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August 24, 1999

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED²

AUG 24 1999

Missouri Public
Service Commission

RE: Empire District Electric Company
Case Nos. EX-99-442

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **Motion to Compel** (NP Version) and an original and six of the **HC sets** filed under seal. Please "file" stamp the extra enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

John B. Coffman
Deputy Public Counsel

JBC:mk

cc: Counsel of Record

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

In The Matter Of 4 CSR 240-20.015)
Proposed Rule – Electric Utilities) Case No. EX-99-442
Affiliate Transactions.)

FILED²

AUG 24 1999

Missouri Public
Service Commission

Motion to Compel

Comes now the Office of the Public Counsel (Public Counsel) and for its Motion to Compel state as follows:

1. On August 6, 1999, Public Counsel propounded Data Requests 526 and 527 upon Kansas City Power & Light Company (KCPL). On August 16, 1999, KCPL counsel sent a letter to Public Counsel objecting to these Data Requests. (Attachment A – Highly Confidential, provided under seal).

2. Public Counsel Data Request 526 merely requests two paragraphs from a KCPL affiliate's strategic business plan. Public Counsel is aware of the contents of these two paragraphs because it received this information through discovery conducted in Case No. EM-97-515. However, Paragraph S of the Protective Order issued in Case No. EM-97-515 prevents the use of that information in this rulemaking case, unless it can be obtained independently in this case.

KCPL objects to this data request on the grounds that it is "irrelevant, over broad, and constitutes an invasion of a non-party's privacy." (Attachment A, page 1). However, the only support that KCPL provides for these objections is a reference to the Commission's August 3, 1999 Order Granting Public Counsel's Motion to Compel. KCPL states that this Commission

determined that information contained in strategic plans is not relevant to the proposed rule in this case. KCPL overstates the Commission's ruling. The Commission's August 3, 1999, Order in this case stated that Public Counsel can inquire about "current activities." The specific two paragraph excerpt that Public Counsel seeks is directly relevant to the affiliate transaction issues contested in this case, and involves current and past activities involving KCPL and an affiliate.

3. Public Counsel Data Request 527 merely requests a copy of the contract documentation that KCPL submitted pursuant to its special contract tariff (Schedule SCS) with regard to contracts that are the subject of a Commission complaint case, Case No. EC-99-485. Paragraph S of the Protective Order issued in that complaint case prevents Public Counsel from using the information obtained in the context of that complaint case for purposes of any other case, and thus Public Counsel has requested the information independently in this matter.

KCPL objects to this data request on the grounds that the information is "irrelevant and beyond the scope of these proceedings." (Attachment 1, page 2). Public Counsel contends that this information is relevant to the issues raised in this rulemaking, and it is information that KCPL is already required to provide pursuant to its tariffs, regardless of how relevant it is to this case.

4. Public Counsel and KCPL have discussed the two Data Requests in dispute and have been unable to reach a compromise. It is clear that the information requested will not be provided in the context of this rulemaking absent an order to compel issued by the Commission. It is unrealistic to expect that the data requested could be compelled prior to the Commission's deadline for supplemental comments in this rulemaking, but if the information could be compelled prior to the hearing scheduled for September 14, 1999, Public Counsel would be better prepared to answer questions at that hearing.

5. If the Regulatory Law Judge or the Commission are unable to determine, on the basis of pleadings, whether the information in dispute should be compelled in this rulemaking case, KCPL could be ordered to provide the information in dispute directly to the Regulatory Law Judge for review. Public Counsel is confident that if the bench were allowed to review the information requested, then the bench would reach the conclusion that Data Requests 526 and 527 are proper and would compel the production of the information.

WHEREFORE: Public Counsel respectfully requests that the Commission, pursuant to Section 386.450 RSMo. 1994, Commission Rule 4 CSR 240-2.090, and Civil Rule 56, issue an order compelling KCPL to fully answer Data Requests 526 and 527, along with any other relief deemed just and reasonable.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: 

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 24th day of August, 1999:

Dan Joyce
Missouri Public Service Commission
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Gary Duffy
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A handwritten signature in cursive script, appearing to read "J B Coffey", is written over a horizontal line.