

**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) **File No. ER-2010-0355**
Certain Changes for Electric Service to Continue) **Tariff No. JE-2010-0692**
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 for Electric) **Tariff No. JE-2010-0693**
Service to Continue the Implementation of Its)
Regulatory Plan)

STAFF’S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

COMES NOW Staff (Staff) of the Missouri Public Service Commission (Commission) and, pursuant to 4 CSR 240-2.090 moves the Commission for an order compelling Kansas City Power & Light Company (KCPL) and KCP&L Greater Missouri Operations Company (GMO) to provide Staff with copies of correspondence between KCPL and GMO witness Chris B. Giles and Schiff Hardin, LLM employees.

1. On December 20, 2010, Staff as a part of the pending KPCL and GMO rate cases submitted Data Request (DR) 580 to KCPL.

2. Staff DR 580 requests from KCPL and GMO the following:

With reference to KCPL witness Chris Giles, please provide the following: 1. A copy of each and every workpaper supporting his testimonies in Case No. ER-2010-0355; and any other workpaper or document he relied upon, in whole or in part, as a basis on which to support his work and conclusions in these proceedings related to the Iatan Construction Project; 2. Other than the 2009 and 2010 KCPL and GMO rate cases, and the 2010 KCC rate case, please provide a copy of all testimony and/or reports filed by Mr. Giles related to construction audits and/or prudence reviews in previous cases before any regulatory jurisdiction; 3. A complete list of all depositions given by the Mr. Giles within the last ten (10) years; 4. A copy of Mr. Giles' current resume or curriculum vitae, including a listing of all educational institutions attended, all degrees earned, and all professional certifications held; 5. A copy of any correspondence, including emails, between Mr. Giles and any

KCPL internal auditor or member of any internal audit team who worked on the Iatan construction audits (including E&Y and Carl Marano) from January 1, 2006 through the current date; **6. A copy of any correspondence, including emails, between Mr. Giles and any Schiff Hardin employee from January 1, 2006 through the current date;** 7. Other than rate case rate design testimony, a list of all testimony of any kind filed by Mr. Giles before any regulatory jurisdiction including the date of the testimony filed and the subject areas covered by the testimony. 8. A list of all construction management, procurement, construction audits, contract administration and similar or related classes attended by Mr. Giles. Please provide the date of the class and description of materials covered in the class. 9. A list and description of all classes attended by Mr. Giles, (including all classes at educational institutions attended) related to auditing activities of any kind.

3. On December 23, 2010, KCPL and GMO objected specifically to Section 6 of Staff's DR 580 stating, "KCP&L objects to this data request on the grounds that it seek privileged attorney-client communications. To the extent this data request concerns any correspondence between Mr. Giles and any Schiff Hardin employee, KCP&L further objects to this data request as being overly broad and unduly burdensome, not relevant, and not reasonably calculated to lead to the discovery of relevant or material information."

4. Undersigned Staff counsel, Jaime Ott certifies Staff has complied with the prerequisites of 4 CSR 240-2.090 to obtaining a Commission Order compelling production of the correspondences Staff requested by Staff DR 580 be produced. Staff attempted to resolve this dispute with KCPL through a telephone conference KCPL counsel Roger Steiner. On December 30, 2010, pursuant to Commission Rule 4 CSR 240-2.090(8)(B) Staff's attorney, Jaime Ott, and KCPL's attorney, Roger Steiner, conferred by telephone with Regulatory Law Judge, Ron Pridgen, the presiding officer in this case. Regulatory Law Judge Pridgen opined that he was unsure on what guidance he would provide the Commission regarding this discovery dispute giving the nature of having a Special Master appointed to handle discovery disputes related to attorney-client privilege and work product doctrine privilege. Regulatory

Law Judge Pridgen indicated that Staff had complied with the Commission Rules and thus could proceed with a Motion to Compel.

5. KCPL asserted to Staff and to Regulatory Law Judge Pridgen that it would be unduly burdensome for KCPL to retrieve and/or produce correspondence between Mr. Giles and Schiff Hardin employees from January 1, 2006 through the current date.

6. Staff disagrees with KCPL and GMO's assertion that it would be unduly burdensome to produce the emails. In Case No. EM-2007-0374, Staff submitted the following Interrogatory to KCPL: "Provide each and every e-mail to or from any or all of the following – Chris Giles, Bill Downey, Dave Price, the accounting team and other KPCL or GPE senior management – regarding the Comprehensive Energy Plan sent at any time during the period June 1, 2005 through June 1, 2008."

7. Given, to the Staff's knowledge, KCPL completely and accurately responded to Staff Interrogatory 22 in Case No. EM-2007-0374, KCPL's and GMO's scope in Staff DR 580 is greatly narrowed. It would limit the communications between Mr. Giles and specifically Schiff Hardin employees from June 1, 2008 through the current date.

8. Mr. Chris Giles, is a former executive of KCPL and currently a contractor to KCPL. He is a key witness in the current rate cases, who has filed both direct and rebuttal testimony. Information contained within the correspondence between Mr. Giles and Schiff Hardin is completely relevant to these current rate cases.

9. While, the Commission may be concerned Staff is requesting communications between a law firm and a current KCPL contractor, it is important to note, that KCPL and GMO did not exclusively engage in legal services with Schiff Hardin, but also a variety of services. *See Highly Confidential Contract for Legal Services Attachment A.* Attachment A specifically

states, ** [REDACTED]

[REDACTED]

[REDACTED] It

further delineates [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ** This clearly illustrates that Schiff Hardin was not predominately

retained to provide legal advice, thus not all communications between Mr. Giles and Schiff Hardin are protected by the attorney-client privilege or work product doctrine. Further, no attorney from Schiff Hardin has entered an entry of appearance in the above referenced rate cases.

10. Because the assertions of attorney-client privilege and attorney work product privilege asserted by KCPL are to the production of information on Schiff Hardin invoices, the Commission should be made aware of, or be reminded of, activities of Schiff Hardin before this Commission.

11. Schiff Hardin, LLP is a general practice law firm located in the Sears Tower on South Wacker Drive, in Chicago Illinois, and has been assisting KCPL in its project management duties at Iatan 1 and Iatan 2. Kenneth M. Roberts is an equity partner, co-chair of the Construction Law Group and member of the executive committee of Schiff Hardin. Mr. Roberts testified in this case on behalf of KCPL, as did Daniel F. Meyer of Meyer Construction Consulting, who identifies himself as having been retained by Schiff Hardin.¹

12. Mr. Roberts testifies² that KCPL engaged Schiff Hardin:

¹ Mr. Meyer in his Rebuttal Testimony at page 1, lines 9-10, identifies the work that he has performed for Schiff Hardin since the early 1990s as “[p]rimarily cost and cost analysis work, project oversight, some scheduling work, some litigation support, all in the construction industry and primarily in the power industry.”
² Direct Testimony of Kenneth M. Roberts, page 3, lines 17-22, filed June 4, 2010, File Nos. ER-2010-0355 and ER-

- a. to help KCPL develop project control procedures to monitor the cost and schedule for the infrastructure projects contained in KCPL's Comprehensive Energy Plan (CEP);
- b. to monitor the CEPs progress and costs, including the review and management of change order requests;
- c. to negotiate contracts with vendors related to the CEP; and
- d. to resolve disputes with vendors that might arise on CEP projects.

13. Not every activity by Schiff Hardin to carry out Schiff Hardin's engagement with KCPL would be attorney-client or attorney work product protected.

14. In addition, Section 386.450, RSMo (2000) provides that the Commission "may require, by order served upon any corporation, person or public utility . . . the production . . . any books accounts, papers or records kept by said corporation, person or public utility in any office place within or without this state."

WHEREFORE, for the foregoing reasons discussed Staff requests the Commission to issue an Order in which it (1) orders KCPL and GMO to provide Staff with correspondences between Mr. Giles and any Schiff Hardin employee as sought in Staff DR 580.

Respectfully submitted;

/s/ Jaime N. Ott

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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 4th day of January, 2011.

/s/ Jaime N. Ott