

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

In the Matter of the Application of)	
Kansas City Power & Light Company for the)	Docket No. EU-2014-0255
Issuance of an Order Authorizing Construction)	
Accounting Relating to its Electrical Operations)	

**MECG RESPONSE IN OPPOSITION
TO KCPL'S MOTION IN LIMINE**

COMES NOW, the Midwest Energy Consumers' Group ("MECG") and, for its response in opposition to KCPL's Motion In Limine Regarding Ratemaking Issues, respectfully states as follows:

1. On November 14, 2014, Staff filed the rebuttal testimony of Mark Oligschlaeger and Keith Majors. After waiting 19 days, KCPL filed a Motion in Limine designed to "exclude and prohibit" certain testimony filed by the Staff. While MECG would like to provide the Commission a more substantive response, adequate time was not provided for such a response. Rather, given KCPL's unexplained delay in filing its Motion in Limine and the expedited date for responses, MECG's response simply addresses the inappropriateness of KCPL's procedural request.

2. Historically, the Commission has held that the Motion in Limine procedural device is not applicable to Commission proceedings. In fact, in its Motion, KCPL fails to cite a single instance in which the Commission has granted a Motion in Limine. The reason is simple, a recent search of Commission indicates that the Commission has denied every Motion in Limine filed in the last ten years.¹

¹ See, Case No. ER-2010-0355, *Order Denying Motions in Limine, Granting, in Part, Motion to Compel, and Granting Motion to Late-File Exhibit*, issued January 12, 2011; Case Nos. SR-2010-0110 and WR-2010-0111, *Order Regarding Staff's Motion in Limine*, issued March 24, 2010; Case No. SO-2008-0289, *Order Denying Stoddard County Sewer Company, Inc.'s and R.D. Sewer Company, L.L.C.'s Motion in Limine*, issued August 12, 2008; Case No. SO-2008-0289, *Order Denying Motion in Limine (OPC)*, issued August 12, 2008; Case No. ER-

3. The reason that Motions in Limine are not utilized is two-fold. First, the Commission is an expert body. As such, unlike a lay person jury, the Commission is capable of disregarding prejudicial and irrelevant evidence. Second, the Commission is unable to consider evidence until it has been offered at the hearing. For both of these reasons, Motions in Limine are typically not applicable to Commission practice.

As former Regulatory Law Judge, and now Missouri Supreme Court General Counsel, Harold Stearley pointed out:

It is impossible for the Commission to prejudge what evidence will and will not be offered at the hearing and issue a ruling on objections that have not yet been made. The issue regarding the relevance and admissibility surrounding the information concerning availability fees will be properly taken up at the evidentiary hearing when evidence is offered and objections are registered. Staff's motion in limine will be denied.²

4. From a practical standpoint, it makes little sense to grant a Motion in Limine to exclude certain evidence. As the Supreme Court has recently recognized, while the Commission may exclude certain testimony from its consideration, it still must preserve that testimony as part of an offer of proof along with any cross-examination.³ For this reason, it is much preferable for the Commission to allow all testimony and simply disregard that testimony which it deems to lack weight.

WHEREFORE, MECG respectfully requests that the Commission deny KCPL's Motion in Limine and consider Staff's Rebuttal Testimony.

2008-0093, *Order Denying Motion in Limine*, issued April 30, 2008; Case No. EM-2007-0374, *Order Denying Second Motion in Limine of Indicated Industrials*, issued April 8, 2008; Case Nos. WC-2007-0038 and SC-2007-0039, *Order Denying Motion in Limine*, issued February 15, 2007; Case No. IO-2005-0468, *Order Regarding Motion in Limine*, issued August 3, 2005; Case No. GC-2004-0216, *Order Denying Motion in Limine*, issued June 3, 2004.

² Case Nos. SR-2010-0110 and WR-2010-0111, *Order Regarding Staff's Motion in Limine*, issued March 24, 2010, at page 2 (emphasis added).

³ *State ex rel. Praxair v. Public Service Commission*, 344 S.W.3d 178 (Mo. 2011).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing pleading has been served by electronic means on all parties of record as reflected in the records maintained by the Secretary of the Commission through the EFIS system.

/s/ David Woodsmall
David Woodsmall

Dated: December 9, 2014