

STATE OF KANSAS
BEFORE THE
KANSAS CORPORATION COMMISSION



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State Corporation Commission
of Kansas

IN THE MATTER OF THE APPLICATION OF)
KANSAS CITY POWER AND LIGHT)
COMPANY TO MODIFY ITS TARIFFS TO)
CONTINUE THE IMPLEMENTATION OF ITS)
REGULATORY PLAN)

Docket No 10-KCPE-415-RTS

DIRECT TESTIMONY OF
ANDREA C. CRANE
RE: RATE CASE COSTS

ON BEHALF OF
THE CITIZENS' UTILITY RATEPAYER BOARD

July 6, 2011

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Appendix A - List of Prior Testimonies

1 **I. STATEMENT OF QUALIFICATIONS**

2 **Q. Please state your name and business address.**

3 A. My name is Andrea C. Crane and my business address is 90 Grove Street, Suite 211,
4 Ridgefield, CT 06877. (Mailing address: PO Box 810, Georgetown, CT, 06829).

5
6 **Q. By whom are you employed and in what capacity?**

7 A. I am President of The Columbia Group, Inc., a financial consulting firm that specializes in
8 utility regulation. In this capacity, I analyze rate filings, prepare expert testimony, and
9 undertake various studies relating to utility rates and regulatory policy. I have held several
10 positions of increasing responsibility since I joined The Columbia Group, Inc. in January
11 1989. I became President of the firm in January 2008.

12
13 **Q. Please summarize your professional experience in the utility industry.**

14 A. Prior to my association with The Columbia Group, Inc., I held the position of Economic
15 Policy and Analysis Staff Manager for GTE Service Corporation, from December 1987 to
16 January 1989. From June 1982 to September 1987, I was employed by various Bell Atlantic
17 subsidiaries. While at Bell Atlantic, I held assignments in the Product Management,
18 Treasury, and Regulatory Departments.

19
20 **Q. Have you previously testified in regulatory proceedings?**

21 A. Yes, since joining The Columbia Group, Inc., I have testified in approximately 350
22 regulatory proceedings in the states of Arizona, Arkansas, Connecticut, Delaware, Hawaii,

1 Kansas, Kentucky, Maryland, New Jersey, New Mexico, New York, Oklahoma,
2 Pennsylvania, Rhode Island, South Carolina, Vermont, West Virginia and the District of
3 Columbia. These proceedings involved electric, gas, water, wastewater, telephone, solid
4 waste, cable television, and navigation utilities. A list of dockets in which I have filed
5 testimony is included in Appendix A.

6
7 **Q. What is your educational background?**

8 A. I received a Master's degree in Business Administration, with a concentration in Finance,
9 from Temple University in Philadelphia, Pennsylvania. My undergraduate degree is a B.A.
10 in Chemistry from Temple University.

11
12 **II. PURPOSE OF TESTIMONY**

13 **Q. What is the purpose of your testimony?**

14 A. On December 17, 2009, Kansas City Power & Light Company ("KCP&L" or "Company")
15 filed an Application with the Kansas Corporation Commission ("KCC" or "Commission")
16 seeking a rate increase of \$55.225 million. On November 22, 2010, the KCC issued *Order:*
17 *1) Addressing Prudence; 2) Approving Application, in Part; and 3) Ruling on Pending*
18 *Requests* ("November 22, 2010 Order") in this case, granting a rate increase of \$21.846
19 million. In its November 22, 2010 Order, the KCC approved recovery of rate case costs for
20 the current docket of \$5.670 million. After a series of Motions for Reconsideration and
21 Clarification filed by KCP&L and the Citizens' Utility Ratepayer Board ("CURB"), the KCC

1 issued *Order Granting KCPL's and CURB's Second Petitions for Reconsideration and*
2 *Clarification* ("Second Reconsideration Order") on February 21, 2011. In the Second
3 Reconsideration Order, the KCC ruled that "the administrative record will be opened to
4 receive evidence on this issue of rate case expense and an evidentiary hearing will be
5 scheduled also limited to the issue of rate case expense for this docket."¹ Pursuant to the
6 procedural schedule that was subsequently adopted, KCP&L filed testimony on May 6, 2011,
7 seeking to increase its recoverable rate case costs to \$9.071 million.

8 The Columbia Group, Inc. was engaged by CURB to review the Company's
9 testimony and to provide recommendations on certain policy issues relating to rate case costs
10 for the current docket. I am also testifying on CURB's overall recommendation with regard
11 to the level of rate case costs that should be recovered by KCP&L. Ralph Smith, of Larkin &
12 Associates, and Stacey Harden, of CURB, are also providing testimony. Mr. Smith is
13 providing testimony on the reasonableness of specific components of rate case costs claimed
14 by KCP&L and Ms. Harden is providing testimony on certain specific expenditures.

15 In order to develop my recommendations, I reviewed the prefiled testimony and
16 exhibits of the Company, the responses to data requests propounded upon the Company by
17 CURB and by the Staff of the Commission ("KCC Staff"), and other documents useful in an
18 analysis of the Company's claim.

¹ Second Reconsideration Order, February 21, 2011, paragraph 15.

1 **III. SUMMARY OF CONCLUSIONS**

2 **Q. What are your conclusions concerning the level of rate case costs being claimed by the**
3 **Company for this case?**

4 A. My conclusions and recommendations are as follows:

- 5 1. The level of rate case costs incurred by the Company is disproportionate to the results
6 achieved by KCP&L.
- 7 2. The other parties to this case do not have the same level of resources that are
8 available to KCP&L for rate case litigation.
- 9 3. In determining the reasonableness of the Company's claim for rate case costs, the
10 KCC should examine the end result to ensure that it is just and reasonable for
11 ratepayers.
- 12 4. Allowing utilities to update claimed rate case costs with actual results late in the
13 procedural schedule does not provide sufficient opportunity for parties to conduct a
14 comprehensive review of rate case costs.
- 15 5. The KCC should limit recovery of rate case costs for the current docket to \$2.100
16 million, which is the amount claimed by KCP&L in its initial filing.
- 17 6. If the KCC decides to permit KCP&L to recover rate case costs that exceed its initial
18 claim, then the KCC should tie recovery of rate case costs in this case to the costs
19 incurred by CURB and KCC Staff, permitting the Company to recover directly-
20 incurred costs that are no greater than the costs incurred by CURB and KCC Staff.
21 This would result in total recovery of \$2.846 million.

- 1 7. In the alternative, in this case the KCC could adopt a policy of requiring a sharing of
2 directly-incurred rate case costs between shareholders and ratepayers, subject to a
3 reasonable maximum. If such a sharing mechanism is adopted, then I recommend a
4 cap on recovery of directly-incurred costs that is no more than twice the costs
5 incurred by CURB and KCC Staff. In this case, this methodology would result in
6 total recovery of \$4.269 million, including CURB and KCC Staff costs of \$1.423
7 million.
- 8 8. Finally, if in spite of the Company's failure to properly update or monitor its rate case
9 costs, the KCC decides to base recovery on a review of individual invoices, then the
10 KCC should approve recovery of no more than \$4.913 million, as recommended by
11 Mr. Smith. Mr. Smith's recommendation includes \$3.490 million in costs incurred
12 directly by the Company and \$1.423 million in costs incurred by CURB and KCC
13 Staff. In addition, as recommended by Mr. Smith, the KCC should require a ten-year
14 amortization period for \$1.896 million of the Company-incurred costs of \$3.490
15 million, resulting from the fact that these costs relate to the prudence of the Iatan
16 Generation Station and therefore are not the types of costs that would reoccur in each
17 rate case.
- 18 9. As a policy matter, the KCC should reexamine the way in which it has permitted
19 utilities to claim and recover rate case costs.
- 20

1 **IV. DISCUSSION OF THE ISSUES**

2 **Q. Please provide a brief history of the issues in this case.**

3 A. In its base rate case seeking an increase of \$55.225 million, KCP&L included a claim for
4 directly-incurred costs associated with this case of \$2.100 million. KCP&L proposed to
5 amortize these costs over 4 years. CURB did not take issue with the level of rate case costs
6 claimed by KCP&L or with the proposed amortization period. I reviewed these costs as well
7 as the amounts that KCP&L had incurred in prior rate cases during the five years of its
8 Regulatory Plan. While \$2.100 million is a relatively large amount for rate case costs, I
9 found the estimate to be reasonable given the complexity of this case. No further estimate or
10 claim for rate case costs was made by KCP&L prior to the hearings in this case.

11 On September 9, 2010, after the hearings in that case, KCC Staff issued a data
12 request, KCC-554, seeking an update of actual and estimated rate case costs, along with
13 supporting invoices. On October 14, 2010, KCC Staff issued a follow-up data request,
14 KCC-555, seeking additional supporting detail. According to the responses to these data
15 requests, actual rate case costs through September 30, 2010 totaled \$8,319,383, including
16 \$1,169,712 for CURB and KCC Staff.

17 The KCC issued its decision on the Company's request for a rate increase of \$55.225
18 million on November 22, 2010. In the November 22, 2010 Order, the KCC granted the
19 Company an increase of \$21.846 million, or approximately 39.6% of its request. In its
20 November 22, 2010 Order, the KCC made several findings with regard to rate case costs.
21 First, it found that the responses to data requests KCC-554 and KCC-555 should be made

1 part of the administrative record in the case. Second, it found that the Company should be
2 permitted to recover \$5,669,712 in rate case costs, including \$1,169,712 of costs for CURB
3 and KCC Staff. Third, it found that recovery of these costs should be Interim Rate Relief.
4 The KCC stated that if the parties contested this amount, it would hold further proceedings to
5 examine these costs.

6
7 **Q. Prior to the issuing of the November 22, 2010 Order, had KCP&L updated its initial**
8 **claim for rate case costs?**

9 A. No, it had not. During the cross-examination of Mr. Weisensee, he testified that “[t]he last
10 numbers that I have seen as of July 31st, and if you want just a general ball park number, I
11 don’t remember the exact number, it was right around 3 million dollars.”² He was asked
12 whether he had an opinion as to what the total amount of rate case expense would be, and he
13 responded “Not specifically.”³ He later testified that rate case costs “could be” in excess of
14 \$4 million.⁴ However, Mr. Weisensee did not amend the Company’s claim during his cross-
15 examination, nor did he provide any supporting documentation regarding either actual rate
16 case costs incurred to date or the Company’s estimate of future rate case costs.

17 In the past, KCC Staff has generally recommended that companies be permitted to
18 update their original rate case cost estimate at the end of the proceeding with actual results,
19 and to amortize that amount over four years. In many cases, rate case costs have not been an

² Tr. 2102-2103.

³ Tr. 2103.

⁴ Tr. 2104.

1 issue since actual rate case costs are usually close to the amount initially claimed. In
2 addition, since many cases are settled, there is often no need for the parties to agree upon or
3 even identify the amount of rate case costs that are recoverable in rates.

4 In this case, it is interesting to note that the only documentation of rate case costs,
5 other than the Company's original claim of \$2.100 million, was entered into the record by the
6 KCC in its November 22, 2010 Order when it required KCC-554 and KCC-555 to be made
7 part of the administrative record. KCP&L did not provide a revised claim in either its Post
8 Hearing Brief filed on September 16, 2010 or in its Post Hearing Rebuttal Brief filed on
9 October 22, 2010, nor did the Company file any further documentation on rate case costs in
10 response to Mr. Weisensee's cross-examination. KCP&L did not seek leave to reopen the
11 record to introduce new evidence or amend its claim for rate case expense prior to the
12 November 22, 2010 Order.

13 In its Post Hearing Brief filed on September 16, 2010, KCP&L took exception to a
14 recommendation made by Staff witness Karen Hull to cut off rate case costs as of April 30,
15 2010. The Company stated in its Post Hearing Brief that "Ms. Hull had indicated to KCP&L,
16 however, that Staff would be willing to include updated rate case costs later in this case, and
17 Mr. McClanahan had indicated that Staff would consider actual costs through the Order date
18 in this case."⁵ In its Post Hearing Rebuttal Brief filed on October 22, 2010, KCP&L stated
19 that it "will incur rate case expense in the present docket that will be much higher than the
20 previous three rate cases." However, once again KCP&L did not provide any estimate of its

⁵ Post Hearing Brief of KCP&L, September 16, 2011, paragraph 429.

1 rate case costs. In fact, it did not even update its actual costs spent to date. Instead, KCP&L
2 argued that "...based on the evidence in the record, KCP&L asks the Commission to find that
3 its actual incurred rate case expenses are prudent and reasonable, and that this requested
4 amortization of its Kansas rate case expenses for each case be recovered over a four-year
5 amortization period beginning with the effective date of new rates in each case is
6 reasonable."⁶

7 After the Commission issued its November 22, 2010 Order, CURB and KCP&L both
8 subsequently filed Motions for Reconsideration and Clarification. KCP&L alleged that the
9 Commission had deviated from past practice by limiting the amount of rate case costs
10 collected in rates. In addition, KCP&L requested authorization to defer any amounts over
11 those reflected in the November 22, 2010 Order. In CURB's Petition, CURB argued that the
12 amount of rate case costs included in rates by the KCC was not supported by the evidence in
13 this case. CURB also requested that the KCC reconsider its decision to make the rate case
14 cost recovery interim, citing several procedural concerns about establishing a revenue
15 requirement that contains some components that were interim and some that were final. On
16 January 6, 2011, the KCC issued its *Order on Petitions for Reconsideration and*
17 *Clarification and Order Nunc Pro Tunc* ("Order on Petitions"), reaffirming its award of
18 \$5,669,712 but agreeing to make this rate case award final. The KCC also denied KCP&L's
19 request to defer recovery of amounts over this award.

20 CURB and KCP&L subsequently filed Second Motions for Reconsideration and

⁶ Post Hearing Rebuttal Brief of KCP&L, October 22, 2010, paragraph 272.

1 Clarification. CURB stated that since the KCC based its decision on documents that were
2 not in the record until after the November 22, 2010 Order was issued (KCC-154 and 155),
3 CURB had been denied its due process right. KCP&L sought reconsideration of both the
4 amount of the rate case award as well as the cut-off date of November 22, 2010. In its *Order*
5 *Granting KCPL's and CURB's Second Petitions for Reconsideration and Clarification*
6 (“Second Reconsideration Order”), the KCC ordered that the record be reopened to take
7 additional evidence on the issue of rate case costs. It also stated that this evidence should be
8 limited to amounts incurred through November 22, 2010, and that expenses “incurred by
9 KCP&L after that date will be borne by the Company.” In addition, the KCC made the entire
10 revenue increase granted in the November 22, 2010 Order interim.

11
12 **Q. How much is the Company currently seeking to recover from ratepayers?**

13 A. In response to the Second Reconsideration Order, KCP&L filed testimony on May 6, 2011,
14 requesting recovery of rate case costs of \$9,070,616. This includes \$1,422,832 in
15 assessments from CURB and Staff, and \$7,647,684 in directly-incurred costs. Our analysis
16 is limited to KCP&L’s directly-incurred costs.⁷ KCP&L is now seeking to increase its
17 recovery of directly-incurred costs from the \$4,500,000 authorized by the KCC in its
18 November 22, 2010 Order, to \$7,647,684, an increase of \$3,147,684, or 70%. Moreover, the
19 total costs being claimed are more than four times the amount included in the Company’s

⁷ Although we are not making any recommendations with regard to costs for CURB and KCC Staff, it should be noted that the Company’s claim for these costs appears to be overstated. As discussed in the testimony of Ms. Harden, it appears that there is at least \$26,000 in costs for Docket No. 09-KCPE-246-RTS included in the amount of CURB and KCC Staff costs being claimed by the Company for Docket No. 10-KCPE-415-RTS.

1 filing.

2
3 **Q. Do you have any general comments about the process that has unfolded to date?**

4 A. Yes, I do. In its Second Reconsideration Order, the KCC acknowledged that its prior
5 decision to award \$5.670 million in rate case costs to the Company was made without
6 sufficient evidence. In fact, the KCC stated that "...the purpose of granting reconsideration
7 and setting a hearing as announced in this Order is to allow development of a record that will
8 provide the Commission with evidence needed to determine an appropriate adjustment for
9 rate case expense that was prudently incurred by KCP&L and that is a just and reasonable
10 amount to recover from KCP&L's ratepayers." So obviously this evidence did not exist
11 when the November 22, 2010 Order was issued. Moreover, it appears that the KCC was
12 aware that there was insufficient evidence on rate case costs in the record when it issued its
13 November 22, 2010 Order, since it felt the need to itself enhance the administrative record by
14 requiring that two data requests (KCC-554 and KCC-555) be entered into evidence.

15 The fact that these data requests were entered into the administrative record
16 concurrent with the issuance of the November 22, 2010 Order makes it clear that this
17 information was not available to the parties during the litigation phase of this case. In fact,
18 even in its November 22, 2010 Order, the KCC acknowledged that the information contained
19 in these data requests was inadequate, finding that "[t]he documentation to support these
20 estimates contains very little detailed information that would enable the Commission to make
21 an individualized review of charges by specific consultants and attorneys. In fact,

1 documentation presented for some vendors, including law firms, provides nothing by which
2 to determine total hours, hourly rates, subject matter addressed, etc.”⁸ The KCC’s Second
3 Reconsideration Order stated that this proceeding “is to allow development of a record that
4 will provide the Commission with evidence needed to determine an appropriate adjustment
5 for rate case expense that was prudently incurred by KCP&L and that is a just and reasonable
6 amount to recover from KCP&L’s ratepayers.”⁹ Thus, there are two threshold issues in this
7 case: how much was reasonably incurred by KCP&L and what is a just and reasonable
8 amount to recover from KCP&L’s ratepayers?

9 Mr. Smith and Ms. Harden are addressing the first issue. They have examined the
10 detailed documentation provided by the Company to support its revised rate case claim of
11 \$9.071 million. Based on this review, they have identified the amount that is supported by
12 proper documentation and that is the type of expenditure for which ratepayers are generally
13 responsible. I am addressing the second issue, i.e., based on the overall record of this case,
14 what is a just and reasonable amount of rate case costs to include in regulated rates to Kansas
15 ratepayers? These two amounts are not necessarily the same.

16
17 **Q. In determining what is a just and reasonable amount of rate case expenses for**
18 **ratepayers to pay, what factors should be considered?**

19 A. There are many factors that should be considered. These include the prima facie

⁸ November 22, 2010 Order, page 89.

⁹ Order on Second Motion, paragraph 20.

1 reasonableness of the resources employed by the Company; the size of the rate case cost
2 claim relative to the size of the rate increase granted by the KCC; whether the Company
3 employed budgetary controls over the expenditures it made; the history of this issue in this
4 proceeding; and whether ratepayers had the opportunity to be adequately heard in this case.

5
6 **Q. On a qualitative basis, do you believe that the level of resources expended by the**
7 **Company on this case was reasonable?**

8 A. No, I do not. The sheer magnitude of the resources that the Company spent on this case is
9 staggering. For example, the Company has included costs for 40 lawyers at six law firms in
10 its claim. KCP&L has also included costs for 45 consultants at 8 consulting firms in its
11 claim, including costs for several individuals that were former employees of KCP&L. Schiff
12 Hardin alone earned \$2.881 million in fees and expenses that KCP&L seeks to charge to
13 Kansas ratepayers as rate case expenses. This is even more disturbing when one considers
14 the fact that in addition to rate case costs, Schiff Hardin was also paid approximately \$20
15 million in fees that were capitalized in the Iatan project and which will be recovered from
16 ratepayers over the life of the project, with carrying costs. Outside attorneys billed
17 approximately 14,379 hours to KCP&L while outside consultants billed approximately
18 11,350 hours. Hourly rates billed to KCP&L ranged up to \$855 per hour.

19 These resources are in addition to the internal KCP&L personnel that worked on this
20 rate case, such as in-house attorneys, accountants, analysts, administrative assistants, etc.
21 Since costs for these employees were included in the Company's salary and wage claim, the

1 actual amount being requested by KCP&L relating to litigating this rate case is in fact far
2 more than the \$9.01 million identified in its testimony.

3 In addition, the KCC should keep in mind that a very similar rate case was being
4 litigated concurrently in Missouri, with many of the same issues, same witnesses, and same
5 testimony. In that case, KCP&L requested recovery of rate case costs of \$6.1 million for the
6 2010 proceeding, reflecting rate case costs through December 31, 2010.¹⁰ The Company also
7 requested deferral of all rate case costs incurred after December 31, 2010.

8
9 **Q. How successful was the Company in litigating its rate case?**

10 A. In its November 22, 2010 Order, the KCC granted KCP&L \$21.846 million or 39.5% of its
11 claim. This result indicates that the KCC had serious concerns about a significant portion of
12 the Company's claim. Moreover, the KCC's rate case award of \$5.670 million equates to
13 almost 26% of the overall increase awarded by the Commission. The Company's revised
14 rate case expense claim of \$9.071 million represents over 40% of the amount awarded by the
15 KCC. While I recognize that rate case costs are amortized, and therefore are being recovered
16 over several years, the amount of rate case costs being claimed is still disproportionate to the
17 ultimate award.

18
19 **Q. Do you believe that the Company's actions in this case with regard to the rate case cost**
20 **issue justify the \$9.071 million now being claimed?**

¹⁰ I do not know if this amount reflects only directly-incurred costs or if it also includes state assessments.

1 A. No. KCP&L filed this case with a claim of \$2.100 million. In determining its rate case
2 claim, the Company knew or should have known, that this would be a difficult case. Many
3 of the issues raised in this case, such as rate of return, depreciation, and various accounting
4 issues were raised in prior KCP&L cases as well. Moreover, the Company knew that the
5 issue of prudence would be a significant issue in this case. As noted by Mr. Rush on page 5
6 of his testimony, "...the issue of KCP&L's prudent management of the environmental
7 upgrades to Iatan Unit 1 and the Iatan common plant were deferred [from the prior case], by
8 agreement of the parties and approval by the Commission." Given that these issues were
9 raised in the prior case, it was reasonable to anticipate that they would also be raised in this
10 case, along with the issue of prudence regarding Iatan Unit 2. In addition to prudence,
11 KCP&L was well aware that issues regarding its new depreciation study and its class cost of
12 service study were also likely to be issues in this case. In spite of this knowledge, KCP&L
13 filed its case with estimated rate case costs of \$2.1 million.

14 KCP&L blew through this estimate as if it was written in dust. Moreover, there has
15 been no evidence presented that would indicate that the Company had any concerns about
16 blowing through this estimate. There is no documentation in evidence to demonstrate that
17 the Company was the least bit concerned about exceeding its cost estimate. In fact,
18 KCP&L's theme here seems to be that if we spent it, regardless of how much was spent or
19 when it was spent, the KCC must include it in our revenue requirement.

20 Not only did the Company fail to formally update its rate case cost claim at any point
21 during the proceeding, but even in its Post Hearing Brief and Post Hearing Reply Brief

1 KCP&L failed to provide the parties with a new claim, or to identify the amount of rate case
2 costs being sought. Instead, KCP&L simply stated that “it would be inappropriate for the
3 Commission to diverge in this case from its long-established practice of allowing recovery of
4 the Company’s actual rate case expenses in its rates.”¹¹ Throughout this proceeding, there
5 has been no attempt to keep the parties informed about the level of rate case costs being
6 incurred, why that level differed from the claim included in the filing, or why that level of
7 cost was appropriate. Any information that was provided was only elicited as a result of data
8 requests propounded by other parties in the case or by cross-examination of the Company’s
9 witness.

10 It appears to CURB as if the Company had a blank check, or thought it did, and acted
11 according. There is no evidence of any attempt to minimize rate case costs, to demonstrate
12 that all such costs were prudent, or even to inform the parties about the level of costs being
13 incurred. In fact, the Company seems offended that any party would question whatever
14 amount was ultimately spent in litigating this case.

15
16 **Q. Hasn’t the KCC Staff often recommended that utilities update their rate case cost claim
17 with actual costs later in the proceedings?**

18 **A.** Yes, it has. However, in other cases there is generally a much smaller difference between the
19 amount of rate case costs claimed in a utility’s filing and the actual costs incurred. In this
20 case, not only is there a very large discrepancy between estimated and actual costs, but the

¹¹ KCP&L Brief, paragraph 429.

1 overall nominal dollar amount of the costs being claimed is very high, particularly in relation
2 to the ultimate rate case award. These are two factors that clearly distinguish this case from
3 other cases where the KCC may have accepted KCC Staff's recommendation that a utility be
4 permitted to update with actual costs. In addition, as mentioned previously, many cases are
5 resolved by a black box settlement and therefore there is never the need to determine the
6 amount of rate case costs being recovered in rates by a particular company.

7 Moreover, in this case the Company had ample warning that CURB was not going to
8 simply accept without question updated cost data filed by the Company. As noted in the
9 Second Reconsideration Petition,

10 While rate case expense has not often been a contested issue, CURB
11 made clear in its Opening Statement that it opposed any rate case
12 expense over the amount KCPL requested in its Initial Application,
13 \$2.1 million. Also, Chairman Wright commented at the beginning of
14 Day 10 of the hearing, August 27, 2010, that, for lawyers at least, the
15 Commission would evaluate the eight factors from Rule 1.5 of the
16 Kansas Rules of Professional Conduct to guide its decision
17 determining reasonable fees for attorneys. This issue was clearly
18 identified as a contested matter and the Chairman's comment
19 unequivocally gave notice that rate case expense would be reviewed
20 in this matter. KCPL cannot defend its failure to submit evidence
21 supporting its request for over \$7 million in rate case expense here
22 (for KCPL costs only) by arguing it has been allowed to recover rate
23 case expense in prior rate cases without providing evidence. The
24 Commission finds KCPL was aware rate case expense was a
25 contested issue in this docket. By asking to include an adjustment for
26 rate case expense in its income statement, KCPL assumed the burden
27 to submit evidence to support this adjustment. The Commission
28 rejects KCPL's claim that this decision should be reconsidered
29 because the Company was not aware it needed to submit evidence to
30 support its rate case expense.¹²

¹² Second Reconsideration Order, paragraph 73, footnotes omitted.

1
2 In spite of CURB's Opening Statement, Chairman Wright's comments, and other
3 indications that any increase in the Company's claim for rate case costs would be an issue in
4 this case, KCP&L failed to update its claim at any time during the procedural schedule or
5 before the record was closed at the conclusion of the hearing in this case.

6
7 **Q. In addition to KCP&L's actions, are there other factors relating to the history of this**
8 **case that should be considered in determining what level of costs are just and**
9 **reasonable?**

10 A. Yes. Now that the Commission has some distance between the issuance of the November
11 22, 2010 Order and our review here today, I think it is incumbent upon the KCC to review its
12 own actions with regard to the Company's rate case costs. In my opinion, the Commission's
13 decision to award the Company \$5.670 million was not based on any documentation or
14 evidence in the record. My comments are not intended to be legal argument, but simply the
15 observation of a witness who has participated in approximately 350 utility cases across the
16 country. The KCC itself had to enter the responses to KCC-554 and KCC-555 into the
17 record, after the record was closed, in an attempt to justify the amount of the rate case award.
18 However, even the KCC acknowledged that the documentation provided in these responses
19 was inadequate, as evidenced by the fact that it ultimately reopened the record to accept
20 further evidence on this issue. This situation is compounded by the fact that the KCC is now
21 permitting the Company to seek recovery of even more costs than the \$5.670 million

1 awarded in the November 22, 2010 Order. So first the KCC awarded the Company \$5.670
2 million, when KCP&L's own claim of \$2.100 million had never been formally revised, then
3 the KCC itself entered data requests into the record in an attempt to support that claim, then
4 the KCC provided the Company with the opportunity to seek an even higher amount of rate
5 case costs from ratepayers. What is just and reasonable about that scenario? Especially now
6 that the Company is seeking to recover approximately 70% more than the amount initially
7 awarded by the KCC, an amount that was clearly not supported by the evidence in the record
8 at that time.

9 Moreover, this Commission has recently expressed its concern about rate case costs
10 in other cases, notably cases involving cooperative utilities. If the KCC is so genuinely
11 concerned about rate case costs, then it makes no sense to permit the Company a second bite
12 of the apple in an attempt to justify a higher level of rate case costs, when clearly KCP&L did
13 not meet its burden of proof in the initial case, as acknowledged by the KCC.

14
15 **Q. Please comment on the Company's contention that if utilities are not permitted to**
16 **update their rate case cost claims for actual results, then companies will have an**
17 **incentive to include high estimates of rate case costs in their initial filings?**

18 A. As it stands, KCP&L has an incentive to include low claims for rate case costs in its filings,
19 so that rate case costs avoid scrutiny by the other parties. Frankly, if KCP&L had included a
20 high claim for rate case costs in its initial filing, then the parties would have been alerted to
21 the potential magnitude of the issue, and they could have directed more time and resources to

1 evaluating the reasonableness of that claim. Instead, the Company attempted to avoid the
2 issue until it was so late in the regulatory process that little could be done by the other
3 parties.

4
5 **Q. Were ratepayers and shareholders on a level playing field with regard to resources in**
6 **this case?**

7 A. Absolutely not. CURB, representing residential and small commercial customers, litigated
8 this case for a cost of \$188,051. This amount includes costs for two witnesses, one of whom
9 addressed class cost of service issues and one of whom addressed all remaining revenue
10 requirement, cost of capital, and policy issues. These costs include charges for a third
11 consultant that assisted CURB on depreciation issues but did not file testimony. These
12 charges also include all legal costs. One CURB attorney was dedicated to this case. A small
13 amount of assistance was provided by Mr. Springe and Ms. Christopher, but approximately
14 87.6% of CURB's legal hours were provided by Mr. Rarrick, who prior to this case worked
15 primarily on telecommunication cases.

16 KCC Staff spent a total of \$1.235 million on this case. Approximately \$500,000, or
17 40% of KCC Staff's expenditures, was spent on Vantage Consulting, Inc. and another
18 \$105,000 on KCC Advisory Counsel. Accordingly, KCC Staff incurred costs of
19 approximately \$630,000 for all other testimony and litigation support services.

20 The amount spent by KCP&L for directly-incurred costs was over forty times the
21 amount spent by CURB, and over five times the amount spent by CURB and the KCC Staff

1 combined, including KCC Advisory Counsel. Once again, the Commission should keep in
2 mind that KCP&L's directly-incurred costs are in addition to costs for internal personnel and
3 that KCP&L also incurred millions of dollars in litigation costs for a concurrent (and similar)
4 case in Missouri. Nevertheless, CURB is not denying the Company's right to hire as many
5 lawyers and consultants as it chooses. Nor are we denying the Company's right to pay these
6 lawyers and consultants hourly fees that are generally higher than those paid to firms working
7 on the public's behalf. But there remains the basic question of "just and reasonable". It is
8 not just and reasonable to have one attorney representing residential and small business
9 customers litigate against 40 opposing Company attorneys. No matter how smart, or
10 qualified, or experienced CURB and KCC Staff's lawyers and consultants may be, there is
11 something to be said for sheer numbers. If CURB and KCC Staff were able to eliminate over
12 60% of the Company's rate request with their limited resources, just imagine what would
13 have been possible if they had the resources that were available to KCP&L? It is not just and
14 reasonable to have the party that is afforded only one attorney pay the costs for the 40
15 opposing attorneys. And it is not just and reasonable to require ratepayers to pay \$9.071
16 million of the Company's rate case costs when the resources available to ratepayers were so
17 limited.

18 This comparison also illustrates the efficiencies that can be gained by maximizing the
19 use of in-house personnel, when available. In-house personnel are generally paid at a lower
20 rate and are generally more familiar with the issues and the company, which can reduce the
21 overall litigation time (and cost) required. It is interesting to note that in the current phase of

1 this case, the Company has limited its witnesses to two in-house personnel. One wonders if
2 the decision to use only in-house personnel was based on the fact that the KCC stated that
3 rate case costs incurred after November 22, 2010 would be borne by the Company. In my
4 experience, companies are generally much more careful about spending shareholder money
5 than ratepayer money. Perhaps this same lesson should be applied to the methodology used
6 by the KCC in future cases to determine the amount of rate case costs included in rates.

7
8 **Q. What level of rate case costs do you believe would be just and reasonable for the KCC
9 to include in KCP&L's rates?**

10 A. Based on the broad issues discussed above, I recommend that the KCC award KCP&L rate
11 case costs of \$2.100 million. Given that this amount was the original claim, that the
12 Company never formally updated this claim, that the Company does not appear to have
13 attempted in any way to mitigate its costs, and that ratepayers deserve a level playing field
14 when it comes to rate case representation, it is just and reasonable for the KCC to hold
15 KCP&L to its original claim in this case.

16
17 **Q. If the KCC decides to award the Company rate case costs that exceed the \$2.100 million
18 included in its original claim, then how should the Commission determine the amount
19 that is just and reasonable to recover from ratepayers?**

20 A. If the KCC decides to increase its award above the \$2.100 million included in KCP&L's
21 claim, then the KCC should strive for a just and reasonable overall result for Kansas

1 ratepayers. Given the Company's actions in this case, the KCC should strive to put
2 ratepayers on a more level playing field by tying the amount of directly-incurred rate case
3 costs recovered from ratepayers to the amount of CURB and KCC Staff costs included in
4 regulated rates. In this case, this methodology would result in total recovery of \$2.846
5 million, half of which funded CURB and the KCC Staff and half of which funded advocates
6 for the Company.

7 As an alternative, the KCC could adopt a methodology that results in a 50/50 sharing
8 of directly-incurred rate case costs, subject to some reasonable maximum. Much of the
9 dispute in this case regarding the recovery of rate case costs has occurred because in the past
10 the KCC Staff has generally recommended that the utilities be permitted to update their rate
11 case cost claims late in the proceedings. As noted previously, many cases are ultimately
12 settled without the need to separately identify rate case costs. In other cases, actual results
13 are relatively close to initial estimates. However, even in cases where there is no dispute
14 about rate case costs, this practice restricts the ability of other parties to undertake a full and
15 timely review of rate case costs. In addition, permitting utilities to update rate case costs late
16 in the proceeding, with virtually no review, does not provide any incentive for the utilities to
17 either accurately estimate their rate case costs or to minimize these costs.

18 If shareholders were required to fund a portion of rate case costs, then both
19 shareholders and ratepayers would benefit from an incentive to control costs. Moreover,
20 such a sharing would recognize that rate cases have two beneficiaries, ratepayers who receive
21 utility service at just and reasonable rates and shareholders who are provided with the

1 opportunity to increase their margins. The KCC acknowledged that “requiring shareholders
2 to share some rate case expenses with ratepayers is appropriate in some situations”,¹³
3 although it failed to adopt my recommendation to require such a sharing for costs incurred in
4 Docket No. 09-KCPE-246-RTS. Given what has transpired in this case, the KCC could
5 adopt a policy of requiring 50/50 sharing of rate case costs, subject to a reasonable cap. If
6 this methodology is adopted by the KCC, I believe that a reasonable cap would be two times
7 the amount spent by CURB and KCC Staff. This would result in recovery of \$2.846 million
8 in directly-incurred costs and of \$1.423 million of CURB and KCC Staff costs, for a total of
9 \$4.269 million.

10 Moreover, regardless of the KCC’s decision in this case, I recommend that the KCC
11 consider adopting a policy of requiring a sharing of rate case costs between shareholders and
12 ratepayers in future cases before the KCC. This policy would not prohibit utilities from
13 spending amounts that are in excess of the amounts spent by CURB and KCC Staff, but it
14 would provide an incentive for utilities to control rate case costs. It would also provide some
15 level of protection for ratepayers against excessive spending by utilities when they seek to
16 increase the utility rates of Kansas ratepayers.

17
18 **Q. Wouldn’t a sharing mechanism be a departure from the KCC’s general practice with**
19 **regard to rate case costs?**

20 **A.** Yes, it would. However, ratepayers have been faced with other changes in ratemaking

13 November 22, 2010 Order, page 85.

1 methodologies over the past few years. Shareholders have benefitted from the ability to seek
2 predetermination or preapproval for certain capital projects. Shareholders have also
3 benefitted from the introduction of new flow-through mechanisms, such as fuel cost
4 adjustments, environmental cost riders, transmission cost riders, energy efficiency riders and
5 property tax recovery mechanisms. Shareholders have benefitted from changes in legislation
6 that require construction work in progress to be included in rate base under many
7 circumstances. Accordingly, there have been a number of changes to well-established
8 ratemaking methodologies over the past few years, most of which have benefitted
9 shareholders. I contend that requiring a sharing of rate case costs between ratepayers and
10 shareholders is no more radical than any of these other changes. Moreover, this change
11 would provide a serious incentive for utilities to minimize rate case costs and would put
12 ratepayers on a more level playing field with shareholders. Given the vast discrepancy
13 between a utility's resources and the State's resources, there will never be a truly level
14 playing field. However, a sharing mechanism would be a small step in ensuring that
15 ratepayers do not have to pay exorbitant rate case costs when a utility spends excessively to
16 win a high rate case award. This is the situation that currently exists.

17
18 **Q. You have presented three rate case recommendations for the KCC. What do these**
19 **three rate case recommendations have in common?**

20 A. While I have presented several options for the KCC, all of these proposals attempt to levelize
21 the rate case playing field and to balance the interests of shareholders and ratepayers. My

1 first proposal holds the Company to the rate case cost claim that it submitted originally. This
2 result is just and reasonable, since the Company failed to update this estimate during the
3 litigation phase of this case or to keep the parties informed about the actual level of rate case
4 costs that it was incurring. The second and third options attempt to tie the amount of
5 directly-incurred rate case costs to the amounts recovered for costs incurred by CURB and
6 KCC Staff. Although these proposals explicitly limit recovery of directly-incurred costs
7 from ratepayers to 1 or 2 times the amounts spent by CURB and KCC Staff, this recovery is
8 in addition to amounts being collected in base rates for internal personnel. It is also in
9 addition to amounts recovered for similar services provided by many of the same attorneys
10 and consultants in the Missouri jurisdiction. Thus, these proposals are in fact much more
11 generous than they may at first appear and therefore undoubtedly favor the interests of
12 shareholders over ratepayers. However, they do represent a vast improvement over the
13 Company's proposal that ratepayers should effectively be responsible for covering a blank
14 check.

15
16 **Q. In addition to the methodologies discussed above, has CURB also undertaken an**
17 **examination of individual expenses in an attempt to evaluate the reasonableness of the**
18 **Company's revised rate case cost claim?**

19 **A.** Yes, we have. However, before discussing the results of CURB's analysis, it should be
20 pointed out that CURB does not necessarily believe that such an analysis would provide a
21 just and reasonable end result for ratepayers. Given the Company's repeated failure in this

1 case to update its initial claim, as well as its repeated failure to identify or justify its actual
2 costs during the litigation phase of this proceeding, it is not just or reasonable to base rates on
3 information that was not provided until the Company submitted its May 6, 2011 testimony.
4 Moreover, as discussed in the testimonies of Ms. Harden and Mr. Smith, even this
5 information contains errors, duplications, and questionable charges.

6 Nevertheless, in an attempt to be responsive to the KCC's Second Reconsideration
7 Order, Mr. Smith has examined the specific costs included in the Company's claim of \$9.071
8 million. Based on his review, Mr. Smith has concluded that ratepayers should pay no more
9 than \$4.913 million, which includes \$1.423 million of CURB and Staff charges. Thus, if the
10 KCC decides to base its decision on the level of costs reflected in the Company's May 6,
11 2011 testimony, then it should permit KCP&L to recover \$3.490 million of directly-incurred
12 rate case costs and \$1.423 million of CURB and Staff charges. It should be noted that this
13 recommendation still allows the Company to recover more than twice as much in rate case
14 costs from ratepayers as the costs that were incurred by CURB and Staff to protect the
15 interests of those ratepayers in this proceeding. Moreover, given the fact that this case
16 involved the issue of prudence for Iatan Unit 2, I agree with Mr. Smith's recommendation
17 that the portion of these costs relating to prudence at Iatan Unit 2 (\$1.896 million) should be
18 amortized over 10 years and the remaining costs should be amortized over 4 years.

19
20 **Q. If the KCC approves rate case costs that are less than the \$5.670 million included in its**
21 **November 22, 2010 Order, should ratepayers receive a refund?**

1 A. Yes, they should. In its Second Reconsideration Order, the KCC noted that “the Commission
2 may decide to grant a smaller or larger amount for rate case expense for this proceeding than
3 decided in its November 22, 2010 Order.”¹⁴ Based on the totality of the record in this case,
4 as well as the actions of the Company and the KCC, I recommend that the Commission
5 approve an amount of rate case costs that is less than the interim amount currently being
6 recovered from ratepayers. Accordingly, if the KCC authorizes recovery of an amount that is
7 less than \$5.670 million, then ratepayers should receive a refund for the difference between
8 the KCC’s final award and the amounts currently reflected in utility rates.

9

10 **Q. Does this conclude your testimony?**

11 A. Yes, it does.

¹⁴ Second Reconsideration Order, paragraph 20.

VERIFICATION

STATE OF CONNECTICUT)

COUNTY OF FAIRFIELD) ss:

Andrea C. Crane, being duly sworn upon her oath, deposes and states that she is a consultant for the Citizens' Utility Ratepayer Board, that she has read and is familiar with the foregoing testimony, and that the statements made herein are true to the best of her knowledge, information and belief

Andrea C. Crane
Andrea C. Crane

Subscribed and sworn before me this 15th day of JULY, 2011.

Notary Public Mayorie M. Berlin

My Commission Expires: DECEMBER 31, 2013

APPENDIX A

List of Prior Testimonies

(Includes Testimonies filed from January 2008-Present)

<u>Company</u>	<u>Utility</u>	<u>State</u>	<u>Docket</u>	<u>Date</u>	<u>Topic</u>	<u>On Behalf Of</u>
Midwest Energy, Inc.	G	Kansas	11-MDWE-609-RTS	7/11	Revenue Requirements	Citizens' Utility Ratepayer Board
Kansas City Power & Light Company	E	Kansas	11-KCPE-581-PRE	6/11	Pre-Determination of Ratemaking Principles	Citizens' Utility Ratepayer Board
United Water Delaware, Inc.	W	Delaware	10-421	5/11	Revenue Requirements Cost of Capital	Division of the Public Advocate
Mid-Kansas Electric Company	E	Kansas	11-MKEE-439-RTS	4/11	Revenue Requirements	Citizens' Utility Ratepayer Board
South Jersey Gas Company	G	New Jersey	GR10060378-79	3/11	BGSS / CIP	Division of Rate Counsel
Chesapeake Utilities Corporation	G	Delaware	10-296F	3/11	Gas Service Rates	Division of the Public Advocate
Westar Energy, Inc.	E	Kansas	11-WSEE-377-PRE	2/11	Pre-Determination of Wind Investment	Citizens' Utility Ratepayer Board
Delmarva Power and Light Company	G	Delaware	10-295F	2/11	Gas Cost Rates	Attorney General
Delmarva Power and Light Company	G	Delaware	10-237	10/10	Revenue Requirements Cost of Capital	Division of the Public Advocate
Pawtucket Water Supply Board	W	Rhode Island	4171	7/10	Revenue Requirements	Division of Public Utilities and Carriers
New Jersey Natural Gas Company	G	New Jersey	GR10030225	7/10	RGGI Programs and Cost Recovery	Division of Rate Counsel
Kansas City Power & Light Company	E	Kansas	10-KCPE-415-RTS	6/10	Revenue Requirements Cost of Capital	Citizens' Utility Ratepayer Board
Atmos Energy Corp.	G	Kansas	10-ATMG-495-RTS	6/10	Revenue Requirements Cost of Capital	Citizens' Utility Ratepayer Board
Empire District Electric Company	E	Kansas	10-EPDE-314-RTS	3/10	Revenue Requirements Cost of Capital	Citizens' Utility Ratepayer Board
Delmarva Power and Light Company	E	Delaware	09-414 and 09-276T	2/10	Cost of Capital Rate Design Policy Issues	Division of the Public Advocate
Delmarva Power and Light Company	G	Delaware	09-385F	2/10	Gas Cost Rates	Division of the Public Advocate
Chesapeake Utilities Corporation	G	Delaware	09-398F	1/10	Gas Service Rates	Division of the Public Advocate
Public Service Electric and Gas Company	E	New Jersey	ER09020113	11/09	Societal Benefit Charge Non-Utility Generation Charge	Division of Rate Counsel
Delmarva Power and Light Company	G	Delaware	09-277T	11/09	Rate Design	Division of the Public Advocate
Public Service Electric and Gas Company	E/G	New Jersey	GR09050422	11/09	Revenue Requirements	Division of Rate Counsel
Mid-Kansas Electric Company	E	Kansas	09-MKEE-969-RTS	10/09	Revenue Requirements	Citizens' Utility Ratepayer Board
Westar Energy, Inc.	E	Kansas	09-WSEE-925-RTS	9/09	Revenue Requirements	Citizens' Utility Ratepayer Board

<u>Company</u>	<u>Utility</u>	<u>State</u>	<u>Docket</u>	<u>Date</u>	<u>Topic</u>	<u>On Behalf Of</u>
Jersey Central Power and Light Co.	E	New Jersey	EO08050326 EO08080542	8/09	Demand Response Programs	Division of Rate Counsel
Public Service Electric and Gas Company	E	New Jersey	EO09030249	7/09	Solar Loan II Program	Division of Rate Counsel
Midwest Energy, Inc.	E	Kansas	09-MDWE-792-RTS	7/09	Revenue Requirements	Citizens' Utility Ratepayer Board
Westar Energy and KG&E	E	Kansas	09-WSEE-641-GIE	6/09	Rate Consolidation	Citizens' Utility Ratepayer Board
United Water Delaware, Inc.	W	Delaware	09-60	6/09	Cost of Capital	Division of the Public Advocate
Rockland Electric Company	E	New Jersey	GO09020097	6/09	SREC-Based Financing Program	Division of Rate Counsel
Tidewater Utilities, Inc.	W	Delaware	09-29	6/09	Revenue Requirements Cost of Capital	Division of the Public Advocate
Chesapeake Utilities Corporation	G	Delaware	08-269F	3/09	Gas Service Rates	Division of the Public Advocate
Delmarva Power and Light Company	G	Delaware	08-266F	2/09	Gas Cost Rates	Division of the Public Advocate
Kansas City Power & Light Company	E	Kansas	09-KCPE-246-RTS	2/09	Revenue Requirements Cost of Capital	Citizens' Utility Ratepayer Board
Jersey Central Power and Light Co.	E	New Jersey	EO08090840	1/09	Solar Financing Program	Division of Rate Counsel
Atlantic City Electric Company	E	New Jersey	EO06100744 EO08100875	1/09	Solar Financing Program	Division of Rate Counsel
West Virginia-American Water Company	W	West Virginia	08-0900-W-42T	11/08	Revenue Requirements	The Consumer Advocate Division of the PSC
Westar Energy, Inc.	E	Kansas	08-WSEE-1041-RTS	9/08	Revenue Requirements Cost of Capital	Citizens' Utility Ratepayer Board
Artesian Water Company	W	Delaware	08-96	9/08	Cost of Capital, Revenue, New Headquarters	Division of the Public Advocate
Comcast Cable	C	New Jersey	CR08020113	9/08	Form 1205 Equipment & Installation Rates	Division of Rate Counsel
Pawtucket Water Supply Board	W	Rhode Island	3945	7/08	Revenue Requirements	Division of Public Utilities and Carriers
New Jersey American Water Co.	W/WW	New Jersey	WR08010020	7/08	Consolidated Income Taxes	Division of Rate Counsel
New Jersey Natural Gas Company	G	New Jersey	GR07110889	5/08	Revenue Requirements	Division of Rate Counsel
Kansas Electric Power Cooperative, Inc.	E	Kansas	08-KEPE-597-RTS	5/08	Revenue Requirements Cost of Capital	Citizens' Utility Ratepayer Board
Public Service Electric and Gas Company	E	New Jersey	EX02060363 EA02060366	5/08	Deferred Balances Audit	Division of Rate Counsel
Cablevision Systems Corporation	C	New Jersey	CR07110894, et al.	5/08	Forms 1240 and 1205	Division of Rate Counsel
Midwest Energy, Inc.	E	Kansas	08-MDWE-594-RTS	5/08	Revenue Requirements Cost of Capital	Citizens' Utility Ratepayer Board

<u>Company</u>	<u>Utility</u>	<u>State</u>	<u>Docket</u>	<u>Date</u>	<u>Topic</u>	<u>On Behalf Of</u>
Chesapeake Utilities Corporation	G	Delaware	07-246F	4/08	Gas Service Rates	Division of the Public Advocate
Comcast Cable	C	New Jersey	CR07100717-946	3/08	Form 1240	Division of Rate Counsel
Generic Commission Investigation	G	New Mexico	07-00340-UT	3/08	Weather Normalization	New Mexico Office of Attorney General
Southwestern Public Service Company	E	New Mexico	07-00319-UT	3/08	Revenue Requirements Cost of Capital	New Mexico Office of Attorney General
Delmarva Power and Light Company	G	Delaware	07-239F	2/08	Gas Cost Rates	Division of the Public Advocate
Atmos Energy Corp.	G	Kansas	08-ATMG-280-RTS	1/08	Revenue Requirements Cost of Capital	Citizens' Utility Ratepayer Board

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 6th day of July, 2011, to the following:

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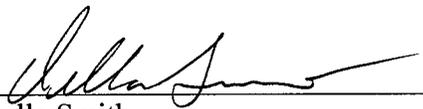
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