

**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)

MOTION TO COMPEL

COMES NOW the Midwest Energy Users' Association ("MEUA"), pursuant to 4 CSR 240-2.090, and for its Motion to Compel responses to data requests respectfully states as follows:

1. On August 19, 2010, MEUA submitted its second set of Data Requests to Kansas City Power & Light Company ("KCPL"). Those data requests attempted to identify the number, timing and subject matter of any communications that KCPL had with any of the Missouri Commissioners. Included in that set of Data Requests was the following item:

Please provide detailed cell phone usage (both corporate and personal cell phones) for William Downey, Chris Giles, Curtis Blanc and Michael Chesser for the past six months. Please include date / time of call and called / calling number information.

2. On August 27, 2010, KCPL objected to the MEUA data request. The entirety of KCPL's objection is as follows:

KCP&L objects to this data request as being overly broad and unduly burdensome as it requests six months of phone records of four KCP&L personnel. KCP&L also objects to this data request to the extent it seeks personal information on either a corporate or privately owned cell phone, based on the grounds that such information is confidential and private and its disclosure would violate the right of privacy of those KCP&L personnel named in the data request. KCP&L further objects to the disclosure of such information on the grounds that it is not relevant and

not reasonably calculated to lead to the discovery of relevant or material information.

3. As the following analysis indicates, KCPL's objection is without merit. Clearly, given the problems in several recent KCPL cases with unlawful *ex parte* communications, this data request is designed to lead to the discovery of relevant information. Furthermore, KCPL's concerns regarding the disclosure of confidential information is properly mitigated through the Commission's current rules regarding treatment of highly confidential information. For these reasons, the Commission should order KCPL to fully respond to the MEUA data request.

RELEVANCE

4. Any lawyer that has followed recent legal developments is aware of the explosion in e-discovery. With the development of the internet, social networking sites, smart phones and other electronic devices, new types of information are being recorded. By now, it is well established that adverse parties are entitled to this information through current discovery rules.

5. In 2010, the Commission promulgated new rules regarding Standards of Conduct. Those rules, codified at 4 CSR 240-4.020, became effective on July 30, 2010. In large part, those rules were adopted in response to unauthorized *ex parte* communications that occurred in the context of several recent KCPL proceedings. In fact, while recusals have occurred in three recent KCPL proceedings, no recusals have occurred in cases involving any other Missouri utility. Given this recent track record, it is unquestioned why parties may have concerns regarding KCPL's ability in playing by the rules.

6. While KCPL identified certain innocuous communications it had with Commissioners in the context of other data requests, the data request in question would allow MEUA to verify the veracity and completeness of KCPL's response. Specifically, MEUA asked KCPL to provide cell phone usage information including "date / time of call and called / calling number information." By comparing this information against known phone numbers for commissioners, advisors and regulatory law judges, MEUA will be able to determine if any other communications have occurred. Certainly, given the *ex parte* contacts that have occurred in recent KCPL cases, and the past implications of those actions (Commissioner recusal), this information is designed to lead to relevant evidence. In fact, given its recent efforts to shake public confidence concerns, the Commission should readily invite such limited inquiries.

BURDENSOME

7. Contrary to KCPL's objection, the data request in question is narrowly tailored. Specifically, MEUA only sought cell phone information for KCPL's two most senior executives and KCPL's current Director of Regulatory Affairs and his immediate predecessor (also a witness in this proceeding). As such, MEUA has narrowly tailored the request to those individuals that it deems likely to have engaged in such communications.

8. Furthermore, the recovery of cell phone information is not burdensome. These records are kept by the cell phone provider and are readily available, in the detail requested, through a simple phone call. Given this ease of access, any KCPL claims that these requests are burdensome ring especially hollow.

CONFIDENTIALITY CONCERNS

9. KCPL also raises concerns with the “disclosure” of certain private information. The Commission has rules established for the protection of such information (4 CSR 240-2.135). Information subject to highly confidential treatment includes Employee-sensitive personnel information. Indeed, because of these existence of these protections, utilities routinely share information related to Board of Directors meetings and minutes, employee salary information and other personnel records.

10. Undoubtedly, KCPL will complain that this Motion is not timely. Specifically, KCPL will point to the fact that this data request was issued four months ago. MEUA recognizes that this Motion could have been filed earlier, but such delays are to be expected when every single electric utility is pursuing a rate increase at the same time. Nevertheless, MEUA notes that resolution of this Motion is not needed before the start of the hearing. In fact, the information deduced from this data request does not impact any particular issue. Rather, this information may impact the deliberations of the case which are still not expected to occur for more than a month.

COMPLIANCE WITH RULE

11. Consistent with Commission Rule 4 CSR 240-2.090(8)(A), counsel certifies that he has complied with all rule prerequisites to the filing of this Motion. Specifically, counsel has conferred with counsel for KCPL at a status hearing on October 7, 2009 and by telephone on January 10, 2010. Furthermore, consistent with 8(B) of that same rule, counsel participated in a telephone conference with the presiding officer on January 11. As such, this Motion is ripe for consideration by the Commission.

CONCLUSION

WHEREFORE, MEUA respectfully requests that the Commission issue its order requiring KCPL to fully respond to the referenced MEUA data request.

Respectfully submitted,



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ATTORNEYS FOR THE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



David L. Woodsmall

Dated: January 11, 2011