

Exhibit No.:
Issue: Property Tax; Gross Receipts Tax
Witness: Melissa K. Hardesty
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: Kansas City Power & Light Company
Case No.: ER-2009-0089
Date Testimony Prepared: April 7, 2009

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: ER-2009-0089

SURREBUTTAL TESTIMONY

OF

MELISSA K. HARDESTY

ON BEHALF OF

KANSAS CITY POWER & LIGHT COMPANY

**Kansas City, Missouri
April 2009**

SURREBUTTAL TESTIMONY

OF

MELISSA K. HARDESTY

Case No. ER-2009-0089

1 **Q: Are you the same Melissa K. Hardesty who submitted Rebuttal Testimony in this**
2 **case on behalf of Kansas City Power & Light Company (“KCP&L” or the**
3 **“Company”) on or about March 11, 2009?**

4 **A: Yes, I am.**

5 **Q: What is the purpose of your Surrebuttal Testimony?**

6 **A: The purpose of my testimony is rebut testimony provided by Staff’s Utility Regulatory**
7 **Auditor, Karen Herrington concerning property taxes and gross receipts taxes.**

8 **PROPERTY TAXES**

9 **Q: Please address your concerns regarding Ms. Herrington’s property tax Rebuttal**
10 **Testimony.**

11 **A: While I disagree with many points Ms. Herrington made regarding the KCP&L approach**
12 **used in its direct filing to annualize property tax expense, most of her points are not**
13 **relevant at this point in the case and therefore I am not going to address them in my**
14 **Surrebuttal Testimony. In the true-up for this case, the Company is simply going to**
15 **utilize actual 2008 property tax costs billed and paid as of December 31, 2008; that is,**
16 **known and measurable costs. Staff has indicated a willingness to do likewise, although in**
17 **Rebuttal Testimony Staff has kept its options open to other methods.**

1 **Q: If both parties utilize 2008 actual property tax costs incurred, will there then be any**
2 **property tax expense differences between the parties at true-up?**

3 A: There is likely to be one difference. Ms. Herrington expressed concern in her Rebuttal
4 Testimony about the inclusion of 2008 property taxes actually incurred in 2008 related to
5 the Iatan 1 Air Quality Control System (“AQCS”). These property taxes were capitalized
6 to Iatan 1 construction work orders in 2008.

7 **Q: What is Ms. Herrington’s concern about including in cost of service in this case 2008**
8 **Iatan 1 AQCS property tax costs incurred?**

9 A: Ms. Herrington indicated on page 5, lines 6 – 9 of her testimony that “if Staff included
10 the plant additions that occur after the January 1, 2009 assessment date, customers would
11 have to pay for property taxes in this case even though those taxes would not be due and
12 payable to the taxing authority until December 31, 2010.” References were also made to
13 several Commission rulings that concluded that certain projected property taxes were not
14 known and measurable and therefore were not includable in the revenue requirement.

15 **Q: Do you agree with Ms. Herrington’s concerns?**

16 A: No, I do not. As indicated in the Direct Testimony of Company witness John Weisensee
17 and more fully explained in the Company’s response to Staff Data Request No. 581, the
18 taxes at issue on the Iatan 1 AQCS in the amount of \$1,043,890 (total Company amount)
19 are not projected but rather actual property taxes that were paid in December 2008.
20 Furthermore, not only will these taxes be sustained in future years just as other property
21 taxes that were expensed in 2008, but they will be significantly higher as the AQCS
22 project cost as of January 1, 2009 (the assessment date for the 2009 taxes to be payable in

1 2009) was almost three times the cost of the project at January 1, 2008 (the assessment
2 date for the 2008 taxes which were paid in 2008).

3 **Q: Does Ms. Herrington make any other comments with which you disagree?**

4 A: Yes. Ms. Herrington states on page 6, lines 3 – 5 of her testimony that “the construction
5 related costs for Iatan 1 (and all other construction costs) were assessed January 1, 2009
6 (to be paid December 31, 2009) and were capitalized to the Iatan 1 construction work
7 order.” Although not entirely clear, it appears Ms. Herrington is stating that the entire
8 amount of 2009 property taxes on construction costs related to Iatan 1 would be
9 capitalized to Iatan 1 construction work orders.

10 **Q: Why do you disagree with that statement?**

11 A: Since the AQCS project will be completed in April 2009, the vast majority of the 2009
12 property taxes will be expensed in 2009. Again, the amount of the 2009 taxes (to be paid
13 in 2009) on the AQCS will greatly exceed the actual 2008 taxes on that project (all paid
14 in 2008).

15 **Q: Do you have any additional comments on this issue?**

16 A: Yes. While Staff has considered ratios to determine appropriate levels of property tax
17 expense, it is clear that the Company is taking a conservative approach by only seeking
18 the actual 2008 taxes. Any additional tax which exceeds the 2008 tax assessed and paid
19 on the AQCS project for construction costs incurred after January 1, 2008 will be
20 included in future rate cases even though such additional tax will be paid and expensed
21 during 2009.

GROSS RECEIPTS TAXES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Q: Please address your concerns regarding Ms. Herrington’s gross receipts tax Rebuttal Testimony.

A: Ms. Herrington states her opinion that the 6% Kansas City, Missouri (“Kansas City” or the “City”) gross receipts tax that is remitted quarterly to the City is not a prepaid tax. This position is not supported by the language of the City ordinance.

Q: Can you explain why the Kansas City ordinance supports the position that the Company’s quarterly gross receipts tax payments are a prepayment?

A: Yes, Ms. Herrington cites only a portion of the Kansas City tax ordinance that pertains to the measurement period of the tax, which essentially indicates that a payment due on or before the 30th day of the first month of the quarter is based on the business done in the preceding quarter. What Ms. Herrington did not cite is that another section of the ordinance indicates that such payment, while based on the prior quarter is for a license to do business for the ensuing quarter.

Q: Could you provide the relevant language to support this position?

A: Yes, the following excerpt was taken from the City of Kansas City tax ordinance Sec 40-344:

(b) Reports by licensee. The licensee shall and he is hereby required to make true and faithful reports under oath to the director of finance and to the commissioner of revenue of the city, in such form as may be prescribed by the director of finance, and containing such information as may be necessary to determine the amounts to which the license tax shall apply on or before January 30, April 30, July 30 and October 30

1 of each year, for all gross receipts for the three calendar months ending, respectively
2 on December 31, March 31, June 30 and September 30.

3 (c) Payment of license fee. **Each fee shall constitute payment for the three months**
4 **beginning on January 1, April 1, July 1 and October 1, respectively, during**
5 **which months such payment shall be due and payable** as prescribed in this section:
6 provided however that the acceptance of such fee shall not prejudice the right of the
7 city to collect any additional fee thereafter found to be due. (emphasis added)

8 **Q: Why did you emphasize the language in the ordinance above in part (c) Payment of**
9 **license fee?**

10 A: This section of the ordinance clearly indicates that a fee paid for a license for any given
11 quarter would be made for the quarter that contained the payment month. Thus, a
12 payment on the 30th of January would be for a license for the period of January 1 thru
13 March 31 and would be considered a prepayment even though the measurement period
14 is the prior quarter.

15 **Q: Has the Kansas City quarterly gross receipts tax always been a prepaid tax?**

16 A: Yes, Prior to January 1, 1943, the tax was prepaid annually based on the number of
17 meters. Starting on January 1, 1943, the City converted from the prepaid meter tax to a
18 prepaid gross receipts based franchise fee.

19 **Q: Do you agree with Ms. Herrington's assertion that the Company pays the tax to the**
20 **taxing authorities after it collects them from the customer?**

21 A: No. While the customer pays for the tax at the same time he pays for the electric service,
22 the billing for the gross receipts tax is in fact a recovery of the taxes that the Company
23 pre-paid to the taxing authority.

1 **Q: If KCP&L had sold or ceased operation within the city limits of Kansas City on**
2 **December 31, 2008, when would the final gross receipts tax payment be made?**

3 A: Based upon the language contained in paragraph (c) of the Kansas City tax ordinance, if
4 KCP&L were to stop serving customers in Kansas City on December 31, 2008, the last
5 6% gross receipts tax license payment would have been made on October 30, 2008.
6 Since the October 30, 2008 payment is for the period of October 1, 2008 thru December
7 31, 2008, and the Company had stopped service customers in Kansas City, then KCP&L
8 would not be required to have a Quarterly license for 2009.

9 **Q: Do you agree with Ms. Herrington's position in her Rebuttal Testimony that all the**
10 **ordinances for each city in which KCP&L operates have similar language?**

11 A: Yes, I agree that the language in most of the city ordinances in cities where KCP&L
12 operates is similar to the language in the Kansas City ordinance. It is KCP&L's position
13 that the Company's payment of these gross receipts taxes is also a prepayment.

14 **Q: Given your conclusion that these tax payments are prepayments, please discuss the**
15 **Company's recommended regulatory treatment.**

16 A: The purpose of my Surrebuttal Testimony and my Rebuttal Testimony earlier in the case
17 is to explain why these payments are prepayments, not payments in arrears as suggested
18 by Staff. Company witness John Weisensee discusses the necessary regulatory treatment
19 of these prepayments in his Rebuttal Testimony.

20 **Q: Does that conclude your testimony?**

21 A: Yes, it does.

