

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
vs.)	Case No. EC-2011-0303
)	
Kansas City Power & Light Company,)	
)	
Respondent.)	

**MOTION TO DISMISS, AND ALTERNATIVELY, ANSWER
OF KANSAS CITY POWER & LIGHT COMPANY**

Pursuant to 4 CSR 240-2.070(6) and (8), Kansas City Power & Light Company (“KCP&L” or “Company”) hereby respectfully requests that the Missouri Public Service Commission (“Commission) dismiss with prejudice the Staff of the Missouri Public Service Commission’s (“Staff”) Complaint in this proceeding for failure to state a claim on which relief may be granted. Should the Commission decide not to dismiss Staff’s complaint, KCP&L provides herein its answer.

In support thereof, KCP&L states as follows:

The heart of Staff’s complaint is that because KCP&L did not provide Staff a list of all cost overruns that occurred in the course of the Iatan Project, it somehow violated the Stipulation and Agreement filed in Case No. EO-2005-0329, In the Matter of Proposed Regulatory Plan of KCP&L (Stipulation) and the Commission’s approval of the Stipulation in that case. In its March 30, 2011 Notice of Complaint, the Commission recognized that Staff’s complaint concerns an issue that was presented in ER-2010-0355, the Company’s recent rate case. The Commission indicated that since its decision in the rate case may impact KCP&L’s answer, the Commission allowed the Company to delay answering the complaint until after the rate case

decision. As is demonstrated below, because the Commission rejected Staff's contention that KCP&L violated the Stipulation in the rate case, there is no need for the Commission to rehear this argument in the complaint case.

I. MOTION TO DISMISS

1. Paragraphs 20 and 21 of the Staff complaint allege that KCP&L violated paragraph III.B.1.9 of the Stipulation as well as the Commission's order approving the Stipulation.

2. Staff made the very same allegations in KCP&L's rate case when it alleged that the Company exhibited a knowing and willful disregard of its obligations under the Stipulation by failing to identify and explain cost overruns on the Iatan project. Report and Order, ER-2010-0355, at paragraph 71.

3. The Commission found no merit in Staff's allegations as shown by paragraphs 19 through 41 of the Report and Order in ER-2010-0355. For example, the following paragraphs (footnotes omitted) in the Report and Order show that the Commission has already determined KCP&L complied with the Stipulation:

19. The Cost Control System contains all the information needed to both identify and explain each of the overruns to the Control Budget Estimate that occurred on the Iatan Project.

* * *

22. KCP&L's cost control system allows any interested party to this matter to track every dollar that KCP&L spent on the Iatan Project, regardless of whether the costs were anticipated in the Control Budget Estimate or constitute a cost overrun to the Control Budget Estimate: "Our system allows you to track through every dollar that's spent from cradle to grave and understand where it was spent and wherever the overrun occurred."

23. KCP&L complied with the requirements in the Regulatory Plan regarding the cost control process for construction expenditures.

Section III.B.1.q. of the Regulatory Plan requires that KCP&L do the following:

KCPL must develop and have a cost control system in place that identifies and explains any cost overruns above the definitive estimate during the construction period of the Iatan 2 project, the wind generation projects and the environmental investments.

24. KCP&L has complied with these requirements. First, KCP&L developed a comprehensive Cost Control System which provides key guidance to each of the CEP Projects governed by the Stipulation.

4. Because of the Commission's decision in the KCP&L rate case, no issue remains for the Commission to decide in Staff's Complaint. The Commission has already determined that the Company did not violate Paragraph III.B.1.9 of the Stipulation.

5. Issue preclusion, also known as collateral estoppel, is used to preclude the re-litigation of an issue that has already been decided in a different cause of action.¹ The reasoning behind issue preclusion is that "an issue that has been unambiguously, necessarily and implicitly determined by a judgment cannot be litigated again."²

6. When deciding whether the application of issue preclusion is appropriate in a given case, the Commission considers the following four factors: (1) whether the issue decided in the prior adjudication was identical to the issue presented in the present action, (2) whether the prior adjudication resulted in a judgment on the merits; (3) whether the party against whom issue preclusion is asserted was a party or in privity with a party to the prior adjudication; and (4) whether the party against whom issue preclusion is asserted had a full and fair opportunity in the prior adjudication to litigate the issue for which issue preclusion is asserted.³

¹ SSM Health Care St. Louis v. Radiologic Imaging Consultants, LLP, 128 S.W. 3d 534, 541 (Mo. App. E.D. 2003).

² Carr v. Holt, 134 S.W.3d 647, 650 (Mo. App. E.D. 2004). *See also Re Kansas City Power & Light Company*, Case Nos. EO-85-185 and EO-85-224, 28 Mo.P.S.C. (N.S.) 228, 282, 376-77 (April 23, 1986).

³ State ex rel. Missouri Gas Energy v. Public Service Comm'n of Missouri, 224 S.W.3d 20, 26 (2007).

7. All of the factors listed above have been met. Staff raised the same Stipulation violation issue in the KCP&L rate case. Staff had a full and fair opportunity to prove that KCP&L violated the Stipulation. The Commission found that KCP&L did not violate the Stipulation.

8. Staff's complaint should be dismissed for failure to state a claim on which relief may be granted. For the foregoing reasons, KCP&L respectfully requests that the Commission dismiss Staff's complaint with prejudice

II. ANSWER

9. Pursuant to the Commission's Notice of Complaint issued in this matter on March 30, 2011, KCP&L submits its answer to the complaint filed by Staff on March 23, 2011.

10. KCP&L denies the allegations contained in paragraph 1 of the complaint.

11. KCP&L admits the allegations contained in paragraph 2 of the complaint.

12. KCP&L admits the allegations contained in paragraph 3 of the complaint.

13. KCP&L admits the allegations contained in paragraph 4 of the complaint.

14. KCP&L admits the allegations contained in paragraph 5 of the complaint.

15. KCP&L admits the allegations contained in paragraph 6 of the complaint.

16. KCP&L admits the allegations contained in paragraph 7 of the complaint.

17. KCP&L admits the allegations contained in paragraph 8 of the complaint.

18. KCP&L admits the allegations contained in paragraph 9 of the complaint.

19. KCP&L admits that it entered into the Stipulation on March 28, 2005 and denies all other allegations in paragraph 10 of the complaint.

20. KCP&L admits the allegations contained in paragraph 11 of the complaint.

21. KCP&L admits the allegations contained in paragraph 12 of the complaint.

22. For its response to paragraph 13 of the complaint, KCP&L restates and incorporates by reference as if fully set forth herein its responses to paragraphs 1 through 12 hereof.

23. KCP&L admits the allegations contained in paragraph 14 of the complaint.

24. Paragraph 15 of the complaint contains Staff's characterization of the case and merely purports to state a legal conclusion, as to which no response is required.

25. KCP&L denies the allegations contained in paragraph 16 of the complaint.

26. KCP&L denies the allegations contained in paragraph 17 of the complaint.

27. KCP&L admits that paragraph 18 of the complaint reproduces the response to data request 970.

28. KCP&L denies the allegations contained in paragraph 19 of the complaint.

29. KCP&L denies the allegations contained in paragraph 20 of the complaint.

30. KCP&L denies the allegations contained in paragraph 21 of the complaint.

31. KCP&L denies the allegations contained in paragraph 22 of the complaint.

32. For its response to paragraph 23 of the complaint, KCP&L restates and incorporates by reference as it fully set forth herein its response to paragraph 1 through 22 hereof.

33. For its response to paragraph 24 of the complaint, KCP&L states that section 386.570 speaks for itself.

34. For its response to paragraph 25 of the complaint, KCP&L states that section 386.600 speaks for itself.

III. AFFIRMATIVE DEFENSES

1. Staff's complaint fails to state a claim upon which relief may be granted.

Unless affirmatively admitted herein in its responses above, KCP&L denies the allegations contained in Staff's complaint. Additionally, KCP&L reserves the right to supplement this pleading to add additional defenses and claims in connection with this complaint.

IV. CONCLUSION

For the foregoing reasons, KCP&L respectfully requests that the Commission dismiss Staff's complaint with prejudice. Alternatively, KCP&L respectfully requests that the Commission accept KCP&L's answer to Staff's complaint.

Respectfully submitted,

/s/ Roger W. Steiner

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**ATTORNEY FOR KANSAS CITY POWER &
LIGHT COMPANY**

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 3rd day of June, 2011, to all parties of record.

/s/ Roger W. Steiner

Roger W. Steiner