

**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-2018-0145**

In the Matter of KCP&L Greater Missouri Operations)
Company's Request for Authorization to Implement)
A General Rate Increase for Electric Service) **Case No. ER-2018-0146**

**THE OFFICE OF THE PUBLIC COUNSEL'S REPLY TO STAFF'S, AND
KCPL AND GMO'S RESPONSES TO COMMISSION'S ORDER DIRECTING FILING**

COMES NOW the Office of the Public Counsel ("OPC") and replies to Staff's, and KCPL and GMO's responses to the Commission's Order Directing Filing as follows:

1. In their responses to the Commission's order Staff, KCPL and GMO all provide interpretations of portions of Commission rule 4 CSR 240-2.130 applicable if a party offers evidence in its rebuttal case that is beyond the scope allowed by Commission rule.

2. What KCPL and GMO request in their motion is that the Commission "not permit Public Counsel to supplement its case-in-chief in rebuttal or surrebuttal testimony with new affirmative positions or additional revenue requirement adjustments."

3. When addressing the question of the scope of rebuttal in a general rate case where a party was seeking to strike rebuttal testimony as being beyond the scope allowed by rule 4 CSR 240-2.130, in its December 23, 2009, *Order Denying Motion to Strike Portion of The Empire District Gas company Rebuttal Testimony on Transportation Issues in In the matter of The Empire District Gas Company of Joplin, Missouri for Authority to File Tariffs Increasing Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company*, Case No. GR-2009-0434, the Commission said the following:

Constellation requests to strike the testimony on the theory that it is "direct" testimony rather than "rebuttal" testimony and thus should have been filed with the original filing under 4 CSR 240-130(7). That section states in part:

(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case in chief.

Constellation argues that Empire failed to support its transportation proposals in its direct testimony and should not be allowed to supplement its direct testimony under the pretense of filing rebuttal. Constellation specifically states that Empire failed to explain its proposal to require small-volume transportation customers to use telemetry equipment. According to Constellation, Empire also "failed to support its proposed 333% increase in the fees for balancing service, or its proposed daily balancing charge for large-volume transportation customers" and that the cost studies and data compilations attached to its "rebuttal" testimony should have been included in the direct testimony.

Constellation claims that if Empire's testimony is allowed to stand, that Constellation will be disadvantaged because it will not have had sufficient time to conduct discovery on the information and schedules attached to the "rebuttal" testimony.

As pointed out in Empire's response, while Constellation accurately quotes the definition of "direct testimony" it is the definition of "rebuttal testimony" found at 4 CSR 240-2.130(7)(B) which must be examined to determine if the testimony is appropriate. That definition is:

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.

Each of the items which Constellation requests be stricken from the testimony of both Mr. Keith and Mr. Overcast is specifically responsive to the direct testimony filed on behalf of Constellation or the Staff of the Missouri Public Service Commission and is, therefore, proper rebuttal testimony.

The real basis for Constellation's motion is that Empire should have anticipated the issue and filed the rebuttal testimony as direct testimony. Empire and Constellation each filed direct testimony regarding the telemetry and service balancing transportation issues and each of the other parties was given an opportunity to do so. The extent of information provided by Empire in its direct testimony on these issues was not ideal, however, given that the majority of its direct testimony on these issues was in the form of the tariff itself. And, failing to file a red-lined version of the tariff pages may have made it difficult for the other parties to review the proposed changes. Much of the testimony that Constellation requests be stricken, however, is the same information which Empire provided to Constellation during discovery. Thus, Constellation cannot claim surprise by this information. Empire's failure to file this testimony as direct testimony does not justify the drastic remedy of striking that testimony. The motion is denied.

4. Consistent with the foregoing Commission order, OPC stated the following in its *Response to KCPL and GMO's Motion to Enforce Rules and Order*: “OPC is not precluded by Commission rule 4 CSR 240-2.130 (7) or the ordered procedural schedule from offering whatever evidence responsive to KCPL’s and GMO’s direct testimony and exhibits that it chooses to rebut those testimonies and exhibits, *i.e.*, OPC’s rebuttal evidence is not limited by what it filed in direct in these cases.”

5. At this time, no party has offered any testimony into evidence in either of these cases.

6. At this time, no party has filed a prehearing motion to exclude any prefiled testimony from evidence in this case.

7. At this time, no party, including OPC, has prefiled rebuttal testimony.

8. KCPL and GMO are presenting a hypothetical—that OPC will file rebuttal testimony that violates Commission rule 4 CSR 240-2.130; therefore, there is no controversy before the Commission ripe for it to decide.

WHEREFORE, the Office of the Public Counsel replies to Staff’s, and KCPL and GMO’s responses to the Commission’s *Order Directing Filing*, and continuing to oppose KCPL and GMO’s *Motion to Enforce Rules and Order*, respectfully requests the Commission to issue an order denying KCPL and GMO’s motion.

Respectfully,

/s/ Nathan Williams

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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 13th day of July 2018.

/s/ Nathan Williams