

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

In the Matter of the Application of Kansas City)
Power & Light Company for Approval to Make)
Certain Changes in its Charges for Electric) Case No. ER-2010-0355
Service to Continue the Implementation of Its)
Regulatory Plan)

In the Matter of the Application of KCP&L)
Greater Missouri Operations Company for) Case No. ER-2010-0356
Approval to Make Certain Changes in its Charges)
for Electric Service)

**MOTION FOR PROTECTIVE ORDER OF
KANSAS CITY POWER & LIGHT CO. AND KCP&L GREATER MISSOURI
OPERATIONS CO. TO QUASH DEPOSITION SUBPOENA DUCES TECUM**

Kansas City Power & Light Company (“KCP&L”) and KCP&L Greater Missouri Operations Company (“GMO”) (collectively, “Company”), pursuant to Missouri Rules of Civil Procedure 56.01(c) and 57.09(b)(1), as well as 4 CSR 240-02.090, move for a protective order to quash a deposition subpoena duces tecum served by Staff upon the Company on January 13, 2011.

In support of this Motion, the Company states the following:

1. Two business days prior to the commencement of the KCP&L rate case hearing on January 18, Staff served a subpoena duces tecum on the Company to produce David McDonald, the current Procurement Director of the Iatan Generating Station Construction Project who was hired in September 2009. See Exhibit 1. The subpoena directs Mr. McDonald to appear not at his usual place of business in the Kansas City metropolitan area, but at the Commission’s offices in Jefferson City on Monday, January 24, 2011 -- while the KCP&L rate case is in progress.

2. The duces tecum portion of the subpoena directs him to bring thousands of pages of documents to the deposition, in that Paragraph 4 of Attachment A asks him to produce:

Any e-mails, memorandums, or other correspondence, documentation, or communications to or from supervisors or project managers regarding Iatan Construction Project procurement or contract administration matters for the Iatan Construction Project.

3. Paragraph 3 of Attachment A to the subpoena asks him to produce "Iatan Construction Project book charge policies and procedures since June of 2005." The Company does not understand this request as there are no "book charge" policies or procedures to the best of its knowledge.

4. He is also requested in Paragraphs 1, 2 and 5 of Attachment A to bring a description of his current duties and responsibilities, a description of the duties and responsibilities of those individuals he supervises, as well as his current resume/curriculum vitae.

5. On January 18 the Company spoke with counsel for Staff and offered to produce Mr. McDonald on January 24 in Kansas City or via a telephone deposition, along with documents responsive to Paragraphs 1, 2 and 5 of Attachment A. This offer was rejected by Staff on January 19. Staff did offer to depose Mr. McDonald by telephone and use the deposition at hearing if the Companies produced, in response to Paragraph 4, documents sent from Mr. McDonald to supervisors or project managers regarding procurement or contract administration matters for the Iatan Construction Project. However, that still would require the Company to produce in the middle of a hearing over a year's worth of emails, memoranda, correspondence and other documents, spanning the time from when Mr. McDonald was hired in September 2009 to the present.

6. This eleventh hour subpoena, which requests him to produce thousands, if not tens of thousands of pages of document representing "emails, memorandums, or other correspondence, documentation, or communications" from any supervisor or project manager at

the Iatan Construction Project without any time limitation is clearly unreasonable. Staff's investigation into and audits of the Iatan Construction Project relating to both Unit 1 and Unit 2 has been in progress for the past several years. For Staff to serve a subpoena that requests the production -- in the middle of the hearing -- of materials that go back at least as far as June of 2005 and perhaps earlier with regard to "[a]ny emails, memorandums, or other correspondence, documentation, or communications" by "supervisors or project managers" regarding the Iatan Construction Project is not only untimely but an abuse of the discovery process.

7. This Commission has the power to quash these subpoenas under longstanding Missouri authority. In State ex rel. Whitacre v. Ladd, 701 S.W.2d 796, 797-99 (Mo. App. E.D. 1985), the Court of Appeals quashed a deposition subpoena duces tecum that was issued to a medical expert witness on the eve of trial. The subpoena requested the production of documents covering a two and one-half year period relating to individuals examined for insurance litigation purposes. Although the trial court denied the motion, the Court of Appeals disagreed. It found that the subpoena request was "unreasonable, oppressive" as well as "burdensome," and made absolute the preliminary writ of prohibition which it granted. Id. This case followed the earlier decision of Hammack v. White, 464 S.W.2d 520, 523-24 (Mo. App. St. L. 1971), where the Court quashed a subpoena duces tecum serve on the day of trial and sought records for a three-year period. The Hammack Court similarly found the request to be "burdensome" and "untimely," as well as likely to delay the trial. Id. at 524. Accord, Coble v. Coble, 931 S.W.2d 206 (Mo. App. W.D. 1996) (affirmed quashing of subpoena duces tecum served day before hearing, noting "subpoena could have been served at an earlier date to allow adequate time to gather and prepare the documents").

8. Consequently, it is not reasonable for Staff at this late hour to subpoena Mr. McDonald, a relatively new employee of KCP&L, requesting that he provide thousands of

documents relating to years when he was not an employee of KCP&L and that he be deposed while the KCP&L rate case is in progress.

9. The subpoena duces tecum and its Attachment A should be quashed by the Commission. Under Rule 56.01(c), persons from whom discovery is sought are entitled to an order protecting them from “annoyance, embarrassment, oppression, or undue burden or expense.” Requiring the Company to comply with the subpoena duces tecum during the middle of the KCP&L hearing certainly constitutes annoyance, oppression, undue burden and expense. The Rules of Civil Procedure provide this Commission with the authority to “provide that the discovery not be had” under Rule 56.01(c)(1), as well as Rule 57.09(b)(1). State ex rel. Pooker v. Kramer, 216, S.W.3d 670, 671 (Mo. 2007). Allowing Staff at this late day to proceed with the deposition during the course of a hearing will unduly burden both the witness and the Company, and result in significant needless expense.

WHEREFORE, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company respectfully request that a protective order be issued that quashes the subpoena duces tecum dated January 13, 2011 for the deposition of David McDonald.

/s/ Karl Zobrist

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Attorneys for Kansas City Power & Light Co. and
KCP&L Greater Missouri Operations Co.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing was served upon counsel of record on this 20th day of January, 2011.

/s/ Karl Zobrist

Karl Zobrist



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Secretary/General Counsel

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January 13, 2010

Mr. Steven C. Reed, Secretary
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102

RE: Subpoenas Duces Tecum in File Nos. ER-2010-0355 and ER-2010-0356

Dear Mr. Reed:

The Staff of the Missouri Public Service Commission (Staff) hereby requests that you in your capacity as the Secretary of the Missouri Public Service Commission (Commission) and pursuant to Sections 386.040, 386.250(1) and (7), 386.320.3, 386.390.4, 386.420.2, 386.440(1) and (2), 393.140.8, 393.140.9, 393.140.10 and 4 CSR 240-2.100 issue a subpoena duces tecum to Mr. David McDonald, the most recent Procurement Director on the Iatan Construction Project. The Staff is seeking to obtain information relevant to project management and accounting associated with the Iatan Construction Project. The Staff's interest in Mr. McDonald in part has occurred as the result of rebuttal testimony filed by Kansas City Power & Light Company (KCPL).

The documents sought and purpose of questioning Mr. McDonald is to gain information about (1) matters of vendor management, including book charging, and requiring rework, with recovery, if any, of additional costs incurred on the project caused by deficiencies in vendor work, (2) his work with the members of the Iatan Construction Project management team and KCPL executives, and (3) the status of Iatan Construction Project procurement.

The Staff inquired of KCPL the week of January 3, 2011 whether KCPL would make Mr. McDonald available for a deposition and possibly to be called as a witness by the Staff at the hearings scheduled to commence on January 18, 2011. The purpose of the deposition the Staff sought and still seeks is for the Staff to determine whether it needs to call Mr. McDonald as a witness during the hearings. KCPL has indicated that it will not make Mr. McDonald available for a deposition or as a witness at the hearings. As a consequence the Staff is requesting that

you, in your capacity as Secretary of the Commission issue a subpoenas duces tecum to Mr. McDonald.

Thank you for your assistance.

Very truly yours,

/s/ Jaime N. Ott

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/s/ Steven Dottheim

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SUBPOENA

Order to Appear



THE STATE OF MISSOURI: To David McDonald, of Kansas City Power & Light Company, One Kansas City Place, 1200 Main Street, PO Box 418679, Kansas City, Missouri, 64105.

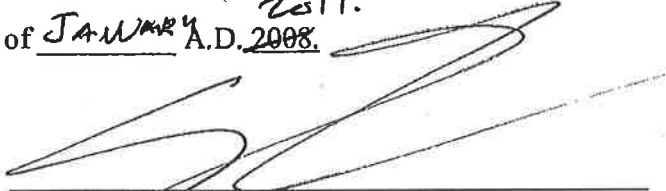
You are hereby commanded, pursuant to §§386.440, 393.140 (9) and (10), 4 CSR 240-2.100, and Supreme Court Rule 57.03 (4), to be and appear personally to testify under oath before a notary public or other person authorized to give oaths on the 24th day of JANUARY A.D., 2010, at 8:00 a.m. of that day, at Governor's Office Building, 8th Floor, Room 810, 200 Madison Street, Jefferson City, in the County of Cole, in the State of Missouri, or at such time, date, and place as the Staff of the Missouri Public Service Commission may agree, to testify at a deposition taken on behalf of the Staff of the Missouri Public Service Commission in *In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Implement its Regulatory Plan*, in Case No. ER-2010-0355, and *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges for Electric Service*, in Case No. ER-2010-0356, which are pending before the Missouri Public Service Commission.

You are further commanded to bring with you and produce at said deposition a copy of the items described on Attachment A.

You are further commanded, pursuant to §§386.440, 393.140 (9) and (10), 4 CSR 240-2.100, and Supreme Court Rule 57.03 (4), to be and appear personally at Governor's Office Building, 3rd Floor, Room 310, 200 Madison Street, Jefferson City, in the County of Cole, in the State of Missouri, to testify at evidentiary hearings in *In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Implement its Regulatory Plan*, in Case No. ER-2010-0355, and *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges for Electric Service*, in Case No. ER-2010-0356, on behalf of the Staff of the Missouri Public Service Commission.

Hereof fail not at your peril. The person or officer serving this writ is commanded to have the same at the time and place aforesaid, certifying thereon its return.

Given under my hand, this 13 day of JANUARY ^{2011.} A.D. 2008.



Steven C. Reed,
Secretary
Public Service Commission of the State of
Missouri

RETURN

I HEREBY CERTIFY, that I have served the within writ by reading the same in the presence and hearing of the within named _____ on the _____ day of _____, _____, in _____ County, in the State of Missouri.

[Name]

[Title]

Attachment A

1. Description of your current duties and responsibilities.
2. Description of the duties and responsibilities of those individuals you supervise.
3. Iatan Construction Project book charge policies and procedures since June of 2005.
4. Any e-mails, memorandums, or other correspondence, documentation, or communications to or from supervisors or project managers regarding Iatan Construction Project procurement or contract administration matters for the Iatan Construction Project.
5. Your current resume/curriculum vitae.