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Issue: Injuries & Damages
Witness: Expense
Type of Exhibit: Michael Higley
Sponsoring Party: Surrebuttal Testimony
Kansas City Power &
Light Company,
KCP&L Greater
Missouri Operations
Case Nos.: Company
ER-2018-0145 and ER-
2018-0146
Date Testimony Prepared: September 4, 2018

MISSOURI PUBLIC SERVICE COMMISSION

CASE NOS.: ER-2018-0145 and ER-2018-0146

SURREBUTTAL TESTIMONY

OF

MICHAEL HIGLEY

ON BEHALF OF

**KANSAS CITY POWER & LIGHT COMPANY, and
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

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1

I. INTRODUCTION

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

3 A: My name is Michael Higley. My business address is 1200 Main Street, Kansas City, MO
4 64105.

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

6 A: I am employed by Kansas City Power & Light Company (“KCP&L”) and serve as Senior
7 Manager, Risk Management for KCP&L and KCP&L Greater Missouri Operations
8 Company (“GMO”).

9 **Q: What are your responsibilities?**

10 A: As Senior Manager, Risk Management for KCP&L and KCP&L Greater Missouri
11 Operations, I am responsible for insurance procurement, claims handling, as well as
12 administration of the Enterprise Risk Management program.

13 **Q: Please summarize your education, experience and employment history.**

14 A: I attended Kansas State University studying Information Technology as well as Business
15 Administration; receiving degrees in Management Information Systems, Computer
16 Science, and Computer Information Systems. Prior to my 6-year tenure as the KCP&L
17 Risk Manager, I served as a member of the Westar Energy Risk Management team for 7
18 years.

1 **Q: Have you previously testified before the Missouri Public Service Commission**
2 **(“Commission”)?**

3 A: No.

4 **Q: On whose behalf are you testifying?**

5 A: I am testifying on behalf of KCP&L and GMO (collectively, the “Company”).

6 **Q: What is the purpose of your testimony in this proceeding?**

7 A: I will respond to the rebuttal testimony of Staff witness Ms. Karen Lyons regarding the
8 level of injuries and damages (“I&D”) expense to be included in KCP&L’s rates.
9 Company witness Ms. Linda Nunn also addresses I&D expense in her surrebuttal
10 testimony.

11 **Q: What is your understanding of Staff’s position regarding I&D expense for KCP&L**
12 **in this case?**

13 A: Based on page 2 of Staff witness Lyons’ rebuttal testimony, I understand that Staff
14 recommends that KCP&L’s I&D expense should be set at a normalized level by use of a
15 two-year average excluding costs associated with one or two specific claims. She has
16 excluded the settlement cost of this claim because she believes it is unusually high and
17 because she believes customers should not bear costs associated with utility negligence.

18 **Q: Do you agree with this Staff position?**

19 A: No. I&D costs are an unfortunate but anticipated and recurring outcome of providing
20 electric service. KCP&L takes prudent steps to mitigate risks to employees, customers
21 and the public at large, but it is impossible to eliminate all risk. As a result, risk transfer
22 is utilized by the utility where possible, when it can be obtained at a reasonable cost.
23 This risk transfer is normally in the form of liability or workers compensation insurance

1 coverage which reimburses the utility for liability due to I&D claims many of which are
2 based on allegations of negligence by the utility. Under Missouri law, the circumstances
3 of this specific claim made it ineligible for workers compensation insurance coverage, so
4 the entirety of the associated cost was borne by the Company. The claim and associated
5 cost Staff witness Lyons proposes to remove from the calculation of a normalized level of
6 I&D expense is unfortunate, but not unique to the industry as a whole or KCP&L
7 specifically. Claims of this nature have occurred in the past at KCP&L and will recur in
8 the future. This type of cost is a part of the Company's continuing cost of service. As
9 such, Staff witness Lyons' exclusion of the cost of this claim from the normalized level
10 of I&D expense should be rejected.

11 **Q: Should costs associated with a claim be excluded from the calculation of a**
12 **normalized level of I&D expense on the basis of its magnitude or allegations or**
13 **findings of negligence on the part of the utility?**

14 A: No. Aside from its magnitude, the claim Staff proposes to exclude is no different than
15 other claims of smaller magnitude. Many claims resulting in I&D expense for KCP&L
16 involve allegations or findings of negligence on the part of the utility. That is one of the
17 primary reasons utilities, including KCP&L, have insurance coverage, the cost of which
18 is accepted as a normal cost of doing business and included in rates as such. If claim size
19 serves as the determinant for whether the associated cost is recoverable in rates, then such
20 a practice would lead to utilities reducing their retained risks by lowering insurance
21 coverage deductibles at increased insurance costs that are ultimately included in customer
22 rates. It is more cost-effective for the utility to retain a reasonable level of risk and costs

1 incurred by the utility within that retention – such as those associated with the claim at
2 issue here – should be recoverable through the I&D allowance included in rates.

3 **Q: Should costs associated with a claim be excluded from the calculation of a**
4 **normalized level of I&D expense because the claim was not covered by an insurance**
5 **policy?**

6 A: No. KCP&L’s risk department obtains all reasonably priced insurance coverage that is
7 available. KCP&L’s risk department evaluates coverage limits and deductible levels
8 annually against loss scenarios and peer benchmarking. Risks that can be transferred in a
9 cost-effective manner to protect KCP&L and its customers are transferred through
10 insurance coverage.

11 Under Missouri law, this claim was not subject to insurance coverage. This
12 peculiarity of Missouri law has no bearing on whether the cost of this claim should be
13 recoverable through rates.

14 **Q: Has KCP&L previously experienced claims similar to the claim at issue here?**

15 A: Yes. While KCP&L is not new to employee and contractor claims of occupational
16 exposures to harmful substances, this was KCP&L’s first claim involving exposure to
17 sulfur.

18 **Q: Why was this claim so large?**

19 A: KCP&L did not, and does not, see a reasonable basis for trial court’s judgment.
20 Nevertheless, the judge thoroughly outlined his one-sided position in his written
21 judgment. Although KCP&L adamantly disagreed with the judge’s findings and the
22 large awards he ultimately handed plaintiffs, KCP&L recognized that the chances of
23 successfully appealing a judgment such as this one were slim and that the appeal would

1 be costly. Plaintiffs similarly realized the risks of appeal and the parties were able to
2 resolve the matter during a court-ordered mediation, saving KCP&L over \$5.5 million
3 compared to the judgment combined with interest costs had KCP&L continued with its
4 appeal rather than resolving the case by settlement. KCP&L has litigated personal injury
5 and occupational disease claims in the past and obtained defense verdicts. The risk of an
6 outlier judgment, like the risk of the claim itself, is an unavoidable element of providing
7 electric service and was significantly mitigated through settlement.

8 **Q: Does this conclude your surrebuttal testimony?**

9 **A:** Yes, it does.