

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

Staff of the Missouri Public Service Commission)	
)	
Complainant,)	
)	
v.)	Case No. EC-2009-0430
)	
KCP&L Greater Missouri Operations)	
and Kansas City Power & Light)	
Company,)	
Respondents.		

**MEMORANDUM IN SUPPORT OF STAFF'S MOTION FOR SUMMARY
DETERMINATION**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and respectfully moves for summary determination of the above captioned case pursuant to Commission Rule 4 C.S.R. 240-2.117(1).

STATEMENT OF FACTS

Staff incorporates by reference herein the facts set out in its Motion for Summary Determination, filed simultaneously with this Memorandum.

STATEMENT OF THE LAW

The Missouri Code of State Regulations provides:

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 all or 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.

4 C.S.R. 240-117(1)(A).

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 the party is

entitled to relief as a matter of as to all or part of the case, and the commission concludes that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

4 C.S.R. 240-2.117(1)(E).

ARGUMENT

Staff is entitled relief as a matter of law and there is no genuine issue of material fact in this matter. According to Commission Rule 4 CSR 240-2.117(1)(a) a “party by motion, with or without supporting affidavits, [may] seek disposition all or part of a case by summary determination at any time after the filing of a responsive pleading. . . .” “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 the party is entitled to relief as a matter of as to all or part of the case, and the commission concludes that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.” 4 C.S.R. 240-2.117(1)(E).

KCPL has been unlawfully operating GMO under the name “KCP&L.” In Commission Case No. EN-2009-0164, the Commission authorized “Aquila, Inc., d/b/a/ Aquila networks – L&P” and “Aquila, Inc. d/b/a Aquila Networks – MPS” to change their name to “KCP&L Greater Missouri Operations.” However, KCPL has purposefully, without Commission authority, decided to operate GMO under the alias “KCP&L.” There is no material issue of fact concerning whether or not GMO has been operating and has been operated under the “KCP&L” name. Thus, Staff is entitled to judgment as a matter of law if that conduct constitutes a violation.

A. The Use of “KCP&L” On Customer Bills Is In Violation of Commission Case No. EN-2009-0164 and Section 417.200 RSMo.

The use of “KCP&L” on GMO customers’ bills is unlawful because such use violates (i) the Commission’s name change order in Case No. EN-2009-0164¹ and (ii) Section 417.200 RSMo., concerning the use of fictitious names by companies doing business in Missouri. Commission Case No. EN-2009-0164 authorized “Aquila, Inc., d/b/a/ Aquila networks – L&P” and Aquila, Inc. d/b/a Aquila Networks – MPS” to change their name to “KCP&L Greater Missouri Operations” not to simply - - “KCP&L.” Further, Section 417.200, RSMo., provides that “every name under which any person shall do or transact any business in this state, other than the true name of such person, is hereby declared to be a fictitious name, and it shall be unlawful for any person to engage in or transact any business in this state under a fictitious name without first registering same with the secretary of state as herein required.” Because “KCP&L” was not a registered fictitious name it was not GMO’s “true name.” Thus, GMO’s operation under the name “KCP&L” was unlawful.

At KCPL’s direction, and under KCPL’s operation, GMO uses “KCP&L” on its bills. (Answer ¶ 8) *See* Exhibit B. It was not until June 1, 2009, that KCPL sought authorization from the Missouri’s Secretary of State office to operate GMO under the fictitious business name “KCP&L.” This *Complaint* was brought prior to KCPL’s request on GMO’s behalf with the Missouri Secretary of State’s Office. Moreover, KCPL has never sought Commission authority to operate GMO under the name “KCP&L.” Since the Companies admit that they use “KCP&L” on the customers bills and have not sought authorization from the Commission to operate under the “KCP&L” name, Staff is entitled to relief as a matter of law.

¹ Such use, prior to date was also in violation of the commission’s name change order Case No. EN-2009-0164

B. The Use of “KCP&L” On Signage Is In Violation of Commission Case No. EN-2009-0164 and Section 417.200 RSMo.

At KCPL’s direction, and under KCPL’s operation, GMO uses of “KCP&L” on signs, which is unlawful because such use violates (i) the Commission’s name change order in Case No. EN-2009-0164² and (ii) Section 417.200 RSMo. concerning the use of fictitious names by companies doing business in Missouri. Reiterating, the Commission Case No. EN-2009-0164 authorized “Aquila, Inc., d/b/a/ Aquila networks – L&P” and Aquila, Inc. d/b/a Aquila Networks – MPS” to change their name to “KCP&L Greater Missouri Operations” not simply – “KCP&L.” Further, Section 417.200 RSMo. provides that “every name under which any person shall do or transact any business in this state, other than the true name of such person, is hereby declared to be a fictitious name, and it shall be unlawful for any person to engage in or transact any business in this state under a fictitious name without first registering same with the secretary of state as herein required.”

At KCPL’s direction, and under KCPL’s operation, GMO uses the name “KCP&L” on signage. (Answer ¶ 21). During July and August 2008, KCPL expended approximately \$56,605 on signs that identified the owner of GMO as “KCP&L.” These signs were displayed at roughly 221 locations owned by GMO. *See* Exhibit F. Respondent’s response to Staff’s Date Request No. 324 in Case No. ER-2009-0090. Again, KCPL’s operation of GMO’s under the name, “KCP&L” is unlawful under the Commission Report and Order issued on November 20, 2008, with an effective date of December 3, 2008, in Case No. EN-2009-0164 and Section 417.200, RSMo., which authorized KCPL to operate GMO under the name “KCP&L Greater Missouri Operations”. Therefore, Staff is entitled to relief as a matter of law.

² Such use, prior to date was also in violation of the commission’s name change order Case No. EN-.2009-0164

C. The Use of “KCP&L” Has Caused Customer Confusion and is Unjust and Unreasonable under Section 393.130(5) RSMo.

KCPL’s operation of GMO’s under the name “KCP&L” is “unjust and unreasonable” in violation of Section 393.130(5), RSMo., because such use causes customer confusion.

[The commission shall] Examine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or changes or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be enforce for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed; and whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaints, that the property, equipment or appliances of any such person or corporation are unsafe, insufficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

Section 393.130(5) RSMo.

The Companies contend that since they filed the fictitious name “KCP&L” with Missouri Secretary of State’s Office on June 1, 2009, that they are in compliance with the law. However, that does not excuse the fact that they had been operating under the unlawful name “KCP&L” during the periods from the December 3, 2008³ leading up to June 1, 2009. Moreover, GMO did not register the fictitious name “KCP&L” until June 1, 2009. (Answer ¶ 27). *See* Exhibit A. Additionally, to date, neither Respondents GMO nor KCPL has filed any record with the Missouri Public Service Commission about use of the fictitious name “KCP&L.”.

³ The effective date of the Report and Order issued in Case No. EN-2009-0164.

There has been more than 30 public comments made in connection with Case Nos. ER-2009-0089 and ER-2009-0090 in which GMO customers indicate that they are customers of “KCP&L.” *See* Exhibit B. The Companies argue that because the public comments are not directly related to “customer confusion,” that must mean the customers have a clear understanding of who their service provider is. (Respondent’s Answer, ¶ 29). Just because the nature of the public comment does not acknowledge customer confusion does not mean that the customer has a clear understanding of who is actually providing them with electrical service. Customers indicated in the public comments that “KCP&L” was their service provider, when in all actuality GMO was their service provided. The Companies’ misuse of the name “KCP&L” has left GMO customers confused and is unjust and unreasonable, and Staff is entitled to relief as a matter of law.

D. GMO’s Use of “KCP&L” Is In Violation of Its Rate Schedules

GMO’s use of “KCP&L” under KCPL’s direction and operation is inconsistent with its filed tariffs. Section 393.140(11) and 4 CSR 240-3.145, require a utility to have its tariffs on file the Commission. The Commission shall “[h]ave the power to require every . . . electrical corporation . . . to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such . . . electrical corporation . . .”. Section 393.140(11) RSMo. Commission Rule 4 CSR 240-3.145 requires every electrical corporation, including Respondents GMO and KCPL, to maintain an accurate schedule of its rates on file with the Commission and to each of its offices and to produce said schedules for public inspection upon request. Such rate schedules shall be

maintained under the Commission's electric filing system, known as "EFIS." Section 393.140(11) RSMo; 4 CSR 240-3.145.

Respondent GMO's schedule of rates are filed in EFIS under the name "KCP&L Greater Missouri Operations Company." This name is also displayed on the title page. *See* Exhibit C. Nowhere in EFIS or on the schedule of rates is GMO referred to as "KCP&L"; nor are any rates maintained under that name. Customers of GMO do not know the true identity of the electric utility that is servicing them, and therefore their ability to inspect Respondent GMO's schedule of rates is impeded. Thus, the Companies have violated Section 393.140(11) and Commission Rule 4 CSR 240-3.145 and Staff is entitled to relief as a matter of law.

CONCLUSION

Respondents GMO and KCPL have stated that there no genuine issues of material fact in this case. (Answer ¶ 1). A motion for summary determination shall be granted if there is no genuine issue of material fact. 4 C.S.R. 240-2.117(1)(E). Respondent "KCP&L Greater Missouri Operations" has been unlawfully operating under the name "KCP&L", under the direction and operation of Respondent "Kansas City Power & Light Company." This unlawful alias has been displayed on customer bills and signage. Furthermore, it has caused customer confusion and is in violation of GMO's tariff sheets. The Commission must grant Staff's motion for summary determination because the material fact is undisputed that GMO has been operating under the name "KCP&L" under the direction and operation of KCPL. 4 C.S.R. 240-2.117(1)(E).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 2nd day of October, 2009.

/s/ Jaime N. Ott