

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

In the Matter of the Application of Kansas)	
City Power & Light Company Regarding)	
the Sale of Assets and Property Rights)	Case No. EO-2010-0353
Located Near Spearville, Kansas)	

**KCP&L’S REPLY TO STAFF’S RESPONSE TO
APPLICATION AND MOTION FOR EXPEDITED TREATMENT**

Kansas City Power & Light Company (“KCP&L” or “Applicant”) states the following in reply to Staff’s Response to KCP&L’s Applications and Motion for Expedited Treatment.

1. Staff fails to provide the Commission with any legal authority that would support the exercise of jurisdiction under Section 393.190.1¹ with regard to the property at issue in this case. As explained in the Application, KCP&L owns 32 General Electric 1.5 MW wind turbine generators currently in storage on the ground in Ford County, Kansas near Spearville, along with certain property rights, which it proposes to convey to the successful party in an RFP process which is about to conclude.

2. Staff correctly notes that the sole issue in this case is a legal one regarding whether the wind turbines and the property rights that KCP&L owns are part of its “franchise, works or system, necessary or useful in the performance of its duties to the public” under Section 393.190.1. See Staff Response at ¶ 2. Staff offers no argument, factual or legal, that the 32 unused wind turbines and the property rights have ever been “necessary or useful in the performance” of KCP&L’s “duties to the public,” as required by statute. Indeed, it is uncontroverted that they have never been put to such use. As Staff concedes, the “wind turbine

¹ All statutory references are to the Missouri Revised Statutes (2000) and its Cumulative Supplement (2009), as amended.

generators ... are stored near KCPL's existing Spearville Wind Energy Facility" in western Kansas. Id. at 1.

3. Staff's analysis ignores the final sentence of Section 393.190.1, which provides: "Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or other disposition by any ... public utility ... which is not necessary or useful in the performance of its duties to the public" See KCP&L's Application and Motion for Expedited Treatment at ¶¶ 29–32. Instead of responding to KCP&L's statutory argument, Staff resorts to other statutes that define "electric plant" and other terms.

4. However, there is no reason for the Commission to search for a definition of "works" or "system" in Chapter 386. Section 393.190 was one of the original provisions of the Public Service Commission Act passed by the General Assembly in 1913. The legislature carefully chose its words, using not "electric plant" but instead "franchise, works or system," and required them to be "necessary or useful in the performance of [the utility's] duties to the public." Wind turbine generators lying on the ground in crates near Spearville, Kansas, and associated development rights, are not a part of KCP&L's "franchise, works or system." Even assuming these assets are part of KCP&L's "franchise, works or system," the key issue of whether the turbines packed in crates, and the associated development rights, are "necessary or useful in the performance" of KCP&L's "duties to the public" remains. These assets are not now and have never been "necessary or useful in the performance" of KCP&L's "duties to the public."

5. The cases which Staff cites in Paragraphs 10–11 of its Response all pertain to utility property which either had been or at the time of the filing was "necessary or useful in the

performance of [the utility's] duties to the public.” Therefore, each of those cases is distinguishable and not pertinent to this case.

6. Similarly, Staff’s reference to the litigation concerning the South Harper gas turbine peaking plant is not relevant to this proceeding, as those cases concerned the absence of a pre-construction certificate of convenience and necessity under Section 393.170. The statute that controls the issue in this case is Section 393.190.1, which is the only provision that requires analysis by the Commission.

7. The statements by KCP&L in the wind investments docket advised the Commission on its purchase of the 32 wind turbines and its various plans to enable a wind project to be constructed by the end of 2010. See In re Kansas City Power & Light Co. for the Opening of a Proceeding to File Status Report on Wind Investments, Case No. EO-2008-0224. The Third Status Update of February 13, 2009 reviewed its acquisition of the 32 turbines and several project proposals. KCP&L stated: “The Company continues to evaluate when and how best to proceed with these options.” Id., “Third Status Update of KCP&L Concerning Additional Wind Generation” (Feb. 13, 2009), at ¶ 5. Similarly, a subsequent report advised that KCP&L continued to evaluate several options, noting the financial difficulties encountered by a potential project developer, and its continued consideration of a power purchase agreement alternative. Id., “Fourth Status Update of KCP&L Concerning Additional Wind Generation” (Oct. 15, 2009), at ¶¶ 4-7.

8. Staff has raised no good reason why the Commission should not decline to exercise its jurisdiction in this particular case where the assets in question have never been and are not “necessary or useful in the performance” of KCP&L’s “duties to the public,” as required by Section 393.190.1. Since there is no question about the “continuation of adequate service to

the public serviced by the utility,” there is no public interest served by the Commission asserting jurisdiction in this case. See State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

9. Finally, since Staff has raised no factual issue concerning the basis for KCP&L’s Motion for Expedited Treatment pursuant to 4 CSR 240-2.080(16), the Motion should be granted and the Commission should take this matter up at soon as possible.

WHEREFORE, Kansas City Power & Light Company respectfully requests that the Commission decline to exercise jurisdiction under Section 393.190.1 with regard to the sale of the 32 wind turbine generators and the associated property rights in Ford County, Kansas, and grant such other relief as may be warranted.

Respectfully submitted,

/s/ Karl Zobrist

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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 14th day of June, 2010, to all counsel of record.

/s/ Karl Zobrist

Karl Zobrist