

**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 in its) Tariff No. JE-2010-0693
Charges for Electric Service)
)

**STAFF'S RESPONSE TO KANSAS CITY POWER & LIGHT COMPANY'S AND
KCP&L GREATER MISSOURI OPERATIONS COMPANY'S MOTION FOR
RECONSIDERATION, OR IN THE ALTERNATIVE REQUEST FOR EXTENSION OF
TIME TO DELIVER DOCUMENTS TO THE SPECIAL MASTER**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and for its response to Kansas City Power & Light Company's (KCPL) and KCP&L Greater Missouri Operations Company's (GMO) *Motion for Reconsideration, or in the Alternative Request for Extension of Time to Deliver Documents to the Special Master*, to the Missouri Public Service Commission (Commission), respectfully, states as follows:

1. On November 29, 2010, KCPL/GMO filed their joint request seeking the Commission to reconsider its November 23, 2010 Order which appointed Regulatory Law Judge Harold Stearley as a Special Master and directed KCPL/GMO to deliver a copy of the un-redacted documents listed in Staff's November 12, 2010 Attachment A or seeking an extension of time to comply with the Commission's November 23, 2010 Order.

2. Staff believes that KCPL/GMO needs to comply with the Commission's November 23, 2010 Order and provide the un-redacted documents listed in Staff's Attachment A without further delay.

3. Further, in particular, in their November 29, 2010 pleading KCPL/GMO direct the Commission to the following Staff Data Requests in paragraph 6 of that Motion: Staff Data Request Nos. 673.1, 863, 900.1, and 902.1.

4. Staff Data Request No. 637.1 states: "Please provide a copy of each and every communication between GPE/KCPL and STS [Strategic Talent Solutions] related to the Iatan construction projects, including but not limited to emails, letters, notes of phone conversations, etc." KCPL/GMO's response states: "KCPL objects to the request regarding emails between GPE/KCPL and STS. This request is overly broad and unduly burdensome in that the company will have to review over 70,000 emails to determine which documents are responsive to this request."

5. First, Staff would note that the KCPL/GMO objection to Staff Data Request No. 637.1 is limited to the assertion that the Staff's Data Request is overly broad and burdensome. Staff apologizes for the confusion, but apparently Staff got this Staff Data Request mixed in with the Staff Data Requests that KCPL/GMO has asserted a privilege and/or an immunity respecting. Staff has reached that realization without KCPL/GMO bringing it to Staff's or the Commission's attention. KCPL/GMO did not address Staff Data Request No. 637.1 in its November 12, 2010 *Response To Staff's Request For A Special Master*. Staff of course has no way of off-hand verifying whether there are truly over 70,000 emails for KCPL/GMO to review to respond to Staff's Data Request. KCPL/GMO made this assertion in its objection and provided no explanation. In another instance when Staff has made a discovery request regarding correspondence and KCPL/GMO has asserted a voluminous volume of emails, Staff and KCPL/GMO have reached agreement on limitations of the email fields of search. Staff believes that may be possible in this instance or there might be resolution if KCPL/GMO were to provide

a list of the universe of emails. Staff would review the list of the universe and determine if a representative sample for KCPL/GMO to provide or some other less than all universe resolution were possible from Staff's perspective.

6. Staff Data Request No. 863 states: "Please provide a copy of all correspondence between KCPL and Ernst & Young related to the Iatan construction audits that has not already been provided to the Staff in this case. 2. Please provide a copy of all emails between KCPL and Ernst & Young related to the Iatan construction audits." KCPL's/GMO's objection states: "KCP&L objects to section 2 of this data request as being overly broad and unduly burdensome as it would result in the production of 50,000 to 100,000 emails. KCP&L continues to request that Staff narrow its request to a specific time period or to specific individuals. In addition, KCP&L objects to the entire data request in that it may seek documents protected from disclosure by the attorney/client privilege, attorney work-product protection and/or accountant/client privilege." Staff of course has no way of off-hand verifying whether there are truly 50,000 to 100,000 emails for KCPL/GMO to review to respond to the Staff's Data Request. KCPL/GMO made this assertion in its objection and provided no explanation. As noted above, in another instance when Staff has made a discovery request regarding correspondence and KCPL/GMO asserted a voluminous volume of emails, Staff and KCPL/GMO reached agreement on limitations of the fields of search. Staff believes that may be possible in this instance or there might be resolution if KCPL/GMO were to provide a list of the universe. Staff would review the list of the universe and determine if a representative sample for KCPL/GMO to provide or some other less than all universe resolution were possible from Staff's perspective.

7. Staff Data Request No. 900.1 states: "Please provide a full and complete copy of each and every invoice from SPENCER FANE BRITT & BROWNE LLP charged to the Iatan 2

construction projects. Please ensure the expense distribution is included. Please provide a copy of all the documents produced by this firm that was charged to the construction projects. Please provide a copy of any contract, purchase order or engagement letter between KCPL and this firm. Please explain why KCPL engaged the services of this firm. Please state who at KCPL supervised the performance of this contractor and also the names of the individuals who approved the invoices. Please ensure all expense charges with full documentation are included. Please ensure that all invoices clearly show the number of hours charged the rate per hour charged, and a complete description of the work provided.” KCPL/GMO response states: “Please see the Highly Confidential response and attachments. Also note, copies will be available for pick up in the PSC room by close of business 4/22.” Further KCPL/GMO objected as follows: “KCP&L objects to subpart 3 of this Data Request as overly broad and unduly burdensome as it seeks voluminous invoices and documents prepared by SPENCER FANE BRITT & BROWNE LLP, a law firm representing KCP&L, for a period of July 2004 – September 2009. Additionally, the request for ‘a copy of all the documents produced by this firm that was charged to the construction projects’ seeks documents protected by the Attorney-Client Privilege and Work-Product Doctrine. Potentially responsive documents, many of which are privileged, constitute approximately 100 banker’s boxes. Review of these materials requires a significant undertaking to determine responsiveness, applicability of Attorney-Client Privilege and Work-Product Doctrine and preparation of privilege logs. Further, KCP&L understands Staff is requesting KCP&L to prepare a privilege log, a document which does not currently exist, for the purposes of verifying that work charged to KCP&L in law firm invoices was actually performed. Such inquiry is beyond the proper scope of this prudence audit. Subject to and

without waiving these objections, KCP&L will provide responses to subparts 1, 2, and 4 – 8, to the extent the existing invoices contain the requested information.

8. KCPL/GMO only objected to subpart 3 of Staff’s Data Request No. 900.1 as being unduly vague and burdensome and protected by the attorney-client privilege and work product doctrine. KCPL/GMO asserts that Staff’s inquiries into verification as to whether KCPL/GMO paid for work actually performed on the Iatan Project is beyond the proper scope of this prudence audit. Such an assertion that KCPL/GMO can be prudent by charging the Iatan Project costs for services not performed for the Iatan Project or not all is not contained in any authoritative source Staff has encountered related to prudence reviews/construction audits. It is noteworthy that KCPL/GMO filing contains no reference to any source supporting such an assertion. However, in response to the other subsections, KCPL/GMO provided redacted invoices without making an objection. While KCPL/GMO did provide a privilege log to accompany the redactions, Staff believes those invoices should be subject to the Special Master’s review and KCPL/GMO should not delay in providing un-redacted invoices to Judge Stearley.

9. Data Request 902.1 states “Please provide a full and complete copy of each and every invoice from Morgan, Lewis & Bockius LLP charged to the Iatan construction projects. Please ensure the expense distribution is included. Please provide a copy of all the documents produced by this firm that was charged to the construction projects. Please provide a copy of any contract, purchase order or engagement letter between KCPL and this firm. Please explain why KCPL engaged the services of this firm. Please state who at KCPL supervised the performance of this contractor and also the names of the individuals who approved the invoices. Please ensure all expense charges with full documentation are included.” KCPL and GMO’s response states: “Please see the Highly Confidential response and attachments. Also note, copies will be

available for pick up by close of business 4/21 in the PSC room.” Further KCPL/GMO objected as follows: “KCP&L objects to subpart 3 of this Data Request as overly broad and unduly burdensome as it seeks voluminous invoices and documents prepared by Morgan, Lewis & Bockius LLP, a law firm representing KCP&L, for a period of October 2006 – April 2007. Additionally, the request for ‘a copy of all the documents produced by this firm that was charged to the construction projects’ seeks documents protected by the Attorney-Client Privilege and Work-Product Doctrine. Potentially responsive documents, many of which are privileged, are contained in 7 document boxes. Review of these materials will result in a significant undertaking to determine responsiveness, applicability of Attorney-Client Privilege and Work-Product Doctrine and preparation of privilege logs. Further, KCP&L understands Staff is requesting KCP&L to prepare a privilege log, a document which does not currently exist, for the purposes of verifying that work charged to KCP&L in law firm invoices was actually performed. Such inquiry is beyond the proper scope of this prudence audit. Subject to and without waiving these objections, KCP&L will provide responses to subparts 1, 2, and 4-7, to the extent the existing invoices contain the requested information.”

10. KCPL/GMO only objected to subpart 3 of Staff’s data request as being unduly vague and burdensome and protected under the attorney-client privilege and work product doctrine. KCPL/GMO asserts that Staff’s inquiries into verification as to whether KCPL/GMO paid for work actually performed on the Iatan Project is beyond the proper scope of this prudence audit. Such an assertion that KCPL/GMO can be prudent by charging the Iatan Project costs for services not performed for the Iatan Project or not all is not contained in any authoritative source Staff has encountered related to prudence reviews/construction audits. It is noteworthy that KCPL/GMO filing contains no reference to any source supporting such an assertion. However,

in response to the other subsections, KCPL/GMO provided redacted invoices without making an objection. While KCPL/GMO did provide a privilege to accompany the redactions, Staff believes those invoices should be subject to the Special Master's review and KCPL/GMO should not delay in providing un-redacted invoices to Judge Stearley.

WHEREFORE, Staff respectfully requests the Commission deny KCPL/GMO's *Motion for Reconsideration* and require KCPL/GMO to comply with the Commission's November 23, 2010 Order.

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 3rd day of December, 2010.

/s/ Jaime N. Ott