

calendar in the event KCPL later requests and the Commission grants an extension of the procedural schedule to accommodate construction delays.²

2. Importantly, the Commission's order affirmed that all provisions of the existing procedural schedule remain in effect.³ That procedural schedule is predicated upon KCPL's direct testimony filed on October 30, 2014. Neither the Company's proposed schedule nor the ordered schedule includes an allowance for KCPL to file supplemental direct testimony.

3. Now KCPL, for the second time, seeks to manipulate the procedural schedule, this time to allow it to supplement its direct case. On February 6, 2015, KCPL filed a Motion for Leave to File Supplemental Direct Testimony to provide testimony regarding KCPL's proposal to install and operate more than 1,000 electric vehicle charging stations.⁴ KCPL's motion confirms that when it filed direct testimony on October 30, 2014, the charging station issue was already contemplated, and that KCPL even proposed a \$385,947 revenue increase associated with the charging stations.⁵ However, KCPL did not discuss the charging station issue in its direct testimony, despite seeking costs for those stations in rates. Now, more than three (3) months after filing its direct testimony, KCPL seeks to correct this error by supplementing its direct testimony to address an issue that should have been addressed with its initial filing.⁶

4. KCPL's reason for not addressing the charging station issue in testimony is once again caused by an uncertainty related directly to the company's timing of the filing of its case. KCPL specifically states that while the charging stations were

² Doc. No. 81.

³ *Id.*

⁴ Doc. No. 92.

⁵ *Id.*

contemplated by the company when it filed its direct testimony, the initiative did not become a certainty until a January 26, 2015 press announcement to the public.⁷ The company was aware of this project but still made the decision to file its direct case in October absent any testimony supporting the charging station project. Accordingly, KCPL is simply trying to supplement its direct testimony due to its failure to adequately provide testimony on this issue, and not because of when KCPL chose to make a public announcement.

5. KCPL states that its motion is made pursuant to Commission rule 4 CSR 240-2.130(10). The language of the rule fails to support the company's request. In pertinent part, the rule states: "[n]o party shall be permitted to supplement prefiled direct, rebuttal, or surrebuttal testimony unless ordered by the presiding officer or the commission."⁸ After including this broad prohibition, the rule provides two circumstances when supplemental direct testimony is appropriate. First, a party shall have an opportunity to address matters not previously disclosed which arise at the hearing – an exception inapplicable at this stage in the case. Second, the rule “does not forbid the filing of supplemental direct testimony for the purpose of replacing projected financial information.”⁹ This exception, too, is inapplicable. KCPL does not file its supplemental testimony to replace projected financial information, but rather, improperly raises the issue for the first time. In its motion, the company cites to the direct testimony of Ronald Klote, adjustment CS-49, Miscellaneous expense as the place where KCPL included an

⁶ See 4 CSR 240-2.130.

⁷ Doc. No 92.

⁸ 4 CSR 240-2.130(10).

⁹ *Id.*

amount for the company's proposed charging stations.¹⁰ A closer review shows that the only testimony Mr. Klote provides on CS-49 to be: "Adjustment CS-49 includes an annual level of expense for miscellaneous maintenance anticipated to occur prior to the true-up."¹¹ There is no reasonable interpretation of that language that would enable the parties - or the Commission - to understand that the company was including a cost for charging stations. In fact, this cost is not for maintenance at all, but for construction of new electric charging stations. The rule cited by KCPL as authority to allow the supplemental filing of direct testimony more appropriately prohibits the new issue.

6. Further, KCPL's explanation that its project did not become certain until its announcement fails to constitute good cause for granting the request to supplement direct testimony, nor does it constitute good cause for changing the procedural schedule.¹² In fact, the Company's motion fails to state any good cause at all. KCPL should have addressed this issue in its direct testimony, and rather than increasing the burden on the other parties by requiring them now to respond to a new issue introduced months after the company's direct case filing, KCPL should be required to have its case stand on the October 31, 2014 filing.

7. Granting KCPL's request to supplement its direct testimony would send a bad signal to all other Missouri utilities. Such a decision would signal that they too can short-circuit the Commission's established procedures and the ability of the other parties to address adequately proposed rate increases simply by constructing a future "decision date" regarding a new cost and stating that the decision to incur those costs came after the

¹⁰ Doc. No. 92. The Company's pleading incorrectly identifies the discussion of adjustment CS-49 as being on p. 30. The proper citation to the discussion is at p. 43. *See* Doc. No. 10, p. 43.

¹¹ Doc. No. 10, p. 43.

direct testimony filing. A far better outcome for consumers and all other parties that participate in general rate cases is to deny KCPL's motion to supplement direct testimony

8. KCPL separately filed a request with the Commission to open a working docket to consider issues surrounding KCPL's charging stations (Case No. EW-2015-0184). KCPL's proposal necessarily will raise a significant number of issues, particularly involving how such a service is to be designated, whether such service is a regulated service, whether such service will be a competitive service, how to tariff such a service if regulated, and a host of other issues surrounding this new service. These issues should be considered in a docket opened for that purpose. Such issues should not be raised for a first time in direct testimony of a rate case three (3) months after the company filed its initial request. The working docket will likely involve a much larger interest group than the parties to KCPL's rate case, and will provide the necessary deliberation on this issue prior to any decision by this Commission regarding whether it is lawful, just and reasonable to include vehicle charging stations in the rates of residential and business customers that may have no intent of ever using such stations.

9. In the working docket case, Case No. EW-2015-0184, the Commission issued an order that raised the following issue: "The fact that some aspects of the Clean Charge Network will be an issue in the rate case creates concerns that ex parte communications about the rate case issue could occur in the working case. Those concerns cause the Commission to pause before establishing the requested working case." Denying KCPL's attempt to raise this issue in the rate case through late-filed testimony would alleviate the ex parte concerns raised by the Commission.

¹² 4 CSR 240-2.130 prohibits parties from filing supplemental direct testimony unless ordered by the Commission.

10. For these reasons, the Office of the Public Counsel, the Midwest Energy Consumers Group, and Consumers Council of Missouri urge the Commission to deny KCPL's attempt to supplement testimony to address an issue that should have, and could have, been addressed on October 30, 2014.

WHEREFORE, the Office of the Public Counsel, the Midwest Energy Consumers Group, and Consumers Council of Missouri offer this joint response in opposition to KCPL's request to supplement direct testimony.

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CERTIFICATE OF SERVICE

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