

115

Exhibit No.:
Issue: Rate Case Expense
Witness: Tim M. Rush
Type of Exhibit: True-Up Rebuttal Testimony
Sponsoring Party: Kansas City Power & Light Company
KCP&L Greater Missouri Operations Company
Case No.: ER-2010-0355/ER-2010-0356
Date Testimony Prepared: February 28, 2011

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: ER-2010-0355/ER-2010-0356

TRUE-UP REBUTTAL TESTIMONY

OF

TIM M. RUSH

ON BEHALF OF

**KANSAS CITY POWER & LIGHT COMPANY
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

**Kansas City, Missouri
February 2011**

KCP&L Exhibit No. KCP&L 115
Date 3/3/11 Reporter JMB
File No. ER-2010-0355 #
ER-2010-0356

TRUE-UP REBUTTAL TESTIMONY

OF

TIM M. RUSH

Case No. ER-2010-0355/ER-2010-0356

1 **Q: Please state your name and business address.**

2 A: My name is Tim M. Rush. My business address is 1200 Main Street, Kansas City,
3 Missouri, 64105.

4 **Q: Are you the same Tim M. Rush who prefiled direct, rebuttal, surrebuttal and true-**
5 **up direct testimony in this matter?**

6 A: Yes.

7 **Q: What is the purpose of your true-up rebuttal testimony?**

8 A: The purpose of my testimony is to address the new issue brought up in the true-up
9 testimony of Staff witness Keith A. Majors regarding rate case expenses.

10 **Q: Is this the appropriate time to bring up an issue like rate case expenses?**

11 A: No. This issue should have been addressed in the rebuttal or surrebuttal testimony during
12 the main hearings of this case. Mr. Majors asserts that he did not have the appropriate
13 detail information to make a recommendation until now. This assertion is contradicted
14 by Mr. Majors' admission on p. 2 that the invoices were available on November 29,
15 2010. Since Staff's rebuttal testimony was due December 8 (December 15 for KCP&L
16 Greater Missouri Operations Company ("GMO")) and surrebuttal was due on January 5
17 (January 12 for GMO) Staff should have filed this testimony at an earlier date. It is
18 important to note that Mr. Majors' adjustments do not simply use a theory Staff
19 developed in its direct, rebuttal or surrebuttal case and update for new information.

1 Rather, Staff is introducing completely new disallowance theories under the guise of true-
2 up testimony.

3 **I. Morgan Lewis Adjustment**

4 **Q: Mr. Majors implies that the work that Ms. Van Gelder performed was not related to**
5 **rate case expense. Do you agree?**

6 A: No. As Mr. Majors notes at p. 4 of his true-up direct testimony, Ms. Van Gelder was
7 involved in Case No. EO-2010-0259 ("0259"). The Commission established the 0259
8 docket on March 15, 2010 at the request of Staff. The Commission set an on-the-record
9 presentation in the 0259 docket to inquire as to the status of the Staff's Iatan 1 audit.
10 Ordered paragraph 6 of the Commission's March 15 Order states that the parties shall be
11 prepared to provide a complete explanation of every aspect of the on-going construction
12 and prudence audit that was ordered to be completed by December 31, 2009. Because
13 the Iatan 1 audit is part of the current rate case, the inclusion of Morgan Lewis fees in the
14 Company's rate case expense is proper. Moreover, Case No. EO-2010-0259 was
15 consolidated into this case. In fact, this docket was linked to the majority of data requests
16 submitted by Staff regarding the Iatan 1, Iatan 2 and Common Plant Prudence Review.

17 **Q: On what basis does Mr. Majors' disallow Morgan Lewis expenses?**

18 A: At p. 5 of his true-up direct testimony, Mr. Majors indicates that Morgan Lewis charges
19 should be removed from rate case expense because the rates are excessive compared to
20 local attorneys and KCP&L retained three outside counsel during the 0259 proceeding.

21 **Q: Do you agree with Mr. Majors' basis for exclusion of these expenses?**

22 A: No. Excluding the expense of Morgan Lewis because other attorneys were present is
23 without foundation. To exclude legal fees for attorneys because other attorneys were also

1 retained and may have even been present during the hearing does in no way indicate that
2 they were not useful or critical to putting on the Company's case. Staff recommends
3 excluding the primary attorney and the expenses of that firm who was assigned to do the
4 cross examination of the Staff witnesses.

5 **Q: Does the fact that Morgan Lewis rates are above local attorney rates support a total**
6 **disallowance of those expenses?**

7 A: No, Mr. Majors does not take issue with the quality or quantity of work performed by the
8 firm. In addition, the MGE case cited by Staff only allows a total disallowance if the
9 Staff can show that the work done by Morgan Lewis was duplicative of work done by
10 other firms. As a witness in the 0259 case, I can state that Ms. Van Gelder's role was not
11 duplicative. She took the depositions of the Staff members assigned to the Iatan 1 audit
12 and cross-examined those same witnesses. She did not duplicate the services of any other
13 counsel and was instrumental in the Company's discovery, through depositions, of the
14 reasons why Staff's Iatan audit was behind schedule due to Staff delays and internal
15 communication problems. The Company was also able to establish with Ms. Van
16 Gelder's assistance that its data request response process was in no way responsible for
17 the delay in the Staff's audit.

18 **Q: How do you explain why some attorneys charge more than others?**

19 A: First, I would say that fees attorneys charge are based on a number of factors, including
20 expertise, location, effectiveness, etc. It is no different than other jobs in the
21 marketplace. A similar question can be asked of accountants, engineers, support staff,
22 economists, etc. The fact is that when you are evaluating the hiring of personnel to do
23 specific tasks, a myriad of factors must be considered. It was the Company's choice to

1 retain the Morgan Lewis firm as the firm to address the issues before it regarding Case
2 No. EO-2010-0259.

3 **Q: Why didn't you choose a local firm or one of the firms that Staff suggested were**
4 **present during the case proceeding?**

5 A: First, I would say that it was the Company's efforts to select the right firm who could
6 address the issues in this case. Second, this was a time when we were in the process of
7 putting our cases together for filing in Missouri, the case was proceeding in Kansas and
8 the Company had a number of other cases, including a number of rulemakings in
9 Missouri that demanded the time and expertise of the attorneys available.

10 **Q: Does Mr. Majors establish that Ms. Van Gelder's work was duplicative?**

11 A: No. He merely states that KCP&L retained three outside counsel during the 0259 case,
12 but this fact alone does not establish duplication in her work. Based on my participation
13 in the case and from a review of the 0259 transcript, it is clear that each of the attorneys
14 that entered an appearance had specific roles in the case. Recall that the case involved
15 live testimony instead of the normal prefiled testimony. Each of the other outside
16 counsel prepared the four KCP&L witnesses for giving live testimony, as well as
17 presenting those witnesses at hearing. With this division of responsibilities, Ms. Van
18 Gelder was able to focus her attention on the depositions and cross-examination of Staff
19 witnesses.

20 **Q: Have you ever seen other parties to rate cases divide responsibilities among**
21 **attorneys?**

22 A: Yes. The practice is not unusual. In fact, Staff often assigns its attorneys to handle
23 specific issues and/or witnesses. For example, at least four Staff attorneys in this case

1 cross-examined the Company's prudence witnesses and produced Staff's prudence
2 witnesses. In addition, Staff took the depositions of KCP&L witnesses Downey, Nielsen,
3 Roberts, Meyer and Archibald using a different attorney than the staff attorney that
4 cross-examined these witnesses at hearing. Mr. Majors' adjustment holds the Company
5 to a standard that the Staff itself doesn't follow. Just as Staff does, the Company should
6 be allowed to make attorney staffing decisions that best utilize the resources available.

7 **II. Schiff Hardin Expenses**

8 **Q: What is your understanding of the reasons for Mr. Majors' Schiff Hardin**
9 **adjustment?**

10 A. Mr. Majors assumes, without any support, that Schiff expenses were duplicative of other
11 law firm expenses charged to rate case. His analysis consists of a listing of the law firms
12 that the Company used during the rate case. Once again, Mr. Majors criticizes the
13 Company for dividing up responsibilities among lawyers even though Staff and other
14 parties routinely do the same. Each of the law firms listed on p. 6 of Mr. Majors'
15 testimony had a specific role in this rate case. Some of them (Duane Morris, Morgan
16 Lewis) had responsibilities outside of the actual hearing of the 0355 and 0356 cases and
17 therefore did not enter an appearance in those cases. Polsinelli and Spencer Fane had
18 very little involvement in the Missouri rate cases, (they were involved in one Staff data
19 request) and were not involved in preparation for hearing, nor the hearing itself. SNR
20 Denton, focused solely on non-prudence issues. Ms. Cafer was utilized when the
21 Missouri Retailer's decided late in the proceeding to sponsor a prudence witness in the
22 case and the attorneys handling the prudence witnesses (Mr. Fischer and Mr. Hatfield)
23 each had several witnesses to prepare and produce. None of these law firms had the

1 exact same role as Schiff Hardin during the rate case. Schiff Hardin assisted in testimony
2 preparation, coordination of prudence strategy, document analysis and review,
3 preparation of exhibits, legal research regarding prudence, analysis of prior MPSC
4 disallowances, cross examination preparation, and issue identification.

5 **Q: How does Staff make its adjustment?**

6 A: Staff substitutes the hourly rate of Pegasus Global senior consultants for the rates charged
7 by Schiff Hardin.

8 **Q: Do you agree with Staff's adjustment?**

9 A: No. While Schiff Hardin employees and contractors did provide expert testimony, Staff's
10 substitution with Pegasus' rate is not appropriate as Pegasus' testimony scope was not the
11 same as Schiff's testimony scope. Moreover, Schiff's role in the rate case, as explained
12 above, was much broader than Pegasus and was not limited to providing a prudence
13 analysis. Schiff's work utilized different skill sets and expertise than Pegasus and
14 therefore compensating Schiff based on Pegasus' rate is not appropriate.

15 **Q: What are the other problems with the adjustment?**

16 A: While Mr. Majors claims at p. 7, that the adjustment is made under Staff's reasonable
17 assumption that there were duplicative legal expenses charged to rate case expense, his
18 use of a non-legal consultant's hourly rate instead of a law firm's hourly rate as a
19 substitute rate does not make sense. Staff appears to be looking for the lowest possible
20 substitute rate instead of a reasonable comparison rate.

1 **III. Communication Counsel of America (“CCA”) Adjustment**

2 **Q: What is the basis for Mr. Majors’ adjustment?**

3 A: It is difficult to ascertain as he devotes one sentence to the rationale behind Staff’s CCA
4 adjustment. Mr. Majors claims, without support, that the services provided by CCA are
5 routine tasks that are typically performed by counsel. Again, Staff’s duplication
6 “analysis” falls short when compared to the facts. In the CCA sessions attended by Iatan
7 prudence witnesses, the attorneys prepared mock cross-examination questions and asked
8 them of the witnesses. CCA consultants reviewed the witnesses’ responses and coached
9 the witnesses on the best way to communicate their positions. CCA provided extensive
10 feedback to the witnesses on their overall demeanor and communication style.

11 **Q: Why was the CCA training specifically targeted to the Iatan prudence witnesses?**

12 A: There were a number of reasons for providing the training to Iatan prudence witnesses.
13 First, this is the last of four rate cases under the Regulatory Plan and is the rate case that
14 decides the rate base treatment of the Iatan project. Second, Iatan construction and
15 prudence had become a contentious issue since the last rate case. The Commission
16 Ordered several prudence reports by Staff, a case was established, Case No. EO-2010-
17 0259, to address cost control system and data requests, a number of issues about
18 confidential data and data protected by attorney client privilege resulted in the
19 Commission ordering a special master. The Company believed that the Iatan prudence
20 issue in this case would be the prominent issue of this case. Third, the Company felt it
21 need to create a team in this case which were focused on rate case prudence. The CCA
22 training was used to help focus the multitude of issues that were likely to be addressed
23 during the hearings dealing with Iatan prudence. The Iatan prudence issue covered

1 multiple specialized areas that required ten Company witnesses almost exclusively
2 addressing Iatan. Lastly, many of the ten witnesses addressing the Iatan prudence issue
3 had not testified before the Kansas rate case and were unfamiliar with rate cases and
4 testimony before regulatory commissions.

5 The last time the Company had a major construction project which was the
6 primary issue of a case was in the early 1980's with the Wolf Creek rate case, over
7 twenty years ago.

8 **Q: Did CCA duplicate the services provided by the Company's counsel?**

9 A: No. CCA's instruction was more in depth and focused on presentation skills. As
10 outlined on CCA invoices provided to Staff, the CCA participants worked with an issue
11 orientated communication system and practiced skills on camera. These recorded
12 sessions were reviewed with CCA consultants. Part of the CCA cost included
13 professional videographers, monitors, etc. These are not the type of "routine" services
14 provided by counsel.

15 **Q: Does that conclude your testimony?**

16 A: Yes, it does.

