

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

Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	File No. EC-2015-0309
)	
Kansas City Power & Light Company)	
)	
And)	
)	
KCP&L Greater Missouri Operations Company,)	
)	
Respondents.)	

**KANSAS CITY POWER & LIGHT COMPANY’S AND KCP&L GREATER MISSOURI
OPERATIONS COMPANY’S RESPONSE IN OPPOSITION TO
STAFF’S MOTION FOR SUMMARY DETERMINATION**

COME NOW Respondents, Kansas City Power & Light Company (“KCP&L”) and KCP&L Greater Missouri Operations Company (“GMO”) (collectively “KCP&L/GMO” or “Respondents”), pursuant to 4 CSR 240-2.117, and hereby file their Response In Opposition to the Motion For Summary Determination filed by the Missouri Public Service Commission (“Commission”) Staff (“Staff”) on October 6, 2015, in this case. In support of this response, Respondents state as follows:

INTRODUCTION

To be entitled to summary determination or summary judgment, the movant must show that: (1) there is no genuine issue as to any material fact; and (2) based upon those undisputed facts, the movant is entitled to judgment as a matter of law; and (3) summary determination is in the public interest. See 4 CSR 240-2.117(E). See also Supreme Court Rule 74.04. *State ex rel. Nixon v. McIntyre*, 234 S.W.3d 474, 476 (Mo. App. W.D. 2007); *Brown v. Morgan County*, 212

S.W.3d 200, 202 (Mo. App. W.D. 2007). For the reasons stated herein, the Commission should find and conclude that Staff has not met its burden under 4 CSR 240-2.117, and Staff's Motion For Summary Determination ("Motion") filed on October 6, 2015 should be denied.

The Motion should be denied because (1) there are material facts in dispute; (2) Staff has failed to demonstrate that Staff is entitled to relief as a matter of law; and (3) summary determination in this case is not in the public interest. Therefore, the Staff's Motion should be denied and the Commission should proceed to consider the issues after an evidentiary hearing has concluded, as contemplated by the jointly recommended procedural schedule approved in this case.

BACKGROUND

On May 20, 2015, Staff filed a complaint against KCP&L and GMO ("Complaint") alleging that KCP&L and GMO are violating Commission rules and statutes by providing certain customer information (i.e. unique customer identifier, customer name, service address, service commencement date, and service confirmation number) to Allconnect, Inc. ("Allconnect"), a company unaffiliated with KCP&L/GMO. KCP&L/GMO provide this information so that Allconnect can (1) verify customer information for the provision of electric service by KCP&L and/or GMO, and (2) provide the customers the opportunity to secure other home-related services (i.e. telephone, internet access, cable television, and home security services) on a one-stop shopping basis without the need to contact other providers of such home services. More specifically, the Staff Complaint alleges that KCP&L and GMO are violating Missouri statutes and Commission rules by:

- (1) transferring valuable system assets, namely, customer names, addresses, telephone numbers, and the like, to Allconnect without first obtaining authorization from the Commission to do so, in violation of § 393.190.1, RSMo.;

(2) by making the aforementioned transfers without the consent of the affected customers, in violation of Commission Rule 4 CSR 240.015(2)(C); and

(3) by transferring certain customer phone calls to Allconnect and relinquishing KCP&L-GMO control and responsibility to Allconnect's personnel to investigate and respond to customer inquiries and complaints in violation of Commission Rule 4 CSR 240-13.040(2)(A).

(Staff's Suggestions in Support of Its Motion for Summary Determination ("Suggestions"), pp. 1-2).

For its requested relief, Staff prays "after due notice and hearing" that the Commission will enter its order:

(1) finding that KCP&L-GMO violated § 393.190.1, RSMo.;

(2) finding that KCP&L-GMO violated Commission Rule 4 CSR 240-20.015(2)(C); and

[(3)] finding that KCP&L-GMO violated Commission Rule 4 CSR 240-13.040(2)(A);

(4) authorizing its General Counsel to seek penalties under Sections 386.570, and 386.590; and

(5) requiring KCP&L-GMO to improve and modify their operations so that they are no longer in violation of the above provisions via their relationship with Allconnect

(Suggestions, pp. 1-2 and Complaint, pp. 31-32). (*Emphasis added*).

On June 22, 2015, the Respondents filed their Answer, including affirmative defenses, which denied that they were violating the Commission's rules or related statutes, and requested dismissal of Staff's Complaint.

On June 23, 2015, the Commission issued its *Order Scheduling A Procedural Conference* for July 15, 2015. Representatives of Respondents, Staff, and the Office of the Public Counsel ("Public Counsel") attended the procedural conference held on July 15.

On July 27, 2015, the Staff, Respondents and the Public Counsel filed a Proposed Procedural Schedule. On July 28, 2015, the Commission issued its *Order Adopting Procedural Schedule* which generally adopted the procedural schedule suggested by the Staff, Respondents and Public Counsel, including three days of evidentiary hearings. More specifically, the Commission ordered the following procedural deadlines:

Direct Testimony - August 21, 2015
Rebuttal Testimony - November 19, 2015
Surrebuttal/Cross Surrebuttal Testimony - December 18, 2015
Last Day to Request Discovery - December 30, 2015
List of Issues - January 6, 2016
Statements of Position - January 11, 2016
Hearing - January 19-21, 2016
Initial Post-Hearing Briefs - February 11, 2016
Reply Post-Hearing Briefs - February 25, 2016

On October 6, 2015, the Staff filed its Motion and Suggestions. This pleading is a response to Staff's Motion and Suggestions.

RESPONSE TO STAFF'S STATEMENT OF FACTS

Pursuant to 4 CSR 240-2.117(1)(C), the following section will set forth each statement of fact contained in Staff's Motion filed on October 6, 2015, in its original paragraph number and immediately thereunder admit or deny each of movant's factual statements:

1. Staff filed its *Complaint* on May 20, 2015, charging that Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO"; together, "KCP&L-GMO") are violating Missouri statutes and Commission rules by (1) transferring valuable system assets, namely, customer names, customer addresses, customer identification numbers, service start dates, and customer service confirmation numbers to Allconnect, Inc. ("Allconnect") without first obtaining authorization from the Commission to do so, in violation of § 393.190.1, RSMo.; (2) by making the aforementioned transfers without the consent of the affected customers, in violation of Commission Rule 4 CSR 240.015(2)(C); and (3) by transferring certain customer phone calls to Allconnect and allowing Allconnect's personnel to deal with customer inquiries and complaints in violation of Commission Rule 4 CSR 240-13.040(2)(A).

KCP&L/GMO Response:

Respondents admit that Staff filed its Complaint on May 20, 2015, but deny that KCP&L/GMO are violating Missouri statutes and Commission rules.

2. Commission Rule 4 CSR 240-2.117(1) provides as follows:

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than sixty (60) days prior to the hearing except by leave of the commission.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

* * *

(E) The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

* * *

KCP&L/GMO Response:

No response is necessary since the rule speaks for itself.

3. There are two Respondents in this case, to-wit: KCP&L and GMO; and Respondents filed their *Answer* on June 22, 2015; this motion therefore, is filed after Respondents have filed their responsive pleading as required by Rule 4 CSR 240-2.117(1)(A).

KCP&L/GMO Response:

Admit.

4. According to the *Order Adopting Procedural Schedule* issued herein on July 28, 2015, the hearing in this case will begin on January 19, 2016, which is more than sixty days following the filing of this motion as required by Rule 4 CSR 240-2.117(1)(A).

KCP&L/GMO Response:

Admit.

STAFF’S ALLEGED UNDISPUTED MATERIAL FACTS

5. There is no genuine issue as to the material facts set out in Paragraphs 6 through 22, below.

KCP&L/GMO Response:

Deny. See below.

6. Complainant is the Staff of the Missouri Public Service Commission, acting through the Chief Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1). (*Answer*, ¶ 6). (Footnote omitted).

KCP&L/GMO Response:

Admit.

7. KCP&L, a Missouri general business corporation in good standing, and GMO, a Delaware general business corporation in good standing, are both electric corporations and public utilities, subject to regulation by this Commission. (*Answer*, ¶¶ 7, 8, 9, and 10). KCP&L and GMO are wholly-owned subsidiaries of Great Plains Energy (“GPE”), a publicly-traded, public utility holding company. (*Answer*, ¶¶ 7, 8; Hyneman Direct, p. 4). KCP&L’s employees act on behalf of both KCP&L and GMO as GMO has no employees. (Hyneman Direct, p. 12).

KCP&L/GMO Response:

Admit.

8. Great Plains Energy Services (“GPES”) is also owned by GPE and is an affiliate of KCP&L and GMO. (*Answer*, ¶ 39; Hyneman Direct, p. 4). GPES provides no services and has no employees. (Hyneman Direct, p. 4). In May of 2013, GPES entered into an agreement with non-affiliate Allconnect, the

Allconnect Direct Transfer Service Agreement (“Agreement”) on behalf of KCP&L and GMO. (*Answer*, ¶¶ 1, 17; Hyneman Direct, p. 14).

KCP&L/GMO Response:

Admit.

9. Allconnect is a non-regulated marketing company based in Atlanta, Georgia. (Hyneman Direct, pp. 4, 12). Allconnect was founded in 1998 and has Sales & Customer Care Centers in Atlanta, Lexington, Kentucky, and St. George, Utah. (Kremer Direct, p. 11). On its web page, Allconnect states that it is an “authorized reseller” of services and a “one stop shop for utilities.” (Kremer Direct, p. 11).

KCP&L/GMO Response:

Respondents do not have sufficient information to admit or deny the allegations stated in Paragraph 9 and therefore deny same. See Affidavit of Darrin R. Ives, p. 3.

10. The Agreement provides for the transfer of certain customer information by KCP&L and GMO to Allconnect for purposes of Allconnect verifying the customers’ information and providing the customers with their confirmation number as well as offering products and services to them. (*Answer*, ¶¶ 1, 19, 21). In exchange, Allconnect pays a fee to KCP&L for each call transferred as well as other monetary benefits if sales of products or services are made. (*Answer*, ¶¶ 2, 17, 31). This revenue and the costs associated with Allconnect are not reflected in rates. (*Answer*, ¶ 2).

KCP&L/GMO Response:

Admit.

11. The transfer works like this: KCP&L and GMO’s Customer Service Representatives receive the customers’ request for service and input customer data into utilities’ customer information systems. The utility representatives then instruct those same customers to remain on the line while their calls are transferred to Allconnect, who will “verify the accuracy of their data” and provide them a confirmation number regarding their electric service order. (*Answer*, ¶ 3). The Company’s Customer Service Representatives may also inform the customer that the Allconnect Customer Service Representative can help the customer connect or transfer other services for his or her home. (*Answer*, ¶ 3). The information transferred is the unique customer identifier customer name, service address, service commencement date, and service confirmation number. (*Answer*, ¶ 40). The customer is not asked if he or she consents to being transferred to the nonregulated, unaffiliated marketing company, Allconnect. (Hyneman Direct, p. 26; Kremer Direct, p. 12).

KCP&L/GMO Response:

Respondents admit that the unique customer identifier (confirmation number), customer name, service address, service commencement date and service confirmation number is provided to Allconnect. Respondents admit that the customer is not asked if he or she consents to be transferred to Allconnect, but in further response KCP&L/GMO state that the customer is advised that the call will be transferred to Allconnect who will verify their order, provide their order confirmation number, and offer them other services for their home (such as home phone, TV, internet) permitting the customer the opportunity to decline the transfer and if the customer so declines, the customer is provided the confirmation number by the KCP&L Customer Service Representative ("CSR"). The customer is not forced to transfer to Allconnect. See Affidavit of Darrin R. Ives, p. 3.

12. ** [REDACTED] ** (Kremer Direct, pp. 15, 16). KCP&L does not record the transferred call revenue as a reduction to the regulated cost to serve customers and also does not charge its regulated customers for customer service representative time associated with Allconnect. (*Answer*, ¶¶ 2, 32).

KCP&L/GMO Response:

Respondents deny that they selected a particular transfer process in order to maximize the number of customers transferred to Allconnect and the proceeds realized by KCP&L. KCP&L admits that it does not record the transferred call revenue as a reduction to the regulated cost to service customers and it does not charge its regulated customers for customer service representative time associated with Allconnect. See Affidavit of Darrin R. Ives, pp. 3-4.

13. The transfer of calls to Allconnect is inconvenient for KCP&L and GMO's customers because they often do not receive their confirmation number until after they have had to listen to a prolonged sales pitch from the Allconnect representative. (Kremer Direct, p. 18, 19). In a number of instances, Staff found that the customer confirmation number failed to transfer to Allconnect or that the

Allconnect representative simply failed to give it to the customer. (Kremer Direct, p. 19). Only about **[REDACTED]** of transferred customers bought at least one additional product or service (home phone, internet, television, or home security) from Allconnect over the ten-month period from June 2013 to March 2014. (Kremer Direct, p. 23). That percentage had declined to **[REDACTED]** as reported in the December 2-3, 2014, *Allconnect Business Review*. (Kremer Surrebuttal, Case No. ER-2014-0370, p. 5).

KCP&L/GMO Response:

The Respondents deny that it is inconvenient for KCP&L and GMO customers to have their calls transferred to Allconnect. Respondents do not have sufficient information to know what “Staff found” and therefore deny the remaining allegations in Paragraph 13. See Affidavit of Darrin R. Ives, p. 4.

14. KCP&L and GMO contend that the relationship with Allconnect is neither an affiliate relationship nor a regulated relationship and, therefore, Commission Rule 4 CSR 240-20.015(2)(C), requiring that customer consent be obtained before customer information is made available by KCP&L and GMO to Allconnect, is not applicable: “KCP&L does not believe that the affiliate transaction rule applies to the transfer of information to non-affiliated entities. As set forth in the purpose section of the rule, the rule is intended to prevent regulated utilities from subsidizing their non-regulated operations. In order to accomplish this objective, the rule sets forth financial standards, evidentiary standards and record keeping requirements applicable to any commission regulated electrical corporations whenever such corporation participates in transactions with any affiliated entity.” (*Answer*, ¶ 47).

KCP&L/GMO Response:

KCP&L/GMO admit that this paragraph contains its data request response but deny the remaining allegations in Paragraph 14 because it does not accurately state KCP&L/GMO’s position. KCP&L/GMO contend that 4 CSR 240-20.015(2)(C) does not require that customer consent be obtained before customer information is provided to an affiliated or unaffiliated entity and used for regulated purposes.

15. The Allconnect Direct Transfer Service Agreement itself states that the Agreement is by and between Allconnect and GPES on behalf of GPES and its affiliates KCP&L and GMO. In Case No. EO-2014-0189, KCP&L-GMO witness Darrin R. Ives testified (Surrebuttal, page 8, lines 2 – 6) that: “. . . The

only role for GPES with respect to Allconnect is that it is a contracting entity for the purposes of administrative efficiency. GPES does not transfer customer information to Allconnect. Customer information is transferred to Allconnect by KCP&L and GMO in a manner that the Company believes is consistent with section [4 CSR 240-20.015(2)(C)] of the affiliate transaction rule.” (*Answer*, ¶ 48).

KCP&L/GMO Response:

Admit.

16. Respondent admits that it stated to Staff, “Since before the affiliate transactions rule was enacted and continuing after enactment, the Company has been providing customer information to non-affiliated entities, such as bill collectors, in furtherance of providing regulated service offerings. The Company fully expects that many other utility companies in the state are similarly situated. The Company is unaware of any utility company in Missouri seeking approval of the Commission under the affiliate transactions rule to provide customer information to non-affiliated entities under such circumstances. Because of this past practice, the Company believes that under a common sense reading of the affiliate transactions rule[s], the limited customer information provided to Allconnect for regulated purposes does not violate the affiliated transactions rule. Furthermore, only after the customer consents to engage in transactions with Allconnect does Allconnect make use of the customer’s information for non-regulated purposes.” (*Answer*, ¶ 48).

KCP&L/GMO Response:

Admit.

17. KCP&L and GMO admit that their own employees are qualified to verify orders and that the check of the accuracy of customer information performed by Allconnect at no cost is beneficial to them and their customers. (*Answer*, ¶¶ 2, 58; Kremer Direct, p. 20). Nevertheless, KCP&L and GMO allow Allconnect to investigate customer complaints and customer escalations even though the customers did not call Allconnect and did not consent to the transfer. (Kremer Direct, p. 6). KCP&L and GMO have assumed a “hands-off” approach to difficulties their customers encounter with Allconnect, the result of a managerial decision KCP&L and GMO have made at the expense of their customers. (Kremer Direct, p. 6). KCP&L and GMO leave the great majority of the investigation and resolution of the complaint/escalation or inquiry to Allconnect. (Kremer Direct, p. 6).

KCP&L/GMO Response:

Respondents admit that their employees are qualified to verify orders and that Allconnect's check of the accuracy of customer information is beneficial to its customers. Respondents deny the remainder of the allegations in Paragraph 17 for a number of reasons, including (1) complaints and escalations related to Allconnect by KCP&L/GMO customers can be handled by either Allconnect personnel, Company personnel, or both, (2) KCP&L/GMO customers are not forced to transfer to Allconnect, and (3) various customer surveys show that the availability of Allconnect unregulated service offerings enhances KCP&L/GMO customer satisfaction.

18. Through their relationship with Allconnect and GPES, KCP&L and GMO are exploiting their monopoly position and subsidizing their nonregulated operations. (Hyneman Direct, p. 10). Although they have no contract with Allconnect, "KCPL and GMO are servicing the contract between GPES and Allconnect by providing the use of regulated utility physical assets (computer equipment, software, office equipment, buildings, etc.) regulated utility employees (customer service, IT support and management overhead) and regulated utility intangible assets (such as access to customer phone calls and customer information)." (Hyneman Direct, p. 12). Regulated utility customer access and regulated utility customer information, such as the names and addresses, future mailing addresses, relocation dates, etc., of KCP&L and GMO customers, are regulated utility assets of KCP&L and GMO. (Hyneman Direct, pp. 36, 37). They are "a necessary and useful part of the utilities' works and systems." (Kremer Direct, p. 4).

KCP&L/GMO Response:

Deny. See Affidavit of Darrin R. Ives, p. 5.

19. KCP&L does not record the transferred call revenue as a reduction to the regulated cost to serve customers and also does not charge its regulated customers for customer service representative time associated with Allconnect. (*Answer*, ¶ 32). Instead, KCP&L is booking the Allconnect proceeds "below the line" to its non-regulated operations and ultimately financially benefiting its unregulated parent company, GPE. (Kremer Direct, p. 4). KCP&L and GMO are selling their customers' information and access without the customers' knowledge or consent and without even sharing any part of the proceeds with the customers. (Kremer Direct, pp. 6-7).

KCP&L/GMO Response:

KCP&L admits that it does not record transferred call revenue as a reduction to the regulated cost to serve customers and does not charge its regulated customers for customer service representative time associated with Allconnect. KCP&L admits that it is booking the Allconnect proceeds “below the line” to its non-regulated operations. KCP&L and GMO deny the remaining allegations in Paragraph 19. See Affidavit of Darrin R. Ives, pp. 5-6.

20. **

** (Kremer Direct, p. 5). **

**

(Kremer Direct, p. 18).

KCP&L/GMO Response:

Deny. See Affidavit of Darrin R. Ives, p. 6.

21. The use of KCP&L and GMO’s regulated assets to support unregulated business activities constitutes improper subsidization of an unregulated business line. (Hyneman Direct, pp. 27, 31). KCP&L’s management, which also acts for GMO, is acting in manner that is detrimental to KCP&L and GMO’s customers, both from a customer service standpoint in unsolicited and forced transfers of regulated customers and their information to an unregulated marketing company and the use of regulated rate base plant in service assets and regulated utility employees in the process. (Hyneman Direct, p. 38). The revenues earned by KCP&L through its relationship with Allconnect are not credited to the regulated operations of either KCP&L or GMO. (Hyneman Direct, p. 38; Kremer Direct, p. 4).

KCP&L and GMO Response:

The Respondents admit that the revenues earned by KCP&L through its relationship with Allconnect are not credited to the regulated operations of either KCP&L or GMO, but deny the remaining factual allegations in Paragraph 21. See Affidavit of Darrin R. Ives, p. 6.

22. Approximately ten percent of KCP&L and GMO’s customers that were transferred to Allconnect without their knowledge or consent are listed on the No Call List maintained by and available from the Attorney General of Missouri. (Kremer Direct, p. 10). KCP&L and GMO’s activities pursuant to the

Allconnect Direct Transfer Service Agreement permit Allconnect to avoid the No Call List and needlessly expose utility customers to unwanted telephone solicitation. (Kremer Direct, pp. 9-10).

KCP&L/GMO Response:

Respondents do not have sufficient information to admit or deny the allegations stated in the first sentence of Paragraph 22 and therefore deny same. Respondents deny the remaining allegations in Paragraph 22. See Affidavit of Darrin R. Ives, pp. 6-7.

ARGUMENT

A. There Are Material Facts In Dispute In This Proceeding, and Therefore Summary Determination Is Not Appropriate.

As explained above, KCP&L/GMO assert that there are a number of material facts in dispute in this proceeding including, but not limited to, the following:

a) Contrary to Staff's factual allegations, Company does not transfer customer information to Allconnect as the term "transfer" is used in section 393.190.1 RSMo. because, among other reasons, the Company retains all rights and abilities to use that customer information upon and after providing it to Allconnect, and as a consequence, the customer information is not "transfer[red], mortgage[d] or otherwise dispose[d] of". As such, this arrangement does not violate section 393.190.1 RSMo. This will be addressed in more detail in rebuttal testimony to be filed on November 19, 2015.

b) Contrary to Staff's factual allegations, the limited customer information provided by the Company to Allconnect (i.e. unique customer identifier, customer name, service address, service commencement date, and service confirmation number) does not constitute its "franchise, works or system, necessary or useful in the performance of its duties to the public" as that phrase is used in section 393.190.1 RSMo. As such, this arrangement does not violate Section

393.190.1 RSMo. This will be addressed in more detail in rebuttal testimony to be filed on November 19, 2015.

c) Contrary to Staff's factual allegations, the fact that GPES served as a contracting vehicle for KCP&L's and GMO's relationship with Allconnect – whereby the Company interacts directly with Allconnect, Allconnect pays money directly to KCP&L and GMO, and GPES has no involvement outside of serving as a contracting vehicle – does not transform this into an affiliate transaction between KCP&L/GMO and GPES. As such, the provisions of Commission Rule 4 CSR 240-20.015 applicable to affiliate transactions do not apply to this arrangement. This will be addressed in more detail in rebuttal testimony to be filed on November 19, 2015.

d) Contrary to Staff's factual allegations, KCP&L and GMO did not select a particular transfer process in order to maximize the number of customers transferred to Allconnect and the proceeds realized by KCP&L.

e) Contrary to Staff's factual allegations, the customer is advised that the call will be transferred to Allconnect permitting the customer the opportunity to decline the transfer and if the customer so declines, the customer is provided the confirmation number by the KCP&L CSR. Transfer of the customer is therefore not forced.

f) Contrary to Staff's factual allegations, Respondents deny that they selected a particular transfer process in order to maximize the number of customers transferred to Allconnect and the proceeds realized by KCP&L.

g) Contrary to Staff's factual allegations, Respondents deny that it is inconvenient for KCP&L and GMO customers to be transferred to Allconnect.

h) Contrary to Staff's factual allegations, Respondents have not assumed a “hands-off” approach to difficulties their customers encounter with Allconnect.

i) Contrary to Staff's factual allegations, Respondents deny that through their relationship with Allconnect and GPES, KCP&L and GMO are exploiting their monopoly position and subsidizing their nonregulated operations.

j) Contrary to Staff's factual allegations, regulated utility customer access and regulated utility customer information, such as the names and addresses, future mailing addresses, relocation dates, etc., of KCP&L and GMO customers, are not regulated utility assets of KCP&L and GMO, and nor are they "a necessary and useful part of the utilities' works and systems."

k) Contrary to Staff's factual allegations, KCP&L and GMO are not selling their customers' information and access without the customers' knowledge or consent.

l) Contrary to Staff's factual allegations, ** [REDACTED]

[REDACTED]

[REDACTED] **

m) Contrary to Staff's factual allegations, KCP&L's management, which also acts for GMO, is not acting in manner that is detrimental to KCP&L and GMO's customers.

n) Contrary to Staff's factual allegations, KCP&L and GMO's activities pursuant to the Allconnect Direct Transfer Service Agreement do not permit Allconnect to avoid the No Call List and needlessly expose utility customers to unwanted telephone solicitation

Additional material disputed facts may become apparent after rebuttal and surrebuttal testimony is filed, and KCP&L/GMO reserve the right to bring such disputed facts to the attention of the Commission at a later time. Since there are fundamental material facts that are in dispute in this proceeding, summary determination or summary judgment is not appropriate. The Commission should therefore deny the Staff's Motion on this basis alone.

B. The Staff's Motion Should Be Denied Since Staff Has Failed To Demonstrate That Staff Is Entitled To Judgment As A Matter Of Law.

As explained below, the Staff's Motion fails to demonstrate that Staff is entitled to relief as a matter of law. As a result, Staff's Motion must be denied.

1. Staff Has Failed to Demonstrate that the Respondents are Violating Section 393.190(1) by Providing Customer Information to Allconnect.

First, Staff alleges that "KCP&L-GMO have violated § 393.190.1, RSMo., by transferring these assets [i.e. specific customer information]¹ to Allconnect without first obtaining permission to do so from the Commission." (Suggestions, p. 4) Staff is incorrect that Section 393.190.1 requires prior approval of the Commission to provide Allconnect with the customer information in question in this case.

Section 393.190.1 states that an electrical corporation may not transfer "the whole or any part of its franchise, works, or system necessary or useful in the performance of its duties to the public" without first obtaining Commission authorization.² The Staff is incorrectly arguing that the "customer information" provided to Allconnect is part of the utility's "franchise, works or system." The Staff offers no legal support for that interpretation. In fact, it provides no Commission decision or court holding that such customer information is part of the "franchise, works or system" of a public utility.

¹ Apparently, the customer information of concern to Staff includes the provision of "a customers' name, service address, billing address, unique number, dates of turn-on and turn-off and service confirmation number. . . ." (Suggestions, p. 5).

² Section 393.190.1 states in relevant part:

393.190.1 No . . . electrical corporation . . . shall hereafter sell, assign, lease, **transfer**, mortgage or **otherwise dispose of** or encumber **the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public**, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, **without having first secured from the commission an order authorizing it so to do**. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void. (*Emphasis added*).

Staff cites only one Commission decision which dealt with SO₂ emission allowances, and not customer information. In *Re Kansas City Power & Light*, EO-92-250, 1 M.P.S.C.3d 359, 360-62 (August 26, 1992), the Commission found that SO₂ emission allowances attached to each generating unit and became “an integral part of its generating system.” *Id.* at 362. As a result, the Commission concluded that emission allowances were necessary and useful in the performance of KCP&L’s duties to the public and were part of KCP&L’s “system.” Even though the Commission in 1992 found that emission allowance sales or transfers were subject to its jurisdiction, the Commission concluded that it would not impede the trading of those allowances, and would allow flexibility in the approval process. *Id.* This decision was not appealed to the courts, and as a result, there is no case law reviewing the Commission’s decision related to the sale or transfer of SO₂ emission allowances.

In its Suggestions, Staff did not discuss a more recent case in which the Commission found that Staff failed to meet its burden to show that a public utility violated Section 393.190.1 when it transferred personnel and local distribution plant in Texas without prior Commission approval. In Order Closing Case, *Re: Transfer of Assets, Including Much of Southern Union's Gas Supply Department, to EnergyWorx, a Wholly Owned Subsidiary*, Case No. GO-2003-0354, 12 Mo.P.S.C.3d 488 (August 5, 2004), the Commission rejected a Staff allegation that the sale of local distribution plant in Texas, and the transfer of public utility employees, required prior approval of the Commission under Section 393.190.1. In that decision, the Commission interpreted Section 393.190.1 as follows: “Section 393.190 requires a utility to obtain this Commission’s approval before consummating a transaction in which it sells property used to serve customers.” *Id.* at 489 (emphasis added). See also *Concurring Opinion of Commissioner Jeff Davis*, Case No. GO-2003-0354, 12 Mo.P.S.C.3d 490-93.

Regarding the property located in Texas and included in the allocation of corporate costs to the Missouri utility, the Commission ruled as follows:

So, with respect to the corporate allocation, the issue facing the Commission is this: Section 393.190 requires a utility to obtain this Commission's approval before consummating a transaction in which it sells property used to serve customers. Here, none of the property sold was in Missouri, or directly used to serve Missouri customers, but a very small part (.002) of the transaction consisted of property the costs of which had been allocated to MGE's Missouri customers.

As the moving party, Staff has the burden of production (also called the burden of going forward). (footnote omitted) Staff has not met its burden to show that the Commission has jurisdiction over the sale of office equipment in Texas even when the costs of that equipment were allocated for ratemaking purposes to Missouri customers. *Id.* at 2-3.

Regarding the transfer of employees, the Commission ruled as follows:

Staff's second allegation is that Southern Union transferred "its assembled experienced and trained gas supply workforce." Staff devotes most of its report to this allegation and the related argument that the transfer of personnel invokes the Commission's oversight pursuant to Section 393.190. Staff does not allege that Southern Union did not meet its obligation to procure gas for its customers as a result of the transfer. Southern Union points out, and Staff does not disagree, that all the functions that had been provided by the transferred gas procurement personnel were still performed after the transfer, either by in-house personnel or through other arrangements. Again, Staff has the burden of production, and has failed to meet it.

This is not to say that the transfer of the gas supply department was a good idea, or that the Commission would have approved of it if asked. It may or may not have been wise, and there may or may not be ratemaking consequences. But in this case, Staff has not met its burden of showing that the transfer of personnel invokes the Commission's jurisdiction. *Id.* at 3.

Contrary to the arguments of Staff, Section 393.190.1 does not reference customer information at all – it requires Commission approval for transfers of a utility's franchise, works or system.³ A utility franchise is simply local permission to use public roads and rights-of-way.⁴ The term "works" is not defined by statute or Commission rule, but that the Missouri Supreme

³ *State ex rel. Martigney Creek Sewer Co. v. Public Service Commission*, 537 S.W.2d 388, 399 (Mo. banc 1976).

⁴ *See, e.g., State ex rel. Union Elec. Co. Public Service Com'n of State of Mo.*, 770 S.W.2d 283, 285 (Mo. App. W.D. 1989).

Court has determined that the gas works of Missouri Public Service (later to become Aquila and now Empire District Gas) is synonymous with the term “gas plant.”⁵ Other statutes, however, use the term in the context of physical assets and not “customer information”.⁶ The term “gas plant” is defined at section 386.020(19) RSMo., but since KCP&L and GMO are electric corporations, the relevant term is “electric plant” which is defined at section 386.020(14) as including “. . . all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.” Thus, the term “works” as applicable to KCP&L and GMO is restricted in scope to that real or tangible operational plant (i.e., right-of-ways, poles, wires, meters, transformers, substations, generating units etc.) actually used to deliver electricity to the public in this state. Clearly, the customer information provided by the Company to Allconnect does not constitute the “works of KCP&L and/or GMO. The same is true of the term “system.”⁷ However, Section 386.020 RSMo. does contain definitions including the terms “plant” and “system”:

(14) “Electric Plant” includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power;

(19) “Gas Plant” includes all real estate, fixtures and personal property owned, operated controlled used or to be used for or in connection with or to

⁵ See, *State ex rel. City of Trenton v. Public Service Commission*, 174 S.W.2d 871, 879-880 (Mo. Banc 1943).

⁶ Sections 393.260.2, 393.140 (2), 88.770.1 RSMo. In addition, a Montana case has defined “works,” in a utility context, to consist of physical property and legal rights. *State v. State Water Conservation Board*, 332 P.2d 913, 917 (Mont. 1958).

⁷ Sections 393.298 (2), 393.025.2, 393.829 (11), 386.800.5 (2), 393.200.1 RSMo.

facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power;

(50) “Sewer System” includes all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for municipal, domestic or other beneficial or necessary purpose;

(60) “Water System” includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for municipal, domestic or other beneficial use.

The terms “sewer system” and “water system” are defined at section 386.020(50) and (60) RSMo. respectively. Each of these statutory definitions enumerates a series of hard operational plant items and “other real estate, fixtures and personal property” used to provide that type of utility service. Thus a utility’s “system” encompasses the organization of the discrete parts of the plant and property used by the utility into an interdependent whole for the purpose of providing service to the public. Again, the customer information provided by the Company to Allconnect is not a part of KCP&L and GMO’s property interests and, therefore, cannot be considered a part of KCP&L and GMO’s system.

If the Missouri General Assembly had wanted “customer information” to be part of an electric company’s “works”, as alleged by Staff, they would have inserted such a reference into Section 386.020(14).

More importantly, KCP&L has been unable to find any precedent in Missouri where the Commission has required prior regulatory approval for the provision of customer information to unaffiliated companies for regulated or unregulated purposes. To the contrary, Staff witness Lisa Kremer admits in answer to Data Request No. 8 in this proceeding that Staff is “aware that utilities regulated by the Commission engage third party contractors to undertake functions in

support of regulated operations.” Staff is also “aware that third party contractors performing certain activities/functions require utility customer information to perform their contractual duties.” Finally, Staff witness Kremer concedes that “I am not aware of any utility in Missouri obtaining the consent of customers prior to providing customer information to a third party contractor to perform an activity in support of its regulated operations.” (Staff Response to DR No. 8).

If the Commission interpreted Section 393.190.1 as requiring prior regulatory approval for the provision of customer information to unaffiliated companies for regulatory purposes, as advocated by Staff, this policy would certainly raise a host of practical problems for every public utility dealing with routine customer matters. Public utilities would arguably be required to obtain Commission approval any time a public utility referred a customer account with an outstanding bad debt to an unaffiliated collection agency. In addition, public utilities “transferring” customer information to third party contractors for meter reading and call center operations purposes would require prior Commission approval under Staff’s construction. All of these circumstances would encompass the disposal of an “asset”, according to Staff’s incorrect interpretation of Section 393.190.1. This analysis illustrates that the Staff’s assertion that “customer information” are assets has consequences beyond the issue of KCP&L providing customer information to Allconnect. It also raises the question of the extent to which the Commission may become involved in the management decisions of KCP&L. Of course, it is not the function of the Commission to manage the operations of public utilities.

This Commission should reject Staff’s argument that Section 393.190.1 requires regulatory approval prior to the transfer of customer information to an unaffiliated company for

regulated purposes because “customer information” is not part of a utility's “franchise, works or system.”

2. Staff Has Failed to Demonstrate that the Respondents are Violating 4 CSR 240-20.015(2)(C) by Providing Customer Information to Allconnect.

Second, Staff incorrectly alleges that the Respondents violate 4 CSR 240-20.015(2)(C) by providing customer information to Allconnect. This rule is part of the Commission’s Affiliated Transactions Rule which “is intended to prevent regulated public utilities from subsidizing their non-regulated operations.” *See Purpose Section*, 4 CSR 240-20.015.⁸ However, in the case at hand, Allconnect is not an affiliated entity with KCP&L or GMO⁹, and there is no affiliated transaction¹⁰ involved in the arrangements between the Respondents and Allconnect.¹¹ Therefore, 4 CSR 240-20.15(2) is not applicable to this case.

However, if the crux of Staff’s complaint is that the Respondents provide specific customer information to Allconnect as an unaffiliated third party service provider assisting KCP&L/GMO in the provision of regulated utility service, and that this practice violates Commission Rule 4 CSR 240-20.015(2)(C), then 4 CSR 240-20.015(2)(C) is vague and overbroad and KCP&L/GMO are being subjected to disparate regulatory treatment from other utilities in Missouri in violation of the equal protection clause of the Missouri and United States Constitutions.

⁸ The *Purpose Section* of 4 CSR 240-20.015 goes on to explain the reason for the Affiliated Transaction Rule: “In order to accomplish this objective, the rule sets forth financial standards, evidentiary standards and record-keeping requirements applicable to any Missouri Public Service Commission (commission) regulated electrical corporation whenever such corporation participated in transactions with any affiliated entity. . . . The rule and its effective enforcement will provide the public the assurance that their rates are not adversely impacted by the utilities’ nonregulated activities.”

⁹ *See* 4 CSR 240-20.020(1)(A).

¹⁰ *See* 4 CSR 240-20.020(1)(B).

¹¹ Staff raises the specter of an affiliated transaction in this case since Great Plains Energy Services (“GPES”) is the technical entity that contracts with Allconnect on behalf of KCP&L and GMO. This fact does not make the arrangement an affiliated transaction between KCP&L/GMO and Allconnect.

Staff has admitted in response to Company data requests that utilities in Missouri make specific customer information available to unaffiliated entities, namely third party service providers engaged by those utilities to assist in the provision of regulated utility service (for function such as collections, meter reading, call center operations). (See attached Staff Response to KCP&L Data Request No. 8 (highlight added for emphasis)). Staff also has admitted that no such utility in Missouri obtains the consent of customers to make such information available to such unaffiliated third party service providers. (See attached Staff Response to KCP&L Data Request No. 8). Staff has further admitted that no such utility in Missouri has requested, or been granted, a waiver of or variance from the provisions of Commission Rule 4 CSR 240-20.015(2)(C) regarding the provision of specific customer information to unaffiliated third party service providers. (See attached Staff Response to KCP&L Data Request No. 8).

The initial purpose of KCP&L/GMO's transfer of each phone call is so that Allconnect can assist in the provision of regulated utility service by confirming and verifying account information entered into the Company's customer information system. The specific and limited customer information provided by KCP&L/GMO (i.e. unique customer identifier, customer name, service address, service commencement date, and service confirmation number) is only utilized by Allconnect to assist in the provision of regulated utility service unless and until the customer agrees to do business with Allconnect. To the extent that Staff is contending that there is no customer consent to do business with Allconnect before the customer information is used for an unregulated purpose, then there is a fundamental factual issue between Staff and Company. This will be addressed in more detail in rebuttal testimony to be filed on November 19, 2015.

In summary, Staff has failed to demonstrate that the Respondents are violating 4 CSR 240-20.015(2)(C) by providing customer information to Allconnect. As a result, Staff's Motion

should be denied since it has failed to demonstrate that the Staff is entitled to relief as a matter of law.

3. Staff Has Failed to Demonstrate that the Respondents are Violating 4 CSR 240-13.040(2)(A) by Providing Customer Information to Allconnect.

Third, Staff has incorrectly alleged that “KCP&L-GMO have transferred service quality responsibilities to Allconnect which, by Commission Rule 4 CSR 240-13.040(2)(A), KCP&L are required to provide.” (Complaint, p. 30) KCP&L and GMO have qualified personnel available and prepared to receive and respond to all customer inquiries, service requests, safety concerns and complaints related to regulated service at all times during normal business hours.

The rule requires that a utility must have qualified personnel available to respond to customer inquiries, service requests, safety concerns and complaints. The rule does not prescribe the manner in which this response is to be achieved and does not require that the personnel be employees of the utility. Complaints of KCP&L and GMO customers related to Allconnect may be handled by either KCP&L personnel, Allconnect personnel or both. Staff has not alleged that the Company lacks adequate resources to respond to customer complaints, customer inquiries, service requests and safety concerns, but instead appears to be arguing that customer complaints must be handled by employees of the utility, that is by KCP&L personnel. This is incorrect. The Company handles customer complaints concerning Allconnect in a way which best utilizes its resources while at the same time ensuring compliance with Commission rules and customer satisfaction. Neither the Commission nor the Staff has the authority to tell the Company how to

manage its business as long as the Commission's regulations are being satisfied. See *State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177, 181 (Mo. App. 1960).¹²

To the extent that Staff alleges that the Respondents are not providing qualified personnel to receive and respond to such customer issues, then there is a factual dispute in this case. In any event, Staff has failed to demonstrate that the Respondents are violating 4 CSR 240-13.040(2)(A) by allowing Allconnect to handle complaints related to Allconnect. As a result, Staff's Motion should be denied since it has failed to demonstrate that the Staff is entitled to relief as a matter of law.

C. The Staff Has Not Demonstrated that the Motion Is In the Public Interest.

As explained above, there are a number of material facts in dispute in this proceeding, and the Staff has failed to demonstrate that Staff is entitled to relief as a matter of law. Staff has the burden of proof in this Complaint case. See *Ag Processing v. Public Service Commission*, 385 S.W.3d 511 (Mo. App. 2012); Section 386.390 RSMo. Staff has not presented any evidence to support its factual and legal allegations, and Staff may not avoid its burden of proof merely by asserting that judicial economy would be promoted by deciding the issues without giving the Company the opportunity to rebut the Staff allegations in an evidentiary hearing. Instead, the Commission should consider the legal issues in this case only after the Commission has held the scheduled evidentiary hearing.

¹² In the *Harline* decision, the Missouri Court of Appeals explained this important principle:

The utility's ownership of its business and property includes the right to control and management, subject, necessarily to state regulation through the Public Service Commission. The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to the public welfare. *Id.* at 181.

CONCLUSION

For the reasons discussed herein, the Staff's Motion For Summary Determination should be denied because (1) there are material facts in dispute; and (2) Staff has failed to demonstrate that the movants are entitled to judgment as a matter of law; and (3) Staff has not demonstrated that it is in the public interest to grant summary determination.

Respectfully submitted,

/s/ James M. Fischer

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

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, postage prepaid, to all parties of record this 5th day of November, 2015.

/s/ James M. Fischer

James M. Fischer

KCPL and KCPL GMO
Case Name: KCPL/GMO Allconnect Complaint
Case Number: EC-2015-0309

Response to Gates Stephanie Interrogatories - KCPL_20150908
Date of Response:

Question:0008

Are you aware of utilities operating in the State of Missouri who engage third party contractors (i.e., outsource) to undertake functions in support of regulated operations such as, but not limited to, collection activities (both in the field and through telephone calls and legal process); service line installation and/or replacement; meter inspection and/or maintenance (including activities related to automated meter reading equipment); meter reading; responding to customer contacts or inquiries. If so, please explain your knowledge of: a) which utilities outsource which functions; b) whether these utilities provide customer information to the third party contractors in connection with the provision of such service; c) whether any of those utilities obtain the consent of customers prior to providing customer information to the third party contractor; d) whether any of those utilities has requested a waiver of 4 CSR 240-20.015(2)(C); and e) whether the Commission has granted or denied any such requested waiver.

RESPONSE: (do not edit or delete this line or anything above this)

Yes, I am aware that utilities regulated by the Commission engage third party contractors to undertake functions in support of regulated operations. a. KCP&L Greater Missouri Operations (GMO) engages a third party (KCP&L) to operate virtually its entire operations. I am aware that utilities in Missouri generally operate in a manner that they engage third party contractors to undertake activities in support of their regulated operations. I do not keep, nor am I aware of anyone on Staff keeping, a list of third party contractors used by Missouri regulated utilities. Even if there were such a list, the Staff would seek utility specific permission to disclose this information to KCP&L-GMO. There is the matter of Section 386.480 RSMo. and individual utilities may consider this information to be highly confidential or proprietary, which involves 4 CSR 240-2.135. Staff suggests KCP&L-GMO inquire directly of other Missouri regulated utilities as to the outside service providers they employ. Staff notes that it would not routinely provide the names of KCP&L-GMO's outside service providers to other utilities in response to a utility data request nor in response to a survey conducted by a third party such as NARUC. I am not aware of any regulated utility in Missouri that conducts its business in a manner similar to KCP&L-GMO and the Allconnect Direct Transfer Service Agreement with Great Plains Energy Services (GPES). Review of the Federal Energy Regulatory Commission (FERC) Form One filings completed by all the Missouri regulated electric utilities, demonstrates that all record expenses in Account 923 known as "Outside Services." Such recording of expenses in FERC Account 923 demonstrates that they all utilize third party contractors in some capacity. The FERC uniform system of accounts (USOA) does not provide specific information regarding outside services for particular accounts. As stated above, I am aware of no Missouri regulated utility that conducts its business in a manner similar to KCP&L and GMO and the Allconnect Direct Transfer Service Agreement with GPES. Allconnect payments to KCP&L are not in support

of regulatory activities/functions but instead are in support of ownership and sale/transfer of KCP&L-GMO's customer information to Allconnect. Third party contractors, such as those referred to by KCP&L-GMO in this data request perform services, to the best of my knowledge, to solely support regulated utility service, of which there is no comparison to the KCP&L-GMO and the Allconnect Direct Transfer Service Agreement with GPES. b. Yes, in some cases: collections, meter reading, call center operations and possibly others would require some amount of customer information. I am aware that third party contractors performing certain activities/functions require utility customer information to perform their contractual duties. Contractual provisions between utilities and its contractors may include provisions to maintain the privacy/confidentiality of customer information as well as restrict the use of the customer information for the exclusive performance of the contracted service. Third party contractors are not sold customer information to use for commercial purposes outside of the regulatory context. Third party contractors, such as those referred to by KCP&L-GMO in this data request, perform services, to the best of my knowledge, to solely support regulated utility service, of which there is no comparison to KCP&L-GMO and the Allconnect Direct Transfer Service Agreement with GPES. c. Not to my knowledge. I am not aware of any utility in Missouri obtaining the consent of customers prior to providing customer information to a third party contractor to perform an activity in support of its regulated operations. Contractual provisions between utilities and their contractors may address privacy/confidentiality and restrictions on the use of customer information beyond the utilization needed to satisfy contractual commitments. Third party contractors, such as those referred to by KCP&L-GMO in this data request, perform services, to the best of my knowledge, to solely support the regulated utility service, of which there is no comparison to KCP&L-GMO and the Allconnect Direct Transfer Service Agreement with GPES. d. Not to my knowledge. I am not aware of any utility in Missouri seeking a waiver to 4 CSR 240-20.015(2)(C) prior to providing customer information to a third party contractor to perform an activity/function in support of its regulated operations. Contractual provisions between utilities and their contractors may address privacy/confidentiality and restrictions on the use of customer information beyond the utilization needed to satisfy contractual commitments. Third party contractors, such as those referred to by KCP&L-GMO in this data request, perform services, to the best of my knowledge, to solely support the regulated utility service, of which there is no comparison to KCP&L-GMO and the Allconnect Direct Transfer Service Agreement with GPES. e. Not to my knowledge. I am not aware of any utility in Missouri having requested, received, or been denied a waiver to 4 CSR 240-20.015(2)(C) prior to providing customer information to a third party contractor to perform an activity/function in support of its regulated operations activities. Contractual provisions between utilities and their contractors may address privacy/confidentiality and restrictions on the use of customer information beyond the utilization needed to satisfy contractual commitments. Third party contractors, such as those referred to by KCP&L-GMO in this data request, perform services, to the best of my knowledge, to solely support the regulated utility service, of which there is no comparison to KCP&L-GMO and the Allconnect Direct Transfer Service Agreement with GPES. The critical distinction between the relationship KCP&L-GMO has with Allconnect from other third party contractors referred to by KCP&L-GMO in this data request is 1) Allconnect pays KCP&L for each call transferred to Allconnect as well as for customer information (KCP&L-GMO does not pay Allconnect as it does traditional third party contractors). Allconnect payments to KCP&L-GMO are booked

to KCP&L non-regulated operations. KCP&L-GMO's non-regulated operations do not profit from the activities of the other third party service providers referred to by KCP&L-GMO in this data request. 2) KCP&L-GMO do not credit to its customers the money it makes from the transfer of customer calls and sale/transfer of customer information to Allconnect. 3) KCP&L-GMO transfer customer calls to Allconnect and sell/transfer customer information without customer consent. The verification of customer information that KCP&LGMO state Allconnect performs for KCP&L-GMO was successfully performed by KCP&L-GMO prior to KCP&L-GMO's engagement with Allconnect, and such data verification is successfully performed by all other regulated utilities in the state of Missouri without the assistance of Allconnect or other third party marketers. Data Request submitted by Lisa Kremer (lisa.kremer@psc.mo.gov).

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

Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	File No. EC-2015-0309
)	
Kansas City Power & Light Company)	
)	
And)	
)	
KCP&L Greater Missouri Operations Company,)	
)	
Respondents.)	

AFFIDAVIT OF DARRIN R. IVES

COMES NOW the undersigned Affiant, who upon oath and personal knowledge states as follows:

1. I am Darrin R. Ives. My business address is 1200 Main Street, Kansas City, Missouri 64105.

2. I am employed by Kansas City Power & Light Company ("KCP&L") as Vice President-Regulatory Affairs.

3. My responsibilities include oversight of the Company's Regulatory Affairs Department, as well as all aspects of regulatory activities including cost of service, rate design, revenue requirements, regulatory reporting and tariff administration.

4. I graduated from Kansas State University in 1992 with a Bachelor of Science in Business Administration with majors in Accounting and Marketing. I received my Master of Business Administration degree from the University of Missouri-Kansas City in 2001. I am a Certified Public Accountant. From 1992 to 1996, I performed audit services for the public accounting firm Coopers & Lybrand L.L.P. I was first employed by KCP&L in 1996 and held

positions of progressive responsibility in Accounting Services and was named Assistant Controller in 2007. I served as Assistant Controller until I was named Senior Director-Regulatory Affairs in April 2011. I have held my current position as Vice President-Regulatory Affairs since August 2013.

5. I have testified on several occasions before the Missouri Public Service Commission (“Commission”) on a variety of issues affecting regulated public utilities. I have additionally testified at the Kansas Corporation Commission.

6. I have reviewed and am familiar with § 393.190.1 RSMo., 4 CSR 240-20.015, 4 CSR 240-13.040, and documents filed by Staff in connection with Case No. EC-2015-0309. I have also reviewed pleadings and discovery in this proceeding, including the Staff’s Motion For Summary Determination (“Motion”) and Suggestions In Support of Motion For Summary Determination (“Suggestions”) filed October 6, 2015.

7. The purpose of this Affidavit is to identify material facts contained in Staff’s Motion and Suggestions which are specific facts that are in dispute in this proceeding, and indicate that there are genuine issues of fact for hearing.

8. KCP&L and KCP&L Greater Missouri Operations Company (“GMO”) (collectively “KCP&L/GMO” or “Respondents”) dispute the following statements (identified by paragraph) contained in Staff’s Motion. Below are paragraphs from Staff’s Motion that are controverted and remain in dispute for hearing:

5. There is no genuine issue as to the material facts set out in Paragraphs 6 through 22, below.

REASON FOR DENIAL:

There are clearly facts in dispute. See below.

9. Allconnect is a non-regulated marketing company based in Atlanta, Georgia. (Hyneman Direct, pp. 4, 12). Allconnect was founded in 1998 and has Sales & Customer Care Centers in Atlanta, Lexington, Kentucky, and St. George, Utah. (Kremer Direct, p. 11). On its web page, Allconnect states that it is an “authorized reseller” of services and a “one stop shop for utilities.” (Kremer Direct, p. 11).

REASON FOR DENIAL:

KCP&L and GMO do not have sufficient information to admit or deny the allegations stated in Paragraph 9 and therefore deny same.

11. The transfer works like this: KCP&L and GMO’s Customer Service Representatives receive the customers’ request for service and input customer data into utilities’ customer information systems. The utility representatives then instruct those same customers to remain on the line while their calls are transferred to Allconnect, who will “verify the accuracy of their data” and provide them a confirmation number regarding their electric service order. (*Answer*, ¶ 3). The Company’s Customer Service Representatives may also inform the customer that the Allconnect Customer Service Representative can help the customer connect or transfer other services for his or her home. (*Answer*, ¶ 3). The information transferred is the unique customer identifier customer name, service address, service commencement date, and service confirmation number. (*Answer*, ¶ 40). The customer is not asked if he or she consents to being transferred to the nonregulated, unaffiliated marketing company, Allconnect. (Hyneman Direct, p. 26; Kremer Direct, p. 12).

REASON FOR DENIAL:

KCP&L and GMO admit that the unique customer identifier (confirmation number), customer name, service address, service commencement date and service confirmation number is provided to Allconnect. Respondents admit that the customer is not asked if he or she consents to be transferred to Allconnect, but in further response, KCP&L/GMO state that the customer is advised that the call will be transferred to Allconnect, who will verify their order, provide their order confirmation number, and offer them other services for their home (such as home phone, TV, internet) permitting the customer the opportunity to decline the transfer and if the customer so declines, the customer is provided the confirmation number by the KCP&L CSR. The customer is not forced to transfer to Allconnect.

12. **

Direct, pp. 15, 16). KCP&L does not record the transferred call revenue as a reduction to the regulated cost to serve customers and also does not charge its regulated customers for customer service representative time associated with Allconnect. (Answer, ¶¶ 2, 32).

REASON FOR DENIAL:

KCP&L and GMO deny that they selected a particular transfer process in order to maximize the number of customers transferred to Allconnect and the proceeds realized by KCP&L. KCP&L admits that it does not recover the transferred call revenue as a reduction to the regulated cost to service customers and it does not charge its regulated customers for customer service representative time associated with Allconnect.

13. The transfer of calls to Allconnect is inconvenient for KCP&L and GMO's customers because they often do not receive their confirmation number until after they have had to listen to a prolonged sales pitch from the Allconnect representative. (Kremer Direct, p. 18, 19). In a number of instances, Staff found that the customer confirmation number failed to transfer to Allconnect or that the Allconnect representative simply failed to give it to the customer. (Kremer Direct, p. 19). Only about ** of transferred customers bought at least one additional product or service (home phone, internet, television, or home security) from Allconnect over the ten-month period from June 2013 to March 2014. (Kremer Direct, p. 23). That percentage had declined to ** as reported in the December 2-3, 2014, *Allconnect Business Review*. (Kremer Surrebuttal, Case No. ER-2014-0370, p. 5).

REASON FOR DENIAL:

KCP&L and GMO deny that it is inconvenient for KCP&L and GMO customers to be transferred to Allconnect. In fact, Allconnect provides a convenient one-stop shopping option for customers who wish to utilize Allconnect's services. KCP&L and GMO do not have sufficient information to know what "Staff found" and therefore deny the remaining allegations in Paragraph 13.

14. KCP&L and GMO contend that the relationship with Allconnect is neither an affiliate relationship nor a regulated relationship and, therefore, Commission Rule 4 CSR 240-20.015(2)(C), requiring that customer consent be obtained before customer information is made available by KCP&L and GMO to Allconnect, is not applicable: “KCP&L does not believe that the affiliate transaction rule applies to the transfer of information to non-affiliated entities. As set forth in the purpose section of the rule, the rule is intended to prevent regulated utilities from subsidizing their non-regulated operations. In order to accomplish this objective, the rule sets forth financial standards, evidentiary standards and record keeping requirements applicable to any commission regulated electrical corporations whenever such corporation participates in transactions with any affiliated entity.” (*Answer*, ¶ 47).

REASON FOR DENIAL:

KCP&L and GMO admit that this paragraph contains its data request response but deny the remaining allegations in Paragraph 14 because it does not accurately state KCP&L and GMO’s position. KCP&L and GMO contend that 4 CSR 240-20.015(2)(C) does not require that customer consent be obtained before customer information is provided to an affiliated or unaffiliated entity and used for regulated purposes.

17. KCP&L and GMO admit that their own employees are qualified to verify orders and that the check of the accuracy of customer information performed by Allconnect at no cost is beneficial to them and their customers. (*Answer*, ¶¶ 2, 58; Kremer Direct, p. 20). Nevertheless, KCP&L and GMO allow Allconnect to investigate customer complaints and customer escalations even though the customers did not call Allconnect and did not consent to the transfer. (Kremer Direct, p. 6). KCP&L and GMO have assumed a “hands-off” approach to difficulties their customers encounter with Allconnect, the result of a managerial decision KCP&L and GMO have made at the expense of their customers. (Kremer Direct, p. 6). KCP&L and GMO leave the great majority of the investigation and resolution of the complaint/escalation or inquiry to Allconnect. (Kremer Direct, p. 6).

REASON FOR DENIAL:

Respondents admit that their employees are qualified to verify orders and that Allconnect’s check of the accuracy of customer information is beneficial to its customers. Respondents deny the remainder of the allegations in Paragraph 17 for a number of reasons, including (1) complaints and escalations related to Allconnect by KCP&L/GMO customers can be handled by

either Allconnect personnel, Company personnel, or both, (2) KCP&L/GMO customers are not forced to transfer to Allconnect, and (3) various customer surveys show that the availability of Allconnect unregulated service offerings enhances KCP&L/GMO customer satisfaction.

18. Through their relationship with Allconnect and GPES, KCP&L and GMO are exploiting their monopoly position and subsidizing their nonregulated operations. (Hyneman Direct, p. 10). Although they have no contract with Allconnect, “KCPL and GMO are servicing the contract between GPES and Allconnect by providing the use of regulated utility physical assets (computer equipment, software, office equipment, buildings, etc.) regulated utility employees (customer service, IT support and management overhead) and regulated utility intangible assets (such as access to customer phone calls and customer information).” (Hyneman Direct, p. 12). Regulated utility customer access and regulated utility customer information, such as the names and addresses, future mailing addresses, relocation dates, etc., of KCP&L and GMO customers, are regulated utility assets of KCP&L and GMO. (Hyneman Direct, pp. 36, 37). They are “a necessary and useful part of the utilities’ works and systems.” (Kremer Direct, p. 4).

REASON FOR DENIAL:

KCP&L and GMO are not exploiting their monopoly position and subsidizing their nonregulated operations. The customer information at issue in this case are not regulated utility assets of KCP&L and GMO and they are not a necessary or useful part of the KCP&L’s and GMO’s works or system.

19. KCP&L does not record the transferred call revenue as a reduction to the regulated cost to serve customers and also does not charge its regulated customers for customer service representative time associated with Allconnect. (*Answer*, ¶ 32). Instead, KCP&L is booking the Allconnect proceeds “below the line” to its non-regulated operations and ultimately financially benefiting its unregulated parent company, GPE. (Kremer Direct, p. 4). KCP&L and GMO are selling their customers’ information and access without the customers’ knowledge or consent and without even sharing any part of the proceeds with the customers. (Kremer Direct, pp. 6-7).

REASON FOR DENIAL:

KCP&L admits that it does not record transferred call revenue as a reduction to the regulated cost to serve customers and does not charge its regulated customers for customer service

representative time associated with Allconnect. KCP&L admits that it is booking the Allconnect proceeds “below the line” to its non-regulated operations. However, KCP&L and GMO deny the remaining allegations in paragraph 19 because they are not selling their customers’ information and access without the customers’ knowledge or consent.

20. **

** (Kremer Direct, p. 5). **

**

(Kremer Direct, p. 18).

REASON FOR DENIAL:

This Staff allegation is not accurate.

21. The use of KCP&L and GMO’s regulated assets to support unregulated business activities constitutes improper subsidization of an unregulated business line. (Hyneman Direct, pp. 27, 31). KCP&L’s management, which also acts for GMO, is acting in manner that is detrimental to KCP&L and GMO’s customers, both from a customer service standpoint in unsolicited and forced transfers of regulated customers and their information to an unregulated marketing company and the use of regulated rate base plant in service assets and regulated utility employees in the process. (Hyneman Direct, p. 38). The revenues earned by KCP&L through its relationship with Allconnect are not credited to the regulated operations of either KCP&L or GMO. (Hyneman Direct, p. 38; Kremer Direct, p. 4).

REASON FOR DENIAL:

KCP&L and GMO admit that the revenues earned by KCP&L through its relationship with Allconnect are not credited to the regulated operations of either KCP&L or GMO, but deny the remaining factual allegations in Paragraph 21 because KCP&L’s management is not acting in a manner that is detrimental to KCP&L’s and GMO’s customers by providing a one-stop shopping option for unregulated services.

22. Approximately ten percent of KCP&L and GMO’s customers that were transferred to Allconnect without their knowledge or consent are listed on the No Call List maintained by and available from the Attorney General of Missouri. (Kremer Direct, p. 10). KCP&L and GMO’s activities pursuant to the


Allconnect Direct Transfer Service Agreement permit Allconnect to avoid the No Call List and needlessly expose utility customers to unwanted telephone solicitation. (Kremer Direct, pp. 9-10).

REASON FOR DENIAL:

KCP&L and GMO do not have sufficient information to admit or deny the allegations stated in the first sentence of Paragraph 22 and therefore deny same. KCP&L and GMO deny the remaining allegations in Paragraph 22 because their activities pursuant to the Allconnect Direct Transfer Service Agreement do not permit Allconnect to avoid the No Call List since that regulation does not apply to this situation.

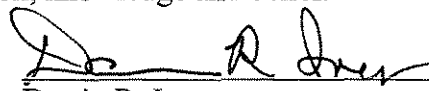
Additional material disputed facts may become apparent after rebuttal and surrebuttal testimony is filed, and KCP&L/GMO reserve the right to bring such disputed facts to the attention of the Commission at a later time.

This concludes my Affidavit in this proceeding.

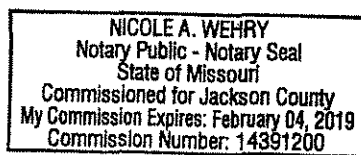

Darrin R. Ives
Date: November 5, 2015

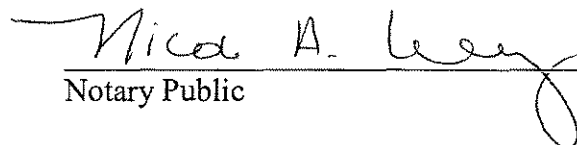
State of Missouri)
) ss
County of Jackson)

I, Darrin R. Ives, having been duly sworn upon my oath, state that I am the Vice-President-Regulatory Affairs of KCP&L that I am duly authorized to make this affidavit on behalf of KCP&L and GMO, and that the matters and things stated in the foregoing Affidavit are true and correct to the best of my information, knowledge and belief.


Darrin R. Ives

Subscribed and sworn before me this 5th day of November, 2015.




Notary Public