

**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 )

In the Matter of the Application of KCP&L )  
Greater Missouri Operations Company for ) Case No. ER-2010-0356  
Approval to Make Certain Changes in its Charges )  
for Electric Service )

**KANSAS CITY POWER & LIGHT COMPANY’S  
RESPONSE TO STAFF’S MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Kansas City Power & Light Company (“KCP&L”) and KCP&L Greater Missouri Operations Company (“GMO”) state the following in opposition to Staff’s Motion to Compel Production of Documents:

On December 20, 2010, Staff submitted Data Request 580 to KCP&L which stated: “With reference to KCPL witness Chris Giles, please provide the following: ... 6. A copy of any correspondence, including emails, between Mr. Giles and any Schiff Hardin employee from January 1, 2006 through the current date.”

On December 23, 2010, KCP&L filed an Objection to Staff’s Data Request 580, stating that the request called for the production of information protected by the attorney-client privilege. On January 4, 2011, Staff filed a Motion to Compel, requesting that the Commission order KCP&L and GMO to provide Staff with correspondence between Mr. Giles and any Schiff Hardin LLP employee as sought in DR 580.

**I. The Communications Staff Seeks Are Privileged Attorney-Client Communications.**

KCP&L and GMO oppose Staff’s Motion to Compel Production of Documents on the ground that it seeks privileged attorney-client communications between KCP&L witness Chris

Giles and the law firm of Schiff Hardin LLP. The attorney-client relationship is clear: Mr. Giles is the former Vice President of Regulatory Affairs for KCP&L and a current consultant to KCP&L. Schiff Hardin LLP is a law firm retained by KCP&L under a contract entitled “Contract for Legal Services” which Staff attached to its motion as a highly confidential document.

Mr. Giles was responsible for the companies’ regulatory affairs and is now consulting on regulatory and prudence issues related to the Iatan construction project. The duties and responsibilities of regulatory affairs professionals like Mr. Giles are to ensure that the companies they represent comply with the regulations and laws pertaining to their business. Therefore, Mr. Giles’ communications with Schiff Hardin are naturally related to issues that are protected by the attorney-client privilege. Staff’s suggestions that an attorney-client privilege does not apply to the communications between Mr. Giles and Schiff Hardin ignore the fact that their relationship is one of a client and its attorneys, which is governed by a “Contract for Legal Services.” This contract contains numerous references to the types of legal services Schiff Hardin provides, including assisting KCP&L’s General Counsel and advising KCP&L “in any dispute resolution, including litigation,” which these proceedings clearly constitute.

## **II. Staff’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 (July 12, 2001), 2001 Mo. PSC LEXIS 866 \*3. “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 for the very reasons articulated by KCP&L. 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 (Aug. 9, 2001), 2001 Mo. PSC LEXIS 1070 \*4. In this case, the Commission denied late requests to compel discovery because the requesting party's two-month delay in filing such requests would work an undue hardship on the participants to the case and disrupt the Commission's procedures for hearing and determining the issues presented. The requesting party did not provide sufficient justification for its delay.

On December 20, 2010, less than a month from the start of evidentiary hearings in the KCP&L rate case, Staff submitted Data Request 580 to KCP&L. Staff easily could have filed this Data Request at a much earlier date, particularly since it seeks documents prepared five years ago. Moreover, Staff has provided no explanation why it waited so long to request what KCP&L believes amount to over 3,800 emails just two weeks prior to the start of hearings. The clear effect of Staff's action is to prejudice and disrupt the efforts of KCP&L and GMO to prepare for hearing.

**III. KCP&L's Response to Discovery in the Aquila Acquisition Case is not Relevant to this Dispute.**

KCP&L's response to a document request in the Aquila Acquisition case is not relevant to Staff's DR 580 or the Motion to Compel. Staff asserts that the scope of DR 580 is "narrowed" because Staff previously requested emails from Mr. Giles in Case No. EM-2007-0374. Apparently, Staff fails to recognize that KCP&L did not provide any emails to or from Mr. Giles that were subject to attorney-client privilege, and produced no emails between Mr. Giles and Schiff Hardin LLP or any other law firm that was acting on behalf of KPC&L at that time.

WHEREFORE, KCP&L and GMO request that the Commission deny Staff's Motion to Compel Production of Documents.

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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 Staff's Motion to Compel Production of Documents was emailed to counsel of record on this 10th day of January, 2011.

/s/ Daniel C. Gibb

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