

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of Kansas City Power & Light )  
Company's Request for Authority to ) Case No. ER-2016-0285  
Implement a General Rate Increase for )  
Electric Service )

**PUBLIC COUNSEL'S OBJECTION AND MOTION  
TO STRIKE TRUE-UP TESTIMONY OF TIM RUSH**

COMES NOW the Office of the Public Counsel ("OPC" of "Public Counsel") and for its *Objection and Motion to Strike Testimony* offers the following comments:

Background

1. On Friday March 10, 2017, Kansas City Power & Light Company ("KCPL") pre-filed the True-up Rebuttal testimony of Tim Rush. The testimony offered by Mr. Rush is neither within the scope of true-up testimony nor is it rebuttal testimony. Instead, KCPL attempts to inappropriately inject further argument into the record to bolster its case-in-chief.
2. Public Counsel objects to this testimony and moves the Commission to strike the true-up rebuttal testimony of Mr. Rush in its entirety.

Motion to Strike

3. The facts and circumstances in this case justify exclusion of the inappropriate and prejudicial testimony of Mr. Rush. The Commission has addressed when it will consider motions to strike pre-filed testimony. In rejecting a motion to strike in a recent rate case, this Commission cautioned against striking pre-filed testimony but explained it is appropriate in certain situations:

Generally, the proper time to object to the admissibility of evidence is after it has been offered. But in some circumstances prefiled testimony may be so inappropriate and prejudicial to make it unjust to require the other parties respond

to that testimony. In such circumstances, the Commission might appropriately grant a motion to strike.

(In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariff to Increase Its Revenues For Electric Service, File No. ER-2014-0258, *Order Denying Motion in Limine or to Strike Testimony*, p. 2, *Iss'd* Jan. 14, 2015). For the reasons discussed below, Mr. Rush's testimony is inappropriate and prejudicial and so should be stricken immediately by the Commission.

4. At page one of the testimony Mr. Rush admits this is not rebuttal testimony, stating "[t]he purpose of this True-up Rebuttal is to respond to certain questions that were brought up during hearings by Chairman Hall regarding the Clean Charge Network ("CCN") for the electric charging stations as well as provide additional information related to the information requested by Chairman Hall and filed by the Company as Exhibit 169." By the admission of Mr. Rush, the testimony he offers violates Commission Rule 4 CSR 240-2.130(7)(B) that provides rebuttal testimony "shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case."

5. First, it should be noted that the Company already responded to the Chairman during the evidentiary hearing. The issues list in this case shows that KCPL would offer Mr. Rush to testify on the issue of electric vehicle charging stations which he did. However, KCPL – perhaps determining Mr. Rush's testimony to be inadequate on the issue – offered another witness who did not pre-file testimony on electric vehicle charging and was not on the witness list. In fact, counsel for KCPL interposed an objection during OPC's cross-examination of Mr. Rush to ask that electric vehicle questions be directed to someone else:

Mr. FISCHER: Your Honor, I - - I think I'm going to interpose an objection and just make a suggestion. We've been going down this road of operation issues on EV charging for quite some time, and we've got a lot of ground to cover. We do have another witness that's coming up, not to address EV charging specifically, but he's probably in a better position to answer some of these questions, and that's Mr. Chuck Caisley. I would suggest that operational questions should be directed to him even though he's here on another topic.

Tr. Vol. 12, pp. 1367-68. After cross-examination from the parties, Commissioners had questions for the witness. When Mr. Rush was unable to answer direct questions from the Commission, counsel for KCPL repeated the request for a second opportunity to respond through an additional witness stating:

MR. FISCHER: Mr. Chairman, I might offer - - once again, there is a witness that's coming directly that could give you direct answers.

CHAIRMAN HALL: Mr. Caisley?

MR. FISCHER: Yes.

Tr. Vol. 12, pp. 1403-04. Mr. Caisley *did* testify about electric vehicles during the hearing including offering responses to the Commission's questions and a lengthy pre-rehearsed speech pitching the Company's perspective.

6. Furthermore, as the Company admits, the testimony of Mr. Rush is not even responding to any party's true-up direct testimony on electric vehicles. Instead, it is the Company's attempt for yet another "bite at the apple" to make its case for cost recovery after the Company management listened to the Commission's deliberation on electric vehicle charging stations during its agenda session on March 8, 2017 related to ET-2016-0246 and determined it needed to

change its argument. If this were not the case, the Company would have filed this inappropriate testimony in its true-up direct filing on March 1, 2017.

7. To be clear, if this testimony were filed in the true-up direct it would still be objectionable. The portions of testimony related to the electric vehicle charging stations are not related to any true-up issue. True-up is an additional opportunity for numbers to be updated for a pre-determined period of time after the normal historical test year and so its scope is necessarily limited. It is not an additional opportunity for KCPL to re-argue issues that were fully litigated during the evidentiary hearing.

8. KCPL, as evidenced by the testimony of Mr. Rush, does not share the same understating of a true-up. Nothing in the testimony of Mr. Rush constitutes “true-up” numbers or information. Aside from his inappropriate testimony on electric vehicle charging stations, Mr. Rush also offers testimony under the heading “Unit Sales and Revenues”. Under this heading, the witness raises another issue that was litigated – the Company’s attempt to double-recover for its MEEIA Cycle 1. For many of the same reasons, the Commission should strike this testimony. True-up is not an additional opportunity for KCPL to re-argue issues that were fully litigated during the evidentiary hearing.

9. The Company’s on-going attempt to foist costs related to electric vehicle charging stations onto captive ratepayers was litigated over the course of two days and will be briefed by counsel in two rounds of post-hearing legal briefs. Nothing in the testimony of Mr. Rush constitutes “trued-up” numbers or information. This attempt to re-litigate issues is especially egregious because the Company filed them in true-up rebuttal when no party would have an opportunity to conduct discovery to test the claims or to respond with written testimony. Thus in addition to being inappropriate for the scope of true-up testimony Mr. Rush’s testimony is

prejudicial in that it deprives all other parties of the process for discovery and to provide responsive witnesses.

10. Public Counsel is authorized to indicate that Midwest Energy Consumers' Group and Consumers Council of Missouri support this motion.

WHEREFORE Public Counsel OBJECTS to the testimony of KCPL witness Mr. Tim Rush and moves the Commission to STRIKE the True-up testimony of Mr. Rush in its entirety.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 14<sup>th</sup> day of March 2017:

/s/ Tim Opitz