

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 23rd day
of December, 2009.

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	
)	
KCP&L Greater Missouri Operations Company and Kansas City Power & Light Company,)	
)	
)	
Respondents.)	

File No. EC-2009-0430

**ORDER GRANTING MOTION FOR SUMMARY DETERMINATION AND
DISMISSING COMPLAINT**

Issue Date: December 23, 2009

Effective Date: January 2, 2010

Syllabus: This order grants summary determination in favor of the Respondents. KCP&L Greater Missouri Operations Company (KCPL-GMO) and Kansas City Power & Light Company (KCPL). It also denies Staff's motion for summary determination.

Background and Procedural History

On May 29, 2009, the Staff of the Commission filed a complaint against KCP&L Greater Missouri Operations Company and Kansas City Power & Light Company. KCPL-GMO and KCPL filed their answer to Staff's complaint, along with a motion for determination on the pleadings, on June 26. The Commission denied that motion on July 29 on procedural grounds.

Staff and the Respondents filed competing motions for summary determination on October 2. Both motions were accompanied by supporting legal memorandums. Staff and the Respondents replied to the respective motions for summary determination on October 16. The Commission heard oral arguments on the motions for summary determination on November 19.

FINDINGS OF FACT

Based upon undisputed facts agreed upon by the parties, the Commission makes these Findings of Fact.¹

1. KCPL is a Missouri general business corporation in good standing, formed on July 29, 1922, with its principal place of business located at One Kansas City Place, 1200 Main, Kansas City, Missouri 64106. Its registered agent is National Registered Agents, Inc., 300-B East High Street, Jefferson City, Missouri 65101. KCPL is an integrated electric utility that provides electricity to customers primarily in the states of Missouri and Kansas.

2. KCPL-GMO is a Delaware general business corporation in good standing, duly qualified to do business in Missouri since March 27, 1987, with its principal place of business located at One Kansas City Place, 1200 Main, Kansas City, Missouri 64106. Its registered agent is CT Corporation System, 120 South Central Avenue, Clayton, Missouri 63105. KCPL-GMO is an integrated electric utility that primarily provides electricity to customers in the state of Missouri.

3. Both KCPL and KCPL-GMO are wholly-owned subsidiaries of Great Plains Energy Incorporated, a publicly-traded Missouri general business corporation in good standing, formed on February 26, 2001, with its principal place of business located at One

¹ The numbered series of facts is set out in KCPL and KCPL-GMO's October 2, 2009 Motion for Summary Determination. Staff admitted the truth of those facts in its October 16, 2009 response to that motion for summary determination.

Kansas City Place, 1200 Main, Kansas City, Missouri 64106. Its registered agent is National Registered Agents, Inc., 300-B East High Street, Jefferson City, Missouri 65101. In filings with the Securities and Exchange Commission and on its corporate website, Great Plains Energy represents that, through KCPL and KCPL-GMO, it provides retail electric service to some 820,000 customers in Missouri and Kansas. Great Plains Energy also represents that it controls generation assets rated at more than 6,000 MW.

4. Great Plains Energy acquired KCPL-GMO, then called “Aquila, Inc.” on July 14, 2008, pursuant to authority granted by the Commission in its Report and Order in Case No. EM-2007-0374, issued on July 1, 2008, and effective on July 11, 2008.

5. Pursuant to the order of the Commission set out in the Report and Order in Case No. EM-2007-0374, KCPL and KCPL-GMO on October 10, 2008, executed and filed their Joint Operating Agreement in Case No. EM-2007-0374, in which KCPL was designated as KCPL-GMO’s agent and operator of its business and properties and expressly accepted responsibility therefor.

6. KCPL and KCPL-GMO are electrical corporations and public utilities within the intendments of Chapters 386 and 393, RSMo, and thus subject to the jurisdiction, regulation and control of this Commission.

7. On July 2, 2008, KCPL-GMO filed tariff sheets and initiated a name change proceeding docketed as Case No. EN-2009-0015, seeking authority for KCPL-GMO, then still known as Aquila, Inc., and which had been operating as “Aquila Networks – L&P” and “Aquila Networks – MPS” to operate as “Aquila, Inc. doing business as KCP&L Greater Missouri Operations Company.” Upon satisfactory proof that the new fictitious name had

been duly registered with the Missouri Secretary of State, the Commission granted the requested authority on August 7, 2008, effective August 8, 2008.

8. On November 3, 2008, KCPL-GMO filed tariff sheets and initiated a name change proceeding, docketed as Case No. EN-2009-0164, seeking authority for KCPL-GMO to change its name from “Aquila, Inc., doing business as KCP&L Greater Missouri Operations Company,” to “KCP&L Greater Missouri Operations Company.” Upon satisfactory proof that the new name had been approved by the Delaware Secretary of State, the Commission granted the requested authority on November 20, 2008, effective December 3, 2008.

9. The name “KCP&L, Inc.” is that of a Missouri close corporation in good standing, formed on April 10, 2009, by Mark English, headquartered at One Kansas City Place, 1200 Main, Kansas City, Missouri 64106. Its registered agent is National Registered Agents, Inc., 300-B East High Street, Jefferson City, Missouri 65101.

10. On June 1, 2009, KCPL and KCPL-GMO each submitted a Registration of Fictitious Name form with the Missouri Secretary of State registering “KCP&L” as a fictitious name. Collectively, those registrations indicate that both KCPL and KCPL-GMO are doing business under the fictitious name “KCP&L”.

11. Bills that included the “KCP&L” brand were issued to KCPL-GMO’s customers.

12. Signs at locations owned by KCPL-GMO include the “KCP&L” brand.

13. KCPL-GMO’s schedule of rates are filed with the Commission under the name “KCP&L Greater Missouri Operations Company”.

14. The schedule of rates of KCPL-GMO is not maintained under the name “KCP&L”; nor are any rates maintained under that name.

15. In the future, the companies expect to seek authorization to merge KCPL and KCPL-GMO.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law:

Jurisdiction

This Commission has jurisdiction and authority over electrical corporations that provide service within Missouri.² The Commission has authority to hear and decide complaints brought against public utilities operating in Missouri.³

Standard of Review for Summary Determination

Commission Rule 4 CSR 240-2.117, which is titled “Summary Disposition,” authorizes the Commission to decide all or any part of “a contested case by disposition in the nature of summary judgment or judgment on the pleadings.”

Commission Rule 4 CSR 240-2.117(1), provides, in relevant part:

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period.

* * *

(E) The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission

² Section 393.140, RSMo 2000.

³ Section 386.390, RSMo 2000.

determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

This is not a case seeking a rate increase, or a case subject to an operation of law date. Moreover, as set out below, to grant summary determination in this case will not be “otherwise contrary to law” since no genuine factual dispute remains for hearing,⁴ one of the parties is entitled to a determination in its favor as a matter of law,⁵ and the contents of the parties’ pleadings make it plain that the merits of this controversy can be fairly and fully decided in a summary manner. Moreover, the public interest clearly favors the quick and efficient resolution of this matter by summary determination without an evidentiary hearing⁶ inasmuch as “[t]he time and cost to hold hearings on [a] matter when there is no genuine issue as to any material fact would be contrary to the public interest.”⁷ Therefore, the Commission may finally dispose of this case on the basis of the law and the undisputed material facts before it.⁸

⁴ *Determination on the Pleadings, In the Matter of the Cancellation of the Certificate of Service Authority and Accompanying Tariff of ConnectAmerica, Inc.*, Case No. TD-2003-0582 (Nov. 4, 2004). See also *Order Denying Motion for Determination on the Pleadings, Tony Walker v. Kansas City Power & Light Company*, Case No. EC-2006-0451 (Aug. 28, 2006) (denying request for determination on the pleadings under 4 CSR 240-2.117(2) as contrary to law and the public interest where it was obvious that the parties did not agree on the essential facts underlying the complainant’s claim for relief); *McGuire v. Dir. of Revenue*, 174 S.W.3d 87, 89 (Mo. App. E.D. 2005) (a motion for judgment on the pleadings should be denied where there is a genuine issue of material fact on the face of the pleadings).

⁵ *Determination on the Pleadings, In the Matter of the Cancellation of the Certificate of Service Authority and Accompanying Tariff of ConnectAmerica, Inc.*, Case No. TD-2003-0582 (Nov. 4, 2004); *Neel v. Strong*, 114 S.W.3d 272, 274 (Mo. App. E.D. 2003) (“A motion for judgment on the pleadings is properly granted . . . if, from the face of the pleadings, the moving party is entitled to judgment as a matter of law.”).

⁶ See, e.g., *Determination on the Pleadings, The Staff of the Missouri Public Service Commission v. Taney County Utilities Corporation*, Case No. WC-2004-0342 (Oct. 19, 2004).

⁷ *Determination on the Pleadings, In the Matter of the Application of Aquila Inc. for an Accounting Authority Order Concerning Fuel Purchases*, Case No. EU-2005-0041 (Oct. 7, 2004).

⁸ See, e.g., *Determination on the Pleadings, The Staff of the Missouri Public Service Commission v. Taney County Utilities Corporation*, Case No. WC-2004-0342 (Oct. 19, 2004).

The Statute Staff Alleges the Respondents have Violated

Staff alleges KCPL and KCPL-GMO have violated Section 417.200, RSMo 2000.

That statute states as follows:

That every name under which any person shall do or transact business in this state, other than the true name of such person, is hereby declared to be a fictitious name, and it shall be unlawful for any person to engage in or transact any business in this state under a fictitious name without first registering same with the secretary of state as herein required.

Section 417.230, RSMo 2000, makes the violation of Section 417.200 a misdemeanor.

The Order Staff Alleges the Respondents have Violated

Staff alleges KCPL and KCPL-GMO have violated an order recognizing name change that the Commission issued in Case No. EN-2009-0164 on November 20, 2008. That order recognizes the name change of Aquila, Inc., d/b/a KCP&L Greater Missouri Operations Company to KCP&L Greater Missouri Operations Company. It also approves an adoption notice tariff submitted by KCPL-GMO to change the name that appears on the company's tariffs. The Commission's order in EN-2009-0164 does not order KCPL-GMO to take any action, nor does it order the company to refrain from taking any other action.

DECISION

Staff's complaint asserts, and the agreed upon facts confirm, that KCPL-GMO and KCPL have both been using the name "KCP&L". That means, for example, the bills KCPL-GMO sends to its customers carry the KCP&L logo rather than a separate logo for KCPL-GMO. The bills sent by KCPL to its customers carry the same KCP&L logo. Similarly, the service trucks for both KCPL-GMO and KCPL carry the same KCP&L logo. Staff contends the two companies' use of the same logo is confusing to customers and violates a prior

Commission order, as well as Section 417.230, RSMo 2000, which forbids any person to engage in or transact any business in Missouri under a fictitious name without first registering that name with the Secretary of State.

The parties agree that KCPL and KCPL-GMO registered their use of the fictitious name “KCP&L” with the Missouri Secretary of State on June 1, 2009, after Staff filed this complaint. Therefore, any violation of Section 417.230, if indeed there ever was such a violation, ended at that time. Nevertheless, Staff asks for authority to seek financial penalties from the companies for what it claims are previous violations of the statute.

However, the Commission finds that the Respondents did not violate the statute, even before they registered their use of a fictitious name. Rather, KCPL and KCPL-GMO’s use of the shortened name “KCP&L”, as described in Staff’s complaint, is in the nature of a brand or trademark, rather than a fictitious name. Section 417.230 forbids the use of an unregistered fictitious name, but does not forbid the use of a shortened version of a true name.⁹ For that reason, KCPL and KCPL-GMO have not violated Section 417.230.

Staff also argues that KCPL and KCPL-GMO’s use of the “KCP&L” name and trademark violates the Commission’s order in Case No. EN-2009-0164. However, that order merely acknowledges the change in the name under which KCPL-GMO would submit an operating tariff. It does not order KCPL or KCPL-GMO to take any action, or to refrain from taking any other action. For that reason, KCPL and KCPL-GMO have not, and indeed, could not, violate that order.

⁹ See. *Williams v. Nuckolls*, 644 S.W.2d 670 (Mo. App. E.D. 1982).

In sum, the Commission finds that Staff has failed to establish that either KCPL or KCPL-GMO have violated any statute or order of the Commission. The Commission also notes that Staff did not present sufficient evidence to establish that the use of the KCP&L brand by KCPL and KCPL-GMO has caused significant confusion among the customers of those companies. Summary determination in favor of the Respondents is appropriate and the Commission will dismiss Staff's complaint.

IT IS ORDERED THAT:

1. The Motion for Summary Determination filed by Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company is granted.
2. The Motion for Summary Determination filed by Staff is denied.
3. Staff's Complaint against Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company is dismissed.
4. This order shall become effective on January 2, 2010.

BY THE COMMISSION

(S E A L)



Steven C. Reed
Secretary

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC., concur.

Woodruff, Chief Regulatory Law Judge