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July 19, 1999

FILED

JUL 19 1999

Missouri Public
Service Commission

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 3660
Jefferson City, Missouri 65102

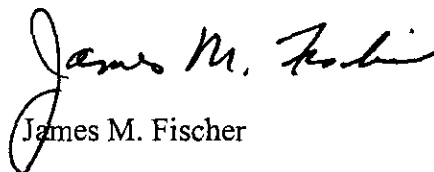
RE: *In the Matter of 4 CSR 240-20.015 Proposed Rule – Electric Utilities Affiliate Transactions, Case No. EX-99-442*

Dear Mr. Roberts:

Enclosed are the original and fourteen (14) copies of Kansas City Power & Light Company's Reply to the Office of Public Counsel's Motion to Compel Data Requests in the above-referenced matter. A copy of the foregoing Reply has been hand-delivered or mailed this date to parties of record.

Thank you for your attention to this matter.

Sincerely,


James M. Fischer

/jr

Enclosures

cc: Office of the Public Counsel

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of 4 CSR 240-20.015 Proposed)
Rule – Electric Utilities Affiliate Transactions)

Case No. EX-99-442

**KANSAS CITY POWER & LIGHT COMPANY'S REPLY TO
THE OFFICE OF PUBLIC COUNSEL'S MOTION TO COMPEL DATA REQUESTS**

Comes Now Kansas City Power & Light Company ("KCPL" or "Company"), by and through its attorneys, and states the following in response to the Office of Public Counsel's Motion to Compel Data Request Submitted to Kansas City Power and Light Company on July 9, 1999:

Background

1. On June 1, 1999, the Public Service Commission of the State of Missouri (the "Commission") caused a proposed rule regarding electric utilities affiliate transactions to be published in the *Missouri Register* and established Case No. EX-99-442 to address the issues relating to the rule.

2. It should be noted that the stated purpose of the proposed rule is to ensure that the rate paid by Missouri electric customers is not adversely affected by the unregulated business activities of Missouri utilities.

3. On June 4, 1999, the Office of Public Counsel ("Public Counsel") served its first set of data requests on KCPL ("Data Requests"), which consisted of 16 data requests numbered 501 through 516. A copy of the Data Requests is attached to Attachment 1 of Public Counsel's "Motion to Compel Data Requests Submitted to Kansas City Power and Light Company. By letter dated June 14, 1999, KCPL objected to each of the Data Requests.

**In the Instant Case, The Commission Lacks the Authority
to Compel Discovery Relating to KCPL's Unregulated Activities**

4. It is KCPL's position that Public Counsel is not legally entitled to any of the information sought in its Data Requests that relates to unregulated activities. Missouri law explicitly prohibits the Commission from regulating non-jurisdictional businesses. Section 393.140(12) (RSMo 1994). Associated Natural Gas Co. v. Public Serv. Comm'n of Missouri, 706 S.W.2d 870, 880 (Mo. App. 1985). KCPL's unregulated business activities are beyond the Commission's jurisdiction. See Section 393.140(12) RSMo. Accordingly, the Commission lacks statutory authority to compel production of information that relates to KCPL's unregulated activities. Fourteen of the 16 Data Requests address the Company's regulated activities. KCPL has informed Public Counsel that it is in the process of gathering information responsive to these 14 data requests and intends to deliver them to Public Counsel as soon as possible.

5. The Commission is not investigating KCPL's unregulated business activities to determine if they are increasing the cost of providing electric service to Missouri customers. If it believes that widespread cross-subsidization has resulted in increased electric rates, Public Counsel could have requested that the Commission open a docket to investigate those Missouri utilities it believes are subsidizing their unregulated activities.

6. KCPL maintains its objections with respect to Data Request Nos. 508 and 511 because it is improper to seek specific, confidential information about KCPL's unregulated business activities in a generic rulemaking proceeding.

7. The data requests aimed at KCPL's unregulated activities seek information concerning the Company's unregulated strategic plans. Data Request No. 508 requests the following information:

Please provide a copy of the Company's most recent strategic plans (business plans) for each of its unregulated business units and affiliates. If the Company does not possess or have access to documents within the scope of those requested in this DR, please provide a statement to that effect.

Data Request No. 511 requests the following information:

Please provide a list of all entities with which the Company or its affiliated entities have entered into partnership, joint venture, strategic alliance, or joint marketing agreements within the last three years and provide a copy of all such contracted [sic] or agreements that have been entered into within the last three years. For purposes of this DR, the term "affiliated entities" should be interpreted to have the same meaning that it has in the proposed affiliated transaction rule. If the Company or its affiliated entities have NOT entered into any partnership, joint venture, strategic alliance, or joint marketing agreements within the last three years, please provide a statement to that effect.

8. Missouri courts have recognized that there are definite limits upon the scope of discovery. Kawasaki Motors Corp. v. Ryan, 777 S.W.2d 247, 251 (Mo.App. 1989). As stated by the Missouri Court of Appeals, rules of discovery are not "talismans without limitations." Id. The courts have established limits on the broad scope of Missouri's discovery so that discovery requests are kept within reasonable bounds. At a minimum, discovery requests must be relevant to the subject matter involved in the pending action. Id.; see Plank v. Koehr, 831 S.W.2d 926, 927 (1992). By seeking information concerning KCPL's unregulated activities, Data Requests Nos. 508 and 511 seek information that is beyond the Commission's subject matter jurisdiction.

**Equity Requires the Commission to Consider the Likely Effect
Granting Public Counsel's Discovery Requests Would
Have on KCPL's and its Affiliates' Economic Health**

9. The Commission is vested with broad discretion in administering the rules of discovery. Spacewalker, Inc. v. American Family Mutual Ins. Co., 954 S.W.2d 420, 423 (Mo.App. 1997). However, the Commission discretion is not unlimited. Missouri courts have ruled that a

[d]etermination of the appropriate boundaries of discovery requests involves the pragmatic task of weighing the conflicting interests of the interrogator and the respondent. Therefore, in ruling upon objections to discovery requests, [the Commission] must consider not only questions of privilege, work product, relevance and tendency to lead to discovery of admissible evidence, but they should also balance the need of the interrogator to obtain the information against the respondent's burden in furnishing it. Included in this burden may well be the extent of an invasion of privacy, particularly the privacy of a non-party.

Anheuser v. Nolan, 692 S.W.2d 325, 328 (Mo.App. 1985)

10. Assuming *arguendo* that Public Counsel's discovery requests regarding KCPL's unregulated activities are proper, the Commission should exercise its discretion to limited discovery because the requests are intrusive, over broad, and constitute an invasion of privacy. See LaBarge v. Clifford, 979 S.W.2d 206, 208 (Mo.App. 1998). Public Counsel seeks information concerning KCPL's unregulated business plans. Like most business plans, KCPL's business plan for its unregulated business units establishes the company's goals, analyzes the feasibility of new businesses and product lines, identifies potential customers and competitors, and points out the company's strengths and weaknesses. None of this information has a direct bearing on the stated purpose of this rule making proceeding. Moreover, Public Counsel's discovery requests seek confidential information from KCPL's "affiliates."

KCPL's affiliates are non-parties to the extent they are not participating in this rulemaking proceeding.

11. KCPL and its affiliates have spent a great deal of time and significant sums of money planning their future unregulated business activities. This information is valuable. Needless to say, KCPL and its affiliates have taken precautions to ensure that this confidential information does not fall into their competitors' hands. If discovery by Public Counsel of KCPL's confidential business plans relating to unregulated activities is permitted, KCPL's competitors will request the same information. Missouri courts have ruled that a Writ of Prohibition is appropriate where "irreparable harm may come to a litigant due to discovery, and an appeal is not adequate to rectify the harm." Blue Cross and Blue Shield of Missouri, 897 S.W.2d 167, 169 (Mo.App. 1995).

12. Thus, if the Commission concludes that KCPL's unregulated business plans are discoverable, KCPL's competitors will have access to a blueprint of the Company's business plans, and will be well positioned to thwart KCPL's unregulated business ventures. KCPL and its affiliates have spent years developing their business plans. The damage that KCPL and its affiliates will suffer if their plans are provided to their competitors is incalculable.

13. The Commission's standard protective order does not provide complete protection to KCPL. It would be unreasonable to subject KCPL to the risks associated with providing this information when the information itself is not relevant to this generic, industry-wide rulemaking proceeding.

WHEREFORE, KCPL requests that the Commission deny Public Counsel's Motion to Compel and requests that the Commission grant such further relief as deemed just and proper.

Gerald A. Reynolds

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Attorneys for Kansas City Power & Light Company

Certificate of Service

I, the undersigned, hereby certify that a copy of the above and foregoing was deposited in the United States mail, postage prepaid, on the 19th day of July, 1999, and addressed to:

Office of the Public Counsel
P O. Box 7800
Jefferson City, Missouri 65102

Gerald A. Reynolds
by Jm-