

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Petition of Kansas City)
Power & Light Company (“KCP&L”) for) Docket No. 11-KCPE-581-PRE
Determination of the Ratemaking Principles)
and Treatment that Will Apply to Recovery)
in Rates of the Cost to be Incurred by)
KCP&L for Certain Electric Generation)
Facilities Under K.S.A. 66-1239.)

**POSTHEARING BRIEF OF
THE CITIZENS’ UTILITY RATEPAYER BOARD**

COMES NOW, the Citizens’ Utility Ratepayer Board (“CURB”) files it’s Post Hearing Brief in the above captioned proceeding. In support thereof, CURB states the following:

I. Introduction

1. On February 23, 2011, Kansas City Power & Light Company (“KCPL”) filed its application with Kansas Corporation Commission (“Commission”) seeking an order pursuant to K.S.A. 66-1239 determining the prudence of, and the ratemaking principles and treatment for a \$1.23 billion environmental retrofit of the La Cygne coal plant. Specifically, KCPL is proposing to install wet scrubbers, baghouses and a common dual-fuel chimney for both La Cygne Unit 1 and Unit 2. In addition, it is proposing to install a selective catalytic reduction (“SCR”) system, low-nitrogen oxide (“NOx”) burners (“LNBS”), and an over-fire air (“OFA”) system for La Cygne Unit 2. (“La Cygne retrofits” or “retrofit”)

2. La Cygne Unit 1 has a net generating capacity of 836 MW and Unit 2 has a net generating capacity of 682 MW. Both of the La Cygne units were built in the 1970’s. KCPL owns 50% of La Cygne. The remaining 50% is owned by Kansas Gas and Electric Company

("KGE"), a wholly-owned subsidiary of Westar Energy, Inc. ("Westar"). KCPL estimates that the Kansas portion of the cost of La Cygne retrofit will be \$281 million (before AFUDC) and will initially require rates to increase \$58 million annually, about \$8.27 per month per customer. (Giles, Direct at 16). Westar customers will incur \$615 million of the costs of the La Cygne retrofit which will likewise impact consumer rates.

3. KCPL is upgrading the La Cygne plant pursuant to two agreements signed by KCPL's management, but not filed with or approved by the Commission. The first is a Collaboration Agreement with the Sierra Club and the Concerned Citizens of Platte County requiring KCPL to seek an agreement with the Kansas Department of Health and Environment (KDHE) incorporating emission limits for La Cygne that are below the presumptive limits under best available retrofit technology ("BART"). ("Collaboration Agreement") KCPL agreed to meet this standard no later than June 1, 2015. The second agreement is between KCPL and KDHE formally requiring KCPL to install BART environmental equipment at both La Cygne units by June 1, 2015. The provisions of the agreement with KDHE were included in the Kansas Regional Haze Rule State Implementation Plan ("SIP") that was submitted by KDHE to the Environmental Protection Agency ("EPA") for approval. The EPA has not approved the SIP agreement at this time.

4. KCPL seeks an Order from the Commission determining that 1) the decision to install the La Cygne retrofits is prudent, and 2) the \$1.23 billion estimated cost is reasonable and prudent, and 3) the amounts spent in excess of \$1.23 billion will be recovered subject to a showing of prudence in a future rate case, and 4) the initial depreciation life of the La Cygne

retrofits is 22 years¹, and 5) that the cost of capital applied to the La Cygne retrofits be the same as that established by the Commission for KCPL's other assets in a future rate case. (Giles, Direct at 12-13) KCPL also seeks approval to implement an Environmental Cost Recovery Rider ("ECRR"), to begin recovering the cost of the La Cygne retrofits in a line item on customer bills that will be updated annually until KCPL's next rate case.

5. In addition to CURB, the other intervenors that filed testimony in this case are Westar, the Sierra Club, Great Plains Alliance for Clean Energy ("GPACE") and the Staff of the Commission ("Staff"). Several industrial customers were represented by counsel at the technical hearing, but did not file testimony.

II. Executive Summary of CURB's Arguments and Testimony

6. CURB urges the Commissioners to not make this case more difficult than it needs to be. KCPL is entitled to ask for a Commission order setting forth the ratemaking treatment and principles that will apply to the La Cygne project if it goes forward. (K.S.A. 66-1239) KCPL must submit a certain items of information in the application. (K.S.A. 66-1239(c)(2)) The Commission is required to issue an order. (K.S.A. 66-1239(c)(4)). Beyond these three items, the statute is silent as to the Commission's obligations, discretion or scope of inquiry. The Commission "may" consider whether KCPL issued an RFP and "may" consider if the plan is reasonable, reliable and efficient, (K.S.A. 66-1239(c)(3)) but the Commission is not required to consider these items, nor is the Commission required to take any action if it does consider these items. There is no directive about what a Commission order can or cannot say. If the

1. KCPL later withdrew the request related to the 22 year depreciation life, and will apply the appropriate depreciation life for the plant to be determined by the Commission from time to time.

Commission chooses to set forth ratemaking principles, there is no language that restricts what the Commission may deem appropriate conditions or treatment in the order. The Commission has wide discretion in applying this statute and it would be unwise to interpret this statute in a way that limits the Commission's discretion in this case, or sets a precedent that may limit Commission discretion in future cases.

7. KCPL, as the Applicant, has the burden of proving its case. CURB does not believe KCPL has done so. CURB witness Pavlovic shows that KCPL's Resource Planning Analysis modeling is biased towards coal. Specifically, Pavlovic finds that KCPL uses unreasonable forecasts for natural gas and coal prices, creating an arbitrarily high cost differential between natural gas and coal. Using the unreasonable cost differentials biased the model results towards coal and the La Cygne retrofit. KCPL also assigns unrealistic and arbitrary scenario probabilities within its decision making framework, again biasing the model results. KCPL fails to consider a range of discount rates that may be more reflective of the discount rates of KCPL's customers. Further, KCPL failed to consider several reasonable options within its decision framework. KCPL failed to consider the possibility of retiring La Cygne units 1 and 2, and replacing them with purchased power, or the possibility of simply delaying the environmental retrofits. Finally, KCPL's actual results are not statistically different from each other and therefore do not provide the Commission a basis to conclude, at this time, that the La Cygne retrofit is prudent and should be pursued. Of particular importance is that every other intervenor party that reviewed KCPL's data and modeling procedures, including the Staff's consultant's from Bates White, came to a very similar conclusion to Mr. Pavlovic.

8. Based on the above data and modeling errors, CURB witness Crane argues that the Commission should issue an order stating that KCPL has not met its burden of proof and that based on the evidence in the record the Commission cannot conclude, at this time, that the La Cygne retrofit proposal is least cost, or that the ECRR is reasonable. The Commission could also state that traditional ratemaking treatment will be accorded any KCPL action in future cases. The Commission is under no obligation to set forth what it may or may not believe would constitute a prudent action, nor is it necessary to set forth in any detail what regulatory treatment may be applied in the future. Issuing an order in this manner does not preclude KCPL from reapplying again under the statute. Nor is KCPL precluded from moving forward with the La Cygne retrofit if it believes the project is prudent and the least cost option for customers. Arguably, if KCPL's management is convinced that the La Cygne retrofit is prudent and is the least cost option for future supply, it would be imprudent if KCPL did not proceed with the project regardless of whether the Commission approves the project in an order. KCPL can use the existing CWIP statute for timely cost recovery in a future rate case. And most importantly, proceeding in this manner puts KCPL's Kansas customers on an equal regulatory playing field as KCPL's Missouri customers, where there is no preapproval statute. K.S.A. 66-1239 requires no more from the Commission and KCPL is denied no traditional ratemaking treatment if the Commission issues an order based on the above principles.

9. If the Commission determines that the La Cygne retrofit is prudent, it is still CURB's opinion that the Commission can issue an order in a manner that will not bind future Commissions. However, if the Commission decides to issue binding ratemaking principles in an order, CURB urges the Commission to include several important ratemaking principles. First, the Commission should find that the proposed \$1.23 billion cost is the definitive cost estimate under

Kansas law. Further, the Commission should order that any amount spent above the definitive cost estimate will be presumed imprudent, with KCPL having the ability to present evidence in a future rate case to overcome that presumption. Second, the Commission must recognize that preapproval is not a traditional ratemaking approach and has the effect of reducing shareholder risk by shifting that risk to KCPL's customers. The Commission should order a 100 basis point reduction in shareholder return on equity ("ROE") in all future rate cases for the portion of ratebase attributable to the La Cygne retrofit.

10. The Commission must also deny KCPL's request for the ECRR cost recovery mechanism. The ECRR does not provide a proper forum to determine whether costs are prudently incurred and constitutes single issue ratemaking. The ECRR may be more expensive for customers than traditional AFUDC accounting. KCPL has also agreed to not request an ECRR mechanism in Missouri, so denying the ECRR in this case will maintain an equal regulatory playing field between KCPL's Kansas customers and KCPL's Missouri customers. Many of these same issues were addressed in the November 22, 2011 rate case order in KCC Docket No. 10-KCPE-415-RTS. ("415 order") The Commission denied KCPL's request for an ECRR in the 415 order, and nothing has changed since that order was issued that should persuade the Commission to grant the ECRR now.

III. Applicable Law

A. General Law On Commission Authority

11. CURB submitted its Prehearing Brief in this proceeding on May 26, 2011. CURB adopts the positions and arguments made in the Prehearing Brief for purposes of this brief and will not repeat those arguments here. In summary, CURB argues that the Commission's

authority is broad and the provisions of K.S.A. 66-1239 do not restrict that discretion in any way.

12. In general, the Commission has the authority to supervise and control public utilities and to do “all things necessary and convenient for the exercise of such authority. (K.S.A. 66-101) The authority granted by the legislature shall be liberally construed. (K.S.A. 66-101g)

13. 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).

14. 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.

15. 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).

B. K.S.A. 66-1239 Contains No Restrictions on the Commission’s Discretion

16. Whether by commission or omission, K.S.A. 66-1239 has very little language that can be interpreted to require specific actions or considerations by the Commission or that in any other way restrict the Commission’s discretion in making a determination and issuing an order under the statute. K.S.A. 66-1239 contains few “shall” statements. If a utility files an application for predetermination under the statute, the utility “shall as a part of its filing submit the following information: (A) A description of the public utility’s conservation measures; (B) a description of

the public utility's demand side management efforts; (C) the public utility's ten-year generation and load forecasts; and (D) a description of all power supply alternatives considered to meet the public utility's load requirements". (K.S.A. 66-1239(c)(2)) If the utility meets these filing requirements, the Commission "*shall* issue an order setting forth the rate-making principles and treatment that will be applicable to the public utility's stake in the generating facility or to the contract in all rate-making proceedings on and after such time as the generating facility is placed in service or the term of the contract commences". (K.S.A. 66-1239(c)(4)) Finally, in all proceedings in which the cost of the public utility's stake in the generating facility is considered, the Commission "*shall* utilize the rate-making principles and treatment applicable to the generating facility or contract". (K.S.A. 66-1239(c)(5))

17. In considering the public utility's supply plan, the commission "*may* consider if the public utility issued a request for proposal from a wide audience of participants willing and able to meet the needs identified under the public utility's generating supply plan, and if the plan selected by the public utility is reasonable, reliable and efficient". (K.S.A. 66-1239(c)(3)) However, there is no requirement that the Commission "shall" consider either. There was some discussion during the trial about whether the "may consider" modifier is only operative with the RFP statement, making mandatory (rather than permissive) the consideration of whether the supply plan is "reasonable, reliable and efficient". (See Chairman's questions, Tr. Vol. 1 at 184-190) Any assertion that this is a mandatory sentence rather than a permissive sentence is incorrect. There is no way to understand the operative language in the sentence without applying the "may consider" modifier to both the RFP and the reasonable, reliable, efficient sections. Without the modifier "may consider" the sentence would read, "In considering the public utility's supply plan, the commission, if the plan selected by the public utility is reasonable, reliable and

efficient”. Without the “may consider”, the statute makes no sense. The Commission must conclude that items listed in K.S.A. 66-1239(c)(3) are suggested review items, not required review items. The Commission should consider whether KCPL issued an RFP from a wide audience of participants willing and able to meet the needs identified. The Commission should consider whether KCPL’s supply plan is reasonable, reliable and efficient. But, those terms have no operative meaning outside of the Commission general discretion to review what it deems appropriate to make its determination in this proceeding.

18. KCPL asserts that the Commission can only consider the ratemaking principles and treatments proposed by the utility in its application. (Giles, Tr. Vol. 1 at 190, line 6) Again, the statute is not so limited. A utility can always select what it chooses to ask for in an application, as set forth in K.S.A. 66-1239 (c)(1), but there are no directives in the statute that condition what the Commission may do in an order. Nor should the Commission attempt to read any directives into the statute that would somehow limit the Commission from ordering any ratemaking principle that it believes is necessary to protect the public interest.

19. The Commission’s order must be based on substantial, competent evidence. But K.S.A. 66-1239 gives the Commission almost total discretion in how it goes about determining what action to take or what conditions it may choose to place in an order. The Commission should not interpret any provision of K.S.A. 66-1239 in any way that might serve to restrict the actions or discretion of the current Commission or any future Commission.

C. Environmental Laws and Agreements

20. KCPL argues that it is required to meet certain environmental standards, both by law and by agreement. CURB is not an expert in environmental law. Nor is CURB an expert in the type of engineering equipment that may or may not be appropriate to meet any given

environmental law or requirement. Others more versed in those two issues are in this case, so CURB will not focus on these two issues in this brief.

21. However, it is clear that KCPL's management signed agreements with the Sierra Club (the Collaboration Agreement) and with KDHE that required KCPL to meet environmental standards that are in excess of that required currently by law, and to meet the environmental standards under a time frame that is quicker than would otherwise be required by law. The agreement with KDHE was included in a Regional Haze Agreement that KDHE submitted to the Environmental Protection Agency ("EPA") for approval as part of the State Implementation Plan ("SIP"). The EPA has not yet approved the SIP, and KDHE testified that the EPA may deny a portion of the SIP. (Gross, Tr. Vol 3, at 576, lines 17-23) KCPL would have to comply with the BART requirement under the SIP within five years after EPA approval. (Gross, Tr. Vol 3, at 577, line 20 through 578, line1) At the outside, that means KCPL would have to comply by late 2016, although according to Mr. Gross, the SIP is on a 10 year cycle ending in 2018, but KDHE is negotiating agreements based on an "as expeditiously as possible" standard.

22. This should concern the Commission greatly in this instance. As is show in the Bates White Supplemental Report, the key variable that changes a decision retire La Cygne from that of retrofit La Cygne is the magnitude and timing of carbon regulation. (Bates White, Puga, Exhibit BW-1S, para. 40) Until there is a better understanding of whether carbon will be regulated and at what price, being forced to construct a \$1.23 billion upgrade because KDHE requires it as expeditiously as possible puts customers at extreme risk. In this instance, it serves to stall for time to see if the political picture around carbon becomes clearer. However, the Commission is being denied time by KCPL agreements with outside parties. These agreements are unreasonable the Commission should declare them unlawful under K.S.A. 66-136.

23. K.S.A 66-136 states in relevant part “No franchise or certificate of convenience and necessity granted a common carrier or public utility governed by the provisions of this act shall be assigned, transferred or leased, *nor shall any contract or agreement with reference to or affecting such franchise or certificate of convenience and necessity or right thereunder be valid or of any force or effect whatsoever, unless the assignment, transfer, lease, contract or agreement shall have been approved by the Commission*”.

24. There is no question that the Collaboration Agreement and the KDHE agreement are contracts that reference or affect KCPL’s certificate and ability to provide service by dictating terms of when and how a major generating facility will operate, or not operate. Further, these agreements require KCPL to spend \$1.23 billion under a time frame that may not be in the interest of the public generally. KDHE doesn’t consider whether there are cheaper options to meet the reductions, that’s the Commission’s responsibility. (Gross, Tr. Vol. 3 at 614, lines 3-11) Since the agreements have never been filed or approved by the Commission, the Commission was never given this opportunity. The agreements are clearly unlawful and a usurpation of the Commission’s obligation to protect the public interest and regulate public utilities.

25. The Commission has previously recognized its obligation under K.S.A. 66-136. The Commission cited this statute as a source of review authority, in holding that it must assure a proposed collateralization of Kansas utility assets, as requested by Aquila, is reasonable, serves the public interest and is not otherwise harmful to Kansas utility customers. (Order’s dated May 7, 2003 and February 17, 2004, KCC Docket No. 02-UTCG-701-GIG) The Commission also rejected Westar arguments that the Commission’s review authority under K.S.A 66-136 is limited, interpreting case law to hold “there is no disagreement between the majority and dissenting court on whether a public utility had the right to harm its ability to perform its public

service obligations. No such right existed". (Order dated November 8, 2002, KCC Docket No. 10-WSRE-949-GIE) The Commission must declare that these agreements harm KCPL's ability to perform its public service obligations.

D. Applicant Must Meet Burden of Proof

26. The Kansas Commission has previously held that the utility filing the application bears the burden of proof to establish the basic facts to make a *prima facie* showing that *it has acted prudently*. In KCC Docket No. 02-KGSG-329-PGA ("02-329 Docket"), Kansas Gas Service Company ("KGS") made an application for a Cost of Gas Rider ("COGR"). During the course of the proceeding, KGS filed a Petition for Specific Reconsideration in which it requested the Commission to revise a February 8, 2002 Order to state that KGS does not have the burden of proof to show the prudence of its choice of actions to enforce or ensure compliance with the terms and conditions of a Settlement Agreement approved in a prior docket (Docket No. 97-WSRE-312-PGA). KGS argued that it is entitled to a presumption of prudence, but the Kansas Commission disagreed:

5. Generally, the burden of proof can refer to either the burden of persuasion or the burden of going forward with evidence. Under Kansas rules of evidence, the term "burden of proof" is synonymous with "the burden of persuasion." K.S.A. 60-401(d). The burden of persuasion means a party has an obligation to meet the requirements of a rule of law that the fact to be established must be proven by a requisite degree of belief. K.S.A. 60-401(d). As a general rule, burden of persuasion or the burden of proof lies with the party who initiates an action. The initiating party must prove the allegations of its application by a preponderance of the evidence. *In re Estate of Robison*, 236 Kan. 431, 439, 690 P.2d. 1383 (1984).

6. The burden of going forward with evidence is the duty to a case to refute or explain a particular point, such as the need to make a *prima facie* showing. The burden of producing evidence is the obligation of a party to introduce evidence sufficient to avoid a ruling against the party on the issue. Under traditional legal theory, the burden of persuasion does not shift at any stage of the proceeding while the burden of coming forward with evidence may shift back and forth as the case progresses. Black's Law Dictionary, West Publishing

Co., 5th Ed., p. 178. If facts which give rise to a presumption are established, the burden is placed on the party against whom the presumption operates to put forth sufficient evidence to rebut the presumption; if sufficient rebuttal evidence is presented, the presumption vanishes. *Matter of Estate of Lewis*, 549 N.E.2d 960, 962 (1990).

7. This proceeding was initiated upon application of KGS to set the gas sales rate under its COGR tariff. That application incorporates the transportation charges of Kansas Pipeline Company that were incurred under contracts, which were the subject matter of the Commission's investigation in Docket No. 97-WSRE-312-PGA. KGS must be prepared to establish the basic facts to make a *prima facie* showing that it has acted prudently to preserve its contract rights against the Kansas Pipeline Company.²

27. Like KGS in the 02-329 Docket, KCPL is the party initiating this predetermination proceeding upon application.³ As such, it is KCPL that must provide substantial, competent evidence that proves that the La Cygne retrofit is a reasonable and prudent decision. This burden of proof, or burden of persuasion, remains with KCPL and no other party. CURB does not believe KCPL has met its burden in this case.

IV. Argument: The Commission Must Find KCPL Has Not Proven Its Case

A. KCPL Data and Modeling Are Biased Towards Coal and Inconclusive

28. Every expert that reviewed KCPL's data and modeling methodology came to the same fundamental conclusions: KCPL's data and modeling are biased toward coal and favor the La Cygne retrofit, have methodological errors and produce results that cannot be relied upon by the Commission for determining whether the La Cygne retrofit is prudent. Staff's experts sum it up this way, "we conclude that because of errors in methodology, and unreasonable assumption

² Order Denying Reconsideration, KCC Docket No. 02-KGSG-329-PGA, March 26, 2002, ¶¶ 5-7 (emphasis added).

³ In the 02-329 Docket, KGS was seeking to set its gas sales rate under its COGR tariff; here, KCPL is seeking a determination of prudence to begin construction of generation facility projects.

for High and Low factor cases, the KCPL evaluation does not appropriately reflect significant risks that the La Cygne retrofit will, in fact, be uneconomic”. (Bates White, Puga Exhibit BW-1 at 65)

i. Natural Gas And Coal Price Forecasting Are Biased

29. KCPL’s analysis contains forecasts with an assumed fuel cost differential that is unreasonable and biased in favor of coal. (Pavlovic, Direct at 16, line 17) CURB found that in 2011 EIA reference case forecasts for natural gas and coal prices, the price for natural gas is 1.9 times the price of coal on a MMBtu basis. In 2020, natural gas price is 2.2 times the price of coal, in 2030 the differential is 2.7 and in 2034 the differential is 2.8. (Pavlovic, Direct Exhibit 3) However, KCPL’s base forecast of natural gas and coal prices assume natural gas prices that are 2.3, 3.3, 4.3 and 4.7 times coal prices compared to EIA’s 1.9, 2.2, 2.7 and 2.8 times coal. (*Id.*) KCPL’s High forecast for natural gas prices put the price of natural gas up to 8 times that of coal. From this data, the Commission must conclude that KCPL systematically overprices natural gas in its models, which biases the results towards coal, and the La Cygne retrofit. (Pavlovic, Direct at 18, lines 4-9)

30. Staff’s experts reached the same conclusion as CURB. With respect to KCPL natural gas price forecasts, Bates White concludes that “KCPL’s assumed High and Low natural gas prices are *extreme* relative to the sensitivities performed by EIA”. (*emphasis added*) (Bates White, Puga Exhibit BW-1 at 65) With respect to KCPL coal price forecasts, Bates White concludes that “KCPL’s High and Low coal price cases are *highly conservative* and do not account for coal price risks associated with production, exports and transportation costs.” (*Id.*)

31. These flawed price forecasts bias KCPL’s results toward coal. (Pavlovic. Direct at 6) Bates White highlight this flaw, concluding “particularly in combination with the excessive

variation in KCPL's natural gas price cases, the conservative coal price cases overstate the stability of future operating costs at La Cygne relative to replacement gas-fired generation". (Bates White, Puga Exhibit BW-1 at 65) This forecasting bias prevents the Commission from concluding that KCPL's results are reasonable. They are not.

ii. Scenario Probability Weightings Are Arbitrary

32. KCPL's use of arbitrarily assigned scenario probability weightings is a fundamental flaw in the KCPL model. KCPL's analysis seeks the resource plan with the lowest Net Present Value Revenue Requirements (NPVRR). To reach the NPVRR of each resource plan, KCPL creates a High, Mid and Low forecast for six input variables, (coal prices, natural gas prices, CO2 prices, construction costs, demand and interest/finance) for use in its model. CURB found that KCPL assumed a set of arbitrary probabilities of occurrence for each forecast, and then treated each forecast as independent of the other forecasts. (Pavlovic, Direct at 15, line 11-19, Crawford, Tr. Vol. 4 at 1069, line 14) The six forecasted variables used by KCPL are all economic variables linked by regional or global economies. There are relationships between the variables such that changes in one (natural gas prices) will impact the price of another (coal prices). KCPL simply assigns an arbitrary probability to each forecast (25% or 50%), treating each as independent. This is a critical flaw in KCPL's analysis. (Cain, Tr.Vol. 5 at 1400 line 1 through 1402, line 23)

33. Staff's experts reached the same conclusion as CURB, stating "KCPL's probability weighting methodology is flawed, and cannot be relied upon as the basis for concluding that the retrofit of La Cygne is economically justified. KCPL's assumed probabilities for its High, Mid and Low cases for each factor are not supported. The implicit assumption that the factors are entirely independent is unrealistic" (Bates White, Puga Exhibit BW-1 at 64)

34. This flaw in KCPL's model makes the NPVRR results of each resource plan unreliable. Bates White concludes that "KCPL's methodological errors give excessive weight to the assumed Mid factor cases, which consistently overstates the robustness of the results and understates the risks associated with the retrofit scenarios". (*Id.*) The Commission cannot conclude, based on this flawed analysis, that the La Cygne retrofit is reasonable, reliable or efficient. Nor is it supported by substantial competent evidence.

iii. KCPL's CO2 Price Forecast Is Unreasonably Low

35. KCPL uses unrealistically low CO2 prices in its model. Staff's consultants conclude that "CO2 price is the dominant risk affecting the retrofit proposal and that it is not appropriately represented in KCPL's modeling. We find that KCPL's Low CO2 price case assumption of a zero price through 2034 is highly unlikely, and certainly not consistent with the 25% probability assigned by KCPL. We conclude that KCPL's Mid CO2 price case is unreasonably low, and the High case is below a level that would adequately account for the substantial risk that this factor represents to the retrofit proposal". (Bates White, Puga Exhibit BW-1, at 65) The impact of CO2 prices in the future is, along with natural gas prices, the chief risk variable in determining whether the La Cygne retrofit is prudent. The Commission must find that KCPL has not adequately addressed this issue.

iv. Several Important Resource Plans Were Not Evaluated

36. KCPL considered a very limited range of potential scenarios. None of KCPL's fifteen possible resource plans considers either the retirement of La Cygne Units 1 and 2 and replacing them with purchased power, or delaying the implementation of the environmental retrofits. (Pavlovic, Direct at 10, lines 16-18) None of the plans considered one or more of the existing units to combined cycle gas. (Schlissel, Direct at 3, lines 3-10) None of the primary

plans considered additional investment in demand-side resources (DSM), renewable and natural gas, instead relying on fairly low level of DSM and wind. (Hausman, Direct at 9, line 19 through 10, line 21) CURB does not believe that KCPL's analysis has considered the full range of possible dispositions of the La Cygne units, and is therefore unreasonable and incomplete.

v. Customer Discount Rates Not Considered

37. KCPL uses its own cost of capital as the discount rate in its modeling. However, to reach an accurate decision in this case, the discount rate of the person on whose behalf the decision is being made should be used. (Pavlovic, Direct at 20, line 17-20) Ultimately, it isn't KCPL that will pay for this decision, it is KCPL's customers.

38. KCPL's cost of capital is fairly low, and certainly lower than the average customer's costs of capital (customer discount rate). CURB witness Majoros argues the customer discount rate is much higher than the discount rate of large industry. (Majoros, Direct at 6, line 16 through 7, line 7) Majoros points to KCPL's own Kansas tariffs that set the late payment fee charged to customers with delinquent bills. Delinquent bills are a good proxy for the customer borrowing rate (or discount rate), because in its simplest form, since the customer cannot pay the bill, the customer is borrowing from the utility and paying an interest rate to do so. And, these rates are reviewed and approved by the Commission. KCPL's current Kansas tariff allows it to charge a residential customer a 24% annual fee on delinquent bills, but KCPL charges non-residential customers a lower 12% annual fee on delinquent bills. (Majoros, Tr. Vol. 4 at 867-868)

39. KCPL acknowledges that if it uses a higher discount rate in its analysis, the decision whether to retrofit or retire changes. (Crawford, Tr. Vol. 4 at 1169, line 15 through 1170, line 7) Pavlovic tested higher discount rates and found that at a 25% discount rate, the

NPVRR differentials do change, leading to different results. (See also, Pavlovic, Direct at 21, lines 7-19 and Pavlovic Exhibit 6) Pavlovic's 25% is close to KCPL's 24% delinquent bill fee. From a customer standpoint, the Commission must conclude that there is value in evaluating scenario outcomes at different discount rates to provide the Commission with a more full understanding of impact of different scenarios, and KCPL has failed to provide this evidence.

vi. KPCL Resource Plans Are Statistically Indistinguishable

40. CURB found that if KCPL's results are compared, the range of results for the 15 resource plans is quite narrow -1100 compared to a mean of 25,120, or about 4%. If one of the resource plans (KP06C "Retire All-Coal replace) is eliminated, the range of results for the remaining plans becomes even narrower at 592 compared to a mean of 25,058, or about 2%. If the range of review is limited to only those resource plans that involve retrofit and/or gas-fired replacement of either one or both of the La Cygne units, the output range narrows even further to 216 compared to a mean of 24,984, or about 1%. (Pavlovic, Direct at 22, lines 9-20) CURB performed a simple statistical test of significance, to test whether there is any statistical difference between KCPL's resource plans. The test indicates there is no statistically significant difference between the NPVRR's of the 11 resource plans that cover the alternative dispositions of La Cygne Units 1 and 2-retrofit verses gas-fired replacement of one or both units. (Pavlovic, Direct at 23, lines 3-7, Pavlovic Exhibit 9) There is no statistical difference between any of KCPL's plans. The Commission cannot conclude that any single resource plan is superior to another, and therefore cannot conclude at this time that the La Cygne retrofit is prudent.

B. Summary

41. With the input and procedural flaws in KCPL's modeling process, and results that are not statistically distinguishable, KCPL is simply unable to demonstrate, and the Commission

is simply unable to conclude that the proposed retrofit of the La Cygne plant is the least cost prudent supply option. KCPL has not demonstrated, at this time, that its plans for the La Cygne retrofit are reasonable, reliable or efficient. KCPL has not met its burden of proof. Any order that uses KCPL's modeling and resource planning as its support fails the test of substantial competent evidence, and is therefore unreasonable, arbitrary and capricious. CURB recommends that the Commission issue an order that simply states the following:

1. KCPL's modeling and data are inadequate to conclude with any certainty at this time that the La Cygne retrofit is prudent. KCPL has not, at this time, met its evidentiary burden of proof.
2. KCPL's management should proceed with the La Cygne retrofit if it believes it is the least cost and prudent course of action. All traditional and normal regulatory principles will be appropriately applied at the time that costs are considered for recovery from customers

V. KCPL Cannot Rely On Staff To Make Its Case

42. If Staff had stopped after its review concluded that KCPL's modeling was methodologically flawed, biased, had an unreasonable representation of future risk and did not support KCPL's request in this case, then all intervenors would have arrived at the same fundamental conclusion about KCPL's evidence. Staff takes the extra step of producing its own analysis (the Bates White study) which Staff says supports KCPL's claim that the La Cygne retrofit is prudent and least cost. The Commission must conclude that Staff cannot meet an evidentiary burden that KCPL as the applicant is required to meet. Further, the Commission must conclude that the evidence came so late in the process that no other party has had a reasonable

opportunity to review Staff's underlying data and modeling. Finally, the Commission must conclude that Staff's recommendations are simply not supported by its own evidence. The Commission cannot base its decision on this evidence.

A. Parties Had Inadequate Time To Review Staff's Evidence

43. Staff filed part of the Bates White study on June 3, 2011. However, on May 27, 2011, Staff filed a motion requesting an extra week until June 10, 2011 to file certain parts of the Bates White report, and certain Staff testimony that depended on the Bates White report. Staff argued that the first data set obtained from the Southwest Power Pool (SPP) to be used by Bates White in its model was useless, and the second set of data obtained by Bates White from SPP had to be substantially modified. This modification took Bates White almost three weeks, and even modified, the data contained enough errors that Bates White had to "abort and rerun cases repeatedly". (Staff Motion, May 27, 2011) Each run of the model apparently took 12 hours. Staff's motion was subsequently granted. Intervenors received part of Staff's evidence on June 3, 2011 and part of Staff's evidence on June 10, 2011.

44. If Staff had provided all of the underlying data for the models on the day it filed testimony, intervenors would have had less than one month to review the data and prepare for trial. CURB issued data requests on June 10, 2011, the day Staff filed the Bates White supplemental testimony. Staff did not respond to the data requests until June 21, 2011 and then simply refused to provide the data. CURB filed a Motion to Compel and Staff and CURB spent time arguing about whether and if CURB was entitled to the data. It is not CURB's intent to rehash those arguments here, but merely to point out that one week before trial, neither CURB's experts, or any other party's experts, had been able to review the underlying data that Staff is using to support its contention that retrofitting La Cygne is prudent. While CURB and Staff were

able to come to an agreement through which Staff's experts provided some high level scenario results based on CURB's data requests, the Commission must realize that Staff's evidence in this case is based on data and modeling that came so late in the procedural schedule that no party has had a reasonable opportunity to review the data, and is based on a model that most parties do not have the resources to own or run. Even Staff's experts agree it would be impossible to review such a large amount of data in one week starting fresh. (Cain, Tr. Vol. 5 at 1398, lines 1-7) Staff's experts called their own several month time period to review KCPL's data a "demanding schedule" and agreed that two weeks would not have been a reasonable amount of time to review and address the KCPL's data . (Cain, Tr. Vol. 5 at 1395, line 1 through 1396, line 22) And yet, that is what CURB is faced with in trying to review the data on which Staff bases its conclusion. It would be patently unfair and a denial of due process, and according to Staff's own experts, "unreasonable" if the Commission were to base its decision on evidence that was fundamentally not available to the parties.

B. Staff's Conclusion Is Not Supported By The Bates White Study

45. Staff's conclusion that retrofitting La Cygne is prudent does not logically follow from the Bates White report. After reviewing the report, it is unclear how Staff arrived at its conclusion.

46. Bates White found only two possible scenarios that could result in the retrofit of La Cygne being a least cost option. Retrofitting La Cygne is least cost if there are zero CO2 prices through 2034. However, Bates White found the probability of zero CO2 prices through 2034 to be "vanishingly small". (Bates White, Puga, Exhibit BW-1S at para 27) Bates White does not recommend the Commission consider any analysis that has zero CO2 prices,

considering such an option as realistic. (Cain, Tr. Vol. 5 at 1403, lines 18-24) Therefore, Bates White eliminates one of the two scenarios by its own testimony.

47. The single remaining scenario where retrofitting La Cygne is least cost option is if “Waxman/Markey level CO2 prices are delayed until 2021 and adjusted for inflation only”. (Bates White, Puga, Exhibit BW-1S at para 40(e)) However, this option produces a cost advantage over retirement and replacement with CT’s of only \$190 million, and Bates White gives a huge caveat that if the goal is to reduce CO2, delaying Waxman/Markey may cause increased control levels at the later date, thereby “possibly reversing” the effects of the implementation delay. (*Id.*) The \$190 million is only a 2% NPVRR differential from the other scenarios, well within the margin of error for the study, meaning this scenario is not statistically different than the other scenario’s rejected by Bates White. (Pavlovic, Cross-Testimony at 9, line17, through 10, line 4) Bates White does not give this one remaining scenario a glowing endorsement. Further, regarding CO2 prices, Bates White discussed several issues that may impact the level of CO2 prices over time, but ultimately concludes that, “this underscores the risk associated with investing in a technology that would be made uneconomic under *plausible* CO2 prices”. (*Id.* at 40(f))

48. Staff adopts this one scenario, ignores the caveat, ignores that the result is within the margin of error for the study and concludes that Bates White recommends retrofitting the coal plant. (Glass, Supplemental Testimony at 1) Bates White gives no indication of what the probabilities of any of the potential CO2 scenarios might be, and Staff supplies none to support its recommendation. (Pavlovic, Cross-Testimony at 8, line12 though 9, line15) Also, Bates White is premised on the assumption that “the reason action on greenhouse gas control has stalled at the Federal level in the U.S. has everything to do with the state of the economy. And

despite the extremity of the recent recession, a return to strong economic growth should be considered inevitable based on past experience”. (Bates White, Puga, Exhibit BW-1 at para. 31) Dr. Glass does not agree with this assumption. (Glass, Tr. Vol. 5 at 1666, line 21) Bates White goes on to state “they have little doubt that improved economic conditions will make political action on controlling greenhouse gas increasingly likely in the coming years”. (Bates White, Puga, Exhibit BW-1 at para. 31) Dr. Glass doesn’t consider himself to have the credibility to speculate on this conclusion. (Glass, Tr. Vol. 5 at 1667, lines 2-4) Finally, Bates White concludes that “it’s reasonable to assume that any prospective greenhouse gas control regime will be effective, i.e., it will not be window dressing but will have meaningful effect on CO2 emissions”. (Bates White, Puga, Exhibit BW-1 at para. 31) Dr. Glass appears skeptical, stating “they are a little more optimistic than I am”. (Glass, Tr. Vol. 5 at 1667, line 10) Ultimately, Dr Glass admits that Staff’s conclusion supporting the Bate White Waxman/Markey delayed CO2 price scenario is based on political forecasting.” (Glass, Tr. Vol. 5 at 1670, lines 21-24)

C. Summary

49. The Commission cannot rely on Staff to provide the evidentiary basis supporting this preapproval order where KCPL has failed to do so. Intervenors had no opportunity to review the underlying data and modeling behind the Bates White report. While CURB tried to get access to the data, it was ultimately unable to do so. Further, Staff’s conclusion supporting KCPL’s claim that retrofitting La Cygne is prudent does not appear to follow from the Bates White report. Bates White found only two scenarios that would support Staff’s conclusion, one of which Bates White believed was unrealistic, and the other came with strong caveats about the level of future CO2 prices potentially reversing the conclusion, a conclusion that is already well within the margin of error of the study, meaning it was inconclusive. Further, Staff doesn’t agree

with the underlying assumptions of the report. The Bates White report simply does not support Staff's conclusion in this case, and cannot be used to form the evidentiary basis supporting a Commission order.

VI. Fair Ratemaking Principles Must Attach to Any Order Approving Predetermination

50. CURB urges the Commission to issue an order stating that KCPL has not met its burden of proof in this case. However, if the Commission decides that the facts in this case support a finding of prudence, then CURB urges the Commission to use its discretion to order ratemaking treatments and principles that will balance the interests of KCPL shareholders and customers.

A. Ratemaking Principle: Any Amount Spent Above \$1.23 Billion Is Deemed Imprudent

51. We've been down this path before. KCPL proposed spending \$1.2 billion on its Resource Plan and sought approval from the Commission based on that number. (See KCC Docket No 04-KCPE-1025-GIE) Six years later, KCPL's Resource Plan cost far in excess of the original \$1.2 billion. KCPL (Chris Giles) claimed the earlier number approved by the Commission had so little meaning, the Commission could have called it "a banana" and it wouldn't have mattered. Unfortunately, the Commission agreed. Now, KCPL is requesting that the Commission state that \$1.23 billion is a prudent amount to spend on La Cygne retrofit and that amounts above this number can also be recovered. The Commission should, at minimum, require KCPL to live with its \$1.23 billion estimate. We don't want another banana on our hands in five years.

52. The Commission should clearly state that, if the \$1.23 billion is prudent, then any amount spent by KCPL over \$1.23 billion is presumed to be imprudent. KCPL would have the burden of showing that the additional expenditures were prudently incurred in a later rate filing, rather than Staff and CURB having the burden of showing KCPL's additional spending was imprudent. This clear shifting of the evidentiary burden balances the public interest by adding some level of protection for customers, while still allowing KCPL an opportunity for recovery if the evidence supports the higher spending. KCPL claims that most of this project is under EPC contracts, so there should be less exposure to unexpected cost increases. With the EPC contracts, assigning KCPL the evidentiary burden is not unreasonable.

B. Ratemaking Principle: The Commission Can and Will Review KCPL's Spending On The Individual Component Parts Of the Retrofit

53. Determining that \$1.23 billion is a prudent amount to spend on this retrofit may have the unwanted effect of making KCPL management less aggressive in trying to minimize the underlying component costs of the construction project. The Commission must still be vigilant to insure that the project is built in the least cost manner for customers. If KCPL, through vigilant management can construct the retrofit for less than \$1.23 billion, the Commission must incent KCPL to do so. KCPL has agreed that even if the Commission determines \$1.23 billion to be a prudent, the Commission can and should still review KCPL construction of the component parts of the project to assure that KCPL is minimizing costs. (Giles, Tr. Vol, 1 at 146, lines 14-19)

54. The Commission should clearly state that even if the Commission approves the \$1.23 billion figure as a prudent, and determines that \$1.23 billion is the definitive cost estimate for the project, the Commission can and will still review whether KCPL was prudent in its acquisition of the component parts of the construction project. KCPL submitted its component

estimates as confidential Exhibit KCPL 5 after the hearing ended. No party has had an opportunity to review the individual component estimates contained in Exhibit KCPL 5 to determine reasonableness. Since Exhibit KCPL 5 will be the baseline for any future prudence review, the Commission should hold a short proceeding to examine Exhibit KCPL 5 to make sure that there is a clear understanding of the cost estimates of the component parts of the retrofit contained therein. The Commission should also assign some mechanism or set forth a date by which the confidential contents of Exhibit KCPL 5 are made public. It is unacceptable for Exhibit KCPL 5 to remain confidential once the supporting contracts are signed and construction is underway. Plus, to complete any review of prudence at a later date, Exhibit KCPL 5 will have to be a public document.

C. Ratemaking Principle: The Commission Will Reduce The Return On Equity For La Cygne Retrofit Costs

55. Issuing a predetermination order reduces the risk KCPL shareholders face with project. KCPL's (Great Plains Energy) Treasurer, Mr. Cline, sums it up best in his direct testimony when he states, "the risk to KCPL in terms of access to and cost of capital, is the negative financial stakeholder response anticipated if the Commission were to reject the Company's request, *thereby forcing KCPL to follow the higher-risk traditional ratemaking model if it were to go forward with this very significant investment*". (Emphasis added)(Cline, Direct at 13, lines 4-7) If the traditional ratemaking model is more risky than the predetermination model, as Mr. Cline acknowledges, then clearly investor risk is reduced by the issuance of a predetermination order. Since risk is a zero sum game, investor risk is reduced by transferring that risk elsewhere. In this case, the financial risk is shifted to KPCL's customers.

56. If the Commission approves KCPL's predetermination request, KCPL customers will be exposed to risks that include (1) the cost of the retrofits will be higher than the company now projects, (2) that the units will not operate as well as the company currently forecasts, (3) that the coal prices also will be higher than KCPL assumes, (4) that CO2 prices will also be higher, (5) that natural gas prices will be lower, (6) that plant operating costs will be higher, and/or (7) that one or both of the Units will be retired before 2034. (Schlissel, Direct at 3, lines 26-32)

57. The Commission has already acknowledged this shifting of risk when a predetermination order is issued. In its order opening the 11-GIME-492-GIE docket, the Commission held, "if a utility is successful in a predetermination proceeding, then it has shifted some risk from its shareholders to its ratepayers". (KCC Docket No. 11-GIME-492-GIE, Order dated January 27, 2011 at para. 15) The Commission has also held that "granting predetermination arguably involves an increase in the level of risk to customers. This risk should be weighed against benefits to the company and its customers to determine the reasonableness of granting a utility's requested ratemaking treatment and principles as opposed to requiring the traditional view". (KCC Docket No. 11-WSEE-377-PRE, Order dated May 9, 2011) Both of these Commission pronouncements were made in the last 8 months, and reflect accurately the Commission's current view on this shifting of risks to customers.

58. If the Commission finds that the La Cygne retrofit is prudent, and chooses to pre-approve the plant costs, the Commission should address the shifting of risk to customers as part of the ratemaking principles attached to the retrofit order. Reducing the return on equity for the La Cygne retrofit costs will shift a commensurate benefit from shareholders to customers for customers being assigned the risks that go along with the retrofit preapproval. The reduction,

while somewhat subjective, should be large enough to compensate ratepayers for taking on additional risk. CURB recommends that the Commission order a 100 basis point reduction for any costs associated with the La Cygne retrofit placed in KCPL's ratebase⁴. (Crane, Direct at 30, lines 5-11) Assuming the capital cost rates contained in the application of 10% ROE and 7% for long-term debt, this recommendation results in a reduction of about 33% of the equity premium above debt. (Crane, Direct at 31, lines 1-8) Shareholders still retain 66% of the equity premium, even though customers are accepting the risk. This is a fair balance between customer and shareholder interests. Assuming the annual ratebase amounts reflected in Mr. Giles's testimony, CURB estimates the largest impact of a 100 basis point ROE reduction would come in 2016, and would equal about \$1.5 million overall reduction in return. (Crane, Direct at 30, lines 15-20) That number would decrease each year as depreciation reduced the La Cygne retrofit ratebase. This reduction is about 11.34% in the total after-tax return included in the Company's proposed revenue requirement, and a savings of about 7.43% for ratepayers in the total pre-tax return component of the revenue requirement. (*Id.*) The Commission must order this reduction to appropriately recognize the risk customers are accepting.

VII. The Environmental Cost Recovery Rider Must Be Denied

59. KCPL requests that it be allowed to create a new Environmental Cost Recovery Rider (ECRR) line item on customer bills to begin charging customers for the cost of the La Cygne retrofits each year as the project progresses. The Commission rejected KCPL's request for this same line item in the recent KCPL rate case. In denying the ECRR, the Commission held

⁴ This same ratemaking treatment should also apply to any portion of La Cygne that is placed in Westar's ratebase.

that “The need to insure correct allocation of the AFUDC requires an additional analysis during the short time frame for review of KCPL’s ECRR filings. The Commission is also concerned that KCPL’s customers need a period of rate stability following annual rate increase brought about by KCPL’s Regulatory Plan. The Commission does not find regulatory lag to be a significant factor in considering an ECRR”. (415 Order, dated November 22, 2011, at page 114)

60. None of these factors have changed since the 415 Order, and KCPL has provided no compelling evidence in this case to reach a conclusion different than that reached in the 415 Order. (McClanahan, Direct at 5, lines 18-22) KCPL customers have had rates increased \$138 million in 5 years due to the four rate cases that accompanied KCPL’s 2005 Resource Plan. While KCPL has a right to file a rate case at any time, the lag between rate cases does help customers. An ECRR simply insures a continuing series of annual rate increases. Clearly the Commission was not convinced that eliminating this regulatory lag was a sufficient reason to allow an ECRR before, and it should not now.

A. K.S.A. 66-1239 Precludes KCPL Recovering Costs Through An ECRR If A Predetermination Order Is Issued

61. Any ratemaking principles and treatment issued by the Commission are applicable “on and after such time as the generating facility is placed in service”. K.S.A 66-1239(c)(4) And, the Commission “*in all proceedings* in which the cost of the public utility’s in the generating facility....is considered *shall* utilize the ratemaking principles and treatment applicable to the generating facility”. K.S.A 66-1239(c)(4) Since the ratemaking principles “shall” be utilized “in all proceedings”, and the ratemaking principles can only be applied in proceedings “on or after” the generating facility is placed in service, an ECRR, which requires ratemaking principles to be applied prior to the generating facility being placed in service,

would constitute a direct violation of clear language of K.S.A. 66-1239. The ECRR is in direct conflict with the explicit statutory language requiring any ratemaking treatment be applied “on or after” the plant comes online. Since the ECRR is not a statutory creation, but rather a Commission creation, the Commission should deny the ECRR in deference to the clear statutory restrictions.

B. Review Time Under An ECRR Is Too Short To Determine Prudence

62. The review time allotted under the current Westar ECRR is no more than 45 days. While Westar does submit certain information to Staff early, that information is minimal, usually a description of the proposed projects, a listing of why they are needed and some high level cost projections. (Rohlf, TR Vol. 5 at 1518, lines 9-15) The review process generally results in Staff checking invoices and adding up numbers. Even Westar says “they review and audit the project costs that are included in the filing”. (Rohlf, Tr. Vol. 5 at 1523, lines 18-19) A quick audit of the costs submitted by Westar is not a review of the prudence of the project, nor is it a review of the prudence of the specific expenditures. The Staff must file its memo with recommendations for the Commission within the 45 days. CURB has 15 days to review and respond to Staff’s recommendation.

63. Contrary to KCPL and Westar suggestions that the ECRR insures prudence, CURB believes it simply avoids prudence given the short review timeline. When asked directly whether there was a prudence review with Westar’s ECRR, Mr. Rohlf could only answer “there could be”. (Rohlf, Tr. Vol. 5 at 1529, lines 24) “There could be” is not that same as “there is”. Westar does not submit a supply plan model. (Rohlf, Tr. Vol. 5 at 1530, line 12) Westar does not submit load forecast data (*Id.* at line 4) Westar does not submit demand response data. (*Id.* at line 6) Westar does not submit data about alternatives to the option it has chosen to pursue. (*Id.*

at line 21) Westar currently charges customers over \$50 million every year through the ECRR. There could have been a prudence review, but there wasn't.

64. The Commission's concern expressed in the 415 order that the ECRR process is too short and informal to address prudence issues is well founded.

C. Customers Pay More Under An ECRR

65. Allowing costs to be collected annually from customers results in customers paying more total dollars to the utility on a net present value basis than if the construction costs are placed in AFUDC and carried until the next utility rate case. The principle reason customers pay more is that the ECRR requires customers to pay a pre-tax return immediately compared to AFUDC accounting where customers pay later and construction costs are carried on the utility books at a lower AFUDC rate until the cost is put in ratebase.

66. Mr. Rohlf explained in cross-examination that Westar charges about 12% pre-tax return in its ECRR. Assume \$100 is spent and placed in the ECRR. Customers will be charged \$12 of return on the \$100 each year in the ECRR. A Westar customer will pay \$36 of pre-tax return over three years through the ECRR on a \$100 investment, assuming a rate case happens at the end of year three.

67. Without the ECRR, that same \$100 is carried in the AFUDC account and a carrying charge is applied. Westar currently charges about 6-7% for AFUDC carrying charges. With a 6% carrying charge, that same \$100 after the end of year 3 in the AFUDC account would be about \$119 with compounding. Customers have paid nothing out of pocket to the utility in the first three years. If that \$119 is placed in rate base during a rate case at the end of year three, then in the fourth year a customer will pay the 12% pre-tax return on the \$119 rate base, or about \$14.28.

68. Since there is no depreciation in the ERCC ratebase is not reduced during the first three years of ECRR payments. The full \$100 goes into rate base at the time of the rate case at the end of year three, and the customer will pay the \$12 return on the \$100 in the fourth year. So, under the ECRR during the first four years customers will have paid \$48 out of pocket. With the AFUDC option, in the first four years customers would have paid \$14.28 out of pocket. While the AFUDC option means a customer will pay \$2.28 more each year after year 4, given that customers have fairly high discount rate, on a net present value basis, the extra \$2.28 a year over time is never going to have a value large enough to offset the \$36 paid out of pocket in the first three years under the ECRR.

69. Simply put, a dollar in the customer's pocket today is much more valuable than a dollar tomorrow. Taking \$36 out of a customer's pocket through the ECRR means the customer cannot use that \$36 to pay other bills, or buy other products. From a customer perspective, given the high customer discount rate, the ECRR is a losing proposition on a net present value basis.

D. An ECRR Will Allow KCPL To Increase Customer Rates Even If It Is Currently Earning More Than The Commission Allowed Rate Of Return

70. Allowing costs on a single project to be recovered through an ECRR is single issue ratemaking. (Crane, Direct at 33, lines 11-13) An ECRR allows a utility to increase rates as a result of one category of costs that may be increasing, but precludes the Commission's ability to balance those increases against other areas of the utility's cost that may be decreasing. The utility gets the benefit of quick recovery of increased costs, without consumer getting the benefit where costs are decreasing. In fact, KCPL and Westar could be earning far more than allowed by the Commission through general rates, and yet still be able to increase rates further through the ECRR. The Commission should avoid this type of single issue ratemaking.

E. KCPL Has Agreed To Not Seek An ECRR In Missouri

71. KCPL has voluntarily agreed to not seek an ECRR type mechanism in Missouri until 2015. (McClanahan, Direct at 4, lines 3-4, Giles Tr. Vol. 1 at 69, line 7) There is no valid reason why Kansas customers should begin paying for the La Cygne upgrade years before Missouri customers. Further, on the same set of ratebase cost, KCPL will have to track Missouri in AFUDC, while splitting Kansas out of AFUDC. There is no reason to create this difficult accounting situation. If the ECRR is of such low priority in Missouri that KCPL simply agreed to not have one, the Commission must find that it is a low priority in Kansas too, and deny KCPL's request for the ECRR.

F. Summary

72. An ECRR allows single issue ratemaking, insures customer see a continuing series of rate increases, cost customers more than traditional AFUDC account, is apparently unnecessary if KCPL's actions in Missouri are any indication, and appears to be specifically preclude under K.S.A. 66-1239. The Commission denies KCPL's request for an ECRR in the 415 Order, and has presented no compelling evidence why that decision should be changed in this case. The Commission should deny KCPL's request for an ECRR, and further, eliminate Westar's ECRR at the Commission's first opportunity.

VIII. Conclusion

73. KCPL as the Applicant has the burden of providing substantial, competent evidence to support its request. In this case, KCPL has failed to do so. Every expert witness in the case agrees there are numerous data and methodological errors with KCPL's model. KCPL's

results are biased, unreliable and not statistically distinguishable. The Commission cannot conclude at this time that the La Cygne retrofit proposed by KCPL is the prudent or least cost option. The Commission should issue an order, as required by K.S.A. 66-1239, stating that KCPL has failed to meet its burden of proof, that the Commission cannot conclude that the La Cygne retrofit is prudent, that if KCPL believes the La Cygne retrofit is prudent then it should proceed and traditional ratemaking principles and treatments will apply at the time KCPL seeks recovery from customers. An order of this nature meets every legal requirement in K.S.A. 66-1239.

74. If the Commission determines that the La Cygne retrofit is prudent and is determined to so state in an order, then CURB requests the Commission also order ratemaking principles that balance the shareholder benefit of predetermination against customers having to accept more risk. CURB recommends the Commission order that any amount spent above \$1.23 billion is deemed imprudent but KCPL can overcome this presumption though evidence at the appropriate time, that the Commission will investigate to determine whether KCPL was prudent in its acquisition and construction of the component parts of the project, and that the return on equity shall be reduced by 100 basis points for any costs associated with the La Cygne retrofit that are placed in the rate base of either KCPL or Westar.

75. Finally, the Commission must deny the ECRR as harmful to customers and unnecessary for KCPL to proceed with the project if it so chooses.

WHEREFORE, CURB respectfully requests that the Commission issue an order in this proceeding in accordance to the principles and arguments set forth in this Post Hearing Brief.

Respectfully submitted,



David Springe #15619
C. Steven Rarrick #13127
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604
(785) 271-3200
(785) 271-3116 Fax

CERTIFICATE OF SERVICE

11-KCPE-581-PRE

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 25th day of July, 2011, to the following:

CRAIG D. SUNDSTROM, ATTORNEY
A NEW ENERGY, LLC
101 N ROBINSON, THIRTEENTH FLOOR
OKLAHOMA CITY, OK 73112

GLENDIA CAFER, ATTORNEY
CAFER LAW OFFICE, L.L.C.
3321 SW 6TH STREET
TOPEKA, KS 66606

TERRI PEMBERTON, ATTORNEY
CAFER LAW OFFICE, L.L.C.
3321 SW 6TH STREET
TOPEKA, KS 66606

DENISE M. BUFFINGTON, CORPORATE COUNSEL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PLACE 1200 MAIN STREET (64105)
P.O. BOX 418679
KANSAS CITY, MO 64141-9679

HEATHER A. HUMPHREY, GENERAL COUNSEL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PLACE 1200 MAIN STREET (64105)
P.O. BOX 418679
KANSAS CITY, MO 64141-9679

MARY TURNER, DIRECTOR, REGULATORY AFFAIRS
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PLACE 1200 MAIN STREET (64105)
P.O. BOX 418679
KANSAS CITY, MO 64141-9679

ANDREW SCHULTE, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

CERTIFICATE OF SERVICE

11-KCPE-581-PRE

PATRICK T. SMITH, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

ROBERT V. EYE, ATTORNEY AT LAW
KAUFFMAN & EYE
112 SW 6TH AVE STE 202
COLUMBIAN BUILDING
TOPEKA, KS 66603-3850

JAMES A. ROTH
PHILLIPS MURRAH P.C.
CORPORATE TOWER, 13TH FLOOR
101 NORTH ROBINSON
OKLAHOMA CITY, OK 73102

ANNE E. CALLENBACH, ATTORNEY
POLSINELLI SHUGHART
6201 COLLEGE BLVD STE 500
OVERLAND PARK, KS 66211-2435

FRANK A. CARO, ATTORNEY
POLSINELLI SHUGHART
6201 COLLEGE BLVD STE 500
OVERLAND PARK, KS 66211-2435

DONALD K. SHANDY, ATTORNEY
RYAN WHALEY COLDIRON SHANDY, PLLC
900 ROBINSON RENAISSANCE
119 NORTH ROBINSON
OKLAHOMA CITY, OK 73102

HOLLY BRESSETT, ATTORNEY
SIERRA CLUB ENVIRONMENTAL LAW PROGRAM
85 2ND ST FL 2
SAN FRANCISCO, CA 94105-3456

CERTIFICATE OF SERVICE

11-KCPE-581-PRE

DOUGLAS HAYES, ATTORNEY
SIERRA CLUB ENVIRONMENTAL LAW PROGRAM
1650 38TH ST STE 102W
BOULDER, CO 80301-2624

GLORIA SMITH, ATTORNEY
SIERRA CLUB ENVIRONMENTAL LAW PROGRAM
85 2ND ST FL 2
SAN FRANCISCO, CA 94105-3456

CHERYL A. VAUGHT, ATTORNEY
VAUGHT & CONNER, PLLC
1900 NW EXPRESSWAY STE 1300
OKLAHOMA CITY, OK 73118-1822

MARTIN J. BREGMAN, EXEC DIR, LAW
WESTAR ENERGY, INC.
818 S KANSAS AVENUE
PO BOX 889
TOPEKA, KS 66601-0889

CATHRYN J. DINGES, CORPORATE COUNSEL
WESTAR ENERGY, INC.
818 S KANSAS AVENUE
PO BOX 889
TOPEKA, KS 66601-0889

C. MICHAEL LENNEN, VP REGULATORY AFFAIRS
WESTAR ENERGY, INC.
818 S KANSAS AVENUE
PO BOX 889
TOPEKA, KS 66601-0889

DICK F. ROHLFS, DIRECTOR, RETAIL RATES
WESTAR ENERGY, INC.
818 S KANSAS AVENUE
PO BOX 889
TOPEKA, KS 66601-0889

CERTIFICATE OF SERVICE

11-KCPE-581-PRE

JAMES P. ZAKOURA, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH STREET, SUITE 750
OVERLAND PARK, KS 66210


Della Smith
Administrative Specialist