



Commission Rule 4 CSR 240-2.130 (8) provides:

No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing. This provision does not forbid the filing of supplemental direct testimony for the purpose of replacing projected financial information with actual results. (emphasis added).

2. On March 13, 2018, the Commission issued its *Order Consolidating Cases and Order Setting Procedural Schedule* (“Procedural Order”) which directed that Staff/Intervenor Direct Testimony was to be filed on June 19, 2018.

3. On June 19, 2018, the Office of the Public Counsel (“Public Counsel”) filed testimony of seven (7) witnesses (Schallenberg, Robinett, Riley, Roth, Conner, Mantle and Marke) which purported to be the “Direct Testimony” of the Office of the Public Counsel.

4. Pursuant to 4 CSR 240-2.130(7)(A), Public Counsel is obligated to file its case-in-chief in its direct testimony. However, contrary to 4 CSR 240-2.130(7)(A), it is very clear that Public Counsel’s direct testimony does not “include all testimony and exhibits asserting and explaining [Public Counsel’s] entire case-in-chief.” Instead, as explained below, all of the various Public Counsel witnesses announced their intentions to file additional positions and adjustments to support the Public Counsel’s case-in-chief in future filings:

**A. Schallenberg:**

Robert E. Schallenberg, the Director of Policy at the Office of the Public Counsel, did not propose any adjustments to revenue requirement in his direct testimony, but announced the “areas that OPC will examine” in the future. At

page 10 of his testimony, he clearly explained the Public Counsel's intent to address areas and revenue requirement adjustments not addressed in the Public Counsel's case-in-chief.

**Q. What are the areas that OPC will examine to determine which scenario it will advocate to the Commission actually applies these requested rate increases?**

A. While new areas may appear as OPC receives responses to data requests and obtains new information and reviews it, OPC has identified five (5) additional areas to examine to determine which of the three scenarios actually apply to these cases. These additional areas are: 1) jurisdictional allocations, 2) Evergy merger, 3) capital structure and return on equity, 4) affiliate transactions including Grid Assurance, and 5) evidence of a formal productivity or efficiency program(s).

**B. Robinett:**

John A. Robinette, a Utility Engineering Specialist for the Office of the Public Counsel, did not propose any adjustments related the Company's customer information system. However, he testified that in his rebuttal testimony, he would "provide an allocation method and cost estimates for KCPL MO and GMO jurisdiction [related to the customer information system] to be included in the cost of service for these cases." (Robinette Direct, p. 17).

**C. Riley:**

John S. Riley, a Public Utility Accountant III for the Office of the Public Counsel, did not propose any revenue requirement adjustments related accumulated deferred income taxes (Riley Direct, pp. 11-12), but instead testified that "OPC will continue to research the protected and unprotected balances presented by the Companies and hope to have adjustments in later testimony." (Riley Direct, p. 12; *emphasis added*). In fact, he more explicitly stated his

intention to file his revenue requirement adjustment in surrebuttal testimony when he stated: “I am still gathering information from prior rate cases and should have more accurate deferral totals for each by the time I file surrebuttal testimony in these cases. (Riley Direct, p. 10; *emphasis added*).

**D. Roth:**

Keri Roth, a Public Utility Accountant III for the Office of the Public Counsel, did not propose any adjustments to revenue requirement, but instead testified: “OPC is currently investigating the prudence of the sponsorship costs and . . . will provide the Commission with future testimony pending the results of the data request responses.” (Roth Direct, p. 2).

**E. Connor:**

Amanda C. Connor, a Public Utility Accountant I for the Office of the Public Counsel, did not propose any specific adjustments related to rate case expense or management expense charges. However, she made a vague and unquantified recommendation that “OPC recommends normalizing the rate case expense, not amortizing it over four years.” (Connor Direct, p. 3) With regard to management expense charges, Connor stated that “I am conducting a comprehensive and detailed analysis of all or substantially all of KCPL officer expenses charged in the June 30, 2017, test year general ledger. . . At this time, the OPC analysis is continuing.” (Connor, p. 4)

**F. Mantle:**

Lena M. Mantle, a Senior Analyst for the Office of the Public Counsel, addressed the subject of the Company’s fuel adjustment clause (“FAC”).

However, she did not explain in the Public Counsel's case-in-chief its position on the continuation of the FAC, but instead she testified:

**Q. How would you summarize OPC's position on the FAC?**

A. Before making a determination as to whether or not KCPL and GMO should continue to have an FAC, they should provide information clarifying why their FAC costs are increasing in an environment with falling and/or stabilizing fuel and purchased power costs. Only after receiving this information and having time to review it can OPC take a position on the FAC. (Mantle Direct, p. 8; *emphasis added*)

**G. Marke:**

Geoff Marke, a Regulatory Economist for the Office of the Public Counsel, addressed the topics of privacy, cybersecurity, and related topics, but he stated: "OPC reserves the right to amend these recommendations in subsequent testimony based on Company responses to on-going discovery. It is not clear, presently, whether or not specific tariff changes would need to be applied to ensure the safeguard compliances referenced above." (Marke Direct, p. 20).

**Motion To Enforce Rules and Procedural Order**

5. Based upon these numerous examples, it is clear that Public Counsel has failed to comply with 4 CSR 240-2.130(7)(A) and the Commission's Procedural Order in this case. Instead, Public Counsel has clearly stated that it intends to present its case-in-chief in rebuttal or surrebuttal testimony, or supplement its direct testimony in violation of 4 CSR 240-2.140(8). Such tactics should not be condoned by the Commission since they compromise the due process rights of the Company and other parties to this proceeding if Public

Counsel is allowed to take affirmative positions and/or propose new adjustments at the eleventh hour in rebuttal and surrebuttal testimony when it will be exceedingly difficult if not impossible given time constraints to adequately rebut such positions and adjustments at that time. In violating the Commission's procedural rules and order, Public Counsel also compromises the development of a full and adequate record so that the Commission may base its decision on the best information available.

**WHEREFORE**, the Company respectfully requests that the Commission strictly enforce its rule 4 CSR 240-2.130(A)(7) and (8) and its Procedural Order, and not permit Public Counsel to supplement its case-in-chief in rebuttal or surrebuttal testimony with new affirmative positions or additional revenue requirement adjustments.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 27th day of June, 2018.

/s/ James M. Fischer  
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