

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

In the Matter of	)	
Kansas City Power & Light Company's	)	File No. ER-2012-0174
Request for Authority to Implement	)	Tracking No. YE-2012-0404
a General Rate Increase for Electric Service	)	

and

In the Matter of	)	
KCP&L Greater Missouri Operations Company's	)	File No. ER-2012-0175
Request for Authority to Implement	)	Tracking No. YE-2012-0405
General Rate Increase for Electric Service	)	

**ORDER GRANTING MOTIONS TO  
STRIKE TESTIMONY OF WITNESS GORMAN AND  
PARTIALLY STRIKE TESTIMONY OF WITNESS HARRIS**

Issue Date: November 16, 2012

Effective Date: November 16, 2012

The Missouri Public Service Commission is granting the motions to strike that Kansas City Power & Light Company ("KCPL") and KCP&L Greater Missouri Operations Company ("GMO") filed on November 14<sup>1</sup> ("motions").

A. Procedure

The Commission received the motions and responses as follows. In both File No. ER-2012-0174 and in File No. ER-2012-0175, KCPL and GMO ("movants") filed a *Motion to Strike True-Up Direct Testimony of Michael P. Gorman*, the Office of the Public Counsel filed a response on November 16, and KCPL & GMO filed a reply that same day. In File No. ER-2012-0175, GMO filed a *Motion to Strike Portions of True-Up Testimony of V. William Harris* and Staff filed a response on November 16.

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<sup>1</sup> All dates are in 2012 except as otherwise noted.

## B. Arguments

Movants ask to strike the disputed testimony (witness Harris' direct true-up testimony on off-system sales and all of witness Gorman's direct true-up testimony) for two reasons: timely filing and relevance.

### *1. Arguments*

Movants argue that the disputed testimony is not true-up testimony; it is merely untimely direct, rebuttal, or surrebuttal testimony as follows. Direct, rebuttal, or surrebuttal testimony were subject to filing deadlines:<sup>2</sup>

	<b>ER-2012-0174 (KCPL)</b>	<b>ER-2012-0175 (GMO)</b>
Non-utility Direct Testimony on all issues other than	August 2	August 9
Non-utility Direct Testimony,	August 16	August 21
Rebuttal Testimony	September 5 <sup>[3]</sup>	September 12
Surrebuttal	October 5 <sup>[4]</sup>	October 10 <sup>[5]</sup>

Permission to file direct, rebuttal, or surrebuttal testimony out of time is necessary under the Commission's regulation 1 CSR 240-2.130 requires:

(10) 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.

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<sup>2</sup> Order Consolidating Cases for Hearing and Setting Procedural Schedule, and Amending Notice of Hearing issued April 26.

<sup>3</sup> Extended to September 6 for certain witnesses. Order Extending Time issued on September 6.

<sup>4</sup> Extended to October 8. Order Granting Motion for Extension of Time to File Surrebuttal issued on September 28.

<sup>5</sup> Same as footnote 4.

No permission to supplement direct, rebuttal, or surrebuttal testimony has issued, so the disputed testimony was timely filed only if it is true-up testimony.

Definitions of direct, rebuttal, or surrebuttal testimony appear at Commission regulation 4 CSR 240-2.130 defines direct, rebuttal, or surrebuttal testimony:

(7) For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(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. A party need not file direct testimony to be able to file rebuttal testimony;

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(D) Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony.

Movants argue that all of the disputed testimony addresses a matter that arose on direct, or was responsive to direct, or was responsive to rebuttal, or both, so all disputed testimony is direct, rebuttal, or surrebuttal.

Conversely, movants argue that the disputed testimony is not true-up testimony and not relevant to the true-up period. The Commission's order defined periods as follows:

Relevant Periods. The time periods relevant to the propriety of the pending tariffs are as follows:

a. Test year: 12 months ending September 31, 2011;

b. Update for known and measurable changes: period through March 31, 2012; and

c. True-up: period ending August 31, 2012. [6]

If the disputed testimony discusses nothing distinctive to the true-up period, denying the motions would render subparagraphs a and b superfluous.

“True-up” is like “test year” or “update.” It is a term of common usage in Commission practice, like “tariff” That is why the statutes<sup>7</sup>—and Commission regulations, orders, and tariffs—repeatedly use, but do not define, the term. The Court of Appeals has recently proceeded with the following understanding:

The “true-up” process for this case is not defined by the parties with any citations to the record. It is described in AmerenUE's brief as “effectively updat[ing] the March 31, 2008 figures for material items for which known and measurable changes occurred, to reflect values as of September 30, 2008. This allows more current information to be used in estimating the revenue requirement used to set prospective rates.”[<sup>8</sup>]

Staff cites that court's earlier description:

. . . a modified version of the projected year model by utilizing a test year which was adjusted to take into account known and measurable future changes. [<sup>9</sup>]

All parties cite the following discussion from an earlier Commission action:

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

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<sup>6</sup> *Order Determining Relevant Periods* issued on April 19, page 1, paragraph 1.

<sup>7</sup> Section 386.266.4(2), RSMo 2000.

<sup>8</sup> *State ex rel. Noranda Aluminum, Inc. v. Public Serv. Comm'n of State*, 356 S.W.3d 293, 298 (Mo. App., W.D. 2011) at fn. 5. Emphasis added.

<sup>9</sup> *State ex rel. Missouri Pub. Serv. Co. v. Fraas*, 627 S.W.2d 882, 888 (Mo. App., W.D. 1981). Emphasis added.

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.” [10]

The feature that distinguishes true-up testimony from direct, rebuttal, or surrebuttal testimony is the updating of figures from the test year for later or future events. Therefore, that is the feature for which the Commission examines the disputed testimony.

As to the testimony of witness Gorman, true-up information is absent from his testimony. The only figures he provides stand on a figure that he provided in his surrebuttal testimony.<sup>11</sup> Instead of providing true-up, Mr. Gorman responds to hearing testimony, which he had the opportunity to do at hearing. Therefore, the disputed testimony of Mr. Gorman is not true-up testimony.

As to the disputed testimony of witness Harris, the same is true. Mr. Harris offers no updated figure and simply maintains his characterization of previous figures. Because he has no adjustment, he has no true-up. Therefore, the disputed testimony of Mr. Harris is not true-up testimony.

### C. Ruling

The disputed testimony is not true-up testimony, is irrelevant to the true-up period, and is untimely as any other type of testimony. Therefore, the Commission will grant the motions. OPC and Staff ask the Commission to strike true-up rebuttal that is responsive to the stricken testimony. The Commission will take up the documents, pages and lines relevant to that argument at the true-up hearing.

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<sup>10</sup> File Nos. ER-2009-0089, ER-2009-0090, and HT-2009-0092, *Order Modifying Procedural Schedule for True-Up Proceedings and Formally Adopting Test Year and True-Up Period* issued on Mar. 18, 2009, page 2. Emphasis added.

<sup>11</sup> *True-Up Direct Testimony and Schedule of Michael P. Gorman*, filed on November 8, 2page 3, line 23.

**THE COMMISSION ORDERS THAT:**

1. In File Nos. ER-2012-0174 and ER-2012-0175, the *Motion to Strike True-Up Direct Testimony of Michael P. Gorman* is granted. As to true-up rebuttal that is responsive to that stricken testimony, Kansas City Power & Light Company (“KCPL”), KCP&L Greater Missouri Operations Company (“GMO”), and OPC shall present a list of documents, pages and lines.

2. In File No. ER-2012-0175, the *Motion to Strike Portions of True-Up Testimony of V. William Harris* is granted. As to true-up rebuttal that is responsive to that stricken testimony, KCPL, GMO, and the Commission’s staff shall address the documents, pages and lines set forth in *Staff’s Response to KCP&L Greater Missouri Operations Company’s Motion to Strike Portions of True-Up Testimony of V. William Harris*.

3. This order shall become effective immediately on issuance.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Daniel Jordan, Senior Regulatory Law Judge,  
by delegation of authority pursuant  
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 16<sup>th</sup> day of November, 2012.