

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

In the Matter of Kansas City Power & Light)
Company’s Request for Authority to Implement) Case No. ER-2014-0370
A General Rate Increase for Electric Service)

**PUBLIC COUNSEL’S RESPONSE TO KCPL’S
MEMORANDUM REGARDING EXHIBIT 152**

COMES NOW the Office of the Public Counsel (“Public Counsel”) and for its response to Kansas City Power & Light Company’s (“KCPL”) July 2, 2015 memorandum regarding KCPL’s denied request for the Commission to take official notice of Exhibit 152, respectfully states as follow:

1. “Before a writing can be admitted into evidence, whether it be a private document or public record, it must be authenticated, i.e., the proponent thereof must show that it is, in fact, what it is claimed to be.”¹ KCPL claims that Exhibit 152 is an official record of the Missouri House of Representatives’ legislative history, and therefore, it is self-authenticating. The Commission rejected this argument during the evidentiary hearing, and for the reasons explained below, should again deny KCPL’s request.

2. “Unlike the federal rules of evidence,² Missouri has no statutory or common law provision as to all public documents. Rather, Missouri has a number of statutes that remove some or all of the standard requirements of admission for various public documents.”³ Regarding public records of the General Assembly, the Revised Statutes of Missouri chapter on evidence,

¹ *Saunders v. Bowersox*, 179 S.W.3d 288, 292 (Mo. Ct. App. 2005).

² Under the Federal Rules of Evidence § 902, public records are self-authenticating if they are signed and certified or contain a seal, or are properly certified by a custodian of the records.

³ *Hadlock v. Director of Revenue*, 860 S.W.2d 335, 337 (Mo. 1993).

Chapter 490, establishes that the only self-authenticating records of legislative proceedings are the “printed journals.” § 490.160 RSMo. KCPL provided no citation to any authority that would allow the Commission to conclude that KCPL’s Exhibit 152, which is not a printed journal, is a self-authenticating official record of the legislative history of the Missouri House of Representatives. Accordingly, KCPL has provided no basis for the Commission to change its initial ruling denying KCPL’s request that the Commission take official notice of an unofficial document of a separate section of government.

3. KCPL also argues that the Commission is to take official notice of all matters of which courts take official notice, but KCPL fails to point to any instance where a court has taken official notice of the documents contained in Exhibit 152. Instead, KCPL cites to Section 490.080, which states, “Every court of this state shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States.” If KCPL had asked the Commission to take official notice of a law or statute, this section would apply. However, KCPL has asked the Commission to take official notice of documents that are not a law or statute. KCPL next asserts that Section 490.090 RSMo applies, which states, “The court may inform itself of such laws in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information.” Again, Exhibit 152 is not a law, and therefore, this statute does not apply.

4. Accordingly, KCPL failed to authenticate Exhibit 152 during the evidentiary hearing by not establishing that any witness was familiar with the document (Transcript Vol. 16, p. 1506), and likewise failed to establish that Exhibit 152 is self-authenticating.

WHEREFORE, the Office of the Public Counsel respectfully offers this response and urges the Commission to again deny KCPL’s motion.

By: /s/ Marc D. Poston

Marc D. Poston (#45722)

Chief Deputy Counsel

P. O. Box 2230

Jefferson City MO 65102

(573) 751-5558

(573) 751-5562 FAX

marc.poston@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 10th day of July 2015.

/s/ Marc Poston