

**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

**REPLY TO PUBLIC COUNSEL’S RESPONSE
TO MOTION TO STRIKE PORTIONS OF
DIRECT TESTIMONY OF WITNESS MICHAEL P. GORMAN**

KCP&L Greater Missouri Operations Company (“GMO” or “Company”) states the following in reply to the Office of the Public Counsel (“Public Counsel” or “OPC”) Response to GMO’s Motion to Strike Portions of the Direct Testimony of Mr. Gorman (“ OPC Response”):

1. Public Counsel misinterprets Commission Rule 4 CSR 240-2.130(7)(A) by asserting that a party’s “entire case-in-chief” includes “responding to the case in chief filed by GMO.” See OPC Response, ¶ 2. Additionally, Public Counsel’s interpretation of the Commission rule ignores subpart (7)(B) which explicitly states: “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 [emphasis added].” The Commission’s mandate that rebuttal testimony “shall” include testimony which is responsive to the testimony of another party’s direct case is rendered meaningless under OPC’s reasoning.

2. In support of its position, Public Counsel cites an order in a recent Union Electric Company, d/b/a Ameren Missouri rate case. See Order Denying Motion in Limine or to Strike Testimony, In re Union Electric Co., No. ER-2014-0258 (Jan. 14, 2015). However, that order did not pertain to a party filing rebuttal testimony in the guise of direct testimony in violation of Rule 4 CSR 240-2.130(7). Instead, it related to a motion in limine that sought to strike direct testimony that was allegedly in violation of the terms of a stipulation and agreement approved by the Commission. Although the Commission noted in its order that “the proper time to object to the admissibility of evidence is after it has been offered,” it declared that “in some circumstances

prefiled testimony may be so inappropriate and prejudicial to make it unjust to require the other parties to respond to that testimony.” Id. at 2-3. Such circumstances are present in this proceeding.

3. Public Counsel seeks to re-write the Commission’s rule so that rebuttal may be filed with direct testimony, and that the carefully prescribed procedures in its rules and in the Procedural Schedule in this case can be ignored. Under these facts, granting GMO’s motion to strike is entirely appropriate.

4. OPC states that “it does not disagree” with the Company’s request 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. See OPC Response, ¶ 4. However, contrary to Public Counsel’s view, the Commission should not view what is proper direct testimony and what is proper rebuttal as a matter of “discretion and control” by a party. Id.

5. To protect the integrity of the Procedural Schedule and to make clear to all parties that rebuttal may not be included in direct testimony, the Commission should — if it is not inclined to grant the motion to strike — explicitly permit the Company to respond to Mr. Gorman’s criticisms of its direct case in GMO’s surrebuttal testimony because the criticisms are, in fact, rebuttal testimony under 4 CSR 240-2.130(7)(B).

WHEREFORE, KCP&L Greater Missouri Operations Company asks that its Motion to Strike be granted.

Dated: July 25, 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 25th day of July 2016.

/s/ Karl Zobrist

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Company