

**BEFORE THE PUBLIC SERVICE COMMISSION
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)

**KANSAS CITY POWER & LIGHT COMPANY’S
RESPONSE TO THE MIDWEST ENERGY USERS’ ASSOCIATION’S
MOTION TO COMPEL**

Kansas City Power & Light Company (“KCP&L”) states the following in opposition to the Midwest Energy Users’ Association’s (“MEUA”) Motion to Compel responses to certain data requests:

On August 19, 2010, MEUA submitted its second set of Data Requests to KCP&L where Item No. 3 stated: “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.”

On August 27, 2010, KCP&L objected to Item No. 3, stating:

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.

Over four months later MEUA filed a Motion to Compel on January 11, 2011, requesting that the Commission order KCP&L to provide MEUA with responses to the data request. MEUA characterizes its request as an “attempted” effort “to identify the number, timing and

subject matter of any communications” that these four KCP&L officials had with members of the Commission.

There are numerous reasons, detailed below, why the Motion to Compel should be denied, primarily because it is untimely. However, setting aside those reasons for the moment, it should be clear that if any party has questions regarding the qualifications or competency of any Commissioner to hear the case, they should be raised prior to the hearing through a voir dire inquiry or similar examination into the bias or prejudice of a decision-maker. The Commission’s recently amended rule on Ex Parte and Extra-Record Communications, 4 CSR 240-2.020, provides a basis to inquire into such matters.

I. MEUA’s Request is Untimely.

The Commission recognizes the doctrine of laches, which acts to bar a claim filed so late that its delay works to the disadvantage of the other parties. See In re Application of Union Electric Co., Case No. EM-96-149, Report and Order, 2001 Mo. PSC LEXIS 866 *3 (July 12, 2001). “Laches is neglect, for an unreasonable and unexplained length of time under circumstances permitting diligence, to do what, in law, should have been done.” Id., citing Lake Development Enterprises, Inc. v. Kojetinsky, 410 S.W.2d 361, 367 (Mo. App. St.L. 1966).

In the past the Commission has denied Motions to Compel based on much shorter delays than the delay by MEUA. See In re Determination of Prices, Terms, and Conditions of Conditioning for xDSL-capable Loops, Case No. TO-2001-439, Order Denying Motion to Compel and Motion for Continuance, 2001 Mo. PSC LEXIS 1070 *4 (Aug. 9, 2001). In that case the Commission denied late requests to compel discovery because the requesting party’s two-month delay in filing such motions would have created an undue hardship on the participants to the case and would have disrupted the Commission’s procedures for hearing and

determining the issues presented. Additionally, the movant did not provide sufficient justification for its delay.

In this pending case, MEUA delayed nearly five months in filing its Motion to Compel. The Motion was filed within a week of the start of evidentiary hearings in the KCP&L rate case. Significantly, MEUA admits that “the Motion could have been filed earlier.” See Motion to Compel, ¶ 10 at p. 4. MEUA has not explained why it waited so long to file the Motion. It only offers the weak suggestion that “such delays are to be expected” because other electric utilities have pending rate cases. Id.

This is clearly not a sufficient justification for its delay. The only rate case scheduled to go to hearing this week is the subject case, yet it is this case where MEUA seeks an eleventh-hour production of cell phone records of dubious relevancy. The clear effect of MEUA’s action is to prejudice and disrupt the efforts of KCP&L to prepare for hearing.

Finally, the Motion to Compel is untimely in light of the July 7, 2010 Order Regarding Construction and Prudence Audits (“Order”), which directed that: “Any discovery disputes shall be taken up immediately” at the monthly status hearings set by the Commission. See Order, ¶ 5 at p. 3. It further stated: “Any discovery dispute not timely raised at the status hearings shall be deemed waived.” Id. The Commission had directed the parties to designate individuals “with settlement authority” who “will be required to attend the monthly status hearings.” Id. at pp. 2-3. Because MEUA’s data request was not timely raised at any of the status hearings, the Commission should deny MEUA’s Motion to Compel.

II. MEUA’s Request is Not Reasonably Calculated to Lead to the Discovery of Relevant Information and is Unduly Burdensome.

MEUA’s general request for cell phone records of four KCP&L employees is not reasonably calculated to lead to the discovery of relevant information. There is no suggestion, let alone any evidence of ex parte communications by KCP&L with commissioners via cell

phone or any other form of communication. Consequently, there is no basis for a wholesale, untargeted inquiry into the corporate and private cell phone records of Company personnel.

Moreover, the request is unduly burdensome. Producing these records requires far more work than just “a simple phone call” to the cell phone provider. Without any evidence or justification for suspecting ex parte communications have taken place, MEUA’s Motion to Compel is nothing more than a fishing expedition.

III. MEUA’s Request Would Violate Privacy Rights of KCP&L Personnel.

KCP&L objected to MEUA’s data request to the extent it sought personal information on corporate and personal cell phone communications, based on the grounds that such information is confidential and private, and its disclosure would violate the right of privacy of the KCP&L employees named in the data request.

MEUA has dismissed KCP&L’s privacy concerns by citing the Commission’s rules for the protection of sensitive information under 4 CSR 240-2.135. However, that rule was designed to protect sensitive information related to the operations of a public utility. It was not designed to permit parties to inquire into the personal and private information of utility employees.

It is KCP&L’s position that the private nature of the information being sought, when combined with the failure by MEUA to justify the need for such information, overrides any potential need for the disclosure of such information, even when protected under the Commission rules. The Commission should deny MEUA’s request on the basis that it would violate the privacy rights of KCP&L personnel.

WHEREFORE, KCP&L requests that the Commission deny MEUA's Motion to Compel.

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing Kansas City Power & Light Company's Response to MEUA's Motion to Compel was emailed to counsel of record on this 17th day of January, 2011.

/s/ Roger W. Steiner

Roger W. Steiner