

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

In the Matter of KCP&L Greater Missouri Operations    )  
Company’s Request for Authority to Implement        )  
A General Rate Increase for Electric Service         )                    Case No. ER-2016-0156

**MOTION TO STRIKE PORTIONS OF DIRECT TESTIMONY  
OF PUBLIC COUNSEL WITNESS MICHAEL P. GORMAN**

KCP&L Greater Missouri Operations Company (“GMO” or “Company”), pursuant to Missouri Rule of Civil Procedure 55.27(e) and 4 CSR 240-2.130(7), moves to strike certain portions of the testimony of Office of the Public Counsel (“Public Counsel” or “OPC”) witness Michael P. Gorman as improper direct testimony.

GMO requests that those portions of Mr. Gorman’s direct testimony that are, in fact, rebuttal testimony that respond to direct testimony filed by the Company be re-filed as rebuttal testimony on August 15, as required by the procedural schedule. This will permit GMO to address these criticisms of GMO’s case-in-chief in surrebuttal testimony on September 2.

In support of this Motion to Strike, the Company states as follows:

1. Commission Rule 4 CSR 240-2.130(7) defines the meaning of direct and rebuttal testimony in the context of parties submitting prefiled testimony:

“(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party’s entire case-in-chief;

“(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party’s direct case.”

2. This proceeding is governed by the Procedural Schedule that was issued April 6, 2016. It called for Staff and intervenor direct testimony to be filed on July 15, with rebuttal testimony to be filed August 15. See Amended Notice of Hearing, and Order Establishing

Procedural Schedule and Governing Procedure at 2 (Apr. 6, 2016). All of the parties to the case, including OPC, agreed to this procedural schedule and its governing procedures.

3. On July 15, OPC witness Mr. Gorman filed direct testimony consisting of 91 pages and 21 schedules. Although portions of the Gorman testimony contain a standard cost of capital analysis, he states on page 2: “I will also respond to GMO witness Mr. Robert Hevert’s recommended return on equity range of 9.75% to 10.50% and GMO’s requested return on equity of 9.90%.” See Exhibit 1. This response is contained in Section V of Mr. Gorman’s testimony (pages 66–91.) The first two pages of this more than 25-page rebuttal to Mr. Hevert’s direct testimony is attached as Exhibit 2. Notably, Section V(A) is entitled: “Summary of Rebuttal.” Id.

4. Mr. Gorman also responds to the direct testimony of GMO witness Kevin Bryant regarding the Company’s proposed capital structure on pages 20 through 25 of his direct testimony. See Exhibit 3. In the course of this discussion, Mr. Gorman attacks Mr. Bryant’s proposed capital structure as containing “an unreasonably high common equity ratio of total capital.” Id. at 21, lines 2–3. He also provides testimony rebutting Mr. Bryant’s direct testimony to a question that states: “Please respond.” Id. at 25, line 4. In his answer, Mr. Gorman directly criticizes Mr. Bryant’s position. Id., line 11 (“Therefore, Mr. Bryant simply has it backwards.”).

5. The Commission’s rules clearly provide for an organized sequence of testimony, whereby the parties to a proceeding like this general rate case set forth their case-in-chief in direct testimony. Once direct testimony is filed, any party may then file rebuttal testimony that “shall include all testimony which is responsive to the testimony and exhibits contained in any other party’s direct case.” See 4 CSR 240-2.130(7)(B). Plainly, a party’s direct case may not contain rebuttal testimony which responds to a party’s direct case. Once rebuttal testimony is

filed, a party may submit surrebuttal testimony “which is responsive to matters raised in another party’s rebuttal testimony.” See 4 CSR 240-2.130(7)(D).

6. These ground rules were established by the Commission to permit the orderly presentation of evidence and to prevent any party from “jumping the gun” or otherwise gaining an advantage in presenting its case. If this rebuttal testimony by Mr. Gorman, here disguised as direct testimony, is allowed to respond to the direct testimony of GMO witnesses Mr. Hevert and Mr. Bryant, the Company will be forced to respond to Mr. Gorman’s remarks in its own rebuttal, thereby allowing Public Counsel an opportunity in surrebuttal to have the final word on these issues. That is not what the Commission’s rules intended.

7. The rules intended for each party to have an opportunity at the rebuttal filing date to respond to the direct testimony of another party. The party providing direct testimony, therefore, is allowed to respond to that rebuttal in surrebuttal, thus having the last opportunity to respond. Given that GMO, as the applicant, has the burden of proof on most of the issues in this case, it would be unfair to allow Mr. Gorman’s rebuttal testimony to masquerade as direct testimony and undermine these carefully designed rules.

8. Notably, in his direct testimony filed in Kansas City Power & Light Company’s last rate case, No. ER-2014-0370, Mr. Gorman filed direct testimony of only 43 pages and 17 schedules on April 2, 2015. That direct testimony, filed on behalf of two industrial consumer groups, conformed with the Commission’s rule on direct testimony, and is in stark contrast to the 91 pages and 21 schedules filed in this case.

9. If the Commission is not inclined to strike the portions of Mr. Gorman’s testimony noted above, the Company requests that the Commission issue an order allowing GMO to respond to Mr. Gorman’s rebuttal to the direct testimony of Mr. Hevert and Mr. Bryant

in the Company's surrebuttal testimony. The Procedural Schedule calls for surrebuttal testimony to be filed on September 2, 2016.

WHEREFORE, KCP&L Greater Missouri Operations Company requests that the Commission order that the following portions of Mr. Gorman's direct testimony be stricken and refiled as rebuttal testimony on August 15, 2016:

- a. Page 2, lines 8–9 (rebuttal to Mr. Hevert).
- b. Page 5, lines 5–15 (rebuttal to Mr. Hevert).
- c. Page 6, line 4 through page 8, line 10 (rebuttal to Mr. Hevert).
- d. Page 21, line 1 through page 25, line 16 (rebuttal to Mr. Bryant).
- e. Section V, page 66, line 7 through page 91, line 2 (rebuttal to Mr. Hevert).

In the event that the Commission declines to grant this Motion to Strike, the Company requests that the Company be permitted to respond to Mr. Gorman's criticisms of the direct testimony of Mr. Hevert and Mr. Bryant in surrebuttal testimony.

Dated: July 20, 2016

/s/ Karl Zobrist

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served upon all parties of record on this 20th day of July 2016.

/s/ Karl Zobrist  
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Attorney for KCP&L Greater Missouri Operations  
Company