

EXHIBIT

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Issue(s):

KCP&L'S Request to Implement
Trackers for Vegetation Management
Costs, and Property Taxes/
Missouri Corporate Franchise Tax/
Normalized Rate Case Expense

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SURREBUTTAL TESTIMONY

OF

WILLIAM ADDO

Submitted on Behalf of the Office of the Public Counsel

KANSAS CITY POWER & LIGHT COMPANY

CASE NO. ER-2014-0370

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Denotes Highly Confidential Information that has been Redacted

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**SURREBUTTAL TESTIMONY
OF
WILLIAM ADDO**

KANSAS CITY POWER & LIGHT COMPANY

CASE NO. ER-2014-0370

1 **I. INTRODUCTION.**

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. William Addo, P.O. Box 2230, Jefferson City, Missouri 65102-2230.

4
5 Q. ARE YOU THE SAME WILLIAM ADDO THAT PREVIOUSLY FILED DIRECT
6 AND REBUTTAL TESTIMONY IN THIS CASE?

7 A. Yes.

8
9 **II. PURPOSE OF TESTIMONY.**

10 Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

11 A. The purpose of my testimony is to respond to the Rebuttal Testimonies of Kansas City
12 Power & Light Company ("KCP&L" or "Company") witnesses, Mr. Tim M. Rush, Mr.
13 Darrin R. Ives, and Dr. H. Edwin Overcast regarding their positions on KCP&L's request
14 to implement trackers for vegetation management costs and property taxes. My
15 testimony will also respond to the Rebuttal Testimony of Mr. Darrin R. Ives regarding the
16 recovery of rate case expenses. Additionally, this testimony will address the Rebuttal
17 Testimony of Company witness, Ms. Melissa K. Hardesty, regarding her position on
18 Missouri corporate franchise tax.

1 **III. KCP&L'S REQUEST TO IMPLEMENT TRACKERS FOR VEGETATION**
2 **MANAGEMENT COSTS AND PROPERTY TAXES.**

3 Q. HAVE YOU REVIEWED THE REBUTTAL TESTIMONIES OF THE VARIOUS
4 WITNESSES THAT TESTIFIED ON BEHALF OF KCP&L REGARDING THESE
5 ISSUES?

6 A. Yes, I have. The central point made by the witnesses regarding this issue is that if
7 KCP&L is not allowed to manage its property taxes and vegetation management costs
8 through the implementation of the requested trackers, KCP&L will not be able to earn its
9 Commission-authorized rate of return that is ordered in this case.

10
11 Q. SHOULD TRACKER MECHANISMS BE AUTHORIZED BY THE COMMISSION
12 BASED ON THE EARNING PROSPECTS OF A UTILITY?

13 A. Tracker mechanisms should not be authorized by the Commission based on a utility's
14 present or future prospects of achieving its Commission-authorized rate of return. A
15 utility's ability to earn its Commission-authorized rate of return is dependent on a host of
16 variables, including the utility's ability to manage its operating costs prudently. In other
17 words, trackers should not be used to insulate a utility from business risks that might likely
18 impede the utility's ability to achieve its Commission-authorized rate of return. A tracking
19 mechanism is not a ratemaking tool that is designed to guarantee a utility's ability to earn its
20 Commission-authorized rate of return.

1 In the State of Missouri, the revenue requirement of a utility is usually established based
2 upon a historical test year which focuses on four factors: (1) the rate of return that the
3 utility has an opportunity to earn; (2) the rate base upon which a return may be earned;
4 (3) the depreciation expense related to plant and equipment; and (4) the allowable
5 operating expenses including income and other taxes. The relationship among these four
6 factors is such that the expenses and the rate base necessary to produce the revenue
7 requirement are synchronized.

8
9 As identified above, rate of return is just one component of computing a utility's revenue
10 requirement. In fact, the rate of return component is synonymous to the profit margin of
11 a non-regulated entity. If there is any logical conclusion that could be drawn from
12 KCP&L's argument, it is that the Company wants the Commission to give it a form of
13 protection—by authorizing it to implement the requested trackers—so that the Company
14 can guarantee its profit margin. However, as stated earlier in this testimony, trackers are
15 not designed to guarantee a utility's ability to earn its Commission-authorized rate of return.
16 Indeed, the suggestion violates the regulatory compact.

17 Q. PLEASE CONTINUE.

18 A. For the duration of a particular period under review in a rate case, such as the test year,
19 the known and measurable period, or the true-up period, costs in the other components of
20 the revenue requirement may either be increasing or decreasing. It is, therefore, very

1 important to take into consideration all relevant factors in a defined period of time when
2 computing a utility's revenue requirement.
3

4 Q. DR. H. EDWIN OVERCAST STATES ON PAGE 41, LINES 7 AND 8, OF HIS
5 REBUTTAL TESTIMONY THAT "THE PURPOSE OF THE TRACKER IS TO
6 PROVIDE A REASONABLE OPPORTUNITY TO EARN THE RETURN ON
7 EQUITY." DO YOU AGREE?

8 A. No. Although the implementation of a tracking mechanism by a utility may have an impact
9 on the final revenue requirement amount determined for the utility, it is too simplistic to
10 argue that the purpose of a tracking mechanism is to provide a reasonable opportunity to a
11 utility to earn its Commission-authorized return on equity. The utility must still manage its
12 operating costs prudently in order to earn its Commission-authorized return on equity.
13

14 Q. DO TRACKERS INCENTIVIZE UTILITIES TO AGGRESSIVELY CONTROL
15 COSTS?

16 A. No. In Ameren Missouri's recent rate case, Case No. ER-2014-0258, the Commission states
17 on page 45 of its Report and Order that "By their nature, cost trackers tend to reduce a
18 utility's incentive to aggressively control costs by ensuring that all costs will be
19 recovered. Under a tracker, such costs would be subject to a prudence review, but a
20 prudence review cannot control costs as efficiently as a strong economic incentive."

1 The revenue requirement that is set in a rate case is designed to provide no more than a
2 reasonable opportunity to earn the authorized return. If KCP&L has an expense increase
3 between rate cases, it can tighten the belt like all competitive industries do (which regulation
4 is supposed to mimic). If it gets to a point where the Company's profits are too low to
5 attract investors, KCP&L can request a rate increase. KCP&L's tracker requests presuppose
6 that there will be a significant earnings shortfall without considering all relevant factors. A
7 hot summer could cause a significant revenue increase that could offset any cost increase or
8 even surpass the cost increase. Trackers, as I understand them, ignore these other factors
9 and shift costs to future periods without considering whether there truly was any revenue
10 shortfall during the period in which the costs were incurred.

11
12 Q. A COMMON PROPOSITION MADE BY COMPANY WITNESSES, MR. IVES AND
13 MR RUSH, IS THAT TRACKER REQUESTS MADE DURING RATE CASES
14 SHOULD BE GRANTED IF IT IS DETERMINED THAT BASING THE RATE
15 ALLOWANCE FOR SUCH COSTS ON HISTORICAL LEVELS, WITH NO ABILITY
16 TO ACCOUNT FOR CHANGES IN THOSE COST LEVELS LIKELY TO OCCUR IN
17 THE FUTURE, IS LIKELY TO LEAD TO A MISMATCH OF COSTS AND

1 REVENUES WITH EARNINGS IMPACTS DURING THE FUTURE PERIOD WHEN
2 RATES WILL BE EFFECTIVE.¹ HOW DO YOU RESPOND?

3 A. This proposition suggests that any historical cost that is likely to change in the future, and
4 which is likely to impact earnings in the future, should be tracked. It should be noted,
5 however, that no business cost remains static overtime. Costs vary from time to time
6 depending on prevailing economic conditions and it is impossible to accurately account for
7 future changes in cost just as it is impossible to accurately account for future changes in
8 revenues. It should also be noted that every cost impacts earning levels—positively or
9 negatively, and materially or immaterially. While it is KCP&L’s position that trackers
10 “should be granted if it is determined that basing the rate allowance for such costs on
11 historical levels, with no ability to account for changes in those cost levels likely to occur
12 in the future, is likely to lead to a mismatch of costs and revenues with earnings impacts
13 during the future period when rates will be effective,” KCPL does not, however, propose
14 the same standard to track changes in revenue levels that will likely occur in the future in
15 order to prevent over-earnings.

16
17 The authorization of trackers should be given consideration based upon the core
18 principles of the historical test year model; i.e., a utility’s rate is established based upon a

¹ Rebuttal Testimony of Mr. Darrin R. Ives, page 14, lines 16 through 23; Rebuttal Testimony of Mr. Tim M. Rush, page 31, lines 18 through 23;

1 historical test year, updated for known and measurable events, and further updated
2 through the true-up period—not based on a future test year or future costs. Any
3 deviations from the historical test year model must be supported by compelling evidence
4 by a utility. As detailed in my Rebuttal Testimony, KCP&L’s tracker requests are not
5 supported by any compelling evidence. KCP&L’s evidence is largely based on future
6 estimated costs and allegations of future cost increases. The costs that KCP&L requests to
7 track are normal ongoing business expenses that KCP&L incurs on a regular basis, and will
8 continue to incur into the foreseeable future. Ratemaking techniques such as
9 normalization, annualization, and known and measurable changes suffice in capturing the
10 ongoing levels of these costs in rates.

11
12 Q. KCP&L WITNESS IVES ASSERTS THAT COST VOLATILITY IS A
13 CONSIDERATION FOR THE COMMISSION WHEN DECIDING A TRACKER
14 REQUEST. IS MR. IVES’ TESTIMONY CONSISTENT WITH THE TESTIMONY OF
15 KCP&L WITNESS DR. OVERCAST?

16 A. No, the testimonies are inconsistent. While witness Ives made a frantic effort in his Rebuttal
17 Testimony, pages 9 through 12, to justify why he believes property tax and critical
18 infrastructure protection/cybersecurity costs are volatile—even though they are not—
19 thus, warrant tracking mechanisms, Dr. Overcast posits that cost volatility is not a sound

1 basis for assessing trackers. The following excerpts capture the differing views of the
2 witnesses:

3
4 **Q. Can a simple forecast demonstrate that KCP&L's...property taxes**
5 **and CIP/cyber security costs are of sufficient magnitude and**
6 **volatility to warrant tracker treatment?**

7
8 A. Yes. (*Source:* Rebuttal Testimony of Mr. Ives, page 11, lines 3
9 through 7)

10
11 **Q. Is the requirement that costs be volatile a sound basis for assessing**
12 **a tracker?**

13
14 A. No. (*Source:* Rebuttal testimony of Dr. Overcast, page 41, lines 11
15 and 12)

16
17 It is, therefore, not clear at this time what the Company's position is on this issue.

18
19 **(i). VEGETATION MANAGEMENT TRACKER.**

20 **Q. WITH SPECIFIC REFERENCE TO KCP&L'S REQUEST FOR AUTHORITY TO**
21 **IMPLEMENT A VEGETATION MANAGEMENT TRACKER, WHAT WAS PUBLIC**
22 **COUNSEL'S RECOMMENDATION IN YOUR FILED DIRECT TESTIMONY?**

23 A. Public Counsel stated that a level of historical cost has occurred for KCP&L's vegetation
24 management program; as such, a tracking mechanism is not needed to determine an
25 ongoing level of cost.

1 Q. HOW DOES COMPANY WITNESS, MR. RUSH, RESPOND TO THIS
2 RECOMMENDATION IN HIS REBUTTAL TESTIMONY?

3 A. Mr. Rush states on page 40, lines 1 and 2, of his Rebuttal Testimony that "Public Counsel
4 appears confused as to why the company is requesting a tracker for vegetation
5 management in the first place" and that "the Company is not requesting a vegetation
6 management tracker primarily because of increasing costs as most trackers may address."

7
8 Q. HOW DO YOU RESPOND?

9 A. KCP&L requested authority to implement a vegetation management tracker with the
10 following language:

11
12 **Q: Is the Company proposing a vegetation management tracker?**

13
14 **A:** Yes. The Company requests that a vegetation management tracking
15 mechanism be authorized in this case to **ensure the appropriate**
16 **recovery of rising expenses** and to help better manage the cyclical
17 nature of tree-trimming throughout the service territory as well as in
18 the Kansas and GMO rate jurisdictions, where we will also seek
19 authority to implement vegetation management cost trackers. Use of a
20 tracker for vegetation management costs will enable the Company to
21 schedule and perform this work in the most efficient manner by, for
22 example, concentrating resources and efforts on a particular portion of
23 the service territory, while still meeting all requirements, without
24 creating the perception that the Company is spending a vegetation
25 management rate allowance for one rate jurisdiction on vegetation
26 management efforts in a different rate jurisdiction. Without a
27 vegetation management tracker, the Company would tend to spread the

1 work ratably over each rate jurisdiction which is likely not the most
2 efficient way to accomplish this work... (Emphasis added by OPC.)
3 (*Source*: Direct Testimony of Mr. Tim M. Rush, page 29, lines 16
4 through 23, and continuing on page 30, lines 1 through 12)

5
6 **Q: Why is a tracker appropriate for KCP&L's vegetation**
7 **management expenses?**
8

9 **A: Vegetation management expenses have been escalating** over recent
10 years as described more fully by Company witness Jamie Kiely. In
11 addition, the Company is proposing to expand its tree trimming
12 activities to address three specific areas that are not currently in the
13 rules for vegetation management, but which will enhance customer
14 reliability. (Emphasis added by OPC.) (*Source*: Direct Testimony of
15 Mr. Tim M. Rush, page 30, lines 14 through 17)

16
17
18 Company witness, Mr. James "Jamie" S. Kiely, in his Direct Testimony, page 7, lines 3
19 through 6, states that "VM costs incurred by all of the Company's jurisdictions increased
20 from just under \$23 million in 2010 to almost \$24.58 million in 2013. **I expect this**
21 **upward trend to continue in the future for a couple of reasons even in the absence of**
22 **the enhanced VM programs discussed in this testimony.**" (Emphasis added by OPC.)
23

24 It appears from the above language that KCP&L requested a vegetation management
25 tracker because the Company wants to: (1) ensure the recovery of rising/escalating
26 vegetation management expenses; (2) better manage the cyclical nature of tree-trimming
27 throughout its service territory as well as in the Kansas and GMO rate jurisdictions; and
28 (3) expand its tree trimming activities to address Emerald Ash Borer mitigation, triplex

1 circuits, and alignment of urban and rural trim cycles. Public Counsel's position was,
2 and still is that reasons Nos. 2 and 3 are not appropriate criteria for assessing trackers and
3 thus confined its analysis to reason No.1 (the rising/escalating vegetation management
4 expenses argument). It is, therefore, surprising that Mr. Rush now states that "the
5 Company is not requesting a vegetation management tracker primarily because of
6 increasing costs as most trackers may address," and attempts to portray Public Counsel as
7 confused.

8
9 Q. HAS MR. RUSH "MODIFIED" THE REASONS HE STATED IN HIS DIRECT
10 TESTIMONY REGARDING WHY KCP&L IS REQUESTING AUTHORITY TO
11 IMPLEMENT A VEGETATION MANAGEMENT TRACKER?

12 A. Yes. On page 40, lines 5 through 16, of his Rebuttal Testimony, Mr. Tim M. Rush states:

13
14 KCP&L Missouri operations are requesting a tracker for two (2) very
15 specific reasons other than [sic] traditional increasing costs. First, KCP&L
16 serves both Kansas and Missouri service territories and has an affiliate
17 GMO. These combined service territories all have tree trimming
18 requirements and cover a fairly large geographic territory. In order to
19 maximize the overall efficiencies, the Company believes that it needs to be
20 able to target certain areas of tree trimming. This may result in an
21 imbalance of expenses in one territory over another, but in the overall
22 plan, would balance over time. Under these circumstances, use of a
23 tracker would enable customers to get full credit for each dollar of
24 vegetation management expense built into rates every year. Second, the

1 Company is recommending the addition of three program improvements
2 that were addressed in the testimony of Jamie Kiley.
3

4 In other words, the “recovery of rising expenses” reason cited in the Direct Testimony of
5 Mr. Rush is conspicuously missing from Mr. Rush’s Rebuttal Testimony. It must also be
6 noted that whereas Mr. Rush, in his Rebuttal Testimony, cites two specific reasons why
7 KCP&L is requesting a vegetation management tracker, Company witness, Mr. Darrin
8 Ives, cites only one reason why the Company is requesting for a vegetation management
9 tracker. Witness Ives states:
10

11 Because of the variability in jurisdictions, it is sometimes necessary to
12 concentrate vegetation management efforts in a certain jurisdiction in a
13 given year, and less so in the following year. This can make the cost of
14 vegetation management by jurisdiction volatile year-over-year. KCP&L-
15 MO is requesting a tracker for vegetation management in order to
16 maximize the benefit of each dollar spent, and to ensure all of our
17 customers are not over- or under-charged for vegetation management
18 efforts. The Company intends to request a vegetation management tracker
19 in all of its electric jurisdictions **for just this reason.**² (Emphasis added
20 by OPC.)
21

22 Q. SHOULD A TRACKER BE AUTHORIZED BECAUSE OF THE VARIABILITY IN
23 VEGETATION MANAGEMENT ACTIVITIES IN DIFFERENT JURISDICTIONS;

² Rebuttal Testimony of Mr. Darrin R. Ives, page 12, lines 19 through 23, and continuing on page 13, lines 1 through 3.

1 INSECT INFESTATION CONCERNS; AND THE DESIRE TO ACCELERATE
2 VEGETATION MANAGEMENT ACTIVITIES BEYOND THE LEVEL REQUIRED
3 UNDER CURRENT COMMISSION RULES?

4 A. No. Whichever form KCP&L desires to implement its vegetation management activities
5 is the prerogative of the Company's management, and should not be used as a basis for
6 implementing a tracker.

7
8 Q. ARE KCP&L'S VEGETATION MANAGEMENT COSTS ESCALATING?

9 A. No. Please refer to my Rebuttal Testimony, pages 7 and 8, for a detailed discussion of this
10 issue. Moreover, the Commission states on page 51 of its Report and Order in Case No.
11 ER-2014-0258 that "Ameren Missouri points to the mention of a tracking mechanism in
12 this regulation to argue that the regulation recognizes the appropriateness of a tracker for
13 the recovery of these costs. However, when read in context, it is clear that the tracker
14 mentioned in the rule is intended to deal with the uncertainty of the cost of compliance
15 with the new rule. The Commission established a tracker for just that purpose, but now
16 the costs are well known and the tracker is no longer needed." As I stated in my Rebuttal
17 Testimony, page 9, lines 3 through 6, KCP&L has operated under the Commission's
18 vegetation management rules for approximately seven years. KCP&L, therefore, has
19 adequate cost information available to be utilized to develop a normalized annual
20 ongoing cost level. On page 46 of the same Report and Order, the Commission also

1 states that “good public policy still requires the extra incentive a utility faces without the
2 protection of a tracker.”

3 Q. WHAT IS PUBLIC COUNSEL’S RECOMMENDATION REGARDING KCP&L’S
4 REQUEST FOR AUTHORITY TO IMPLEMENT A VEGETATION MANAGEMENT
5 TRACKER?

6 A. Consistent with my Rebuttal Testimony, Public Counsel recommends that the
7 Commission deny KCP&L’s request for authority to implement a vegetation management
8 tracker because the Company has not provided any compelling evidence to support its
9 request.

10
11 **(ii). PROPERTY TAX TRACKER.**

12 Q. HAS KCP&L PROVIDED ANY NEW INFORMATION THAT JUSTIFIES THE
13 COMPANY’S REQUEST FOR AUTHORITY TO IMPLEMENT A PROPERTY TAX
14 TRACKER?

15 A. No, the Company has not provided any new information except for a series of allegations
16 concerning the Company’s inability to earn its Commission-authorized rate of return if
17 the Commission does not authorize it to implement a property tax tracker. However,
18 property taxes are normal ongoing business expense incurred annually by utilities, and to
19 my knowledge no electric utility company in Missouri has a property tax tracker

1 mechanism in place. Property taxes have been adequately addressed in rate case
2 proceedings through ratemaking techniques such as annualization and normalization.
3 In this case, the Missouri Public Service Commission (“MPSC” or “Commission”) Staff
4 proposes to include in KCP&L’s rates an annualized property tax expense based on
5 KCP&L’s property in-service on January 1, 2015. The MPSC Staff determined
6 KCP&L’s annualized property tax amount by first calculating a ratio based upon the
7 actual property tax paid by KCP&L in December 2014 divided by the Company’s actual
8 Plant-in-Service on January 1, 2014, and then applied the ratio to Plant-in-Service as of
9 January 1, 2015. The MPSC Staff consistently utilized this methodology for calculating
10 the Company’s annualized property tax amounts in the past. This methodology avoids
11 any speculation inherent in trying to project future property taxes.

12
13 Q HOW DO YOU RESPOND TO THE Q & A MR. TIM RUSH FORMULATES ON
14 PAGE 38 OF HIS REBUTTAL TESTIMONY? TO WIT:

15
16 **Q. Absent a tracker mechanism, can the Company eliminate the**
17 **negative earnings impact of rising property taxes simply by filing**
18 **another rate case immediately after the conclusion of this rate**
19 **case?**

20
21 **A. No. Without a tracker, any earnings shortfall resulting from a**
22 **mismatch between actual property taxes and the rate allowance for**
23 **those costs included in rates will be lost forever.**

1 A. Mr. Rush's concern also holds true for ratepayers. Such is the nature of the ratemaking
2 model utilized in Missouri. Inherent in the historical ratemaking model utilized in
3 Missouri is what is referred to as the concept of "regulatory lag." Regulatory lag is the
4 time period between when a utility incurs a cost or earns revenue, and when that cost or
5 revenue is reflected in rates. In this instant case, KCP&L is opposed to refunding certain
6 amounts to customers largely because of this concept. An example is the discontinuation
7 of the fees that KCP&L was required to pay U.S. Department of Energy for spent nuclear
8 fuel storage.

9
10 Q. SHOULD THE USE OF TRACKERS BE AUTHORIZED BASED ON SPECULATIVE
11 FUTURE PROPERTY TAX ESTIMATES?

12 A. No.

13
14 Q. PLEASE SUMMARIZE PUBLIC COUNSEL'S RECOMMENDATION REGARDING
15 THIS ISSUE.

16 A. Consistent with my Rebuttal Testimony, Public Counsel recommends that the
17 Commission deny KCP&L's request for authority to implement a property tax tracker
18 because of the reasons outlined in this testimony, and in my Rebuttal Testimony.
19

1 **IV. MISSOURI CORPORATE FRANCHISE TAX**

2 Q. MS. MELISSA K. HARDESTY STATES ON PAGE 22, LINES 19 THROUGH 21, OF
3 HER REBUTTAL TESTIMONY THAT "I DO AGREE THAT MISSOURI
4 FRANCHISE TAXES WILL BE COMPLETELY PHASED OUT IN 2016.
5 HOWEVER, I DO NOT BELIEVE IT IS APPROPRIATE TO LOOK AT FUTURE
6 COSTS TO DETERMINE THE FRANCHISE TAX EXPENSE IN THIS CASE." HOW
7 DO YOU RESPOND?

8 A. It is not a fair assessment to characterize year 2015 Missouri corporate franchise tax liability
9 as "future costs." For a calendar year-end company, the Missouri corporate franchise tax
10 liability is assessed based upon the company's total assets or the par value of issued and
11 outstanding capital stock as of December 31st of the year preceding the tax year or
12 January 1st of the tax year, and the corporate franchise tax return is due to be filed on
13 April 15th of the tax year. Thus, KCP&L's year 2015 Missouri corporate franchise tax
14 liability should be based upon the Company's total assets or the par value of issued and
15 outstanding capital stock as of December 31, 2014 or January 1, 2015, and the corporate
16 franchise tax return filed by April 15, 2015. The fact that KCP&L has not filed its 2015
17 Missouri Corporate Franchise Tax Return to-date does not necessarily mean that the
18 Company's 2015 Missouri corporate franchise tax liability is a future cost.
19

1 It must be noted that April 15, 2015, the date KCP&L should have filed its Missouri
2 Corporate Franchise Tax Return, falls within the true-up period in this case, and given the
3 unique circumstances surrounding the discontinuation of the Missouri corporate franchise
4 tax—as described in my Direct and Rebuttal Testimony in this case—it is very important
5 to utilize the most recent known and measurable Missouri corporate franchise tax liability
6 incurred by the Company in the development of rates.

7
8 Q. HAS THE COMPANY PROVIDED YOU WITH THE ACTUAL TAX YEAR 2015
9 MISSOURI CORPORATE FRANCHISE TAX LIABILITY AMOUNT?

10 A. No. The Company's response to Public Counsel's follow-up Data Request No.
11 1219 to provide this information was that "KCP&L's 2015 Missouri Franchise
12 Tax Return, which includes Schedules MO-FT and MO-TC, will not be available
13 until the return is filed on or near October 15, 2015."

14
15 Q. IF THE COMPANY CLAIMS THAT IT HAS NOT YET FILED ITS YEAR 2015
16 MISSOURI CORPORATE FRANCHISE TAX RETURN, WHY DO YOU STILL
17 INSIST THAT YEAR 2015 MISSOURI CORPORATE FRANCHISE TAX LIABILITY
18 SHOULD BE THE MOST RECENT KNOWN AND MEASURABLE AMOUNT TO
19 UTILIZE IN THE DEVELOPMENT OF RATES?

1 A. The fact that KCP&L has not yet filed its 2015 Missouri Corporate Franchise Tax Return
2 does not imply that the Company's 2015 corporate franchise tax liability amount cannot
3 be calculated by the Company. Irrespective of whether the Company has filed its 2015
4 Missouri Corporate Franchise Tax Return or not, the Company can compute its 2015
5 Missouri corporate franchise tax liability amount. The Company's 2015 Missouri corporate
6 franchise tax liability is based upon the Company's financial data as of the end of
7 calendar year 2014 or January 1, 2015, and the franchise tax rate for tax year 2015. This
8 information is available to the Company; thus, KCP&L should be able to provide OPC
9 and the Commission with the expected 2015 Missouri corporate franchise tax liability
10 amount.

11
12 Q. MS. HARDESTY ALSO STATES THAT THE COMMISSION DOES NOT LOOK AT
13 FUTURE COST IN COMPUTING EXPENSES IN COST OF SERVICE, BUT
14 INSTEAD, THE COMMISSION LOOKS AT HISTORICAL COSTS, AND THAT IT IS
15 NOT APPROPRIATE TO SINGLE OUT ONE EXPENSE ITEM AND ADJUST IT TO
16 A FUTURE COST AMOUNT.³ DO YOU AGREE?

17 A. Yes, however, the Commission should take note of Ms. Hardesty's position
18 regarding the use of "future costs" in setting rates. KCP&L's request to implement
19 tracking mechanisms in this case is based, in part, on the Company's allegation of

³ Rebuttal Testimony of Ms. Melissa K. Hardesty, page 23, lines 8 through 11.

1 future cost increases. Estimated future costs should not be used to justify the
2 implementation of a tracker. That said, the Company's 2015 Missouri corporate
3 franchise tax liability is not a future cost. The fact that KCP&L has not filed its
4 2015 Missouri Corporate Franchise Tax Return to-date does not necessarily mean
5 that the Company's 2015 Missouri corporate franchise tax liability is a future
6 cost—it is known and measurable.

7
8 Q. WHAT IS PUBLIC COUNSEL'S RECOMMENDED NORMALIZED AMOUNT FOR
9 MISSOURI CORPORATE FRANCHISE TAX THAT KCP&L SHOULD BE
10 AUTHORIZED TO INCLUDE IN RATES?

11 A. Consistent with my Direct Testimony in this case, Public Counsel recommends that
12 the Commission should authorize KCP&L to include an amount of ** ** in
13 the Company's rates.

14
15 V. NORMALIZED RATE CASE EXPENSE

16 Q. WHAT IS THE ISSUE?

17 A. This issue concerns the normalized amount of rate case expense to include in KCP&L's cost
18 of service.

1 Q. MR. DARRIN IVES STATES IN HIS REBUTTAL TESTIMONY THAT ALL
2 PRUDENTLY INCURRED RATE CASE EXPENSES IN THIS CASE SHOULD BE
3 INCLUDED IN THE COMPANY'S RATES. DO YOU AGREE?

4 A. No. As detailed in my Direct Testimony in this case, Public Counsel's position is that it is
5 just and reasonable to share rate case expense between shareholders and ratepayers because
6 the outcome of a rate case proceeding benefits both shareholders and ratepayers—
7 shareholders in the form of allowed return on equity, and ratepayers in the form of safe,
8 adequate, and reliable service.

9
10 Q. MR. DARRIN IVES, IN HIS REBUTTAL TESTIMONY, REFERS TO PUBLIC
11 COUNSEL'S PROPOSAL TO SHARE RATE CASE EXPENSE EQUALLY
12 BETWEEN SHAREHOLDERS AND RATEPAYERS AS "AN ARBITRARY
13 DISALLOWANCE." DO YOU AGREE?

14 A. No. It appears Mr. Ives' allegation is informed by the parallel he drew between rate case
15 expenses and other expenses that KCP&L incurs. On page 21, lines 7 through 9, of his
16 Rebuttal Testimony, Mr. Ives states that "rate case expenses are no different from other
17 costs that provide benefits to customers (i.e. generation, transmission, and delivery
18 expenses) because both shareholders and customers benefit from the company's continued
19 operation." An understanding of how rate case expenses are incurred is very critical in

1 understanding Public Counsel's proposal to share rate case expenses between shareholders
2 and customers.

3
4 Rate case expenses are largely incurred during the pendency of a rate case proceeding
5 wherein a utility incurs expenses to process its application to revise its existing general rate
6 levels. A utility may retain the services of attorneys and consultants to argue for a higher
7 return on equity in a rate case proceeding. An intervenor may also retain the services of
8 similar experts to argue for other competing issues of interest. While the intervenor takes
9 full responsibility for the costs it incurs in a rate case proceeding, the utility does not. Rate
10 case expense sharing requires the utility's shareholders to be held responsible for a portion
11 of all of the costs incurred in processing the rate case, and ameliorates the ratepayers'
12 obligation to pay both sides of the litigation.

13
14 Since both intervenors—who are also usually ratepayers—and utilities incur costs in
15 contesting a rate case, equity and fairness might suggest that utilities take full responsibility
16 of the costs they incur. Public Counsel's proposal is not intended for KCP&L to bear full
17 responsibility of rate case expense in this case, but to bear just a portion of it. This
18 suggestion is more than reasonable in the context of this case.

19

1 Q. HOW DO YOU RESPOND TO MR. DARRIN IVES' ASSERTION THAT RATE
2 CASE EXPENSES ARE NO DIFFERENT FROM OTHER COSTS THAT PROVIDE
3 BENEFITS TO CUSTOMERS (I.E., GENERATION, TRANSMISSION, AND
4 DELIVERY EXPENSES) BECAUSE BOTH SHAREHOLDERS AND CUSTOMERS
5 BENEFIT FROM THE COMPANY'S CONTINUED OPERATION?

6 A. Rate case expenses are incurred during the pendency of a rate case proceeding
7 wherein a utility incurs expenses to process its application to revise its existing
8 general rate levels. The costs that Mr. Ives referenced are normal ongoing business
9 expenses that KCP&L incurs on a regular basis, and no intervenor incurs costs in a
10 drive to intervene in KCP&L's management decision regarding the incurrence of
11 reasonable and prudent costs that Mr. Ives referenced. It is just and reasonable to
12 ask ratepayers to reimburse a utility for the costs the utility expends to undertake
13 reasonable and prudent investments and/or prudent costs it incurs in running it
14 operations, but it is unreasonable for ratepayers to reimburse the utility for costs the
15 utility incurs to justify why its investments and/or its costs of operation and profit
16 margin be included in the Company's rates.

17
18 Q. DO YOU AGREE WITH MR. IVES THAT IF THE COMMISSION WANTS TO
19 REVIEW ITS POLICY WITH REGARD TO THE TREATMENT OF RATE CASE
20 EXPENSES, IT SHOULD BE DONE IN A RULEMAKING PROCEEDING IN

1 WHICH ALL AFFECTED PUBLIC UTILITIES AND OTHER STAKEHOLDERS
2 MAY PARTICIPATE AND EXPRESS THEIR POSITION ON THE PROPOSED
3 CHANGE?⁴

4 A. No. On the advice of counsel, the Commission can review its rate case policy as it
5 applies to KCP&L based on the record in this case. To create a rule of general
6 applicability in all cases irrespective of the record in that case, is totally different.
7 The Commission should not wait for a future rulemaking to protect KCP&L's
8 ratepayers from paying more than a reasonable portion of rate case expense.

9
10 Q. HAVE YOU UPDATED RATE CASE EXPENSES SINCE THE FILING OF
11 REBUTTAL TESTIMONY?

12 A. Yes. Invoices made available to Public Counsel through March 2015 show that
13 KCP&L has so far expended the amount of \$368,043 for rate case expense. The
14 breakdown of this amount is depicted on **Table 1** below.

15
16
17
18

⁴ Rebuttal Testimony of Mr. Darrin Ives, page,31 lines 13 through 16.

Vendor	Description of Service	Amount
Siemens Industry, Inc.	Loss Study for KCP&L	** **
Gannett Fleming Valuation and Rate Case Consultants, LLC	Missouri Depreciation Study	** **
Management Application Consulting, LLC	Missouri Cost of Service Study	** **
Sussex Economic Advisors, LLC	Missouri ROE engagement	** **
Dentons US LLP, Kansas City	Legal Services-Missouri Rate Case	** **
Fischer & Dority, PC	Legal Services-Missouri Rate Case	** **
Sega Inc	Decommissioning and Dismantlement Study	** **
Laser Cycle Inc	Toner	\$ 3.01
Unisource	Supplies	\$ -
Digital Evolution Group LLC	MO Rate Case - Google Media	\$ 5,922.92
Versadox	Copying	\$ 1,175.79
Sumner Group Inc	Printing	\$ 2,907.00
Xerox Corporation	Printing	\$ 78.80
Black & Veatch Corporation	Testimony	** **
Harvest Graphics LLC	Rate Case-Cust. Bill Ins	\$ 5,087.00
Next Source Inc	Contractors Labor	\$ 337.94
Miscellaneous Expenses	Lodging, Parking, Mileage, etc.	\$ 1,879.65
		\$ 368,043.17

Table 1

Q. WHAT IS PUBLIC COUNSEL'S RECOMMENDED NORMALIZED AMOUNT OF RATE CASE EXPENSES THAT KCP&L HAS INCURRED TO-DATE?

A. By my calculations, the normalized rate case expenses incurred by the Company to-date would amount to \$49,262.

1 Q. HOW DID YOU DETERMINE THIS AMOUNT?

2 A. From the rate case expenses that the Company claims it has incurred so far in this
3 case, and which are supported by invoices, as depicted in *table 1* above, Public
4 Counsel recommends a disallowance of \$49,394. The remaining amount was
5 split in the ratio of 50:50 to reflect Public Counsel's recommendation that
6 incurred rate case expenses be shared between the Company's shareholders and
7 ratepayers. The ratepayers' portion of rate case expense was then normalized
8 over a 3-year period. However, the normalized ratepayers' portion of the Gannett
9 Fleming Valuation and Rate Case Consultants, LLC costs is over a 5-year period
10 to reflect the requirements for a depreciation study.

11

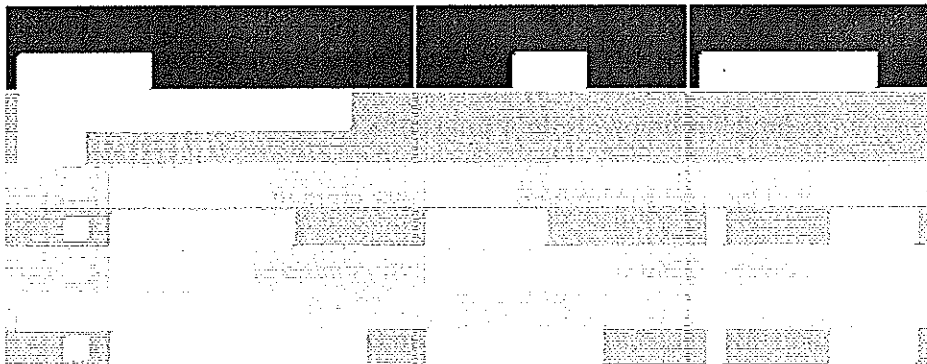
12 Q. WHAT ARE THE BASES FOR PUBLIC COUNSEL'S RECOMMENDATION THAT
13 \$49,394 BE DISALLOWED?

14 A. First, my review of the hourly rates charged by the two law firms retained by
15 KCP&L in this case show the following:

16

1

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2

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5

Public Counsel made adjustments to reprice the hourly rates for Karl Zobrist, Lisa Gilbreath, and James M. Fisher to \$200 per hour. These adjustments result in a total disallowance of \$35,314.

6

7

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9

Second, my review also shows an invoice amount of ** ** for services provided by Black & Veatch. This invoice lists the names of three personnel, their hourly rates, the number of hours worked, and the total dollar amount charged. The invoice, however, does not describe the specific tasks that these personnel performed for KCP&L. Although Public Counsel is aware that Mr. H. Edwin Overcast filed rebuttal testimony on behalf of KCP&L, it is still not clear from the invoice what constitutes his billable hours. Without a detailed description of the tasks performed by Black & Veatch, it appears to me that the

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1 ** ** charge is the result of Dr. Overcast's work product—Rebuttal
2 Testimony. Public Counsel recommends this amount be disallowed because Dr.
3 Overcast's Rebuttal testimony is duplicative of KCP&L in-house personnel's
4 testimony. Dr. Overcast filed rebuttal testimony on regulatory mechanisms (fuel
5 and purchase power adjustment clause, vegetation management tracker, property
6 tax tracker, and critical infrastructure protection and cybersecurity tracker.)
7 Public Counsel's position is that KCP&L has utilized in-house personnel to make
8 the case in both direct and rebuttal testimony as to why the Commission should
9 grant the Company the authority to implement these regulatory mechanisms.
10 Therefore, there is absolutely no need to retain the services of an outside
11 consultant to testify on these same issues. KCP&L personnel have a better
12 understanding of the Company's cost structure than any outside consultant.

13
14 Q. YOU STATED EARLIER THAT YOU REPRICED THE HOURLY RATES
15 CHARGED BY SOME OUTSIDE ATTORNEYS. WHAT IS BASIS FOR THE \$200
16 AMOUNT THAT YOU UTILIZED?

17 A. Public Counsel conducted a search of various sources, including the internet and the
18 Commission's database, to determine an hourly rate that is representative, reasonable,
19 and non-detrimental to both KCP&L and ratepayers. In Ameren Missouri's rate case
20 filing, Case No. ER-201-0258, the Company's outside attorney, Mr. James B. Lowery

1 testified that his office's "rates are effectively \$200 an hour for the lawyers that are
2 working on the case."⁵ Mr. Lowery is a well known and respected attorney with at least "15
3 years of practice"⁶ before the Commission.

4
5 Mr. Lowery's law firm, Smith Lewis, LLP, is the oldest law firm in Columbia, Missouri,
6 and one of the largest firms based in central Missouri. Multiple partners of Smith Lewis,
7 LLP and the firm as a whole have earned the highest AV® Peer Review Rating available
8 from Martindale-Hubbell, denoting the highest levels of professional performance as
9 attorneys and the highest commitment to ethical practice.⁷

10 Considering also the fact that Ameren Missouri is much larger than KCP&L, the \$200
11 per hour amount quoted by Mr. Lowery is a just and reasonable rate to use as a proxy in
12 repricing the hourly rates that KCP&L's outside attorneys charge.

13
14 Furthermore, the Missouri Bar 2013 Economic Survey Report also shows that the median
15 hourly rate charged by sole practitioners for office work and trial work is \$151-\$200,
16 compared to \$201-\$250 charged by those in private practice firms with more one
17 attorney. Excerpts of this Report are attached to this testimony as Schedule WA-5.

18

⁵ Case No. ER-2014-0258, Transcript-Volume 18 (Evidentiary Hearing 2-25-15), page 631, lines 5 through 7.

⁶ Case No. ER-2014-0258, Transcript-Volume 33 Corrected (Evidentiary Hearing 3-11-15), page 2664, lines 1.

⁷ www.smithlewis.com

Surrebuttal Testimony of William Addo
Case No. ER-2014-0370

1 KCP&L has a high degree of control over rate case expenses; yet, it appears the
2 Company is oblivious of this fact because the Company looks forward to recovering the
3 entire rate case expense amounts from its "captive" ratepayers. A sharing mechanism
4 would incentive the Company to control cost in the future.

5

6 Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

7 A. Yes, it does.

THE MISSOURI BAR
 2013
ECONOMIC SURVEY
REPORT



www.mobar.org

Information as of December 31, 2012

Schedule WA-5

BILLABLE HOURS

Respondents in full-time private practice who reported having a billable hour requirement were asked to report the number of billable hours they worked. The full-time attorneys in those firms who reported working more than 2,000 billable hours dropped from 24.5% in 2010 to 17.6% in 2012. Of those with a billing requirement in excess of 2,000 hours per year, 72.7% met the requirement in 2012 as compared to 54.5% in 2010 (Table 3.36).

HOURLY CHARGES

Sole practitioners reported hourly rates in the lower ranges as compared to those who are not sole practitioners. The median hourly rate charged by sole practitioner for office work and trial work is \$151 - \$200, compared to \$201 - \$250 charged by those in private practice firms with more than one attorney (Table 3.37).

FLAT FEE SERVICES / LIMITED SCOPE REPRESENTATION

Survey respondents were asked if over the past five years they had begun offering their clients flat fee options in lieu of hourly billing. Over 66% reported they are now offering flat fees for some services, while almost 14% indicated they are offering flat fees for most services. Nearly 20% reported they are not offering flat fees for any services (Table 3.40). Respondents or their law firms offering limited scope representation services increased between 2010 (53.4%) and 2012 (60%) (Table 3.41).

PAYMENT OF FEES BY CREDIT CARD & PAYPAL

Offering clients the option to pay by credit card continues to increase. Nearly 57% of the respondents in private practice reported accepting credit cards for payment, which is up from 48% in 2010 and 40% in 2008 (Table 3.45). In contrast, only 7.6% of the respondents in private practice reported accepting payment of fees by PayPal in 2012 (Table 3.46).

PRIVATE PRACTICE SUPPORT STAFF

Of respondents in private practice, 30% reported paying legal secretary salaries over \$42,000 per year. In 2010, 25% reported legal secretary salaries over that amount. As in 2010, approximately 50% reported paying legal assistants/paralegals over \$42,000 per year. The salaries of law students hired as summer clerks shifted from 2010 to 2012. Summer law clerks paid \$1,500 or less per month increased from 33% in 2010 to 41% in 2012. Those paid \$1,501 - \$3,000 per month remained at just over 30%. Summer clerks making more than \$3,000 per month dropped from 35% to 29%. (Table 3.33)

OFFICE OVERHEAD

Private practice law firm overhead costs, reported as a percentage, were similar in 2010 and 2012 (Table 3.50) for most counties. Cole and Greene County respondents reported the greatest increase in overhead from 2010 to 2012 and Clay County and St. Louis City respondents reported a substantial decrease in overhead costs from 2010 to 2012. (Table 3.51).

Hourly Charges

The 998 respondents engaging in either full-time or part-time private practice for at least half of 2012 were asked to select their hourly charge for office work and for trial work from a list of ten choices in \$50 ranges. There was an additional choice of "I don't charge on an hourly basis."

Sole practitioners tended to have hourly charges falling in the lower ranges when compared to other types of lawyers for both office and trial work. Likewise, there was a greater difference in the amount charged for office work as opposed to trial work for sole practitioners than for other lawyers. The median ranges are shaded for each group.

Table 3.37: Hourly Charge for Office Work and Trial Work

Hourly Charge	Office Work		Trial Work	
	Sole Practitioner	Not Sole Practitioner	Sole Practitioner	Not Sole Practitioner
\$100 or less	13 5.5%	6 1.0%	3 1.4%	2 0.4%
\$101 – \$150	53 22.5%	59 10.3%	33 15.9%	51 10.6%
\$151 – \$200	78 33.1%	141 24.7%	71 34.3%	125 25.9%
\$201 – \$250	56 23.7%	132 23.1%	51 24.6%	106 21.9%
\$251 – \$300	25 10.6%	81 14.2%	29 14.0%	74 15.3%
\$301 – \$350	6 2.5%	54 9.4%	12 5.8%	46 9.5%
\$351 – \$400	2 0.8%	37 6.5%	3 1.4%	29 6.0%
\$401 – \$450	2 0.8%	33 5.8%	2 1.0%	26 5.4%
\$451 – \$500	0 –	15 2.6%	2 1.0%	13 2.7%
Over \$500	1 0.4%	14 2.4%	1 0.5%	11 2.3%
Total	236 100.0%	572 100.0%	207 100.0%	483 100.0%

Office Work - "Don't charge on an hourly basis": 101 "Don't know/Not applicable": 41 Not reported: 48
 Trial Work - "Don't charge on an hourly basis": 99 "Don't know/Not applicable": 161 Not reported: 48