

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

AUG 25 2011

In the Matter of the Application of Kansas)
City Power & Light Company to Modify Its)
Tariffs to Continue the Implementation of Its)
Regulatory Plan.)

by
State Corporation Commission
of Kansas
Docket No. 10-KCPE-415-RTS

CURB'S RESPONSE TO KCPL MOTION TO STRIKE TESTIMONY

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB"), and files its Response to Kansas City Power & Light Company's Motion to Strike Testimony of Witnesses Andrea C. Crane, Stacey Harden, and Ralph C. Smith. ("Motion to Strike"). In support of its response, CURB states as follows:

I. INTRODUCTION

1. On August 15, 2011, KCPL filed its motion to strike the testimony of CURB witnesses Andrea Crane, Stacey Harden, and Ralph Smith.

2. KCPL's motion is without merit and should be disregarded in its entirety.

3. KCPL attempts to characterize its witnesses as "fact witnesses" that merely "provided the factual data requested by the Commission,"¹ and attempts to distinguish their testimony from the testimony provided by CURB's witnesses Andrea Crane, Ralph Smith, and Stacey Harden. KCPL argues that each of CURB's witnesses "expressed opinions on the rate case expense issue, presumably as 'expert witnesses' because none of them have first-hand knowledge of the legal expenses incurred by KCP&L."

4. KCPL's characterization couldn't be further from the truth. Contrary to KCPL's mischaracterization, KCPL's witnesses did not simply provide the factual data requested by the

¹ Motion to Strike, ¶ 3.

Commission (three levels of detailed information about actual rate case expenses incurred). Instead, each of KCPL's witnesses expressed numerous opinions on the rate case expense issues, presumably as expert witnesses, including but not limited to the following:

- Whether the rate case expense incurred by KCPL was reasonable.²
- Whether KCPL's attorney fees were reasonable under Rule 1.5(a)(4) of the Kansas Rules of Professional Conduct.³
- Whether Rule 1.5(a)(4) of the Kansas Rules of Professional Conduct as applied by CURB witness Andrea Crane indicates KCPL's rate case costs were unreasonable.⁴
- Whether it is unreasonable to believe a utility and the consumer advocate should have a reasonably level playing field, resource wise, to try a rate case.⁵
- Whether it would be reasonable to limit KCPL's recovery of rate case expense to the \$2.1 million original estimate amount actually in the record at the close of the hearing and record.⁶
- Whether KCPL's rate case expense was reasonable as well as a fair and reasonable amount to be recovered from ratepayers.⁷
- Whether the evidence submitted by KCPL met the Commission's requirements and is consistent with industry standards.⁸
- Whether Rule 1.5 of the Kansas Rules of Professional Conduct requires the level of detail being suggested by Staff.⁹
- Whether requiring the level of detail for legal invoices suggested by Staff would be retroactively setting a new standard for attorney invoices that is higher than required by Kansas law or industry standards.¹⁰
- Whether KCPL failed to provide the Level 3 information required by the Commission for several of its vendors.¹¹
- Whether there is insufficient information in the record to ascertain the roles of various law firms and consultants.¹²
- Whether, in the KCPL witnesses "opinion", there is unreasonable or unnecessary duplication of services,¹³ including:

² Rush Direct Testimony, May 6, 2011, pp. 96-101, 104-108, 111-115.

³ Rush Rebuttal Testimony, August 5, 2011, pp. 19-23.

⁴ *Id.*, pp. 19-20.

⁵ *Id.*, pp. 20-21.

⁶ *Id.*, pp. 2-22.

⁷ *Id.*, pp. 23-31; Rush Direct Testimony, pp. 30, 32, 38, 44, 49, 56, 64, 72, 88, 92, 101-102, 108-109, 116-117, 121, 125.

⁸ Rush Rebuttal Testimony, pp. 2-5.

⁹ *Id.*, pp. 3-5.

¹⁰ *Id.*, p. 4.

¹¹ *Id.*, pp. 4-5.

¹² *Id.*, pp. 5-13.

¹³ *Id.*, pp. 14-16.

- A legal conclusion about whether a “bright line does not always exist where one subject and/or witness ends and another begins.”¹⁴
- Whether the use of 44 attorneys was reasonable and duplicative.¹⁵
- Whether the fact that all 44 attorneys billed for work related to prudence and that their descriptions were general and nature and did not indicate any specific prudence assignment indicated duplication.¹⁶
- That it was not necessary for each attorney to expand the description of their specific area of prudence responsibility in each invoice entry.¹⁷
- Whether retaining multiple outside law firms with responsibility for addressing the prudence of the Iatan project was evidence of duplication.¹⁸
- Whether it was “reasonable and prudent” for KCPL to engage multiple outside counsel and consultants to address the prudence issue.¹⁹
- Whether specific KCPL witnesses duplicated the efforts of other witnesses or outside experts.²⁰
- Application of the factors outlined in the Commission’s February 21, 2011, Order to each outside consultant expenses.²¹
- Whether, in the opinion of KCPL’s witness, KCPL’s consultants had the the level of professional ability, skill, and experience required in this case.²²
- Whether Staff witness McClanahan’s testimony should be disregarded because KCPL’s invoices allegedly comply with Kansas’ legal requirements and were approved by KCPL’s management.²³
- Other factors KCPL’s witness believes the Commission “should” consider in evaluating the reasonableness and prudence of the Company’s rate case expense.²⁴
- The staffing “required” for the 415 docket.²⁵
- Whether KCPL’s decision to retain outside help rather than increasing its internal staff was “unusual”.²⁶
- Whether the expertise of external experts was necessary and the fees were reasonable and appropriate.²⁷
- Whether there are differences between incurring rate case fees in a regulatory proceeding and incurring fees in standard civil litigation.²⁸

¹⁴ *Id.*, p. 15 (citing caselaw in support of his “opinion”).

¹⁵ *Id.*, p. 16.

¹⁶ *Id.*, p. 17.

¹⁷ *Id.*, p. 17.

¹⁸ *Id.*, p. 17.

¹⁹ *Id.*, pp. 17-18.

²⁰ Rush Direct Testimony, pp. 30, 36, 41, 47, 54, 72, 118, 119.

²¹ *Id.*, pp. 30-33, 36-38, 41-44, 47-49, 55-56, 60-64, 66-67, 70-72, 86-88, 91-92, 120.

²² *Id.*, pp. 32,

²³ Rush Rebuttal Testimony, p. 18.

²⁴ Downey Rebuttal Testimony, August 5, 2011, pp. 6-7.

²⁵ *Id.*, at pp. 7-10.

²⁶ *Id.*, at p. 8.

²⁷ *Id.*, at pp. 10-13.

²⁸ *Id.*, at pp. 10-11.

- Whether KCPL used an excessive number of attorneys.²⁹
- Whether there were any unreasonable duplication of services between the various law firms retained by KCPL.³⁰
- What constitutes a “reasonable” comparison of KCPL’s Missouri and Kansas rate case costs.³¹
- The similarity or differences between the rate case issues in the 246 docket and the 415 docket as it relates to overall rate case costs.³²
- Whether KCPL’s allocation methods were inconsistent among the various consultants and law firms.³³
- Whether the use of multiple allocations was necessary.³⁴
- Whether the allocation process could result in Missouri and Kansas ratepayers being charged for the same expense.³⁵
- Whether rate case expense for KCC and CURB in this docket include charges for the 246 and 1025 dockets.³⁶
- Whether prudence-related rate case costs should be amortized over ten years, with the remaining rate case costs amortized over four years.³⁷
- Whether it is reasonable to conclude that rate case expenses in excess of \$5,669,712 that have been written off KCPL’s books should not be recoverable.³⁸

5. The above referenced testimony goes far beyond simply presenting the factual data requested by the Commission, as misrepresented by KCPL. Instead, as demonstrated above, each of KCPL’s witnesses expressed opinions on rate case expense, including but not limited to whether the Company’s expenses were duplicative, excessive, necessary, reasonable, in conformance with Rule 1.5 of the Kansas Rules of Professional Conduct, a fair and reasonable amount to be recovered from ratepayers, complied with the level of detail required by the Commission, etc.

6. KCPL argues that to testify on the issue of rate case expense, witnesses must have “experience, education or training as to evaluating legal invoices or expounding on the

²⁹ *Id.*, at p. 11.

³⁰ *Id.*, at p. 12.

³¹ Weisensee Rebuttal Testimony, August 5, 2011, p. 7.

³² *Id.*, at p. 8.

³³ *Id.*, at pp. 9-10.

³⁴ *Id.*, at p. 10.

³⁵ *Id.*, at pp. 11-12.

³⁶ *Id.*, at pp. 12-13.

³⁷ *Id.*, at pp. 14-15.

³⁸ *Id.*, at p. 16.

reasonableness of attorney fees and expenses.”³⁹ Specifically, related to the three CURB witnesses,

KCPL states:

Mr. Smith obtained a law degree in 1986, but he presents no evidence that indicates he has ever practiced law or that he has experience or expertise in evaluating the reasonableness of attorney fees and expenses.

...

She [Andrea Crane] is not a lawyer and her experience and education do not qualify her to evaluate legal invoices or expound on the reasonableness of attorney fees and expenses.

...

She [Stacey Harden] is not a lawyer and the statement of qualifications provided in her prepared written testimony is void of any experience, education, or training as to evaluating legal invoices or expounding on the reasonableness of attorney fees and expenses.⁴⁰

7. The pre-filed written testimony of KCPL witnesses Tim Rush, John Weisensee, and William Downey likewise fails to establish that they have any “experience, education or training as to evaluating legal invoices or expounding on the reasonableness of attorney fees and expenses,” yet each of these witnesses “expound” at great length regarding their opinions as to the reasonableness of attorney and consultant fees.⁴¹ KCPL’s position that the opinions and conclusions of CURB’s witnesses based on their review and audit of KCPL’s rate case expense documentation should be stricken is therefore disingenuous⁴² and noteworthy for its hypocrisy.

8. Careful review of the testimony of KCPL witnesses Tim Rush, John Weisensee, and William Downey reveals no “demonstrable knowledge, skill or experience related to attorney fees and expenses [or non-attorney fees and expenses] that would aid the Commission in examining the

³⁹ Motion to Strike, ¶¶ 7, 8, 9.

⁴⁰ *Id.*

⁴¹ See litany of expert opinions expressed by KCPL witnesses Rush, Weisensee, and Downey in paragraphs 4-5 above.

⁴² The Commission recently determined a position taken by KCPL in Docket No. 11-KCPE-581-PRE to be disingenuous as well. Order Granting KCP&L Petition for Predetermination of Rate-Making Principles and Treatment, August 19, 2011, Docket No. 11-KCPE-581-PRE, ¶ 50.

evidence in this proceeding.”⁴³ Using the rationale relied upon by KCPL in seeking to strike the testimony of CURB’s witnesses, one would have to conclude that “Based on the information provided in prepared written testimony, there is no evidence that [Mr. Rush, Mr. Weisensee, or Mr. Downey] possess any special knowledge, training, or expertise as to attorneys fees and expenses in complex ratemaking litigation to make them competent as expert witnesses on this subject matter.”⁴⁴

9. In the unlikely event the Commission would be inclined to grant KCPL’s motion to strike the testimony of CURB witnesses, the voluminous opinion testimony given by KCPL’s witnesses would likewise need to be stricken, since KCPL’s witnesses are much less qualified to testify on the reasonableness of rate case expenses than CURB’s witnesses, as will be demonstrated below.

10. Interestingly, KCPL failed to direct its Motion to Strike at Staff witnesses, whose testimony likewise fails to establish that they have any special knowledge, training, or expertise as to attorneys fees and expenses either. Again, this supports the unavoidable conclusion that KCPL’s position on this issue is disingenuous and frivolous.

11. KCPL’s argument that the testimony of CURB’s witnesses should be stricken is without merit. The testimony given by KCPL’s witnesses and CURB’s witnesses should be given the weight the Commission finds is appropriate after hearing their testimony and, if appropriate, responses to voir dire questions related to their qualifications to render expert testimony.

12. Putting aside the hypocrisy of KCPL’s proposition (that CURB witness testimony should be stricken yet KCPL witness opinion testimony should be allowed), CURB’s witnesses have more than adequate knowledge, training, and expertise to qualify them to testify as to their findings

⁴³ Motion to Strike, ¶ 5.

⁴⁴ *Id.*, ¶ 5.

and opinions regarding KCPL's amended rate case expense claim. This will be discussed at length below.

II. CURB'S WITNESSES ARE QUALIFIED TO RENDER TESTIMONY ON RATE CASE EXPENSE.

13. KCPL's argument that CURB's witnesses are not qualified to testify with respect to their findings and conclusion based on their audit and review of KCPL's rate case expense evidence is without merit, frivolous, and misleading. KCPL either had information from data request responses from CURB witnesses in its position contrary to the representations contained in its Motion to Strike, or had outstanding data requests to CURB addressing the qualifications and experience of CURB witnesses that KCPL fails to acknowledge in its Motion to Strike. CURB finds the lack of candor by counsel for KCPL on these issues troubling.

14. The qualifications for CURB's witnesses to testify with regard to KCPL's amended rate case expense claim will be discussed below.

A. CURB Witness Andrea Crane

15. As reflected in her Direct Testimony, Andrea Crane has testified in approximately 350 regulatory proceedings in 17 States and the District of Columbia.⁴⁵ KCPL was served with CURB's response to KCPL DR-226 on July 28, 2011, regarding Ms. Crane's qualifications to provide expert testimony and specifically her prior experience regarding rate case expense issues. KCPL intentionally chose not to disclose any of this information to the Commission in its Motion to Strike, a concerning lack of candor to this tribunal by its counsel. KCPL DR-226 and Ms. Crane's response thereto is set out fully below:

⁴⁵ Direct Testimony of Andrea Crane, pp. 3-4.

226. Please provide a list of prior testimony and copies of prior testimony in other dockets in which Ms. Crane has addressed the recovery of rate case expense.

Response: Rate case costs are reviewed by Ms. Crane in every case in which she addresses revenue requirement issues. In many cases, Ms. Crane does not recommend any adjustment to the Company's claim for rate case costs, and therefore this issue is not specifically discussed in her testimony. Moreover, since most states in which Ms. Crane testifies do not permit the utility to unilaterally update rate case costs late in the litigation process, the issues that arose in this case generally do not arise in other base rate case proceedings.

Ms. Crane has not undertaken a comprehensive review of her testimonies to determine all cases in which she recommended an adjustment to rate case costs. In addition, in many cases where she has raised the issue of rate case costs, the cases were settled without an explicit finding on rate case costs. All of Ms. Crane's testimonies in Kansas are available from the KCC's website. Attached are excerpts from three cases in other jurisdictions where Ms. Crane recommended adjustments to the utility's claim for rate case costs. These are being provided as representative of the types of adjustments recommended by Ms. Crane.

- Southwestern Public Service Company – New Mexico Case No. 07-00319-UT. The Hearing Examiner recommended a disallowance of rate case costs and the Commission concurred. Relevant pages from the Hearing Examiner's Report are also provided.
- Delmarva Power and Light Company – Delaware Docket No. 06-284. This case was settled.
- Public Service Electric and Gas Company – New Jersey Docket No. GR09050422. This case was settled.⁴⁶

16. The above demonstrates that KCPL was aware that Ms. Crane reviews rate case costs in every case in which she reviews revenue requirement issues, that all of her testimonies in Kansas dockets are available on the Commission website, and that she specifically provided KCPL with excerpts of her testimony in rate cases in New Mexico, Delaware, and New Jersey addressing rate

⁴⁶ Attachment 1, CURB Response to KCPL DR-226 (Excerpts from prior testimonies omitted).

case expense issues. KCPL's request to strike her testimony as unqualified to address the reasonableness of attorney's fees and expenses is therefore frivolous, misleading, and without merit.

B. CURB Witness Ralph Smith

17. As reflected in his Direct Testimony, CURB witness Ralph Smith is a Certified Financial Planner, a Certified Rate of Return Analyst, a licensed Certified Public Accountant, and a licensed attorney. He has performed extensive work in the field of utility regulation on behalf of industry, public service commission staffs, state attorney generals, municipalities, and consumer groups before 36 state Commissions (including Kansas), the District of Columbia, Canada, the Federal Energy Regulatory Commission, and various state and local courts of law.⁴⁷

18. KCPL served data requests received by CURB on August 10, 2011,⁴⁸ requesting information regarding Mr. Smith's experience and qualifications to provide expert testimony and specifically his prior experience regarding rate case expense issues. KCPL received CURB's responses to those data requests on August 24, 2011. Those responses including the response below:

KCPL Data Request No. 260.

Question:

In the Commission's February 21, 2011 Order in Docket No. 10-KCPE-415-RTS, the Commission requested that experts limit their opinions to matters "within the scope of the expert's knowledge, skill, experience or training." (§ 27). With this standard in mind, please provide the following information:

- (a) A description of Mr. Smith's particular knowledge, skill, experience or training with regards to the review of attorney fees and expenses.
- (b) A list of all dockets in which Mr. Smith has been deemed an expert on attorney fees and expenses by a court or regulatory body.
- (c) A copy of all prepared written testimony or transcripts wherein Mr. Smith has testified regarding the reasonableness of attorney fees and expenses.

⁴⁷ Direct Testimony of Ralph Smith, Appendix I, p. 1.

⁴⁸ Because KCPL served the data requests after 3:00 p.m. on August 9, 2011, they are deemed to have been received on August 10, 2011, pursuant to the January 27, 2011 Discovery Order, ¶ 2.

Response:

- (a) Mr. Smith has addressed utility claims for rate case expenses and legal expenses in many proceedings in many jurisdictions in the context of utility rate cases. Additionally, as chairman or a member of various arbitration panels involving security industry disputes under the auspices of the National Association of Securities Dealers (NASD) Dispute Resolution and the entity now known as the Financial Industry Regulatory Authority (FINRA) he has addressed and decided various claims for attorney fees in the context of those proceedings. Additionally, as an attorney involved in various probate matters he has negotiated attorney fees and has been involved in probate litigation involving disputes regarding attorney fees.
- (b) Larkin & Associates records show that Mr. Smith's testimony in utility rate cases has been accepted as expert testimony by the respective utility regulatory commissions in the following states: Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, New York, Nevada, North Dakota, Ohio, Pennsylvania, South Carolina, Texas, Utah, Vermont, Virginia, Washington, and West Virginia. A specific listing of utility rate cases in which Mr. Smith has addressed utility rate case expense has not been maintained, but the list of Mr. Smith's testimony provided in response to part (c) below provides numerous examples of dockets in which Mr. Smith has addressed legal or rate case expense issues as an expert. As noted in the response to part (a) above, Mr. Smith has also served on various arbitration panels under the auspices of NASD Dispute Resolution where he addressed and decided various claims for attorney fees. A listing of those NASD Dispute Resolution case numbers has not been maintained by Mr. Smith or Larkin & Associates.
- (c) Larkin & Associates in most cases does not receive and does not maintain transcripts of regulatory proceedings and does not have such transcripts to provide. Mr. Smith's testimony before utility regulatory commissions is typically public record. A specific listing of utility rate cases in which Mr. Smith has addressed utility rate case expense has not been maintained. Mr. Smith's testimony (attached) in the dockets listed below provides illustrative examples of Mr. Smith's prior testimony on legal or rate case expense that could be readily located within the time frame for responding to this request:

Attachment 1: Direct Testimony of Ralph C. Smith, June 28, 2002, Docket No. 02-

- BLVT-377-AUD, Blue Valley Telephone Company, Kansas Corporation Commission, 2002; *KCPL DR 260c Attachment 1 02-BLVT-377-AUD.pdf*
- Attachment 2: Direct Testimony of Ralph C. Smith, June 27, 2003, Docket No. 03-WHST-503-AUD, Wheat State Telephone Company, Kansas Corporation Commission, 2003; *KCPL DR 260c Attachment 2 03-WHST-503-AUD Wheat State.pdf*
- Attachment 3: Direct Testimony of Ralph C. Smith, March 8, 2006, Docket No. 05-1278-E-PC-PW-42T, American Electric Power, West Virginia Public Service Commission, 2006; *KCPL DR 260c Attachment 3 05-1278-E-PC-PW-42T AEP.pdf*
- Attachment 4: Direct Testimony of Ralph C. Smith, December 11, 2009, Docket No. 09-0319, Illinois American Water Company, Illinois Commerce Commission, 2009; *KCPL DR 260c Attachment 4 09-0319 Illinois American Water.pdf*
- Attachment 5: Direct Testimony of Ralph C. Smith, October 26, 2010, Docket No. 10-0467, Commonwealth Edison, Illinois Commerce Commission, 2010; *KCPL DR 260c Attachment 5 10-0467 Commonwealth Edison.pdf*
- Attachment 6: Direct Testimony of Ralph C. Smith, November 12, 2010, Docket No. 10-0699-E-42T, West Virginia American Water Company, West Virginia Public Service Commission, 2010; *KCPL DR 260c Attachment 6 10-0699-E-42T WV American Water.pdf*
- Attachment 7: Direct Testimony of Ralph C. Smith, June 11, 2010, Docket No. 2010-00036, Kentucky American Water Company, Kentucky Public Service Commission, 2010; *KCPL DR 260c Attachment 7 2010-00036 KAWC.pdf*
- Attachment 8: Direct Testimony of Ralph C. Smith, February 29, 2008, Docket No. E-01933A-07-0402, Tucson Electric Power Company, Arizona Corporation Commission, 2008; *KCPL DR 260c Attachment 8 E-01933A-07-0402 TEP.pdf*
- Attachment 9: Direct Testimony of Ralph C. Smith, August 30, 2007, Docket No. W-02113A-04-0616, Chaparral City Water Company, Arizona Corporation Commission, 2007; *KCPL DR 260c Attachment 9 W-02113A-04-0616 Chapparall.pdf*⁴⁹

19. Mr. Smith's response to KCPL DR-260 demonstrates that while Mr. Smith's firm does not maintain a specific listing of utility rate cases in which Mr. Smith has addressed rate case expense, Mr. Smith provided KCPL with copies of nine examples of testimony in utility cases where

⁴⁹ Attachment 2, CURB Response to KCPL DR-260 (Excerpts from prior testimonies omitted).

he provided expert testimony on rate case expense (Arizona, Kansas, Illinois, Kentucky, and West Virginia), including two occasions where he testified on behalf of the Kansas Corporation Commission Staff (Docket Nos. 02-BLVT-377-AUD and 03-WHST-503-AUD). Mr. Smith's response to KCPL DR-260 further demonstrates that Mr. Smith also has extensive experience serving on arbitration panels under the auspices of the National Association of Securities Dealers (NASD) Dispute Resolution where he addressed and decided various claims for attorney fees. Additionally, as an attorney involved in various probate matters, Mr. Smith has negotiated attorney fees and has been involved in probate litigation involving disputes regarding attorney fees.⁵⁰

20. Mr. Smith's expert testimony on rate case expense issues has been accepted by the Kansas Commission in addition to the West Virginia Public Service Commission, the Illinois Commerce Commission, the Kentucky Public Service Commission, and the Arizona Corporation Commission. Mr. Smith is without question qualified to render expert opinion testimony regarding rate case expense issues, and KCPL's request to strike his testimony is without merit and frivolous.

C. CURB Witness Stacey Harden

21. CURB witness Stacey Harden audited and reviewed the rate case expense evidence submitted by KCPL in support of its amended rate case expense claim of over \$9 million, and amount over four times greater than the amount claimed and in the record at the conclusion of the hearing and the close of the record in August, 2010.

22. Ms. Harden's testimony specifically stated that her involvement in reviewing and auditing this evidence was to support the recommendations made by CURB witnesses Andrea Crane

⁵⁰ CURB Response to KCPL Data Request No. 260.

and Ralph Smith.⁵¹ Ms. Harden has a Bachelors Degree in Business Administration and a Masters Degree in Business Administration. She has been employed as a Regulatory Analyst at CURB since February 2008. Prior to joining CURB, Ms. Harden was the manager of a rural water district in Shawnee County, Kansas for five years. She is also currently an adjunct faculty member at Friends University, where she is an undergraduate instructor in business and accounting courses such as Data Development and Analysis, Financial Decision Making, Fundamental Financial Accounting Concepts, Financial Reporting of Assets, Debt & Equity, and Managerial Statistics.⁵²

23. While Ms. Harden has not previously addressed the recovery of rate case expenses in other dockets, a fact emphasized by KCPL in its Motion to Strike, her role on behalf of CURB was to (1) utilize her business and auditing skills and experience to review the voluminous rate case expense documentation provided by KCPL in their filing and discovery, and (2) support the recommendations made by Ms. Crane and Mr. Smith. Simply because she hasn't previously addressed rate case expense issues is not a valid reason to disqualify her to testify with respect to her review and findings. If KCPL's rationale was a valid, no expert witness would ever qualify because they wouldn't ever testify in their first case. Every expert witness, just like every surgeon, has to have his/her first case or surgery. This just happens to be the first rate case expense case for Ms. Harden.

24. Contrary to KCPL's misleading argument, however, Ms. Harden did not "merely" review KCP&L's invoices, and then present her "personal" opinion that KCPL's rate case expenses were unreasonable. She audited and reviewed KCPL's rate case expense documentation, then

⁵¹ Direct Testimony of Stacey Harden, p. 2.

⁵² Direct Testimony of Stacey Harden, p. 1.

presented her professional opinion, based on her education, training, and experience. Her role and testimony is indistinguishable from KCPL witnesses Rush, Weisensee, and Downey.

25. Moreover, KCPL has intentionally and misleadingly mischaracterized Ms. Harden's testimony regarding Ms. Harden's auditing and review of KCPL's rate case expenses. KCPL argues that CURB witness Stacey Harden "performed a word search of the June 2010 invoices using a single word – Drabinski – then totaled the number of hours billed for that day's services concluding there was duplication of services." What Ms. Harden's testimony actually states is:

I conducted an audit of the June 2010 invoices that KCPL provided as part of its May 6, 2011 filing in this docket. I then performed a key word search for Drabinski in the descriptions of services provided by each law firm. I read the descriptions of services provided and summed up the total number of hours billed for that day's services. Because some attorney's daily descriptions of services include worked performed for tasks other than reviewing Mr. Drabinski's testimony, I was unable to specifically pinpoint exactly how many hours were devoted solely to the review or analysis of Mr. Drabinski's testimony, and therefore said that the legal services vendors billed "at most" 974.7 hours.⁵³

26. KCPL also references discovery responses that it indicates it attached to its Motion to Strike as Exhibit A. Since KCPL failed to attach any Exhibit to its Motion, CURB is unable to respond to KCPL's characterization of those discovery responses.⁵⁴ As a result, KCPL's reference to these discovery responses should be disregarded.

27. KCPL's request to strike Ms. Harden's testimony as unqualified to address the reasonableness of attorney's fees and expenses is therefore frivolous, misleading, and without merit.

⁵³ Direct Testimony of Stacey Harden, pp. 4-5.

⁵⁴ Motion to Strike, ¶ 7, footnote 15.

III. CONCLUSION.

28. The appropriate procedure to challenge the qualifications of an expert's qualifications is to object to the testimony at the hearing and request the opportunity to voir dire the witness to demonstrate the witness is not qualified to render expert testimony. KCPL had ample opportunity to serve timely data requests to challenge the qualifications of CURB witnesses, and in fact had received data request responses from Ms Crane regarding her qualifications and experience prior to filing this frivolous motion.

29. KCPL's failure to acknowledge this information and cite it to the Commission constitutes a lack of candor to the Commission. KCPL also failed to apprise the Commission that it had recently served Mr. Smith with data requests regarding his qualifications and experience in addressing rate case expense, and that those data request responses were due to be provided on August 24th. The unnecessary time expended by CURB, Commission Staff, Advisory Staff, and the Commission could and should have been avoided had KCPL simply waited until it received CURB's data request responses.

30. Instead, KCPL filed this frivolous motion, a clear abuse of process. The motion unnecessarily required all parties to this proceeding, including Advisory Staff and the Commission, to address to KCPL's unsupported allegations. As demonstrated above, CURB's witnesses clearly possess more than adequate experience and expertise in reviewing and analyzing rate case expense issues to testify with respect to their findings and conclusions. KCPL's motion should be denied and

KCPL should be admonished for wasting the time of all parties involved, and for its lack of candor to the Commission.

Respectfully submitted,



C. Steven Rarrick #13127
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1500 SW Arrowhead Road
Topeka, KS 66604
(785) 271-3200
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VERIFICATION

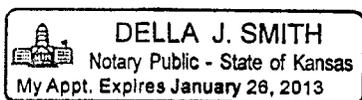
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.


C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 25th day of August, 2011.




Notary Public

My Commission expires: 01-26-2013.

ATTACHMENTS

KCPL DATA REQUEST 226 – Ms. Crane’s response
KCPL DATA REQUEST 260 – Mr. Smith’s response

**KCP&L Rate Case Expense Data Requests to CURB
Docket No. 10-KCPE-415-RTS**

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- (a) A description of Mr. Smith's particular knowledge, skill, experience or training with regards to the review of attorney fees and expenses.
- (b) A list of all dockets in which Mr. Smith has been deemed an expert on attorney fees and expenses by a court or regulatory body.
- (c) A copy of all prepared written testimony or transcripts wherein Mr. Smith has testified regarding the reasonableness of attorney fees and expenses.

Response:

- (a) Mr. Smith has addressed utility claims for rate case expenses and legal expenses in many proceedings in many jurisdictions in the context of utility rate cases. Additionally, as chairman or a member of various arbitration panels involving security industry disputes under the auspices of the National Association of Securities Dealers (NASD) Dispute Resolution and the entity now known as the Financial Industry Regulatory Authority (FINRA) he has addressed and decided various claims for attorney fees in the context of those proceedings. Additionally, as an attorney involved in various probate matters he has negotiated attorney fees and has been involved in probate litigation involving disputes regarding attorney fees.
- (b) Larkin & Associates records show that Mr. Smith's testimony in utility rate cases has been accepted as expert testimony by the respective utility regulatory commissions in the following states: Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, New York, Nevada, North Dakota, Ohio, Pennsylvania, South Carolina, Texas, Utah, Vermont, Virginia, Washington, and West Virginia. A specific listing of utility rate cases in which Mr. Smith has addressed utility rate case expense has not been maintained, but the list of Mr. Smith's testimony provided in response to part (c) below provides numerous examples of dockets in which Mr. Smith has addressed legal or rate case expense issues as an expert. As noted in the response to part (a) above, Mr. Smith has also served on various arbitration panels under the auspices of NASD Dispute Resolution where he addressed and decided various claims for attorney fees. A listing of those NASD Dispute Resolution case numbers has not been maintained by Mr. Smith or Larkin & Associates.
- (c) Larkin & Associates in most cases does not receive and does not maintain transcripts of regulatory proceedings and does not have such transcripts to provide. Mr. Smith's testimony before utility regulatory commissions is typically public record. A specific listing of utility rate cases in which Mr. Smith has addressed utility rate case expense has not been maintained. Mr. Smith's testimony (attached) in the dockets listed below provides illustrative examples of Mr. Smith's prior testimony on legal or rate case

expense that could be readily located within the time frame for responding to this request:

- Attachment 1: Direct Testimony of Ralph C. Smith, June 28, 2002, Docket No. 02-BLVT-377-AUD, Blue Valley Telephone Company, Kansas Corporation Commission, 2002; *KCPL DR 260c Attachment 1 02-BLVT-377-AUD.pdf*
- Attachment 2: Direct Testimony of Ralph C. Smith, June 27, 2003, Docket No. 03-WHST-503-AUD, Wheat State Telephone Company, Kansas Corporation Commission, 2003; *KCPL DR 260c Attachment 2 03-WHST-503-AUD Wheat State.pdf*
- Attachment 3: Direct Testimony of Ralph C. Smith, March 8, 2006, Docket No. 05-1278-E-PC-PW-42T, American Electric Power, West Virginia Public Service Commission, 2006; *KCPL DR 260c Attachment 3 05-1278-E-PC-PW-42T AEP.pdf*
- Attachment 4: Direct Testimony of Ralph C. Smith, December 11, 2009, Docket No. 09-0319, Illinois American Water Company, Illinois Commerce Commission, 2009; *KCPL DR 260c Attachment 4 09-0319 Illinois American Water.pdf*
- Attachment 5: Direct Testimony of Ralph C. Smith, October 26, 2010, Docket No. 10-0467, Commonwealth Edison, Illinois Commerce Commission, 2010; *KCPL DR 260c Attachment 5 10-0467 Commonwealth Edison.pdf*
- Attachment 6: Direct Testimony of Ralph C. Smith, November 12, 2010, Docket No. 10-0699-E-42T, West Virginia American Water Company, West Virginia Public Service Commission, 2010; *KCPL DR 260c Attachment 6 10-0699-E-42T WV American Water.pdf*
- Attachment 7: Direct Testimony of Ralph C. Smith, June 11, 2010, Docket No. 2010-00036, Kentucky American Water Company, Kentucky Public Service Commission, 2010; *KCPL DR 260c Attachment 7 2010-00036 KAWC.pdf*
- Attachment 8: Direct Testimony of Ralph C. Smith, February 29, 2008, Docket No. E-01933A-07-0402, Tucson Electric Power Company, Arizona Corporation Commission, 2008; *KCPL DR 260c Attachment 8 E-01933A-07-0402 TEP.pdf*
- Attachment 9: Direct Testimony of Ralph C. Smith, August 30, 2007, Docket No. W-02113A-04-0616, Chaparral City Water Company, Arizona Corporation Commission, 2007; *KCPL DR 260c Attachment 9 W-02113A-04-0616 Chapparall.pdf*

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10-KCPE-415-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic mail this 25th day of August, 2011, to the following:

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