

**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 HEARING SUBPOENAS**

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 three hearing subpoenas served by Staff upon the Company on January 14, 2011, or otherwise to limit their terms and conditions.

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

1. On January 14, 2011 Staff served a request to compel the attendance of Company employees Terry Bassham, Denise Shumaker, and David McDonald to appear at the KCP&L rate case hearing on January 25, 2011. See Exhibits 1-3. Because Mr. Bassham and Ms. Shumaker have been deposed by Staff, there is no good reason why they should be compelled to attend the hearing. Instead, their depositions should be submitted to the Commission with appropriate designations. Since Staff rejected the Company’s offer to produce Mr. McDonald

for a deposition (pursuant to a subpoena duces tecum served by Staff on January 13), the Company asks that his hearing subpoena be quashed as well.

2. Mr. Bassham, KCP&L's Executive Vice President of Utility Operations, was deposed by Staff on January 12, 2011. Ms. Shumaker, an accounting policy expert at KCP&L, was also deposed on January 12, 2011. The transcripts of these depositions have been prepared and circulated to the parties who were present at the taking of the depositions.

3. The Company offered to produce Mr. McDonald, the Director of Procurement, for a deposition if the scope of the document request attached to the subpoena duces tecum served upon him was narrowed, but Staff refused this offer. Staff's counter-proposal was not acceptable to the Company. Therefore, the Company has moved for a protective order to quash that deposition subpoena in a separate pleading.

4. Missouri Rule of Civil Procedure 57.07(a) provides: "Depositions may be used in court for any purpose." The Commission, like a trial court, has broad discretion in determining whether to admit deposition testimony. See Hemeyer v. Wilson, 59 S.W.3d 574, 580 (Mo. App. W.D. 2001). Thus, the Commission could admit into evidence the deposition transcripts of these witnesses and avoid unnecessarily duplicative live testimony.

5. Once admitted, "depositions of witnesses are used as evidence in all respects as though the witnesses orally testified in open court." Robertson v. Cameron Mut. Ins. Co., 855 S.W.2d 442, 448 (Mo. App. W.D. 1993). Because deposition testimony is given the same credibility as live testimony at trial, where a deposition transcript is available and admitted into evidence, the party deposed need not be subpoenaed to testify at trial.

6. Therefore, the Commission should direct Staff to designate by page and line the portions of the transcript it seeks to offer into evidence. The Company should then be permitted

an opportunity to submit any objections for the Commission's consideration, and to counter-designate any additional passages of the depositions, with Staff given the right to object to any such counter-designations.

7. This would be similar to the process often used in judicial proceedings where portions of the deposition transcripts are offered into evidence, and the non-offering party is then permitted to rebut the offered testimony by reading into the record any additional portions of the deposition. After selections from a deposition are proffered to the Court or the jury, the opposing party's remedy is to utilize the deposition to clarify, rebut the inferences to be drawn from the selections, or explain its side of the controversy. Saddleridge Estates, Inc. v. Ruiz, 2010 WL 3743761 *3 (Mo. App. W.D. 2010). "As a general rule, once one party reads a portion of a deposition, the opposition may read some or all of the remainder in explanation." Bowls v. Scarborough, 950 S.W.2d 691, 703 (Mo. App. W.D. 1997).

8. Given the constraints upon the Commission's time and resources, and the fact that Commissioners consider pre-filed written testimony in the majority of cases pending before them, the process of designating and counter-designating deposition testimony would be the most efficient means of presenting deposition testimony to the Commission.

9. With regard to the David McDonald subpoena, the Company asks that the hearing subpoena be quashed, and that Mr. McDonald be permitted to appear for a deposition pursuant to the terms offered by the Company, as described in its Motion for Protective Order to Quash Deposition Subpoena Duces Tecum.

WHEREFORE, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company respectfully request that a protective order be issued that:

(1) Quashes the hearing subpoenas dated January 14, 2011 to Terry Bassham and Denise Shumaker (Exhibits 1 and 2), and instead order Staff to use these witnesses' deposition testimony, as may be designated by the parties, and

(2) Quash the hearing subpoena dated January 14, 2011 to David McDonald (Exhibit 3), and provide that Staff may depose Mr. McDonald in the manner that it deposed Mr. Bassham and Ms. Schumaker, and on the terms offered by the Company, as described in the Motion for Protective Order to Quash Deposition Subpoena Duces Tecum.

/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



Commissioners
ROBERT M. CLAYTON III
Chairman
JEFF DAVIS
TERRY M. JARRETT
KEVIN GUNN
ROBERT S. KENNEY

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

WESS A. HENDERSON
Executive Director
DANA K. JOYCE
Director, Administration and
Regulatory Policy
ROBERT SCHALLENBERG
Director, Utility Services
NATELLE DIETRICH
Director, Utility Operations
STEVEN C. REED
Secretary/General Counsel
KEVIN A. THOMPSON
Chief Staff Counsel

January 14, 2011

Steven Reed,
General Counsel/Secretary
Missouri Public Service Commission
200 Madison Street
Jefferson City, MO 65102

RE: ER-2010-0355 & ER-201-0356 Request for Subpoena for Terry Bassham

Secretary Reed:

The Staff of the Missouri Public Service Commission (Staff) requests that the Secretary of the Missouri Public Service Commission pursuant to Section 386.440 RSMo and 4 CSR 240-2.100 issue a subpoena for the attendance of, **Terry Bassham** at an evidentiary hearing beginning on **January 25, 2011 at 8:30 a.m.** and continuing thereafter until excused, at **200 Madison Street, Jefferson City MO 65102**, in the Hearing Room 310. In PSC Cases ER-2010-0355 and ER-2010-0356, Kansas City Power & Light Company, Inc, and KCP&L Greater Missouri Operation's have requested a rate increase. Under Commission Rule 4 CSR 240-2.100(2), a subpoena for appearance as a witness in an evidentiary hearing "shall not be issued fewer than twenty (20) days before hearing" except for a showing of good cause. On Wednesday, January 12, 2011, Staff deposed Mr. Bassham. During said deposition, Staff became aware of, among other things, new relevant information related to the rebuttal testimony of KCPL/GMO witness Dr. Kris Nielsen respecting the Iatan 1, Iatan 2 and Iatan Common Plant Construction Projects, it believes is necessary in presenting its case to the Commission. Staff believes that new information obtained during the January 12, 2011 deposition warrants good cause to serve the subpoena on less than the 20 days requirement.

Thank you for your assistance. If you require anything further, please do not hesitate to contact me at jaime.ott@psc.mo.gov or 573-751-8700.

Sincerely,

Jaime N. Ott
Legal Counsel

SUBPOENA

**Order to Appear for Evidentiary Hearing in
Case Nos. ER-2010-0355 and ER-2010-0356**



THE STATE OF MISSOURI: To **Terry Bassham**, Kansas City Power & Light Company, One Kansas City Place, 1200 Main Street, PO Box 418679, Kansas City, Missouri, 64105

SERVE at: 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 §§386.250; 386.440; 393.130; 393.140 (9), (10) and (12); 4 CSR 240-2.100; and Supreme Court Rules 57.03, 57.09(b) and 58.01, to be and appear personally before The Public Service Commission of the State of Missouri on **January 25, 2010**, at **8:30 a.m.** at the Missouri Public Service Commission, **200 Madison Street, Rm. 310**, in the County of Cole, in the State of Missouri, 65102, to testify at a evidentiary hearing in the matter of Kansas City Power and Light Company, Inc. and KCP&L Greater Missouri Operations Company's application to Implement a General Rate Increase in Electric Service, PSC Case Nos. ER-2010-0355 and ER-2010-0356; on behalf of the Staff of the Missouri Public Service Commission.



Commissioners
ROBERT M. CLAYTON III
Chairman
JEFF DAVIS
TERRY M. JARRETT
KEVIN GUNN
ROBERT S. KENNEY

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Secretary/General Counsel
KEVIN A. THOMPSON
Chief Staff Counsel

January 14, 2011

Steven Reed,
General Counsel/Secretary
Missouri Public Service Commission
200 Madison Street
Jefferson City, MO 65102

RE: ER-2010-0355 & ER-201-0356 Request for Subpoena for Denise Shumaker

Secretary Reed:

The Staff of the Missouri Public Service Commission (Staff) requests that the Secretary of the Missouri Public Service Commission pursuant to Section 386.440 RSMo and 4 CSR 240-2.100 issue a subpoena for the attendance of, **Denise Shumaker** at an evidentiary hearing beginning on **January 25, 2011 at 11:00 a.m.** and continuing thereafter until excused, at **200 Madison Street, Jefferson City MO 65102**, in the Hearing Room 310. In PSC Cases ER-2010-0355 and ER-2010-0356, Kansas City Power & Light Company, Inc, and KCP&L Greater Missouri Operation's have requested a rate increase. Under Commission Rule 4 CSR 240-2.100(2), a subpoena for appearance as a witness in an evidentiary hearing "shall not be issued fewer than twenty (20) days before hearing" except for a showing of good cause. On Wednesday, January 12, 2011, Staff deposed Ms. Shumaker. During said deposition, Staff became aware of, among other things, new relevant information related to the rebuttal testimony of KCPL/GMO witness Dr. Kris Nielsen respecting the Iatan 1, Iatan 2 and Iatan Common Plant Construction Projects, it believes is necessary in presenting its case to the Commission. Staff believes that new information obtained during the January 12, 2011 deposition warrants good cause to serve the subpoena on less than the 20 days requirement.

Thank you for your assistance. If you require anything further, please do not hesitate to contact me at jaimn.ott@psc.mo.gov or 573-751-8700,

Sincerely,

Jaime N. Ott
Legal Counsel

SUBPOENA

**Order to Appear for Evidentiary Hearing in
Case Nos. ER-2010-0355 and ER-2010-0356**



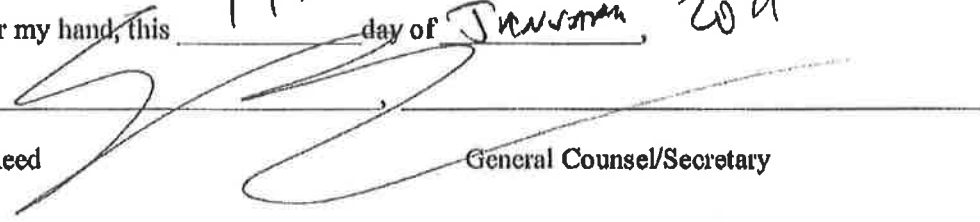
THE STATE OF MISSOURI: To **Denise Shoemaker**, Kansas City Power & Light Company, One Kansas City Place, 1200 Main Street, PO Box 418679, Kansas City, Missouri, 64105

SERVE at: 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 §§386.250; 386.440; 393.130; 393.140 (9), (10) and (12); 4 CSR 240-2.100; and Supreme Court Rules 57.03, 57.09(b) and 58.01, to be and appear personally before The Public Service Commission of the State of Missouri on **January 25, 2010**, at **11:00 a.m.** at the Missouri Public Service Commission, **200 Madison Street, Rm. 310**, in the County of Cole, in the State of Missouri, 65102, to testify at a evidentiary hearing in the matter of Kansas City Power and Light Company, Inc. and KCP&L Greater Missouri Operations Company's application to Implement a General Rate Increase in Electric Service, PSC Case Nos. ER-2010-0355 and ER-2010-0356; on behalf of the Staff of the Missouri Public Service Commission.

Given under my hand, this 14th day of January, 2011

Steven C. Reed



General Counsel/Secretary

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]



Commissioners
ROBERT M. CLAYTON III
Chairman
JEFF DAVIS
TERRY M. JARRETT
KEVIN GUNN
ROBERT S. KENNEY

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KEVIN A. THOMPSON
Chief Staff Counsel

January 14, 2011

Steven Reed,
General Counsel/Secretary
Missouri Public Service Commission
200 Madison Street
Jefferson City, MO 65102

RE: ER-2010-0355 & ER-201-0356 Request for Subpoena for David McDonald

Secretary Reed:

The Staff of the Missouri Public Service Commission (Staff) requests that the Secretary of the Missouri Public Service Commission pursuant to Section 386.440 RSMo and 4 CSR 240-2.100 issue a subpoena for the attendance of, **David McDonald** at an evidentiary hearing beginning on **January 25, 2011 at 2:00 p.m.** and continuing thereafter until excused, at **200 Madison Street, Jefferson City MO 65102**, in the Hearing Room 310. In PSC Cases ER-2010-0355 and ER-2010-0356, Kansas City Power & Light Company, Inc, and KCP&L Greater Missouri Operation's have requested a rate increase.

Under Commission Rule 4 CSR 240-2.100(2), a subpoena for appearance as a witness in an evidentiary hearing "shall not be issued fewer than twenty (20) days before hearing" except for a showing of good cause. Staff served a subpoena *decus tecum* on David McDonald for a Monday January 23, 2011. Staff believes it will likely discover information within that deposition which Staff will want to use during the evidentiary hearing scheduled for January 18 – February 4, 2011. The issues related to the Iatan 1, Iatan 2 and Iatan Common Plant Construction Projects are set for January 18 – 25, 2011. Due to the schedule of the hearing, Staff believes it is necessary to serve this subpoena on Mr. McDonald to ensure his availability during the evidentiary hearing.

Staff believes that new information likely to be obtained during the January 12, 2011 deposition warrants good cause to serve the subpoena on less than the 20 days requirement.

Thank you for your assistance. If you require anything further, please do not hesitate to contact me at jaime.ott@psc.mo.gov or 573-751-8700.

Sincerely,

Jaime N. Ott
Legal Counsel

SUBPOENA

**Order to Appear for Evidentiary Hearing in
Case Nos. ER-2010-0355 and ER-2010-0356**

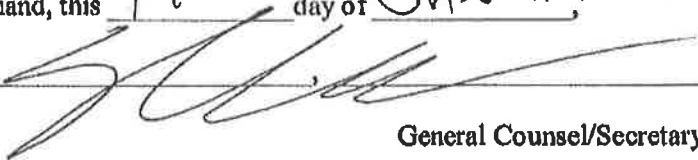


THE STATE OF MISSOURI: To **David McDonald**, Kansas City Power & Light Company, One Kansas City Place, 1200 Main Street, PO Box 418679, Kansas City, Missouri, 64105

SERVE at: 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 §§386.250; 386.440; 393.130; 393.140 (9), (10) and (12); 4 CSR 240-2.100; and Supreme Court Rules 57.03, 57.09(b) and 58.01, to be and appear personally before The Public Service Commission of the State of Missouri on **January 25, 2010**, at **2:00 p.m.** at the Missouri Public Service Commission, **200 Madison Street, Rm. 310**, in the County of Cole, in the State of Missouri, 65102, to testify at a evidentiary hearing in the matter of Kansas City Power and Light Company, Inc. and KCP&L Greater Missouri Operations Company's application to Implement a General Rate Increase in Electric Service, PSC Case Nos. ER-2010-0355 and ER-2010-0356; on behalf of the Staff of the Missouri Public Service Commission.

Given under my hand, this 14th day of January, 2011


Steven C. Reed General Counsel/Secretary

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]