).

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

80. There is no testimony or any mention in the 1025 Stipulation regarding the word conceptual with respect to Iatan 2 or the entire project. (Giles, Tr. Vol. 2, p. 403, line 25, p. 404, lines 1-4). Chris Giles testified that he didn't describe the cost estimates presented to the Commission in the 1025 docket as conceptual construction cost estimates. (Tr. Vol. 2, p. 430, lines 4-6). KCPL's current Senior Director of Regulatory Affairs does not recall any place in the 1025 docket where any witness from KCPL described these cost estimates as conceptual or informed guesses. (Tr. Vol. 1, p. 227, lines 16-25).

81. The Project Definition Report was a substantial document that Burns & McDonnell prepared over a two-year period with significant interchange between KCPL and Burns & McDonnell. Burns & McDonnell utilized their experience on other projects, reference

projects, and costs from other projects that they built up for this KCPL-specific project (Iatan 2). Burns & McDonnell obtained estimates from vendors of major plant components and made adjustments for things such as labor, productivity, and site specific activities. Burns & McDonnell charged KCPL nearly a quarter of a million dollars to prepare the Project Definition Report. (Tr. Vol. 6, p. 1330, lines 2-25, p. 1331, lines 1-2; Hearing Exh. 44, p. 31).

82. The Project Definition Report contained a 95 percent confidence level, which include an 8 percent or $85 million contingency. Nothing in the Project Definition Report would lead stakeholders such as CURB, Staff, other intervenors, or the Commission to question the confidence level provided in the Project Definition Report. (Tr. Vol. 6, p. 1333, lines 4-25, p. 1334, lines 1-11; Tr. Vol. 11, p. 2505, lines 21-25; p. 2506, lines 1-20, p. 2519, lines 9-23).

83. The cost estimate in the Project Definition Report is a valid cost estimate. (Tr. Vol. 7, p. 1440, lines 11-21). The Project Definition Report was used by KCPL to obtain regulatory approval with the Kansas and Missouri Commission, obtain air permits for Iatan 2, and to get the joint owner agreements finalized. (Tr. Vol. 5, p. 1101, lines 6-25).

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

85. The 2005 Commission determined the total company cost of the investment planned by KCPL amounted to $1.2 billion, including $734 million for KCPL's 500 MW share of Iatan 2, $131 million for the 100 MW of wind generation, $272 million for environmental investments through 2010, and $52.8 million for demand side management and energy efficiency

investments. (Hearing Exh. 24, Order Approving Stipulation and Agreement, KCC Docket No. 04-KCPE-1025-GIE, ¶ 9).

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

87. KCPL's betterment argument completely ignores the provisions of K.S.A. 66-128g, which place considerable emphasis on original cost estimates, and demonstrate legislative intent to hold utilities accountable for the original cost estimates submitted.

4. Dr. Glass's proposed exclusion of expenses from revenue requirement based on off-system sales margins should be adopted

88. CURB supports the adjustment made by Staff witness Dr. Robert Glass excluding expenses from revenue requirement based on off-system sales margins for the reasons set forth in Dr. Glass's testimony. As a result, CURB opposes the position set forth in KCPL's Brief, paragraphs 207-224.

5. CURB's proposed disallowance is based on substantial competent evidence and K.S.A. 66-128g (4), and is further supported by Staff's prudence review.

89. K.S.A. 66-128g outlines the "factors which shall be considered by the commission in making the determination of 'prudence' or lack thereof in determining the reasonable value of electric generating property..." These factors include a comparison of the original cost estimates made by the owners of the facility under consideration with the final cost of such facility. K.S.A. 66-128g (a)(4).

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

91. In this case, not only was a cost estimate for a new generating facility presented to the KCC, but the KCC approved a comprehensive Regulatory Plan to support the Company's proposed construction activities based upon those cost estimates. In CURB's view, the Regulatory Plan resulted in a regulatory compact between shareholders and ratepayers. The Regulatory Plan contained several ratemaking provisions that went above and beyond the normal ratemaking framework. It provided for a series of annual rate filings during the construction period. It provided for payment of CIAC, which was to be used to maintain the Company's financial integrity during the construction period. It permitted the Company to retain proceeds from the sales of SO_2 emission allowances until after construction of Iatan Unit 2 was complete. It provided for a true-up of pension costs during this period and permitted carrying costs on the resulting regulatory asset or liability. In approving this Regulatory Plan, the KCC relied upon the cost estimates contained in the plan, especially the cost estimate for Iatan Unit 2. (Hearing Exh. 24, Order Approving the Stipulation and Agreement, KCC Docket No. 04-KCPE-1025-GIE, August 5, 2005, ¶¶ 9, 11; Crane D., p. 34, lines 2-14).

92. The Company now contends that the cost estimate for Iatan Unit 2 should not have been relied upon by the parties, that it was "conceptual" or just an informed guess. Long

after it provided those original cost estimates, KCPL now attempts to tie the validity of the original Iatan 2 cost estimate to the estimate classification system provided by the Association for the Advancement of Cost Engineers ("AACE"). Company witness Daniel Meyer now attempts to characterize the original cost estimates that the parties and the KCC relied upon in the Regulatory Plan as simply "conceptual phase estimates, which Mr. Meyer describes as "merely providing a cost order of magnitude for a project." (Crane D., p. 34, lines 15-20, p. 35, lines 1-13).

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

94. In addition, the Company claims that one of the reasons for the higher than anticipated costs is that the Regulatory Plan contemplated an 800 MW unit generating station while an 850 MW station was actually constructed. (Hearing Exh. 21, KCPL's Summarized Comparison of Regulatory Plan Estimates to Current Forecasted Total Project Costs, ¶ 13). However, the Company ignores the fact that KCPL's share of Iatan Unit 2 is much less than

projected in the Regulatory Plan. The Regulatory Plan envisioned that KCPL would acquire 500 MWs of generation, or 62.5% based on an 800 MW facility. However, KCPL actually owns 54.7% of Iatan Unit 2, or 465 MWs. Thus, Kansas ratepayers are not only paying more, but they are paying more for less capacity. (Crane D., p. 37, lines 9-16).

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

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

97. While CURB did not have the resources to do a comprehensive prudence review, Staff did have the resources and conducted a thorough, comprehensive review of the Iatan

construction projects. CURB's prudence disallowance, based on K.S.A. 66-128g (a)(4), is supported by the findings of Staff witness Walter Drabinski as well.

98. KCPL misleadingly argues that the compact KCPL made with its customers, referenced by CURB witness Andrea Crane, was simply to construct the least cost resource.[14] However, KCPL made specific representations about the costs of each project in the Regulatory Plan, which are referenced in Appendix A and specified in Appendix D of the 1025 Stipulation. (Hearing Exh. 23, 1025 Stipulation, Appendix A, p. 1, Appendix D). Furthermore, Section B. 2., Adherence to Resource Plan, specifically states:

> KCPL will not voluntarily incur material capital investments or expenses **beyond those contemplated by this Agreement and the Resource Plan** without explicit approval by the Commission. For purposes of this provision, "material" means an **amount** that could affect the financial rating of the company and the amount of CIAC that may be needed.

(Hearing Exh. 23, 1025 Stipulation, pp. 9-10, ¶ B. 2).

99. The evidence has shown that the escalating costs associated with Iatan 1 and 2 increased the 246 docket CIAC calculation required under the 1025 Stipulation to $280 million, an amount nearly four times the rate increase requested by the Company. (Tr. Vol. 2, p. 384, lines 13-25, p. 385, line 1). Since the purpose for the CIAC, or PTPP, was to support or allow KCPL to maintain an acceptable level credit rating (Hearing Exh. 24, Order Approving Stipulation and Agreement, ¶34; Downey, Tr. Vol. 4, p. 799, lines 20-23), it is reasonable to conclude that the increased costs leading to a $280 CIAC calculation would meet the definition of material under the 1025 Stipulation.

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[14] KCPL Brief, ¶ 228.

100. Mr. Downey's statement that KCPL did not incur material capital expenses beyond those contemplated under the Agreement is simply not credible. When capital expenses increase to 50% above the original cost estimate, they have by definition incurred material capital expenses beyond those contemplated under the 1025 Stipulation.

6. Application of the K.S.A. 66-128g factors demonstrates that KCPL did not act prudently

(a) Factor 1. A comparison of the existing rates of the utility with rates that would result if the entire cost of the facility were included in the rate base for that facility

101. CURB will defer and adopt the arguments contained in Staff's Brief on this issue.

(b) Factor 2. A comparison of the rates of any other utility in the state which has no ownership interest in the facility under consideration with the rates that would result if the entire cost of the facility were included in the rate base

102. CURB will defer and adopt the arguments contained in Staff's Brief on this issue.

(c) Factor 3. A comparison of the final cost of the facility under consideration to the final cost of other facilities constructed within a reasonable time before or after construction of the facility under consideration

103. CURB will defer and adopt the arguments contained in Staff's Brief on this issue.

(d) Factor 4. A comparison of the original cost estimates made by the owners of the facility under consideration with the final cost of such facility

104. This factor is addressed above in Section II. 4 of CURB's Post-Hearing Brief.

(e) Factor 5. The ability of the owners of the facility under consideration to sell on the competitive wholesale or other market electrical power generated by such facility if the rates

for such power were determined by inclusion of the entire cost of the facility in the rate base

105. CURB will defer and adopt the arguments contained in Staff's Brief on this issue.

(f) Factor 6. A comparison of any overruns in the construction cost of the facility under consideration with any cost overruns of any other electric generating facility constructed within a reasonable time before or after construction of the facility under consideration

106. CURB will defer and adopt the arguments contained in Staff's Brief on this issue.

(g) Factor 7. Whether the utility having an ownership interest in the facility being considered has provided a method to ensure that the cost of any decommissioning, any waste disposal or any cost of clean up of any incident in construction or operation of such facility is to be paid by the utility

107. This factor is inapplicable to Iatan 2, and is therefore not necessary for consideration in this case.

(h) Factor 8. Inappropriate or poor management decisions in construction or operation of the facility being considered

108. CURB will defer and adopt the arguments contained in Staff's Brief on this issue.

(i) Factor 9. Whether inclusion of all or any part of the cost of construction of the facility under consideration, and the resulting rates of the utility therefrom, would have an adverse economic impact upon the people of Kansas

109. CURB will defer and adopt the arguments contained in Staff's Brief on this issue.

(j) Factor 10. Whether the utility acted in the general public interest in management decisions in the acquisition, construction or operation of the facility

110. CURB will defer and adopt the arguments contained in Staff's Brief on this issue.

(k) Factor 11. Whether the utility accepted risks in the construction of the facility which were inappropriate to the general public interest to Kansas

111. CURB will defer and adopt the arguments contained in Staff's Brief on this issue. However, CURB would briefly note that by not seeking explicit approval (Hearing Exh. 24, 1025 Order; Hearing Exh. 23, 1025 Stipulation, at p. 9, Section B.2) for the material costs overruns of Iatan 2 as required by the 1025 Stipulation and Order, KCPL accepted the cost overrun risks.

(l) Factor 12. Any other fact, factor or relationship which may indicate prudence or lack thereof as that term is commonly used

112. CURB will defer and adopt the arguments contained in Staff's Brief on this issue.

7. Staff's proposed disallowance for Iatan Unit 1

113. CURB supports Staff's proposed disallowance for Iatan 1 made by Staff witness Walter Drabinski for the reasons set forth in Mr. Drabinski's testimony. As a result, CURB opposes the positions set forth in KCPL's Brief, paragraphs 260-275.

C. REVENUE REQUIREMENT - RATE OF RETURN ISSUES

1. CURB's recommended ROE conforms to the applicable standards for just and reasonable rates

114. Under K.S.A. 66-101f, the Commission is required to set just and reasonable rates. While ratemaking is not an exact science, *Federal Power Comm'n v. Conway Corp.*, 426 U.S. 271, 278 (1976), the Commission has the power, authority and jurisdiction to supervise and control electric utilities doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. K.S.A. 66-101.

115. "Under the statutory standard of just and reasonable it is the result reached not the method employed with is controlling [citation omitted.] It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the act is at an end. The fact that the method employed to reach that result may contain infirmities is then not important" *Sekan Electric Coop Ass'n. v. Kansas Corporation Commission,* 4 Kan. App. 2d 477 at 481, 609 P.2d 188 (1980) (citing *Power Comm'n v. Hope Gas Co.,* 320 U.S. 591 at 602, 88 L.Ed. 333, 64 S.Ct. 281 (1944).

116. The Kansas Court of Appeals has made clear that "the ratemaking process involves a balancing of the investor and consumer interests and that public utility regulation does not insure that the business shall produce net revenues." *Kansas Gas & Electric Co. v. Kansas Corporation Commission,* 239 Kan. 483, 489, 720 P.2d 1063 (1986). The *Kansas Gas & Electric* Court noted that, "the United States Supreme Court in *Hope* and *Permian Basin Rate* Cases did not establish, as a constitutional requirement, that the end result of a rate-making body's adjudication must be the setting of rates at a level that will, in any given case, guarantee the continued financial integrity of the utility. Rather *Hope* requires only that the regulatory authority balance competing consumer and investor interests to determine just and reasonable rates providing a return on used and useful property". 239 Kan. at 489-490.

117. The *Kansas Gas & Electric* Court also cited with approval the U.S. Supreme Court decision in *FPC v. Memphis Light, Gas & Water Div.,* 411 U.S. 458, 474, 36 L.Ed. 2d, 93 S.Ct. 1723 (1973), where the Supreme Court recognized that rates cannot be determined just and reasonable unless consumer interests are protected. 230 Kan. at 490.

2. CURB's recommended rate of return will result in just and reasonable rates

118. The return on equity amounts recommended by CURB witness Andrea Crane complies with the standards set forth above and will allow KCPL the opportunity to earn a reasonable return on its invested capital.

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

120. Because the KCC has traditionally relied upon the Discounted Cash Flow Model ("DCF") as the primary mechanism to determine cost of equity for a regulated utility, CURB witness Andrea Crane relied primarily upon the Discounted Cash Flow Model ("DCF"). (Crane D., p. 19, lines 16-20).

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

DCF Result	9.96% X 75% =	7.47%
CAPM	7.67% X 25% =	1.92%
Total		9.39%

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

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

123. Moreover, while the Company contends that its GDP growth rate is forward looking, the Company's estimated GDP growth consists entirely of historic results over the past 60 years. In fact, the Company ignored future long term estimates of GDP growth, which were well under the 5% used by Ms. Crane.

124. KCPL places emphasis on the fact that Staff and CURB recommendations are lower than reported ROEs in recent years, and below the reported 10.48 average ROE authorized by public utility commissions for vertically-integrated public utilities in the first and second quarters of 2010 as reported by Regulatory Research Associates ("RRA").[15] However, these are unique times, and the evidence established that ROEs are trending downward for vertically-integrated utilities, from the 11% received by Detroit Edison, to the 10% received by Florida Power and Light on March 17th and 10% received by MDU Resources on May 26th. (Hearing Exh. 139).

125. And while Dr. Hadaway may not have an experienced an "an integrated electric utility company that has had a 9.7 percent ROE imposed on it in my career in the United States,"[16] Staff witness Adam Gatewood testified that an ROE of 9.9% was granted to a vertically integrated utility in Indiana during the course of the hearing in this docket. (Tr. Vol.

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[15] KCPL Brief, ¶ 286.

[16] KCPL Brief, ¶ 286.

12, p. 2778, lines 12-25, p. 2779, lines 1-7, p. 2811, lines 23-25, p. 2812, lines 1-15, p. 2835, lines 11-24).

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

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

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

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

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

of his risk premium models in last year's case (246 docket). (Tr. Vol. 11, p. 2489, lines 2-25, p. 2490, lines 1-6).

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

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

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

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

135. Relying on authorized returns is not a reasonable manner to set ROE. Authorized returns include settled cases. In settled cases, the parties may adopt an ROE that is higher than the commission would allow, as a trade off. Consumer advocates care about revenue

requirements while companies care about ROE (for investment community). (Tr. Vol. 11, pp. 2547-49).

(a) CURB's use of CAPM is appropriate

136. KCPL complains that "under present market conditions, all three of the CAPM inputs tend to produce unreasonably low estimates of ROE."[17] However, utilities always claim that various methods produce "inappropriately" low results – this is because the method at issue varies depending on what that result is. CURB would submit that consistency in methodology is important - which is why CURB witness Andrea Crane continues to consistently recommend a 75/25 weighting between the DCF and the CAPM methodology.

137. KCPL further argues that under present market conditions, "[t]he risk-free rate, R_f, is understated because, due to the government's **temporary** interventions in the market and **investors' flight to safety**, the U.S. Treasury rates used for R_f are artificially low."[18] CURB submits the government's intervention in the markets is neither temporary nor new - the government has always been involved in the establishment of monetary policy. Further, if investors are fleeing to safety, then there is no need for a utility (a relatively safe investment) to produce excessive returns, as investors will come to utilities in their flight to safety.

138. KCPL argues that since FERC does not utilize the CAPM methodology in rate proceedings but instead relies solely on DCF calculations, this somehow lends credence to Dr. Hadaway's approach. However, Dr. Hadaway used other risk premium approaches as well, not solely the DCF. (Tr. Vol. 8, lines 5-10).

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[17] KCPL Brief, ¶ 289.

[18] *Id.* (emphasis added).

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

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

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

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

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

143. KCPL states that Andrea Crane failed to consider consensus analysts' forecasts of future growth, instead choosing to rely upon historical rates as an indicator of future growth. This is completely untrue. Ms. Crane considered both historic and future growth. In fact, the 5% growth rate Ms. Crane utilized is higher than Value Line's projected growth in dividends or book value, which is reflected in Ms. Crane's schedules. (Hearing Exh. 98, Schedule ACC-6).

144. KCPL further mischaracterizes Andrea Crane's testimony when it states she argued that "the use of historical rates to determine future growth is more appropriate than relying upon growth forecast estimates prepared by professional securities analysts, because she feels that securities analysts experience a conflict of interest as they both value and sell securities, and this causes them to present overly optimistic forecasts of future growth.[19]

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

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[19] KCPL Brief, ¶ 301.

146. KCPL argues that had Ms. Crane considered Value Line's earnings estimates and the Thomson/Reuters earnings estimates, her DCF analysis would have increased from an ROE of 9.96% to 10.28%, an increase of 32 basis points. This is simply not true. Ms. Crane did consider Value Line's earnings estimate as well as its dividend and book value estimate. The Value Line dividend growth rate, considered and reflected in Ms. Crane's Schedule ACC-6, was 4.3%, lower than the 5% growth rate utilized by Ms. Crane. (Hearing Exh. 98, Schedule ACC-6).

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

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

3. The Commission should exclude KCPL's equity-linked convertible debt units from the Company's capital structure

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

150. Moreover, there has been testimony that this financing was used in part to retire high cost Aquila debt. (Tr. Vol. 8, p. 1832, lines 6-14). The Company issued these convertible units because it could not issue regular debt, and it did not want to issue additional equity which

would further dilute the equity of existing shareholders, given the fact that the Company's stock was selling under book value. (Tr. Vol. 8, p. 1801, lines 18-25, p. 1802, line 1).

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

152. The escalating capital costs associated with Iatan 1 and 2 increased KCPL's CIAC calculation in the 246 rate case from the Company's request for $11.2 million to over $280 million, an amount nearly four times the rate increase requested by the Company. (Tr. Vol. 2, p. 384, lines 13-25, p. 385, line 1; Tr. Vol. 8, p. 1802, lines 19-25, p. 1803, lines 1-9, p. 1818, lines 15-25). KCPL's initial forecast of $11.2 million in CIAC in the 246 docket was not just wrong, it was "an economic disaster." (Tr. Vol. 8, p. 1819, lines 1-3). Staff was critical of KCPL for not utilizing the CIAC methodology and requesting less CIAC than the amount calculated by the 1025 metrics. (Tr. Vol. 8, p. 1817, lines 4-16).

153. The Regulatory Plan made it clear that if the Company's investment grade rating was jeopardized in spite of the CIAC or prepayments collected from ratepayers, then the parties "are under no obligation to recommend any further cash flow or rate relief to satisfy the obligations under this section. KCPL also recognizes and agrees that Kansas is only responsible for and will only provide cash flow for its share of the necessary cash flows as set out in this section. Therefore, if KCPL is unable to meet the BBB+ credit ratio guidelines because of inadequate cash flows from its Missouri operations, because of imprudent or unreasonable costs, because of inadequate cash flows from the non-regulated subsidiary of GPE or any risk

associated with GPE that is unrelated to KCPL's regulated operations, KCPL will not argue for or receive increased cash flows from Kansas in order to meet the BBB+ credit ratio guidelines." (Crane D., p. 17, lines 15-21, p. 18, lines 1-2; Hearing Exh. 23, p. 8-9).

154. Thus, the Regulatory Plan suggests that, apart from providing for CIAC, it is incumbent upon the Company and its shareholders to take the appropriate steps necessary to maintain its investment grade rating. As acknowledged by KCPL in the Regulatory Plan, "KCPL further understands that it is incumbent upon the Company to take prudent and reasonable actions that do not place its investment grade debt rating at risk and that this Agreement heightens rather than lessens such obligation. KCPL further understands that its Kansas jurisdictional customers will not support any negative impact from KCPL's failure to be adequately insulated from the Great Plains business risks as perceived by the debt rating agencies." (Crane D., p. 17, lines 3-14; Hearing Exh. 23, p. 5).

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

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

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

156. Kansas ratepayers deserve to be insulated from any harm resulting from the Aquila acquisition and CURB recommends that the convertible units be excluded from capital structure.

D. REVENUE REQUIREMENT - INCOME STATEMENT ISSUES

1. Known and Measurable Requirement

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

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

2. KCPL's proposed capitalization rate (payroll and various other benefits)

159. CURB is taking no position on this issue.

3. CURB's adjustment to KCPL's incentive compensation for non-executives is reasonable and should be accepted by the Commission.

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

161. CURB recommends that 100% of incentive compensation costs be disallowed. The Company's work papers show that average base salaries included in this case for non-executive employees average $89,278 for management employees and between $55,355 and $73,582 for bargaining unit employees. (Crane D., p. 57-64, Hearing Exh. 98, Schedule ACC-22; Hearing Exh. 128, p. 2)

162. The maximum weight given to individual achievement when determining incentive compensation is only 20% for management employees. Incentive for union employees is not even based on any individual performance matrix. The company expects 100% payout, as every employee in a division gets the same payout. The best union employee receives the same incentive compensation award as the worst performing employee in that division. (Tr. Vol. 11, p. 2415, lines 8-25).

163. CURB doesn't understand how these plans can provide any incentive when the best performing union employee in a division will receive the same compensation as the worse

performing employee in that division. How can that be called an incentive? Employees are getting incentive compensation for simply performing the job they were hired to do. Why should ratepayers be required to pay for incentive compensation to employees for simply performing their basic job requirements, such as providing good customer service, safety and reliability, etc.? Since 100 percent of the target level is basically "acceptable" performance, employees will receive an "incentive" for simply doing what is required as part of the job!

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

Management	$89,278
Local 1613	$55,355
Local 1464	$70,902
Local 412	$70,972
Iatan 1	$73,582
Iatan 2	$67,317

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

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

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

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

168. It is not appropriate to recover all of these incentive compensation costs from regulated ratepayers. Most of these types of programs are based, at least in part, on a utility's ability to achieve certain financial goals. (Tr. Vol. 11, p. 2409, lines 19-25). Providing employees with a direct financial interest in the profitability of the Company is an objective that benefits shareholders, but it does not benefit ratepayers. Incentive compensation awards that are based on earnings criteria may violate the principle that a utility should provide safe and reliable utility service at just and reasonable rates. This is because these plans require ratepayers to pay higher compensation costs as a consequence of higher corporate earnings, generating an upward spiral that does not directly benefit ratepayers, but does directly benefit shareholders, as well as the management personnel responsible for establishing such programs -- to whom much of the incentive compensation is granted. (Crane D., p. 58, lines 5-17).

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

170. It is patently unfair to allow a utility to charge ratepayers for additional return that is then distributed to employees as part of a plan devised to divide extraordinary profits. This results in burdensome and unwarranted rates for its ratepayers, and also violates the principle of sound utility regulation, particularly with regard to the requirement for "just and reasonable" utility rates. (Crane D., p. 59, lines 4-9).

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

4. CURB's adjustment to KCPL's incentive compensation for executives is reasonable and should be accepted by the Commission.

172. With regard to executive compensation, once again CURB believes that the 18 executives eligible for executive awards are more than well compensated. CURB has no problem with these executives receiving additional compensation, but recommends that any compensation in excess of base rates be paid for by shareholders, not ratepayers.

173. The base pay for executive officers is more than adequate; in fact it greatly exceeds the base compensation for officers of Westar Energy, KCPL's most comparable peer group. (Hearing Exhs. 52, 56, 125, 126, 127; Tr. Vol. 10, pp. 2343-2357). While KCPL is entitled to pay its executive officers salaries far in excess of its comparable peer group, ratepayers are only required to pay in rates those amounts the Commission deems reasonable. Amounts above the reasonable threshold become the responsibility of shareholders.

174. The incentive compensation CURB is requesting be disallowed do not provide benefits to ratepayers, and should be disallowed by the Commission.

5. KCPL's proposed generation/production maintenance expense is unreasonable

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

176. CURB witness Andrea Crane recommends that the actual test year level of production maintenance costs be used for all accounts, including steam production maintenance, to determine the Company's revenue requirement is this case. Ms. Crane's recommendation is based on two factors. First, while the Company's historic steam maintenance costs have

fluctuated from year-to-year, the actual test year costs appear reasonable in light of these fluctuations. Historic costs decreased from 2003 to 2004, increased in 2005, declined again in 2006, increased in 2007 and 2008, and declined in the test year. As shown below, the actual test year cost was actually below the level of costs experienced in 2003. Moreover, the actual test year cost was relatively close to the seven-year average for steam maintenance costs.

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

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

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

178. Ms. Crane also pointed out that the purported study the Company references improperly included labor (the Company's production maintenance adjustment does not include

a labor component), which makes the information inapplicable. She also emphasized that it wasn't a study but a sample, without providing any of the parameters of the sample. The historical record of the Company's production maintenance costs have fluctuated up and down. (Tr. Vol. 11, pp. 2514-2516).

6. KCPL's proposed distribution maintenance expense adjustment is unreasonable

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

180. Consistent with her recommendation regarding steam production maintenance costs, Ms. Crane recommends that the KCC reject the Company's proposal to utilize a price escalator to determine pro forma costs and instead utilize the actual test year costs. As shown below, the actual test year costs appear reasonable relative to actual historic costs over the past five years.

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

181. The actual costs incurred since 2005 already reflect actual contractor rates, to the extent that contractors are used for vegetative management services. The Company's methodology, whereby another price escalation factor would be included in its revenue requirement, is nothing more than a speculative inflation adjustment that is neither known nor measurable. Moreover, this adjustment would sever the relationship between the historic test year costs and prospective rates. For all these reasons, CURB recommends that the KCC reject the Company's proposal to utilize a price-escalated historic average and instead reflect the actual test year costs in the Company's revenue requirement. (Hearing Exh. 98, Schedule ACC-33).

182. KCPL argues that CURB ignores the fact that distribution maintenance costs are largely based on vegetation management costs, which they allege have been increasing over time due to increases in contractor rates. (KCPL Brief, ¶ 358). However, this is not borne out by a review of the historic maintenance costs, as shown above.

7. KCPL's budgeted Iatan Unit 2 O&M expense is unreasonable

183. CURB supports the adjustment made by Staff witness Justin Grady disallowing budgeted O&M expense for Iatan 2 for the reasons set forth in Mr. Grady's testimony. As a result, CURB opposes the position set forth in KCPL's Brief, paragraphs 360-362.

8. Staff's proposed disallowance of Iatan Common O&M expense is reasonable and supported by substantial competent evidence

184. CURB supports the adjustment made by Staff witness Justin Grady disallowing budgeted O&M expense accounts applicable to Iatan Common Plant for the reasons set forth in

Mr. Grady's testimony. As a result, CURB opposes the position set forth in KCPL's Brief, paragraphs 363-368.

9. KCPL's proposed $S0_2$ emission allowances amortization period is not reasonable or supported by substantial competent evidence

185. CURB witness Ms. Crane recommends a $3,696,978 decrease (Kansas jurisdictional) to KCPL's operating expense based on two primary adjustments to KCPL's proposed treatment of $S0_2$ emission allowance proceeds. The reasons for this decrease in operating expense are: (1) the current regulatory liability should be returned to customers over 10 years instead of 22 years recommended by the Company; and (2) the regulatory liability should be returned through base rates, not through the ECA. (Crane D., p. 78, lines 9-21, p. 80, lines 1-11; p. 5-16; Hearing Exh. 98, Schedule ACC-31).

186. KCPL disagrees with the shorter amortization period and contends that the flow back to customers should occur through the ECA mechanism.

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

proceeds were received and the period over which the proceeds will be returned to ratepayers. Crane D., p. 78, lines 9-21, p. 79, lines 1-3).

188. In addition, the use of a ten-year period will provide greater rate relief to ratepayers now, when it is most needed. The revenue requirement associated with the investment in new plant is at its highest during this time because there is virtually no depreciation reserve to offset the investment in the new generating facility. The use of a ten-year amortization period will not only provide a better match with the period of time over which most of the emission allowance proceeds were received, but it will also provide a significant financial benefit to ratepayers by returning these proceeds more quickly. Ms. Crane's adjustment is shown in Schedule ACC-31. (Crane D., p. 79, lines 3-11; Exhibit 98, Schedule ACC-31).

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

190. KCPL addresses Ms. Crane's argument that her 10-year period provides a better match with the period over which most of the proceeds were received by stating it is not relevant to the amortization period. However, KCPL's response to CURB-59 demonstrates that the overwhelming majority of the SO_2 emission allowance proceeds included in the regulatory liability were received in 2005-2007. It is unreasonable to ask ratepayers to wait for up to 22 years for the return of these proceeds.

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

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

193. CURB also disagrees with the Company's proposal to have the amortization of the regulatory liability flow through the ECA, instead of being returned through base rates. The regulatory liability has been a rate base component of the Company's distribution rates since the Regulatory Plan was initially approved. In addition, the regulatory liability will continue to be a component of the Company's rate base, and therefore a component of its distribution rates, until the amortization is complete. Accordingly, it would be unreasonable to reflect the amortization credit through the ECA while the regulatory liability continues to be reflected in base rates. Therefore, she recommends that the regulatory liability be returned to ratepayers through its distribution revenue requirement, and has included this amortization in calculating her revenue requirement recommendation in this case as discussed above. (Crane D., p. 80, lines 5-16).

194. Amounts accrued during the regulatory plan should be returned in base rates, as they will be in Missouri. While the Company argues that these amounts should be booked to accounts (Account 509) that flow through the ECA, the fact is that there is nothing preventing

KCPL from returning these amounts in base rates. KCPL has no ECA in Missouri, and still manages to flow these to ratepayers through base rates. (Tr. Vol. 11, pp. 2549-50).

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

196. Because the revenue requirement for Iatan 2 is greater in the earlier years (when the depreciation reserve is small), returning SO_2 proceeds over 10 years will provide ratepayers a greater offset to rates when they need it the most. (Crane D., p. 79, lines 3-11).

10. KCPL's SERP benefits should be the responsibility of shareholders, not ratepayers.

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

> ...an amount substantially equal to the difference between the amount that would have been payable under the Pension Plan in the absence of tax laws limiting pension benefits and earnings that may be considered in

> calculating pension benefits, and the amount actually payable under the Plan...Messrs. Chesser and Marshall are credited with two years of service for every one year of service earned under our Pension Plan.

(Crane D., p. 68, lines 1-20).

198. As shown in the revised work papers for its pension expense adjustment, KCPL has included $1,174,964 of GPE SERP costs in its filing, a portion of which are capitalized. None of the GPE SERP costs have been allocated to entities other than KCPL. The Company has also included WCNOC SERP costs of $496,778, 47% of which are allocated to KCPL. (Crane D., p. 68, lines 23-25, p. 69, lines 1-3).

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

200. The Company cites the IRS restrictions as the reason it set up a non-qualified SERP plan that would make the affected individuals whole.[20] The IRS restrictions are there because the IRS doesn't think other taxpayers should be funding these programs! That is why

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[20] KCPL Brief, ¶ 383.

the tax deductibility of retirement contributions must meet the criteria for qualified plans. Yet KCPL thinks Kansas ratepayers should fund these excessive programs.

11. KCPL's proposed pension funding status adjustment is unreasonable and should be denied

201. CURB supports the adjustment made by Staff witness Karen Hull disallowing KCPL's funding status adjustment for the reasons set forth in Ms. Hull's testimony. As a result, CURB opposes the position set forth in KCPL's Brief, paragraphs 386-394.

12. The Company's projected claims for other benefits are based on budgeted amounts, are speculative, and do not represent known and measurable changes to the test year

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

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

204. The Company's claim is based on budgeted 2010 amounts, which do not represent known and measurable changes to the test year. As noted, the Company is self-insured

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

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

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

207. CURB recommends that the Company's actual test year costs be used in this proceeding instead of the Company's speculative increases. As shown by Staff's adjustment to Other Benefits, updating these costs for more recent historic information does not necessarily result in increased costs, indicating that such costs can fluctuate from year to year. CURB does not believe that the Company has supported its adjustment to Other Benefits and therefore recommends that the actual test year costs be adopted.

13. KCPL's property tax expense should be based upon the actual 2009 expense

208. The Company has accepted CURB's adjustment to the property tax expense issue.[21] (Hearing Exh. 98, p. 1, Schedule 40).

14. Staff's depreciation study adjustment should be adopted

209. CURB supports the depreciation adjustments made by Staff witness William Dunkel for the reasons set forth in Mr. Dunkel's testimony. As a result, CURB opposes the positions set forth in KCPL's Brief, paragraphs 406-425.

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

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

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[21] KCPL Brief, ¶ 403.

has advocated reducing such ratios to their present value. Here, he picked six key issues, but probably could have picked twenty. (Tr. Vol. 12, pp. 2682-84, p. 2686, lines 2-25).

212. Consequently, Staff's depreciation adjustments are very conservative, and still result in charges to ratepayers in excess of a return of KCPL's invested capital. This leads to an overriding depreciation concern for this and future proceedings: what is the purpose of allowing depreciation in the revenue requirement? Is it to provide additional cash to a utility or is it to provide a return of invested capital. CURB believes the purpose is to provide to a utility a return of its invested capital.

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

214. While CURB supports the additional depreciation study adjustments proposed by Staff, the evidence shows they are conservative, and while we may not be able to resolve the overriding issue in this docket, it is an important issue for the Commission to consider. Otherwise, we will continue to allow KCPL to extract capital contributions from its ratepayers through excessive depreciation charges.

215. It is CURB's position that investors, not ratepayers, should make such investments. However, even if the KCC should determine that ratepayers should be required to make capital contributions to utilities, then those contributions should be transparent, not buried in depreciation rates, and the utilities should be held accountable for the contributions and ratepayers should not be required to pay another return of or return on such contributions extracted from ratepayers.

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

217. In *Kansas Industrial Consumers,* Mr. Spanos ascertained net salvage values to determine depreciation by estimating the dismantling costs at all steam generation stations based upon costs derived from dismantling studies of "other similar stations." 36 Kan. App.2d at 105. In rejecting inclusion of Westar's terminal net salvage depreciation calculated by Mr. Spanos, the *Kansas Industrial Consumers* Court stated that it wasn't rejecting the inclusion of terminal net salvage depreciation if and when it is supported by evidence before the Commission. However, in order to uphold an order permitting terminal net salvage depreciation, the Court concluded there must be *some evidence* that the utility has a reasonable and detailed plan to actually dismantle a generation facility upon retirement. The *Kansas Industrial Consumers* Court noted that there was no evidence of even tentative plans – instead, "Spanos' testimony was based upon case studies from other areas and was completely speculative as to the realities of Westar's operations." 36 Kan. App.2d at 108.

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

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

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

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

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

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

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

15. Rate Case Expense

(a) CURB's proposed disallowances for rate case expense are reasonable and should be adopted

225. The Company's claim includes amortization costs for three rate cases, including the current case. As shown in the work papers to Adjustment CS-80, KCPL has included the annual amortization of the following rate case costs: $871,309 for costs incurred in KCC Docket No. 07-KCPE-905-RTS, $2,313,299 for costs incurred in KCC Docket No. 09-KCPE-246-RTS, and $2,020,307 for the current case. Each of these cases is being amortized over a four-year period. The Company has not included costs for KCC Docket No. 06-KCPE-828-RTS in its claim, since these costs will be fully amortized by December 31, 2010. KCPL incurred rate case costs of $1,224,160 in that proceeding. It should be noted that these amounts are the Kansas-jurisdictional share of the Company's rate case costs. Since KCPL has filed concurrent cases in Kansas and Missouri, it is also recovering significant rate case costs in the Missouri jurisdiction. In addition to claims for Kansas rate cases, the Company has also included costs relating to a transmission rate case at the Federal Energy Regulatory Commission ("FERC"). KCPL is

proposing to amortize costs associated with the FERC case over one year. (Crane D., p. 85, lines 10-21, p. 86, lines 1-6).

226. With regard to rate case costs, CURB recommends that any amounts over $1.157 million for KCC Docket No. 09-KCPE-246-RTS (246 docket) be borne by shareholders. The Company's original rate case cost estimate in that case was $800,000. The estimate when the stipulation was signed was $1 million. Now, the Company is seeking $2.3 million from ratepayers relating to that case. Much of the complexity of that case was due to the fact that the Company had not appropriately allocated its budget for common plant between Iatan 1 and Iatan 2, and therefore this allocation needed to be made in the middle of the case, complicating the analysis significantly. However, the Company was well aware of this complexity when the $1 million cost estimate was included in the stipulation. CURB therefore believes that shareholders should be responsible for ½ of the Company's actual costs of $2.3 million. CURB's adjustment results in recovery of rate case costs for that proceeding of $1,157,150, which is still 44% higher than the Company's original cost estimate. CURB's adjustment is shown in Schedule ACC-34. (Crane D., p. 86, lines 8-21, p. 87, lines 15-20; Hearing Exh. 98, Schedule 34).

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

228. In addition, while CURB did not make any adjustment to the Company's claim of $2.1 million for costs of the current case, CURB would oppose any attempt by the Company to

recover more than this amount from ratepayers in this case. The Company should be limited to recovering its claim of $2.1 million unless CURB has the opportunity to review any additional actual charges, conduct discovery, and prepare additional testimony on this issue. Any additional costs should be examined in some future proceeding, such as the upcoming abbreviated case. During the hearing, CURB requested additional review of any rate case expense in the current docket that exceeded the $2.1 million amount included in KCPL's application. (Tr. Vol. 1, p. 117, lines 5-14). While the Commission indicated on several occasions during the hearing that it would consider this issue, the parties are still uncertain how the Commission intends to proceed. CURB urges the Commission to consider CURB's request to defer consideration of any additional rate case expenses until the abbreviated case.

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

230. Ms. Crane also recommends that the Company's claim for recovery of certain FERC-jurisdictional costs be denied. According to page 60 of Mr. Weisensee's testimony, "FERC does not allow a deferral and amortization of these costs; rather, costs must be expensed

as incurred. Therefore, we included the 2010 budgeted FERC transmission rate case expense in this rate proceeding." The fact that FERC does not permit the Company to defer and amortize these costs is no reason to require Kansas-jurisdictional customers to pay these costs. If the Company attempted to recover Missouri rate case costs from Kansas ratepayers, that claim would undoubtedly be denied. Whether or not the Company can recover costs that are incurred for the benefit of another jurisdiction in that other jurisdiction is irrelevant in determining whether the costs should be recovered in Kansas. KCPL has not provided any rationale for why these costs should be recovered in Kansas-jurisdictional rates, other than its claim that such costs cannot be recovered elsewhere. Accordingly, the Company's claim should be denied. Ms. Crane's adjustment to eliminate these FERC transmission costs from the Company's Kansas-jurisdictional revenue requirement is also shown in Schedule ACC-34. (Crane D., p. 88, lines 10-21, p. 89, lines 1-7).

16. KCPL's use of a 30-year average is appropriate.

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

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

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

234. Finally, the Kansas Commission has traditionally used a 30-year normal. (Crane C/A, p. 5).

17. KCPL's attempt to reduce the ratepayer benefit of the pre-tax payment on plant by deducting accumulated deferred income tax violates the agreement between the parties and should be rejected

235. The Company's claim that the rate base impact of the pretax payment on plant (PTPP) should be reduced by accumulated income taxes clearly violates the agreement and understanding reduced to writing in the settlement of the last rate case (246 docket). In its filing, the Company included an adjustment to increase its depreciation reserve by $66.25 million,

consistent with the terms of the Regulatory Plan. This adjustment has the effect of decreasing rate base by $66.25 million. However, the Company also included an adjustment to reduce its deferred income tax reserve by $25,134,888, which has the effect of increasing rate base by this amount. Therefore, the net impact on ratepayers is that they are effectively only receiving the benefit of a prepayment of $41.12 million. (Crane D., p. 47, lines 1-16).

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

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

- As part of the negotiations to pay an additional $18 million annually in pretax payment on plant (PTPP), the parties to the 246 docket demanded the description contained in Schedule CBG-2 attached to Chris Giles testimony in support of the 246 docket Stipulation. (Tr. Vol. 2, p. 389, lines 14-21; Hearing Exh. 34, Schedule CBG-2).
- Schedule CBG-2 contains a description requested by the parties of how KCPL believes the pre-tax payment on plant on behalf of customers which has been identified in each of the first three cases under the 1025 Stipulation and Agreement "will affect rate base and overall revenue requirements within the context of KCPL's fourth rate case under the 1025 stipulation." (Tr. Vol. 2, p. 387, lines 2-25, p. 388, line 1; Hearing Exh. 34, Schedule CBG-2; Crane D., p. 48, lines 15-21, p. 49, lines 1-13) (emphasis added).

- Schedule CBG-2, attached to Chris Giles testimony in support of the 246 docket Stipulation, does not mention accumulated deferred income taxes (ADIT). (Tr. Vol. 2, p. 385, lines 16-25, p. 386, lines 1-25, p. 387, line 1; Hearing Exh. 34, Schedule CBG-2).
- Schedule CBG-2 states that "The accumulated CIAC amounts will be treated as increases to the depreciation reserve and be deducted from rate base in any future KCPL rate proceedings, beginning with the 2009 rate case (Iatan 2 case)." (Hearing Exh. 34, Schedule CBG-2, p. 1; Crane D., p. 48, lines 15-21, p. 49, lines 1-13).
- Schedule CBG-2 states that "In the estimated example above, the total cumulative amount of pre-tax payment on plan on behalf of customers of $74 million would be added to the accumulated depreciation reserve as of the date rates resulting from the fourth rate case under the Regulatory Plan are effective (January 1, 2011). The effect of this would be to lower rate base as if the customers had already paid for this amount of plant investment, and therefore no return on this $74 million would be forthcoming to the Company as part of rates going forward. In addition, there would be no depreciation expense related to this customer-paid plant amount ($74 million in this example) included in KCP&L's future revenue requirement." (Hearing Exh. 34, Schedule CBG-2, pp. 1-2; Crane D., p. 48, lines 15-21, p. 49, lines 1-13) (emphasis added).
- Schedule CBG-2 further states "This is a permanent addition to the depreciation reserve and so will have the impact of never allowing the Company to earn a return on or a return of (depreciation expense) a portion of its rate base equivalent to the amount of accumulated pre-tax payment on plan on behalf of customers." (Hearing Exh. 34, Schedule CBG-2, p. 2; Crane D., p. 48, lines 15-21, p. 49, lines 1-13) (emphasis added).
- Finally, Schedule CBG-2 states, "In addition to this rate base effect, revenue requirements in the next rate case will be reduced by the removal of the annual level of pre-tax payment built into rates as of August 1, 2009, or $33 million." (Hearing Exh. 34, Schedule CBG-2, p. 2).
- While John Weisensee testified that Mr. Giles "should have" discussed the ADIT (Weisensee R., p. 7, line 21), the fact is that Mr. Giles never mentioned ADIT in his description of how PTPP would "affect rate base and overall revenue requirements within the context of KCPL's fourth rate case under the 1025 stipulation."

238. Now, the Company is attempting to go back on its word and deny ratepayers the benefit of $25.1 million of that prepayment. The Company has attempted to link this $25.1 million to a reduction in depreciation expense. KCPL states that, "Mr. Giles also did not reference this future depreciation expense effect in his Direct Testimony, and if one were to utilize CURB's apparent rationale, customers should also not be granted this benefit since it wasn't mentioned."[22]

239. This statement is simply not true, as every document relating to the PTPP states that the Company will not recover depreciation expense associated with these amounts. Schedule CBG-2, attached to Mr. Giles testimony in support of the 246 docket Stipulation, specifically states, "In addition, there would be no depreciation expense related to this customer-paid plant amount ($74 million in this example) included in KCPL's future revenue requirement." (Hearing Exh. 34, Schedule CBG-2, p. 2 (emphasis added)). As a result, the depreciation expense issue is simply a red herring to distract the parties from the Company's attempt to go back on its word with regard to the rate base treatment of PTPP.

240. KCPL relies upon Hearing Exh. 115 in support of its assertion that ratepayers get a greater benefit with the ADIT than without it. However, Ms. Crane demonstrated in Hearing Exhibit 132 that the $3.41 million depreciation expense effect shown in the "revised" column of Exhibit 115, should also be in the first column, as reflected in Hearing Exh. 132. This

[22] KCPL Brief, ¶ 454.

demonstrates that the depreciation expense effect is the same, with or without KCPL's attempt to offset ratepayer PTPP benefits with ADIT.[23]

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

242. In addition, KCPL may or may not pay the income taxes it is attempting to offset from the PTPP benefit to ratepayers. To the extent any income taxes were paid, it certainly was not at the statutory rate used by the Company in its deferred tax adjustment. While the Company calculated the ADIT at a composite tax rate of 39.58%, the 2009 10-K indicates the composite tax rate actually paid by GPE was only 16.3% in 2009, 34.8% in 2008, and 27% in 2007 and the composite tax rate actually paid for KCPL was only 26.7% in 2009, 30.3% in 2008, and 27.4% in 2007. Income tax calculations are very complex, but the rate used for ratemaking purposes is generally not the rate the Company actually pays in income taxes. (Tr. Vol. 11, p. 2552, lines 17-25, p. 2553, lines 1-25, p. 2554, lines 1-3; Hearing Exh. 57, pp. 125-126).

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

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

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

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

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

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

248. KCPL claims that the failure of Mr. Giles and the documentation in the 1025 Stipulation[24] to reference the ADIT treatment is a simple "oversight."[25] It is difficult to understand how anyone can consider a $25.1 million offset to the $77 million, or 1/3 of the PTPP benefit rightfully belonging to ratepayers, as an "oversight." Mr. Weisensee's statement that Mr.

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

[25] KCPL Brief, ¶ 448.

Giles' written description[26] of the PTPP treatment "should have" referenced the ADIT offset[27] is an understatement, but an admission nonetheless.

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

250. As a result, the Commission should reject the Company's adjustment to the deferred income tax reserve, and accept CURB's adjustment shown in Schedule ACC-16. (Hearing Exh. 98, Schedule ACC-16).

E. CLASS COST OF SERVICE, RATE DESIGN AND OTHER ISSUES

1. KCPL's Environmental Cost Recovery ("ECR") Rider should not be approved.

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

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

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

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

253. While the Company may be required to undertake additional environmental investments over the next few years, this investment should be handled like any other investment that is required to provide safe and adequate electric utility service. Between base rate cases, the risk of recovery should be on shareholders, who are given a premium return on equity for taking on such risk. The Company does not begin to recover other types of investment until it files for new base rates and investment in environmental projects should be given the same regulatory treatment. Requiring the Company to recover these costs in a base rate case also provides a better forum for CURB, KCC Staff, and other intervenors to review these costs and to determine whether the costs are just and reasonable. While the Company will argue that parties have the ability to review these costs in an ECR proceeding, the reality is that such proceedings are conducted in a relatively short period of time and many intervenors to not have the resources to undertake a comprehensive review outside of a base rate case. (Crane D. p. 108, lines 11-21, p. 109, lines 1-3).

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

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

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

257. Westar does have a similar ECR rider, and it should be noted that CURB opposed the adoption of an ECR rider for Westar as well, for some of the same reasons outlined above. However, one difference with KCPL is that this utility has had rate increases each year since the

Regulatory Plan was adopted. Ratepayers have the right to expect some rate relief from these annual increases at the end of the Regulatory Plan. (Crane D. p. 110, lines 8-13).

258. CURB recommends that the KCC reject the Company's proposal. The ECR rider results in single-issue ratemaking, provides a disincentive for utility management to control costs, and shifts risk from shareholders to ratepayers. Given the increases that KCPL ratepayers have experienced under the Regulatory Plan, and will continue to experience in 2010 and possibly in 2011, now is not the time to implement a new mechanism that will result in further annual rate increases. Instead, investment in environmental projects should be treated no differently from other investment that is necessary to provide safe and adequate utility service, and should be recovered only through a base rate case where all parties can undertake a thorough review of the costs. Accordingly, the Company's request for an ECR rider should be denied. (Crane D. p. 110, lines 15-21, p. 111, lines 1-4).

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

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

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

262. KCPL appears to argue that granting the ECR to Westar constitutes Commission policy, or "longstanding practice."[28] Granting a rider to one utility does not constitute Commission policy or longstanding practice. The Commission is entitled to reconsider the wisdom of approving hundreds of millions, perhaps even billions of dollars in environmental upgrades through an informal, expedited proceeding, where public participation and intervention is not allowed. Public scrutiny of these costly investments is necessary and in the public interest.

263. Even if the isolated ECR rider for Westar could possibly be considered policy or longstanding practice (which it is not), the reasons to reconsider ECR riders provided by Staff, CURB, and MUUG witnesses are substantial and provide support and basis for such a decision.[29]

264. KCPL also claims that customers "will benefit because the Company's environmental expenditures will be phased in over time, as opposed to customers seeing "lumpy" increases as projects are completed."[30] Again, any miniscule benefits that may fall to consumers are greatly outweighed by the informal process, minimal opportunity to participate and intervene, annual rate increases, and lack of public awareness. Customers simply do not benefit from continued annual rate increases during these difficult economic times.[31]

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[28] KCPL Brief, ¶ 475.

[29] *Water District No. 1 v. Kansas Water Authority*, 19 Kan. App. 2d 236, 243, 866 P.2d 1076 (1994).

[30] KCPL Brief, ¶ 457.

[31] CURB does agree, however, with the Company admission that the ECR rider will benefit the Company. KCPL Brief, ¶ 457.

2. KCPL's Class Cost of Service ("CCOS") Study

265. CURB supports the Company's Class Cost of Service Study.

3. Rate Design

266. KCPL's current rate design violates the longstanding rule of utility law that one class or sub-class of customers shall not be burdened with costs created by another class or subclass. *Jones v. Kansas Gas and Electric,* 222 Kan. 390, 401, 565 P.2d 597 (1977). This is demonstrated by KCPL's own class cost of service study, which shows that KCPL's discounted winter space and water heating rates are unfairly subsidized by other ratepayers.

(a) KCPL's proposed rate design is unreasonable and should be denied as it continues subsidies to KCPL's water and space heating sub-classes

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

268. The majority of KCPL's residential customers (i.e., 71.6%) take service under RES-A. The RES-A rate schedule contains a customer charge, a declining-block winter energy charge, and a flat rate summer energy charge.[32] Approximately 20.6% of residential customers take service on the Company's RES-C space heating rate schedule. The RES-C rate schedule

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

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

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

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

271. Since KCPL proposes to assign a uniform increase to all residential tariff components, the Company's filed rate design would do nothing to address the excess discounts currently provided to the residential water and space heating subclasses. In other words, the Company's filed residential rate design would simply continue the discriminatory subsidies provided to the water and space heating subclasses. Such subsidies are unfounded, inequitable, and unduly discriminatory. They encourage rather that discourage electricity consumption. (Tr. Vol. 14, pp. 3145 & 3180). Accordingly, the Commission should reject KCPL's filed residential rate design.

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

273. KCPL may respond to this by arguing that Customer A will incur additional costs if he heats his home with natural gas, but how Customer A heats his home is completely irrelevant to analyzing the discriminatory nature of KCPL's discounted, subsidized winter space and water heating rates. In the example illustrated in Hearing Exhibit 154, both customers consume the exact same amount of electricity. Charging significantly different rates for the same consumption of electricity is unreasonable and unduly discriminatory.

(b) CURB's residential and small general service (SGS) rate design is reasonable and should be adopted

274. CURB recommends certain revisions to KCPL's residential rate design in order to simplify the Company's existing rate structure and to provide stronger price signals to consumers to conserve electricity. The conservation policy of the State of Kansas, as expressed by the current sitting Governor of the State of Kansas on January 13, 2009, is: "We must change our outdated rate structure, which currently rewards consumption, instead of conservation, and

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

275. Specifically, CURB opposes the Company's existing declining block energy charges, which are applicable during the winter season for general use (RES-A) and certain space heating (RES-C and RES-D) customers. As currently configured, the Company's tariff provides various discriminatory discounts for increased consumption, beginning with the 1,001st kWh consumed by a customer during the winter. Such discounts encourage rather than discourage consumption, send the wrong price signal to customers, and are unduly discriminatory. CURB also takes issue with the Company's flat rate energy charge in the summer months. In CURB's view, summer energy charges should be redesigned to provide a flat rate for the first 1,000 kWh of consumption, with a higher price applying to all consumption in excess of that level (i.e., a two-step inclining block rate structure) so as to encourage conservation. (Kalcic D., p. 6).

276. Consistent with the Company's proposal to assign an across-the-board increase to all rate classes, CURB assigned a system average increase of 1.54% to KCPL's (aggregate) residential rate class, based on Ms. Crane's filed revenue requirement recommendation. CURB's recommended residential rate design adopts the Company's approach of assigning a system average increase to customer charges. However, as shown in column 4 of Schedule BK-

2, CURB's recommended rates would establish a uniform rate of $0.08037 per kWh covering: a) usage up to 1,000 kWh per month in the summer; and b) all winter usage that is not water heating or space heating related.[33]

277. During the winter season, CURB recommends a *flat* space-heating rate of $0.05768 per kWh for all RES-C consumption, and distinct space heating rates for separately metered space-heating customers on Rates RES-D and RES-E. In addition, CURB would establish a uniform water-heating rate of $0.06189 per kWh for the first 1,000 kWh of winter usage for RES-B and RES-E customers. In contrast, the Company's existing winter energy charges exhibit no such internal consistency (with respect to general use, water heating or space heating service) across the residential subclasses. Finally, column 4, line 5 of Schedule BK-2 shows a summer consumption charge for usage in excess of 1,000 kWh of $0.09726 per kWh. This equates to a conservation-oriented price differential of approximately 1.7¢ per kWh (or a 21.0% increase) over CURB's recommended rate for the 0-1,000 kWh block.[34]

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

279. CURB's recommended winter residential consumption charges were derived by comparing: a) the average consumption charge paid by each of the Company's residential subclasses at present rates; to b) each class' cost-based consumption charge, as given by the

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

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

Company's COSS. The difference between these two (2) values is the *excess* discount received by water and space heating customers. In order to mitigate customer rate impacts, CURB recommends that 50% of the Company's excess discounts be eliminated in this case. However, CURB also recommends that the Commission require KCPL to eliminate all remaining excess space heating and water heating discounts in KCPL's next rate proceeding. (Kalcic D., p. 9-11).

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

281. With respect to SGS rates, the Company maintains four (4) secondary SGS rate schedules: a) General Use (SGSS); b) Space Heating – All Electric (SGSSA); c) Separately Metered Space Heat (SGSSH); and d) Unmetered Service (SGSSU). The SGSS and SGSSA rate schedules contain a customer charge (based on the size of the customer's load in kW), a demand charge and a seasonally differentiated, demand-based declining block energy charge.[35] The SGSSU rate schedule reflects a (single) customer charge and seasonally differentiated, declining

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

block energy charges (i.e., the same seasonal energy charges that apply to SGSS customers). The Company maintains one set of summer energy charges that applies to all SGSS, SGSSA and SGSSH customers. Space heating customers receive non-uniform discounts from the winter energy charges paid by SGSS customers. (Kalcic D., p. 14-15).

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

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

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

285. KCPL argues CURB's proposal is not supported by any study that was prepared or presented that would justify such changes.[36] To the contrary, CURB's winter rate design for

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[36] KCPL Brief, ¶ 500.

KCPL's residential and SGS subclasses is based upon eliminating 33%-50% of the excess discounts identified in KCPL's COSS. Even Mr. Rush agrees that Mr. Kalcic's rate design proposal moved the residential subclasses toward cost utilizing the principle of gradualism, to reduce the percentage differences by approximately 50%. (Tr. Vol. 13, pp. 3018, 3020). As a result, it is not correct to conclude that CURB's rate design is unsupported by any study.

286. KCPL also argues that CURB's proposed change would also place a substantial amount of risk on the Company and would potentially decrease customer satisfaction.[37] One of the fundament policy questions before the Commission is whether it would be appropriate to modify KCPL's existing flat residential energy charge for summer usage. Mr. Rush objects to a summer inclining or inverted block rate design proposed by Staff and CURB, even though he recognizes the Commission has previously approved a summer inclining block rate design for Westar Energy's residential customers, and that an inclining rate would encourage customers to use less energy. (Tr. Vol. 13, pp. 3025, 3037).

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

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[37] *Id.*

288. KCPL argues that Staff, CURB, MUUG, KGS and Atmos have focused on the Residential and smaller commercial classes, and in general are seeking to: (1) send price signals that attempt to force customers to reduce annual energy consumption, and (2) eliminate the Company's heating rates.[38]

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

290. Second, CURB's rate design is not intended to eliminate KCPL's heating rates as KCPL alleges. Rather, it would continue to treat the subclasses as separate rate schedules. CURB's rate design would move residential subclasses towards parity based upon the Company's filed COSS, i.e., it would eliminate a portion of KCPL's (existing) excess water and space heating discounts, which are currently priced well below the system average. Staff, KGS, and Atmos recommend that the Commission eliminate the residential water and space heating subclasses. (Tr. Vol. 14, pp. 3173-3174; 3188-3189) As acknowledged by KCPL witness Tim Rush, Mr. Kalcic's rate design proposal utilized the principle of gradualism, similar to Mr. Rush's alternative rate design proposal. (Tr. Vol. 13, pp. 3018).

291. KCPL also argues that no analysis was done in order to understand the impact of Staff and CURB's proposed rate designs.[39] However, the Company's COSS provides no guidance with respect to the appropriate price of the first versus second residential rate block in

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[38] KCPL Brief, ¶ 488.

[39] KCPL Brief, ¶ 488.

the summer, so it is the Company's CCOS that is lacking depth of analysis. (Tr. Vol. 13, pp. 3019, 2915-16). CURB's rate design would establish a 21% summer price differential across those summer rate blocks, which is a reasonable starting point for introducing a conservation-oriented price signal. (Tr. Vol. 14, pp. 3168-3169).

292. KCPL contends that a dedicated rate design case is the best forum to advance significant rate design changes, including the integration of rate designs that will complement energy efficiency.[40] KCPL simply seeks to delay the inevitable. As a result of KCPL's last rate case, we have all the cost of service evidence necessary to address an alternative rate design for the Company's residential subclasses. Furthermore, there is no issue with respect to rate switching within the residential class. Therefore, it is not necessary to invoke a separate rate design proceeding in order to address residential rate design. (Tr. Vol. 14, p. 3190).

(c) KCPL's overall recommendation concerning rate design is unreasonable and should be denied

293. In CURB's view, KCPL's suggestion that a separate rate case be established to address rate design is nothing more than a delaying tactic. As previously mentioned, the record contains all of the cost of service evidence necessary to address an alternative rate design for the Company's residential subclasses. Furthermore, there is no issue with respect to rate switching within the residential class. Therefore, it is not necessary to invoke a separate rate design proceeding in order to address residential rate design. (Tr. Vol. 14, p. 3190).

294. In addition, CURB's recommended SGS rate design is limited solely to reducing KCPL's excess SGSSA and SGSSH winter energy charge discounts. As such, CURB's SGS rate

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[40] KCPL Brief, ¶ 490.

design is fully justified based on the cost of service evidence in this case. (Tr. Vol. 14, pp. 3193-3194). CURB submits that it is not necessary to implement a separate rate design case in order to determine the validity of CURB's SGS rate design proposal.

(d) KCPL's alternative residential rate design proposal remains unreasonable and CURB's rate design proposal should be adopted by the Commission

295. Over the course of this case, Mr. Kalcic reviewed the Company's alternative residential rate design, and reached certain conclusions regarding the Company's alternative proposal. First, the Company's alternative rate design retains a flat rate summer energy charge, while establishing an overall summer rate that remains too high compared to the cost evidence presented in the Company's own COSS. As a result, the rate design would still favor (subsidize) winter load on the Company's system. By way of comparison, CURB's recommended residential rate design establishes an average summer/winter rate differential equal to that contained in KCPL's COSS. (Tr. Vol. 14, pp. 3165-3166).

296. Second, Mr. Kalcic examined the customer rate impacts associated with the Company's alternative rate design, and compared them to the rate impacts produced by CURB's recommended rate design (assuming the Company were to be awarded an overall 11.5% rate increase). Based upon his analysis, Mr. Kalcic concluded that the rate impacts on each of the residential subclasses were generally comparable across the two (2) proposals. (Tr. Vol. 14, p. 3166).

297. Third, Mr. Kalcic determined that the Company's alternative rate design would eliminate some of the excess water heating and space heating discounts that are provided under KCPL's existing rate design. However, the record is silent as to whether the Company would

propose to eliminate all remaining excess discounts in a future base rate case. (Tr. Vol. 14, pp. 3166-3167). In contrast, CURB's recommended residential rate design would eliminate 50% of the excess discounts in this case, and 50% of the excess discounts in the Company's next case. (Kalcic D., p. 9-11).

298. In CURB's view, the Company's alternative rate design is preferable to KCPL's filed rate design, since the alternative proposal would eliminate *some* of the current excess water and space heating discounts, while the filed rate design would not. However, CURB's recommended rate design is preferable to the Company's alternative rate design since: a) CURB's rate design includes an inverted-block summer energy charge; b) CURB's rate design would establish the appropriate summer/winter rate differential; c) CURB's rate design would impose comparable rate impacts on each of the residential subclasses. In view of the above, CURB recommends that the Commission adopt its recommended residential rate design.

4. KCPL's request to modify its off-system sales allocator should be denied

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

300. The Company now claims that the unused energy allocator is not an appropriate allocator. Instead, KCPL claims that the off-system sales margins should be allocated in proportion to the fixed costs of the generating units used to generate the electricity sold, which

the Company claims primarily comes from its coal-fired steam generating stations. (Crane D., p. 111, lines 16-21).

301. While the coal-fired steam generating stations may be the source of much of the energy used for off-system sales, the Company's proposed allocator does not provide any meaningful information about the availability of this energy to be used for off-system sales. If a particular unit is producing at full capacity but if its output is being used entirely to serve native load, then there is no opportunity for that unit to participate in the off-system sales market. Accordingly the use of the unused energy allocator provides a better measure of the degree to which energy is available to be sold in the off-system sales market. (Crane D., p. 112, lines 1-10).

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

303. The unused energy allocator was a condition of approving the Company's ECA mechanism. While CURB initially opposed the Company's proposal to adopt an ECA, CURB did sign the Stipulation and Agreement in KCC Docket No. 07-KCPE-905-RTS, which provided for the implementation of an ECA. However, an integral part of that agreement was the use of an unused energy allocator for off-system sales. Specifically, the Stipulation and Agreement in that case provided that "KCPL agrees to utilize its UE1 [Unused Energy Allocator] to allocate off-system margins to Kansas retail ratepayers within the context of its ECA tariff." Now that

the ECA is in operation, KCPL is attempting to change the rules agreed upon by the parties. (Crane D., p. 112, lines 18-21, 113, lines 1-6).

304. The change in the allocation methodology would reduce the percentage of the credit allocated to Kansas, yet the Company provides no quantifiable information on exactly how this proposal would impact ratepayers. Based on data from KCC Docket No. 09-KCPE-246-RTS, Kansas would be allocated 44.32% of off-system sales margins if the steam production allocator is used, instead of the 47.11% resulting from the unused energy allocator. (Crane D., p. 113, lines 8-14).

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

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

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

energy allocator in Missouri for off-system sales margins, instead of putting the burden on Kansas ratepayers. Therefore, the KCC should maintain the current allocation methodology for off-system sales margins. (Crane D., p. 114, lines 16-21, p. 115, lines 1-9).

5. KCPL's proposed ROE adder for inclining block rate structure is unnecessary, unreasonable, and not supported by substantial competent evidence

308. The Company requests a 25 basis point adder if the Commission accepts CURB or Staff's rate design proposals. However, Mr. Hadaway didn't perform any analysis to support the 25 basis points adjustment. (Tr. Vol. 8, p. 1733, lines 16--25, p. 1734, lines 1-4, Tr. Vol. 11, p. 2435, lines 3-6).

309. KCPL argues there is increased risk to the company related to inclining block rates, yet admits it conducted no quantitative or other studies. Instead, Mr. Rush "estimated" the potential risk at $7 million, then "assumed" about half of the $7 million would not be recovered.[41] (Tr. Vol. 13, pp. 3039-40). These unquantified estimations and assumptions do not constitute substantial competent evidence upon which the Commission may base a decision to award an additional 25 basis points. Estimations and assumptions constitute speculation, and should be disregarded by the Commission.

310. CURB finds it a little disingenuous that the Company demands a 25 basis point ROE adder in the event a summer inclining block rate design is adopted, but wouldn't dream of proposing a reduction in its ROE due to risk mitigation measures, such as those provided under the regulatory plan, the proposed environmental cost recovery rider, the ECA mechanism, transmission riders, etc. (Tr. Vol. 13, p. 3103).

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[41] KCPL Brief, ¶ 524.

6. International Dark Sky's Recommendations

311. CURB takes no position on this issue.

7. KCPL's uncontested street lighting and municipal traffic control tariffs

312. CURB takes no position on this issue.

8. KCPL's requested OPEB tracker and modifications should be denied

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

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

315. As part of the Regulatory Plan, the KCC approved a new approach for KCPL. In order to reduce the Company's risk during the period of the Iatan Unit 2 construction, the KCC approved a mechanism that has allowed the Company to defer the difference between its actual pension costs each year and the amount recovered in rates. This regulatory asset or liability, which has received rate base treatment, is being amortized over a five-year period. (Crane D., p. 98).

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

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

318. KCPL has proposed to expand the situations whereby KCPL would be granted rate recognition of contributions in excess of the FAS 87 expense. Therefore, the Company is seeking rate recognition for excess contributions for the following reasons, in addition to those listed in the Regulatory Plan: (i) to avoid pension benefit restrictions under the Pension Protection Act of 2006 ("PPA") that would cause an inability of the Company to pay pension benefits to recipients according to the normal provisions of the plan; (ii) to avoid at-risk status under the PPA that would result in acceleration of minimum contributions; and (iii) to reduce Pension Benefit Guarantee Corporation variable premiums. (Crane D., p. 99).

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

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

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

(Crane D., p. 100).

321. On March 18, 2009, Staff filed its Report and Recommendations in the generic proceeding. Staff recommended that the KCC permit the utilities to establish a regulatory asset or liability for the difference between pension and OPEB costs recovered in rates and amounts recorded for financial reporting purposes. KCC Staff also recommended that the utilities be required to fund the amount of pension and OPEB costs recovered annually in rates. The KCC Staff recommended that any deferrals be amortized over a five-year period without carrying costs. Moreover, the KCC Staff recommended that the KCC reject the utilities' request to establish a regulatory asset for the difference between the annual amount of pension and OPEB contributions and the amounts booked pursuant to GAAP. (Crane D., pp. 100-101).

322. On April 17, 2007, CURB filed Initial Comments in the generic docket. CURB recommended that the KCC deny the utilities' request to establish regulatory assets or liabilities

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

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

any amounts not funded due to IRS limitations with regard to tax deductibility. (Crane D., p. 102).

324. In addition, in their Applications for Accounting Orders, both parties requested authorization to establish a second regulatory asset if the amounts actually funded exceeded the annual costs booked pursuant to GAAP. However, KGS and Westar agreed that this second regulatory asset would not accrue carrying costs or be included in rate base in a future case, but would only be used to meet the funding requirements for its first tracker. On September 11, 2009, the KCC issued orders approving the Applications for Accounting Orders submitted by KGS and Westar. On January 12, 2010, CURB, Staff, Westar, and KGS filed a Stipulation and Agreement proposing that the KCC adopt the terms and conditions outlined in the KGS and Westar Accounting Orders on a permanent basis. (Crane D., pp. 102-103).

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

314-RTS, Empire agreed to modify its proposal to be consistent with the mechanisms approved for Westar and KGS. (Crane D., p. 103).

326. CURB continues to oppose pension and OPEB tracker mechanisms, for the reasons expressed in the Initial Comments and Reply Comments filed by CURB in KCC Docket No. 07-GIMX-1041-GIV. However, if the KCC determines that some tracking mechanism is appropriate, then it should adopt the mechanisms approved for KGS, Westar, and Empire. These mechanisms have substantial ratepayer safeguards that are not found in KCPL's current or proposed mechanisms. First, the KGS, Westar, and Empire mechanisms require that utilities actually fund amounts collected in rates in order to record a regulatory asset for differences between pension and OPEB amounts collected in rates and amounts booked pursuant to GAAP. This is an important safeguard and will ensure that amounts collected from ratepayers for pension and OPEB costs are actually used for that purpose.[42] Second, the KGS, Westar, and Empire mechanisms do not include rate base treatment for the regulatory asset or liability resulting from the difference between pension and OPEB amounts collected in rates and amounts booked pursuant to GAAP. Since the funding requirement will match the amount collected in rates, the regulatory asset or liability generated will have no cash impact on the Company and therefore there is no rationale for including any such regulatory asset or liability in rate base. Third, the KGS, Westar, and Empire mechanisms do permit the recording of a second regulatory asset relating to excess contributions, but this regulatory asset has no ratemaking implications and therefore receives no rate base treatment or carrying costs. This provision allows the companies to apply "excess" contributions to meet their regulatory funding requirements in

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

future years, but avoids the possibility of utilities basing funding decisions on discretionary criteria that may not benefit ratepayers. Therefore, if the KCC revises the pension tracker that was adopted for the duration of the Regulatory Plan, and adopts an OPEB tracking mechanism for KCPL, it should adopt the same mechanisms as those approved for KGS, Westar, and Empire. Given the KCC's generic investigation, which was initiated by the utilities including KCPL, it would be reasonable to implement uniform tracking mechanisms for all Kansas utilities. (Crane D., pp. 104-105).\

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

328. In its Order Approving Stipulation and Agreement in KCC Docket No. 04-KCPE-1025-GIE, the KCC noted that the Regulatory Plan does not bind the Commission, and noted that even "KCP&L acknowledged that the Commission's approval of the Agreement would not require the Commission to make any specific determinations or grant any approvals in subsequent dockets."[43] In approving the Regulatory Plan, the KCC noted that "[t]he proposed treatment regarding the specific matters contained in the Agreement appears reasonable at this

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

time, but is subject to future Commission review to ensure that they result in just and reasonable rates and reflect the provision of efficient and sufficient service. K.S.A. 66-101b."[44] In addition, the KCC itself was not a signatory party to the Regulatory Plan and therefore would not be bound by language addressing the "non-KCP&L parties." Thus, the KCC has the authority in this case to extend the pension tracking mechanism recently approved for Westar, KGS, and Empire to KCPL, or to find that no tracking mechanism is appropriate. (Crane D., p. 106).

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

330. KCPL argues that Staff and CURB's objections are inconsistent with Commission policy and precedent,[45] yet the current policy of the Commission, approved in three settlement agreements, utilized the methodology advocated by CURB and Staff. It is KCPL's proposal that is inconsistent with the Commission's current policy.

9. Abbreviated Rate Case

331. CURB is unclear as to what KCPL is proposing regarding the fourth item to be added to the abbreviated rate case "in recognition of the concerns raised by the Commission"

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[44] Id., paragraph 61.

[45] KCPL Brief, ¶ 533.

regarding when total rate case expenses are known compared to the timing of decisions in a rate case. CURB agrees with any proposal to defer to the abbreviated rate case all rate case expenses above those submitted in its Application, to be examined and reviewed for reasonableness and prudence in the abbreviated rate case. If KCPL is proposing something different from that, CURB opposes the proposal. It is CURB's position that additional and substantial rate case expenses must be subject to a full and fair review by all parties, which cannot be provided in the current procedural schedule.

10. Other specific actions requested in the Commission's September 8, 2010 Order

332. As reflected in the arguments above, CURB opposes the following KCPL requests, in addition to any requests relating to the issues CURB has briefed above.

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

(a) Joint Report

333. CURB has no objections to KCPL's description of the Joint Report.

(b) Rate Application

334. CURB opposes all aspects of the rate application that that relate to the issues CURB has briefed above.

(c) Partial Settlement

335. The Commission has approved the uncontested partial settlement agreement which settled several of the contested issues in this case. (Tr. Vol. 1, p. 150; Hearing Exh. 4)

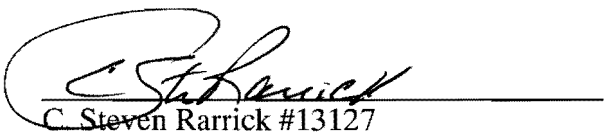
(d) Other items requiring Commission action

336. CURB opposes all matters raised by KCPL in this section that relate to the issues CURB has briefed above.

III. CONCLUSION

337. CURB respectfully requests that the Commission grant Staff's full disallowances for Iatan 1 and 2, issue a rate decrease of approximately $8.468 million, deny the Company's attempt to offset PTPP by $25 million in accumulated deferred income taxes, deny the Company's request for an environmental cost recovery rider, deny the Company's rate design proposals, grant CURB's rate design proposal, and for such further relief as may be just and equitable.

Respectfully submitted,



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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

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

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

C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 29th day of September, 2010.

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

Notary Public

My Commission expires: 01-26-2013.

CERTIFICATE OF SERVICE

10-KCPE-415-RTS

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

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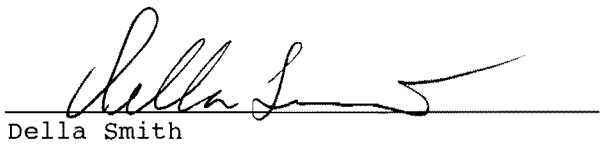

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