

**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) **Case No. ER-2010-0355**
Service to Continue the Implementation of its)
Regulatory Plan)

In the Matter of the Application of Aquila, Inc.)
dba KCP&L Greater Missouri Operations) **Case No. ER-2010-0356**
Company for Approval to Make Certain)
Changes in its Charges for Electric Service)

MOTION TO COMPEL DISCOVERY

COMES NOW Robert Wagner, Pro Se Intervener, and respectfully requests the Commission issue an order to: 1) compel the disclosure of all proprietary information in the above mentioned cases to Robert Wagner; 2) compel the disclosure of all highly confidential information in the above mentioned cases to Robert Wagner; and 3) issue a ruling that a pro se intervener is by definition their own attorney of record and may receive proprietary and highly confidential information when a Non-Disclosure agreement has been filed. In support of his requests Robert Wagner states:

1. On 8/3/2010 Robert Wagner filed a Non-Disclosure Agreement in the above-mentioned cases.
2. On 9/8/2010 Robert Wagner received a Response to Interrogatories – Set ProSe_20100819 Question Number 6 with a note that “A publication is available, but considered CONFIDENTIAL and therefore can only be provided to counsel.”
3. On 9/24/2010 Robert Wagner spoke with Tim Rush of KCP&L to verify the CONFIDENTIAL information would not be disclosed and to discuss other discovery issues.

4. On 10/7/2010 Robert Wagner spoke with Roger Steiner, KCP&L, at the monthly case update meeting in Jefferson City, MO about this designation. Additionally, Robert Wagner raised questions at this meeting regarding this issue and legal status of a pro se intervener.

5. On 10/13/2010 a conference was held at 1:30pm with Judge Pridgen, Senior Regulatory Law Judge; Roger Steiner, KCP&L; and Lewis Mills, Missouri Public Counsel. This conference was to satisfy 4 CSR 240-2.090 (8)(B). While access to the particular data marked as confidential in response to Question number 6 is a surmountable issue, larger concerns were raised regarding a pro se intervener's ability to provide adequate counsel if they are prohibited from seeing testimony and evidence related to the case.

6. It is my understanding that an intervener prohibited from viewing proprietary and highly confidential information would not be able to: 1) examine such information to determine if the confidentiality marking is appropriate; 2) reasonably argue for changes in the marking; 3) provide a reasonable examination or cross examination of witness testimony or exhibits marked as proprietary or highly confidential during the proceedings and hearing.

7. The effective result of prohibiting the disclosure of proprietary and highly confidential information is a class of intervener that is subject to a severe handicap and burden not afforded other parties in the case. Such a limitation does not appear to apply to other courts such as those mentioned in 4 CSR 240-2-090 (1) "*Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court.*" In order to ensure fair and equal access for a pro se intervener, they would need to file an appeal or change of venue to another court.

8. Additional background: Concerns on the issue of a pro se intervener's ability to effectively represent themselves was raised in the Final Order of Rulemaking dated September

21, 2006 in case number AX-2003-0404. Concerns were raised through the dissenting opinions of Commissioner Steve Gaw, Commissioner Robert M. Clayton III and the Commission staff. It appears that the ruling was passed due to a concern that pro se individuals would be more likely to disclose proprietary and highly confidential information. I would argue that an individual unable to afford an attorney would be more likely to not disclose such information out of fear of civil or criminal penalties, which they may be unable to defend themselves against. If a regulated utility believes an individual or counsel is not trustworthy, let them provide evidence and seek a prohibition on an individual basis rather than through a blanket rule on a class of individuals. Robert Wagner, an Eagle Scout; assistant Scoutmaster for Troop 1495; Den Leader for Pack 4348; President of the Board of Directors for the International Dark-Sky Association feels confident such an investigation would produce no such evidence in this case.

9. Similar concerns were mentioned in the Order Regarding Motion for Protective Order dated August 25, 2010 in case number EO-2010-0263.

WHEREFORE, for all the reasons stated above, Robert Wagner respectfully requests the Commission order KCP&L to disclosure of proprietary and highly confidential information, issue a ruling and provide any and other such relief as the Commission may deem just.

Respectfully submitted,



Robert Wagner
Pro Se Intervener

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 14th day of October 2010.

