

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

In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service.)	Case No. ER-2012-0174
)	
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-2012-0175
)	

**MOTION TO STRIKE
TRUE-UP DIRECT TESTIMONY OF MICHAEL P. GORMAN**

Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO") (collectively, "Companies"), pursuant to Missouri Rule of Civil Procedure 55.27(e) and 4 CSR 240-2.130(10), move to strike the True-Up Direct Testimony of Michael P. Gorman.

None of the testimony that Mr. Gorman presents is proper true-up testimony. As such it violates 4 CSR 240-2.130(10), as well as longstanding Commission practice that limits true-up proceedings to an update of historical test year figures with known and measurable subsequent or future changes. The Companies therefore ask that the Commission strike Mr. Gorman's True-Up Direct Testimony in these proceedings.

In support of the Motion to Strike, KCP&L and GMO state as follows:

1. On April 26, 2012, the Commission ordered a procedural schedule in these matters, calling for True-Up Direct Testimony to be filed on November 6, 2012 and True-Up Rebuttal Testimony on November 13, 2012.
2. Office of the Public Counsel ("OPC") witness Michael P. Gorman filed Direct Testimony in Case No. ER-2012-0174 on revenue requirement issues, including capital structure and short-term debt, on August 2, 2012. He also filed Surrebuttal in that matter on October 8, responding to Company witness Kevin Bryant's rebuttal testimony on capital structure and debt

issues. Similarly, Mr. Gorman filed Direct and Surrebuttal in Case No. ER-2012-0175. He filed no Rebuttal Testimony in either case.

3. Mr. Gorman now improperly attempts to further comment on the issues of capital structure and short-term debt in five pages of True-Up Direct Testimony filed in both rate cases on November 8, 2012. This purported true-up testimony is nothing more than a supplement to his prefiled testimony on capital structure and short-term debt issues, in violation of 4 CSR 240-2.130(10). All of these issues were previously raised, covered fully in prefiled testimony during the case-in-chief, and addressed at hearing.

4. Mr. Gorman states that the purpose of his True-Up Direct Testimony is to “comment on the need for a balanced capital structure” for each Company. See Gorman KCP&L and GMO True-Up Direct at 1:9. Yet even Mr. Gorman admits that he has previously made many of the arguments he repeats. See Gorman KCP&L True-Up Direct at 1:13-2:4, 3:23-4:5; Gorman GMO True-Up Direct at 2:3-8, 3:23-4:5. Furthermore, the testimony to which Mr. Gorman improperly responds in his True-Up Direct Testimony relates to capital structure and short-term debt issues that were disclosed in the filing of the Company’s case-in-chief and were addressed by Mr. Gorman in both Direct (pages 10-13) and Surrebuttal (pages 2-5) Testimony. Mr. Gorman has had ample time to respond to these issues in prefiled testimony pursuant to 4 CSR 24-2.130(7). Notably, he declined to file rebuttal testimony. Yet, now he attempts to supplement the record in violation of 4 CSR 240-2.130(10).

5. Finally, Mr. Gorman’s True-Up Direct is an improper attempt to respond to the live testimony of KCP&L’s Treasurer Kevin Bryant at the October 23, 2012 evidentiary hearing. While the Commission’s rule at 2.130(10) provides that a “party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing,” such “reasonable opportunity” was provided. Mr. Gorman testified at the hearing (Tr.

515-41) *subsequent* to Mr. Bryant (Tr. 359-63), but he and his counsel declined to respond to Mr. Bryant or otherwise address the short-term debt issues while he was on the stand. As a result, Mr. Gorman attempts to put new and supplemental evidence before the Commission in the guise of true-up testimony.

6. In the 2009 general rate cases of KCP&L and GMO, the Commission explained the purpose of a rate case true-up as follows:

The use of a True-Up audit and hearing in ratemaking is a compromise between the use of a historical test year and the use of a projected or future test year. It involves adjustment of the historical test year figures for known and measurable subsequent or future changes. However, while the “test year as updated” involves all accounts, the True-Up is generally limited to only those accounts necessarily affected by some significant known and measurable change, such as a new labor contract, a new tax rate, or the completion of a new capital asset. Both the “test year as updated” and the True-Up are devices employed to reduce regulatory lag, which is “the lapse of time between a change in revenue requirement and the reflection of that change in rates.”

See Order Modifying Procedural Schedules For True-Up Proceedings and Formally Adopting Test Year And Update Period (Mar. 18, 2009) (internal citations omitted).

7. The true-up process is the fundamental way in which this Commission addresses regulatory lag. During this process, figures that were not available during the presentation of the case are added to the record. The test year is adjusted to take into account known and measurable future changes. State ex rel. GTE North, Inc. v. PSC, 835 S.W.2d 356, 368 (Mo. App. W.D. 1992); State ex rel. Missouri PSC v. Fraas, 627 S.W.2d 882, 888 (Mo. App. W.D. 1981). The true-up is limited to updating information provided in the case-in-chief so as to allow rates to be based upon more current cost data. Issues previously known were to have been raised in the chief case, and addressed in direct, rebuttal, or surrebuttal testimony pursuant to 4 CSR 240-2.130(7).

8. Neither the presiding officer nor the Commission in this case has ordered that matters outside of traditional true-up issues be addressed in true-up testimony or at the true-up hearing, other than the Commission's recent order permitting the true-up hearing to include any stipulation and agreement not approved by the Commission as of the date of that hearing. See Notice and Order Regarding True-Up Hearing Dates and Stipulations and Agreements, Case Nos. ER-2012-0174 and ER-2012-0175 (Nov. 5, 2012).

9. Nevertheless, Mr. Gorman improperly responds to Mr. Bryant's hearing testimony during the one post-hearing opportunity that the Commission provides merely to add to the record more timely and accurate figures that were not available during the case-in-chief. Despite true-up being limited to an update for new information so as to allow rates to be based upon more current cost information, Mr. Gorman attempts to supplement his testimony on previously disclosed issues. Because Mr. Gorman's testimony is not pertinent to the true-up proceeding and not proper true-up testimony, it must be stricken pursuant to Missouri Rule of Civil Procedure 55.27(e).

WHEREFORE, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company request that this Motion to Strike be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing was served upon counsel of record on this 14th day of November , 2012.

/s/ Karl Zobrist
Attorney for Kansas City Power & Light
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