

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE 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 ) **File 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 ) **File No. ER-2010-0356**  
Approval to Make Certain Changes in its )  
Charges for Electric Service )

**KANSAS CITY POWER & LIGHT COMPANY’S AND KCP&L GREATER  
MISSOURI OPERATIONS COMPANY’S RESPONSE TO STAFF’S REQUEST  
FOR A SPECIAL MASTER**

COMES NOW, Kansas City Power & Light Company (“KCP&L”) and KCP&L Greater Missouri Operations Company (“GMO”) (collectively known as the “Company”) and for its response to Staff’s request for a Special Master, states:

1. Staff requests the Missouri Public Service Commission (“Commission”) appoint a Special Master to conduct *in camera* reviews of certain documents produced by the Company. The Company does not believe that a special master is necessary but will not oppose the Commission’s use of a Special Master to expedite the review of these documents for the majority of the data requests on Staff’s Attachment A if the Commission believes it is truly necessary for the Staff to utilize this procedure.

2. Having discussed this issue with the Staff over several months, it is the Company’s belief that the Staff may be pursuing this matter principally to avoid criticism from the Commission, the Company or perhaps other parties, that the Staff did not

exhaust every possible administrative remedy, and did not overturn every stone in its quest of relevant information for its audit.

3. Given the fact that the Commission has recently ruled that “The Companies have not engaged in any dilatory or unreasonable practices in responding to discovery during the construction audit and prudence review,” (*Order Making Findings*, Case No. EO-2010-0259), it seems like an inappropriate use of the Commission’s scarce resources, as well as the limited resources of other parties, at this late stage of the proceedings, for the Commission to approve such an open-ended use of the “Special Master” procedure without any real showing by Staff of what it intends to gain from the tedious exercise, except for a possible showing that it has pursued every available administrative remedy from the Commission to ensure that some portion of a document is not inappropriately classified as attorney-client privileged material. Rather than rubber-stamping this request by Staff, the Company believes that the Commission should indicate to Staff that it is unnecessary to spend hours and hours going over such documents with a Special Master, merely to remove criticism that the Staff did not exhaust every administrative remedy. In the alternative, the Commission should order Staff to make a good cause showing why this use of scarce judicial resources at this juncture of the proceedings makes any sense, given the Commission’s *Order Making Findings* issued in the related Construction Audit case just four (4) months ago.

4. If the Commission decides that it wants to commit its Regulatory Law Judges to this tedious and time-consuming task, the Company would also have a few additional comments. First, the Company does not believe that the ruling of the Special Master shall be final and binding on the parties as requested by Staff. Such a

determination would be a violation of the Company's due process rights. The Commission can delegate its authority to a Special Master to review the documents. The Commission cannot prevent the Company from seeking rehearing and judicial review of any Commission action (including a Special Master review) without violating the Company's rights to due process.

5. A recent Ameren case is a good example of the proper delegation of authority to a Special Master. In ER-2010-0036, the Commission empowered the Special Master to review the privileged materials and prepare an order for the Commission's approval.

6. Second, the Company agrees that one of the Commission's Regulatory Law Judges ("RLJ") should be appointed Special Master. The Company suggests that Harold Stearley would be the most appropriate person to fill this role as he has dealt with the privilege issue in the Company's previous rate case and in other rate cases, and in many cases Judge Stearley has already reviewed for privilege the same documents Staff seeks to have reviewed here.

**I. Staff is challenging some of the same data requests that the RLJ has addressed in previous cases.**

7. The Company began providing privilege logs at the request of Staff in Case Nos. ER-2009-0089 and ER-2009-0090. Prior to those cases, the Company had never been requested or provided privilege logs for any of its data requests. The Company is working to prepare the requested privilege logs as expeditiously as possible.

8. The Staff challenged the Company's assertion of privilege in the Company's 0089 and 0090 rate cases. In those cases, the Staff brought the documents at issue to RLJ Stearley and he made a ruling on what documents should be provided. The

Staff eventually filed a Motion to Compel. On pp 1-2 of its December 9, 2009 Order entitled “Order Regarding Staff’s Motion to Compel,” the Commission found:

On October 30, [2009] the Commission’s Staff filed a motion to compel the production of documents from Kansas City Power and Light Company (“KCPL”). The motion generically referred to documents referenced in Staff’s Data Request 0631, which are invoices requested in association with the prudence review of environmental upgrades to Iatan 1.

On September 14 and 15, the Regulatory Law Judge (“RLJ”) held a discovery conference with the parties concerning thousands of pages of invoices, a small percentage of which contained redactions. During that conference, KCPL waived certain claims of privilege and the RLJ found the remaining asserted privileges appropriate.

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On November 12, another discovery conference was held. At that conference, issues were raised with regard to Staff’s Data Requests Numbers 339, 342, 350, 358, 360, 363, 370, 411, 413, 415, 430, 490 (the DRs 339-490 were all made on January 14, 2009), and 0710 (request made August 17, 2009). At this conference the RLJ directed KCPL to disclose certain portions of the redacted documents at issue, and KCPL agreed to revisit certain documents following the RLJs instructions on which information was discoverable. Staff’s motion to compel does not involve these data requests.

9. Because RLJ Stearley has already reviewed DRs 339, 342, 350, 358, 360, 363, 370, 411, 413, 415, 430, 490, 631 and 710 and either found that the asserted privileges were appropriate or directed KCP&L to disclose certain portions of the redacted documents, the Company believes that Staff should not be allowed to address these data requests again with a Special Master. Staff’s duplication of efforts is not an efficient use of the Commission’s or the Company’s time and resources.

**II. The Commission should not require a privilege log in certain cases because the underlying data requests are too broad.**

10. For 14 of the data requests listed in Attachment A, Staff has indicated that the Company will not provide a privilege log. The Company believes that Staff needs to

narrow its data request for the data requests discussed below before the Company can prepare privilege log.<sup>1</sup>

11. DRs 650 and 439.2 ask the Company to provide Staff with access to the Sharepoint website. Among other objections, the Company indicated to Staff that access to the Sharepoint website would allow the Staff to view certain attorney-client privileged documents that are on the website. To be clear, Staff has not been denied specific documents that it has requested but only access to the Sharepoint website. In order to produce a log of the privileged documents, the Company would have to review over 65,000 records.

12. DR 863 asks for a copy of all correspondence between the Company and Ernst & Young related to the Iatan construction audits that has not already been provided to Staff. The Company objected on the grounds that there are between 50,000 and 100,000 e-mails that would have to be reviewed in order to respond to this request. The Company asked the Staff on December 4, 2009 to narrow its request.

13. DR 899 asks the Company to prepare a privilege log for any document for which it has asserted a privilege. KCP&L believes it has already produced a log for those requests with the exception of the data requests discussed in this section.

14. DR 900.1 requests all documents produced by the law firm of Spencer Fane Britt & Brown and charged to the Iatan project. The Company indicated to Staff that there are over 100 banker's boxes of documents that the Company would have to review in order to provide a privilege log. The Company requests the Staff narrow its request.

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<sup>1</sup> For the other data requests, Company believes it can either provide a privilege log or that no privileged documents exist.

15. DR 902.1 requests all documents produced by the law firm of Morgan Lewis and charged to the project. The Company indicated that there are approximately seven banker's boxes of documents that the Company would have to review in order to provide a privilege log. The Company requests the Staff narrow its request.

16. DR 360S asks for all copies of documents related to the negotiation of the contract with Kiewit for Balance of Plant. The Company estimates that there are hundreds of documents that are potentially responsive to this request. The Company requests that the Staff narrow its request.

17. DRs 398 and 398S ask for all communications related to the Iatan projects between KCP&L and the Duane Morris law firm. The Company would need to review all communication with Duane Morris since 2008 to prepare a log. The Company requests the Staff narrow its request.

18. DR 418 asks for all assessments, audits and advice provided to KCP&L from Schiff Hardin regarding Schiff Hardin's independent review and reporting of the project controls for the Iatan projects. The Company estimates that there are thousands of documents that are potentially responsive to this request. The Company requests the Staff narrow its request.

19. DR 630.3 requests a detailed description of the work performed by the Sonnenschein law firm that was charged to the Iatan construction projects. The Company has provided the firm's bills and a general description of the work performed. The Company would have to review Sonnenschein invoices since 2005 to determine what documents were produced by the firm. The Company requests Staff narrow its request.

20. WHEREFORE, for the above reasons, the Company believes that the Commission should indicate to Staff that it is unnecessary to spend hours and hours going over such documents with a Special Master, merely to remove criticism that the Staff did not exhaust every administrative remedy. In the alternative, the Commission should order Staff to make a good cause showing why this use of scarce judicial resources at this juncture of the proceedings makes any sense, given the Commission's *Order Making Findings* issued in the related Construction Audit case just four (4) months ago. In the event that the Commission determines that a Special Master is necessary, then the Commission should rule that the Special Master not be given binding authority, and finally, that the Company not be required to provide a privilege log for the overly broad Staff data requests discussed herein.

Respectfully submitted,

*/s/ Roger W. Steiner*

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**Attorneys for Kansas City Power & Light  
Company and KCP&L Greater Missouri  
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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed, or mailed, postage prepaid, this 12<sup>th</sup> day of November, 2010, to all counsel of record.

*/s/ Roger W. Steiner* \_\_\_\_\_  
Roger W. Steiner