

**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 Company and)	
Kansas City Power & Light Company,)	
)	
Respondents.)	

MOTION FOR SUMMARY DETERMINATION

COMES NOW Kansas City Power & Light Company (“KCP&L”) and KCP&L Greater Missouri Operations Company (“GMO”) (collectively, the “Companies”) , pursuant to 4 CSR 240-2.117(1), by and through its attorneys, and hereby files this Motion For Summary Determination (“Motion”)¹.

I. INTRODUCTION

1. The gravamen of Staff’s Complaint is that GMO’s use of the “KCP&L” brand is unlawful because “GMO has not sought, and has not obtained, authority from either the Missouri Secretary of State or this Commission to operate under the name ‘KCP&L.’”² The Companies respectfully disagree. It is lawful and appropriate for GMO to use the “KCP&L” brand and no additional authorization is necessary. The

¹ On June 26, 2009, the Companies filed their Answer And Motion For Determination On The Pleadings Of Kansas City Power & Light Company And KCP&L Greater Missouri Operations Company (“Answer”), including eleven attachments which are incorporated herein by reference. On July 29, 2009, the Commission issued its Order Denying Motion For Judgment On The Pleadings And Setting Prehearing Conference which denied the Companies’ Motion For Judgment on the Pleadings, and scheduled a prehearing conference. On September 9, 2009, the Staff filed a proposed procedural schedule which included the filing of Motion(s) For Summary Determination by October 2, 2009. This Motion is being filed pursuant to the procedural schedule adopted by the Commission. See Order Adopting Procedural Schedule (September 10, 2009).

² Staff Complaint, at ¶ 14.

Commission's order in the merger proceeding (Case No. EM-2007-0374) and the name change orders authorizing the change from Aquila, Inc. to KCP&L Greater Missouri Operations Company (Case Nos. EN-2009-0015 and EN-2009-0164) provide all the authorization that is required. Nonetheless, in an attempt to address Staff's concerns, GMO and KCP&L each submitted a Registration of Fictitious Name form with the Missouri Secretary of State, registering "KCP&L" as a fictitious name. Collectively, those registrations indicate that both KCP&L and GMO are doing business under the fictitious name "KCP&L."³

2. Simplified brand names, such as "KCP&L," allow customers and their utility to communicate without the customers having to have intimate knowledge of the cumbersome and often complex corporate structures of the companies serving them.⁴ Significantly, GMO's use of the "KCP&L" brand is consistent with how the Companies explained to their customers they would operate following the close of the merger. Through newspaper ads, billing inserts, and by separate customer mailings, GMO explained to each of its customers that "Aquila is being acquired by Great Plains Energy, *and will operate under the KCP&L brand.*"⁵ Moreover, the Companies clearly explained in the merger proceeding that the operations of the two Companies would be integrated, with KCP&L acting as the operator.⁶ Simply put, the Companies are

³ See Answer, Attachment 1.

⁴ For example, to effectively communicate with his electric utility a customer living in St. Joseph, Missouri did not need to know that he was served by "Aquila, Inc., dba Aquila Networks – For Territory Served by Aquila Networks – L&P," a division of Aquila, Inc., a Delaware Corporation, as a result of its merger with St. Joseph Light and Power Company, with Aquila, Inc. as the surviving entity. Instead, the customer simply received a bill from "Aquila" and could contact "Aquila" with any questions or concerns regarding his electric service.

⁵ See Answer, Attachment 2 (emphasis added).

⁶ Merger Order, at p. 226 ("The Application incorporates by reference the prefiled testimony from Great Plains and KCPL's witnesses that fully outline the specifics of the transaction, including the integration of KCPL and Aquila's operations."); Order, at ¶ 571 ("Aquila's employees will become KCPL

operating precisely how they told the Commission and their customers they would operate.

3. With few possible exceptions, it would appear that no utility in the state has availed itself of either a formal name change proceeding before the Commission or a fictitious name registration with the Missouri Secretary of State for authorization to use a brand or service mark comprised of a shortened or abbreviated version of the company's full legal name. To the contrary, as detailed in the Companies' Answer, it would seem that virtually every utility in the state uses a brand or service mark shortening its full legal name without such authorization or registration.⁷ It is not at all clear why the use of the "KCP&L" brand by Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company is any different.

4. In sum, GMO's use of the "KCP&L" brand is lawful, appropriate, and consistent with how the Companies told the Commission and their customers they would operate following the merger. Such use is also consistent with the use of brands or

employees and services will be provided to Aquila from KCPL, GPES and Great Plains."); Merger Order, at p. 250 ("KCPL Vice President of Customer Operations William Herdegen explained KCPL's process and future steps to ensure that customer service and reliability will not deteriorate after the close of the transaction. The strategy is to adopt the KCPL organization design to minimize change as much as possible for combining the two companies' customer service functions."); Merger Order, at ¶ 478 ("KCPL will pool the combined operational workforce to more efficiently address customer needs."); Merger Order, at ¶ 484 ("Currently, both companies serve the Kansas City District from eleven service centers. The combined operation will serve this district from six service centers."); Merger Order, at ¶ 496 ("The[] five operating areas, although different in customer size and area, will be operated as an integrated organization."); Merger Order, at ¶ 529 ("A single call center for the new Great Plains customer base will be created. The call center, referred to as the Customer Care Center, will handle all residential and business customer contacts for time-saving, self-service options for any service or account need including service requests, new construction or service upgrades, billing and account information, payment options, and special programs and services."); Merger Order, at ¶ 250 ("The post-transactional operational model planned by Great Plains will allow the full range of synergies to be accessed.").

⁷ See, e.g.,



service marks by virtually every utility operating in the state. The Companies concede that GMO is “operating under the ‘KCP&L’ brand,” as the Companies told their customers it would, including use of the brand on customer bills and signage. Such use is the factual basis of Staff’s Complaint, and no material issues of fact exist concerning such use. Consequently, this matter is ripe for resolution by the Commission based on the Companies’ Motion For Summary Determination.

II. MATERIAL FACTS NOT IN DISPUTE AMONG THE PARTIES

5. As indicated above, there are no material facts in dispute between the Companies and Staff that require resolution by the Commission prior to its determination of the underlying legal issues in this case. During the prehearing conference held on August 19, 2009, both counsel for Staff and the Companies confirmed that there are no material facts in dispute, and that it is appropriate to resolve this matter based upon a Motion For Summary Determination. (Tr. 4-5)

6. Pursuant to 4 CSR 240-2.117(1)(B), the Companies will state with particularity in separately numbered paragraphs material facts that are not in dispute between the Staff and the Companies. The following facts have already been admitted in the Answer And Motion For Determination On The Pleadings Of Kansas City Power & Light Company And KCP&L Greater Missouri Operations Company (“Answer”) filed on June 26, 2009 and are not in dispute in this proceeding:

1. Respondent Kansas City Power & Light Company (“KCPL”) is a Missouri general business corporation in good standing, formed on July 29, 1922, with its principal place of business located at 1201 Walnut Street, Kansas City, Missouri 64106.⁸ Its registered agent is

⁸ Effective September 21, 2009, Great Plains Energy, KCP&L, GMO and KCP&L, Inc. have relocated their principal place of business to a new headquarters building located at One Kansas City Place, 1200 Main, Kansas City, Missouri 64106. See Notification Letter to Steve Reed, Secretary, of the Missouri Public Service Commission from Victoria Schatz filed in this proceeding on September 18, 2009.

National Registered Agents, Inc., 300-B East High Street, Jefferson City, Missouri 65101. KCPL is an integrated electric utility that provides electricity to customers primarily in the states of Missouri and Kansas. (See Answer, p. 6, note15)

2. Respondent KCP&L Greater Missouri Operations Company (“GMO”) is a Delaware general business corporation in good standing, duly qualified to do business in Missouri since March 27, 1987, with its principal place of business located at 1201 Walnut Street, Kansas City, Missouri 64106⁹. Its registered agent is CT Corporation System, 120 South Central Avenue, Clayton, Missouri 63105. GMO is an integrated, electric utility that primarily provides electricity to customers in the state of Missouri. (See Answer, p. 6, note15)

3. Both Respondent KCPL and Respondent GMO are wholly-owned subsidiaries of Great Plains Energy Incorporated (“GPE”), a publicly-traded Missouri general business corporation in good standing, formed on February 26, 2001, with its principal place of business located at 1201 Walnut Street, Kansas City, Missouri 64106¹⁰. Its registered agent is National Registered Agents, Inc., 300-B East High Street, Jefferson City, Missouri 65101. In filings with the Securities and Exchange Commission and on its corporate website, GPE represents that, through KCPL and GMO, it provides retail electric service to some 820,000 customers in Missouri and Kansas. GPE also represents that it controls generation assets rated at more than 6,000 MW. (See Answer, p. 6, note 15)

4. GPE acquired Respondent GMO, then called “Aquila, Inc.,” on July 14, 2008, pursuant to authority granted by the Commission in its Report & Order in Case No. EM-2007-0374, issued on July 1, 2008, and effective on July 11, 2008.¹¹ (See Answer, p. 6, note 15)

5. Pursuant to the order of the Commission set out in the Report & Order referred to in Paragraph 4, above, Respondent KCPL and Respondent GMO on October 10, 2008, executed and filed their Joint Operating Agreement in Case No. EM-2007-0374, in which Respondent KCPL was designated as Respondent GMO’s agent and operator of its business and properties and expressly accepted responsibility therefor. (See Answer, p. 6, note 15)

6. Respondents KCPL and GMO are electrical corporations and public utilities within the intendments of Chapters 386 and 393, RSMo,

⁹ See note 8 *supra*.

¹⁰ See note 8 *supra*.

¹¹ In the Matter of the Joint Application of Great Plains Energy, Incorporated, Kansas City Power & Light Company and Aquila, Inc., Case No. EM-2007-0374 (Report & Order, issued July 1, 2008), p. 281-84.

and thus subject to the jurisdiction, regulation and control of this Commission. (*See Answer*, p. 6, note 15)

7. On July 2, 2008, Respondent GMO filed tariff sheets and initiated a name change proceeding, docketed as Case No. EN-2009-001 5, seeking authority for GMO, then still known as Aquila, Inc., and which had been operating as “Aquila Networks – L&P” and “Aquila Networks – MPS,” to operate as “Aquila, Inc., doing business as KCP&L Greater Missouri Operations Company.” Upon satisfactory proof that the new fictitious name had been duly registered with the Missouri Secretary of State, the Commission granted the requested authority on August 7, 2008, effective August 8, 2008. (*See Answer*, p. 6, note 15)

8. On November 3, 2008, Respondent GMO filed tariff sheets and initiated a name change proceeding, docketed as Case No. EN-2009-0164, seeking authority for GMO to change its name from “Aquila, Inc., doing business as KCP&L Greater Missouri Operations Company,” to “KCP&L Greater Missouri Operations Company.” Upon satisfactory proof that the new name had been approved by the Delaware Secretary of State and duly registered with the Missouri Secretary of State, the Commission granted the requested authority on November 20, 2008, effective December 3, 2008. (*See Answer*, p. 6, note 15)

9. The name “KCP&L, Inc.,” is that of a Missouri close corporation in good standing, formed on April 10, 2009, by Mark English, headquartered at 1201 Walnut Street, Kansas City, Missouri 64106¹². Its registered agent is National Registered Agents, Inc., 300-B East High Street, Jefferson City, Missouri 65101. (*See Answer*, p. 6, note 15)

10. On June 1, 2009, GMO and KCP&L each submitted a Registration of Fictitious Name form with the Missouri Secretary of State registering “KCP&L” as a fictitious name. Collectively, those registrations indicate that both KCP&L and GMO are doing business under the fictitious name “KCP&L.” (*See Answer*, Attachment 1)

11. Bills that included the “KCP&L” brand were issued to GMO’s customers. (*See Answer*, p. 6, note 15)

12. Signs at locations owned by GMO include the “KCP&L” brand. (*See Answer*, p. 13, note 35.)

13. GMO’s schedule of rates are filed with the Commission under the name “KCP&L Greater Missouri Operations Company.” (*See Answer*, p. 17, note 46.)

¹² *See note 8 supra.*

14. The schedule of rates of GMO is not maintained under the name “KCP&L”; nor are any rates maintained under that name. (*See* Answer, p. 17, note 46.)

15. In the future, the Companies expect to seek authorization to merge KCP&L and GMO. (*See* Answer, p. 6, note 15)

III. MOTION FOR SUMMARY DETERMINATION

A. GMO’s Use Of The “KCP&L” Brand On Customer Bills Is Lawful And Appropriate.

15. Staff alleges that GMO’s use of the “KCP&L” brand on customer bills is unlawful because such use purportedly violates (i) the Commission’s name change order in Case No. EN-2009-0164 and (ii) Section 417.200 concerning the use of fictitious names by companies doing business in Missouri.¹³ The Companies respectfully disagree. As set forth more fully in the Companies’ Legal Memorandum, it is entirely lawful and appropriate for GMO to use the “KCP&L” brand on its bills under both the Commission’s name change order and Section 417.200. Such use is also consistent with how virtually every utility in the state does business.¹⁴

16. In Case Nos. EN-2009-0015 and EN-2009-0164, the Commission authorized GMO to change the names of both “Aquila, Inc. dba Aquila Networks – L&P” and “Aquila, Inc. dba Aquila Networks – MPS” to “KCP&L Greater Missouri Operations Company.” Consistent with that authorization, GMO is operating under the brand,

¹³ Staff Complaint, at ¶¶ 19 and 20.

¹⁴ The Companies sought information from Staff concerning Staff’s understanding of how other utilities use brands or service marks in Data Request No. 016, which asked “Is Staff aware of any utility operating in Missouri, including, telephone, natural gas, water, or electric utilities, that does not use a brand or service mark to communicate with and bill its customers? If so, please provide the names of those utilities.” Staff objected, stating that the data request “seeks a response that is overly broad and burdensome. Staff is aware of many utilities operating in Missouri that do not use a brand name or service mark to communicate with and bill customers. A listing of such utilities is an overly broad and burdensome request. Such information is available on EFIS, which is equally available to respondents, and is available in EFIS as a production of business records.”

“KCP&L,” a shortened version of company’s full legal name, KCP&L Greater Missouri Operations Company. Use of such a shortened name is entirely consistent with past practices before the Commission concerning the necessity of formal name change proceedings. Moreover, in the merger proceeding, the Companies clearly explained their intent to have uniform, integrated billing.¹⁵ GMO’s use of the “KCP&L” brand is consistent with the name change authorizations it received in Case Nos. EN-2009-0015 and EN-2009-0164.

17. In addition, no Missouri Court has held that it is necessary under Section 417.200 to register a fictitious name to use a brand or service mark that shortens or abbreviates a company’s full legal name. The purpose of fictitious name registration statutes like Section 417.200 is to ensure fair dealing and prevent fraud or deceit.¹⁶ There is no allegation here of fraud or deceit. Nor has there been a suggestion of a lack of fair dealing between GMO and its customers. To the contrary, the Companies have been completely open about how they intended to operate the Companies and about GMO’s use of the “KCP&L” brand. Through billing inserts and separate mailings, GMO explained to literally each and every one of its customers that “Aquila is being acquired by Great Plains Energy, *and will operate under the KCP&L brand.*”¹⁷ The Companies also publicized that message in several area newspapers. GMO’s use of the “KCP&L” brand is therefore consistent with Section 417.200.

¹⁵ Merger Order, at ¶ 530. (“KCPL will evaluate the approaches each company is taking to payment options, to the delivery and printing of bills, and to the information flow from its meter systems *with the intent of creating one approach to the bill process that customers will understand, regardless of geographic location.*” (emphasis added)). In addition, the Commission expressly recognized that “for ratemaking purposes, separate rate bases will be maintained” for KCP&L, GMO (MPS), and GMO (L&P). Merger Order, at ¶ 252. This is how the Companies have operated—one-approach billing under the different rate schedules of KCP&L, GMO (MPS), and GMO (L&P).

¹⁶ *Hanten v. Jacobs*, 684 S.W.2d 433, 437 (Mo. Ct. App. E.D. 1984); 57 Am. Jur. 2d Name § 68.

¹⁷ See Answer, Attachment 2 (emphasis added).

18. The “KCPL” brand by KCP&L Greater Missouri Operations Company is analogous to the situation addressed in the case of *Williams v. Nuckolls*, 644 S.W.2d 670 (Mo. App. E.D. 1982) wherein the Court of Appeals found “there is no violation of this statute when Mel Nuckolls does business under the name Mel Nuckolls Auto Sales.” In other words, Mr. Nuckolls (like GMO) was not using a fictitious name because he was using his true name.

19. In sum, Staff’s position is that GMO’s use of the “KCP&L” brand is unlawful because GMO did not (i) get specific authority from the Commission under 4 CSR 240-2.060(5) to use the “KCP&L” brand or (ii) file “KCP&L” as a fictitious name with the Missouri Secretary of State, which both Companies have recently done. As described above, such steps are not a prerequisite for GMO to use the “KCP&L” brand. Neither the Commission’s name change orders, nor Section 417.200 require it. In fact, nearly universally, utilities operating in Missouri use a brand or service mark that shortens or abbreviates the company’s full legal name without such authorization or registration. Consequently, if Staff’s allegations against the Companies have merit, it would appear that nearly every utility in the state is operating illegally. The level of granularity Staff suggests is not only unnecessary in that it would provide no benefit to customers but it would likely only serve to create confusion and increase costs.

20. For all of these reasons, GMO’s use of the “KCP&L” brand on customer bills is lawful and appropriate, and the Commission should dismiss Count I of Staff’s Complaint.

B. GMO's Use Of The "KCP&L" Brand On Signage Is Lawful And Appropriate.

21. Staff alleges also that GMO's use of the "KCP&L" brand on signage at GMO-owned facilities is unlawful because such use again purportedly violates (i) the Commission's name change order in Case No. EN-2009-0164 and (ii) Section 417.200 concerning the use of fictitious names by companies doing business in Missouri.¹⁸ Again, the Companies respectfully disagree. Although GMO does use the "KCP&L" brand on signage, it is entirely lawful and appropriate for the Company to do so under both the Commission's name change order and Section 417.200. As more fully explained in the Companies' Legal Memorandum, such use is also consistent with how virtually every Missouri utility does business.

22. The Companies explain above and in their Legal Memorandum why it is lawful and appropriate under both the name change order in Case No. EN-2009-0164 and Section 417.200 for GMO to operate under the "KCP&L" brand. The Companies will not repeat those arguments here but will incorporate them by reference.

23. GMO's use of the "KCP&L" brand on signage is also consistent with the authorization granted by the Commission in the merger proceeding for the two Companies to consolidate operations.¹⁹ Staff opposed in the merger proceeding the

¹⁸ Staff Complaint, at ¶¶ 24 and 25.

¹⁹ Merger Order, at p. 226 ("The Application incorporates by reference the prefilled testimony from Great Plains and KCPL's witnesses that fully outline the specifics of the transaction, including the integration of KCPL and Aquila's operations."); Merger Order, at p. 222 ("Although Aquila and KCPL will remain separate legal entities, many of the companies' operational functions will be integrated and centralized after the merger closes."); Merger Order, at ¶ 568 ("Although Aquila and KCPL will remain separate legal entities, many of the companies' operational functions will be integrated after the merger closes."); Merger Order, at ¶ 571 ("Aquila's employees will become KCPL employees and services will be provided to Aquila from KCPL, GPES and Great Plains."); Merger Order, at ¶ 476 ("With regard to the effect the merger will have on customers and communities served by KCPL and Aquila in Missouri: (1) KCPL ranks in the top tier of performance in nearly every category typically benchmarked by utilities, including production cost, reliability, distribution cost to serve per customer, and is nearing top-tier in customer satisfaction; and, (2) it is Great Plains' and KCPL's objective to combine management practices

Companies' proposal to consolidate operations. The Commission ruled against Staff, finding "that the operational integration of KCPL and Aquila will produce substantial benefits for their respective customers."²⁰ The Complaint continues Staff's argument against the consolidated operation of KCP&L and GMO. As the Commission rejected that argument in the merger proceeding, it should reject it again here.

24. GMO's operation under the "KCP&L" brand is consistent with how it told its customers it would operate, how the Commission authorized it to operate in the merger proceeding and name change orders. Such use is also consistent with the requirements of Section 417.200.

25. For these reasons, GMO's use of the "KCP&L" brand on signage is lawful and appropriate, and the Commission should dismiss Count II of Staff's Complaint.

and resources to achieve significant reduction in costs and further enhance reliability and customer satisfaction, with rates lower than they would have been had the merger not occurred."); Merger Order, at p. 250 ("KCPL Vice President of Customer Operations William Herdegen explained KCPL's process and future steps to ensure that customer service and reliability will not deteriorate after the close of the transaction. The strategy is to adopt the KCPL organization design to minimize change as much as possible for combining the two companies' customer service functions."); Merger Order, at ¶ 478 ("KCPL will pool the combined operational workforce to more efficiently address customer needs."); Merger Order, at ¶ 482 ("The combined service territory will be divided into geographic areas known as districts. Within each district employees will operate from multiple service centers."); Merger Order, at ¶ 484 ("Currently, both companies serve the Kansas City District from eleven service centers. The combined operation will serve this district from six service centers."); Merger Order, at ¶ 496 ("The[] five operating areas, although different in customer size and area, will be operated as an integrated organization."); Merger Order, at ¶ 529 ("A single call center for the new Great Plains customer base will be created. The call center, referred to as the Customer Care Center, will handle all residential and business customer contacts for time-saving, self-service options for any service or account need including service requests, new construction or service upgrades, billing and account information, payment options, and special programs and services.").

²⁰ Merger Report and Order, p. 258. *See also*, Merger Order, at ¶ 250 ("The post-transactional operational model planned by Great Plains will allow the full range of synergies to be accessed."); Merger Order, at p. 234 ("Based upon the Commission's findings of fact, the total operational synergies projected to result from the proposed transaction are \$305 million over the first 5-year period. The total synergies created through the first ten years are \$755 million. On a Missouri jurisdictional basis, the total synergies are equal to \$549 million for 10 years, with \$222 million expected during the first 5 years."); Merger Order, at p. 238 ("the resulting synergies from the operational integration of KCPL and Aquila will afford substantial benefits to the companies' customers.").

C. GMO's Use Of The KCP&L Brand Is Not an "Unjust" or "Unreasonable" Act Under Section 393.130(5).

26. Staff alleges that GMO's use of the "KCP&L" brand is "unjust and unreasonable" in violation of Section 393.130(5) because such use allegedly causes customer confusion.²¹ Staff requests the Commission to "order that Respondent GMO operate henceforward as 'KCP&L Greater Missouri Operations Company,' and that Respondent KCPL henceforward operate GMO as 'KCP&L Greater Missouri Operations Company,' unless lawful authority is duly sought and obtained to operate under some other name."²²

27. As a preliminary matter, the Companies would note that both KCP&L and GMO now have on file with the Missouri Secretary of State Fictitious Name Registrations indicating that both intend to operate under the fictitious name, "KCP&L."²³ Such registration constitutes the "lawful authority" Staff asserts the Companies require and therefore renders moot Staff's request for relief in Count III of its Complaint.

28. As more fully explained in the Companies' Legal Memorandum, Staff provides no evidence of the type of customer confusion that would render GMO's use of the "KCP&L" brand "unjust and unreasonable." Missouri courts have not opined on the types of acts that would be unjust or unreasonable under Section 393.130(5). Historically, however, the requirements of Section 393.130 have been enforced to address more tangible issues, such as a utility charging rates other than those authorized by the Commission or to address a utility's undue discrimination among similarly situated

²¹ Staff Complaint, at ¶¶ 28-30.

²² Staff Complaint, at p. 9.

²³ See Answer, Attachment 1.

customers.²⁴ In no case, has a Missouri court interpreted Section 393.130(5) to prohibit a utility from using a brand or service mark. Nor has the Commission. Without prior guidance from the courts or the Commission, one must consider the language of the statute, its intended purpose, and common sense. Presumably, an act is only “unjust” or “unreasonable” under Section 393.130(5) if it has a material or adverse impact on customers. Neither is the case here. There is no evidence of meaningful confusion among GMO’s customers and there is no evidence of any harm to GMO’s customers.

29. For all of these reasons, GMO’s use of the “KCP&L” brand is not “unjust and unreasonable”, and the Commission should dismiss Count III of Staff’s Complaint.

D. GMO’s Use Of The “KCP&L” Brand Is Not Contrary To Its Rate Schedules On File With The Commission.

30. Staff alleges that GMO’s use of the “KCP&L” brand is inconsistent with its filed tariffs. Specifically, Staff asserts that GMO’s use of the “KCP&L” brand is unlawful because “the schedule of rates of Respondent GMO is not maintained under the name ‘KCP&L’; nor are any rates maintained under that name.”²⁵ The Companies respectfully disagree. The statute and Commission regulation cited by Staff, Section 393.140(11) and 4 CSR 240-3.145, require a utility to have its tariffs on file with the Commission. GMO has done so. Significantly, neither Section 393.140(11) nor 4 CSR 240-3.145 prohibit GMO from using the “KCP&L” brand to communication with its customers.

²⁴ *City of Joplin v. Missouri Pub. Serv. Comm.*, 186 S.W.3d 290 (Mo. Ct. App. WD 2005); *GS Technologies Operating Co., Inc. v. Missouri Pub. Serv. Comm.*, 116 S.W.3d 680 (Mo. Ct. App. WD 2003); *Marco Sales, Inc. v. Missouri Pub. Serv. Comm.*, 685 S.W.2d 216 (Mo. Ct. App. WD 1984); *Ashcroft v. Missouri Pub. Serv. Comm.*, 674 S.W.2d 660 (Mo. Ct. App. WD 1984).

²⁵ Staff Complaint, at ¶ 35.

31. As more fully explained in the Companies' Legal Memorandum, the Companies are not aware of a public utility operating in Missouri that only communicates with its customers using the formal name provided on the utility's tariffs. Prior to the merger, for example, Aquila, Inc. used the "Aquila" brand to communicate with its customers despite the fact its tariffs bore the names "Aquila, Inc. dba Aquila Networks – L&P" and "Aquila, Inc. dba Aquila Networks – MPS." In addition, Ameren Corporation presently uses the "AmerenUE" brand to communicate with its customers despite the fact its tariffs bear the names "Union Electric Company Electric Service Missouri Service Area" and "Union Electric Company Gas Service Missouri Service Area." The Empire District Electric Company uses the "Empire" brand despite the fact its tariffs bear the name "The Empire District Electric Company." The Empire District Gas Company also uses the "Empire" brand despite the fact its tariffs bear the name "The Empire District Gas Company." Southern Union Company uses the "MGE" brand, or in some cases "MGE-Missouri Gas Energy," despite the fact its tariffs bear the name "Missouri Gas Energy, a Division of Southern Union Company." Laclede Gas Company uses the brand "Laclede Gas" despite the fact its tariffs bear the names "Laclede Gas Company." It is not at all clear how GMO's use of the "KCP&L" brand is any different when its tariffs bear the name "KCP&L Greater Missouri Operations Company" (emphasis added).

32. There is no requirement that utilities only communicate with their customers using the formal name provided on the utilities' tariffs. In fact, it would appear that no utility in the state does so. The Commission should therefore dismiss Count IV of Staff's Complaint.

IV. PRAYER FOR RELIEF

WHEREFORE, for the reasons stated herein, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company respectfully request that the Commission grant their Motion For Summary Determination and conclude that GMO's use of the "KCP&L" brand is lawful, deny the Staff the relief it seeks in this proceeding, and dismiss the Complaint in its entirety.

Respectfully submitted,

/s/ James M. Fischer

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**Counsel for Kansas City Power & Light Company and
KCP&L Greater Missouri Operations Company**

Dated October 2, 2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Legal Memorandum was served via e-mail or first class mail, postage pre-paid, on this 2nd day of October, 2009, upon:

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