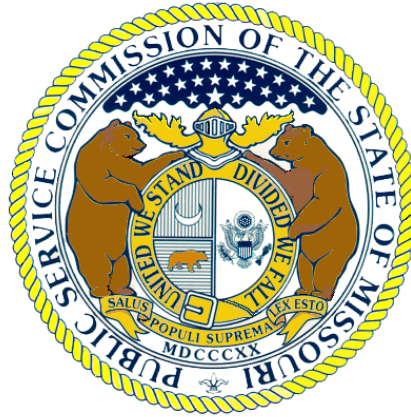


BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



Staff of the Missouri Public Service
Commission

Complainant,

v.

Kansas City Power & Light Company

And

KCP&L Greater Missouri Operations
Company

Respondents.

File No. EC-2015-0309

REPORT AND ORDER

Issue Date: April 27, 2016

Effective Date: May 27, 2016

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APPEARANCES

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For the Office of the Public Counsel and the Public.

Chief Regulatory Law Judge: **Morris L. Woodruff**

REPORT AND ORDER

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The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

The Commission's Staff filed this complaint against Kansas City Power & Light Company (KCP&L) and KCP&L Greater Missouri Operations Company (GMO) on May 20, 2015, alleging that KCP&L and GMO's contractual relationship with Allconnect, Inc. violates several statutes and Commission regulations. KCP&L and GMO filed a timely answer on June 22, 2015. The parties prefiled direct, rebuttal, and surrebuttal testimony, and an evidentiary hearing was held on January 19 and 20, 2016. The parties filed initial post-hearing briefs on February 11, 2016, and reply briefs on February 25, 2016.

Findings of Fact

1. KCP&L is a Missouri general business corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105. KCP&L is an “electrical corporation” and a “public utility” subject to the jurisdiction, supervision and control of the Commission under Chapters 386 and 393, RSMo 2000.¹

2. GMO is a Delaware general business corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105. GMO is an “electrical corporation” and a “public utility” subject to the jurisdiction, supervision and control of the Commission under Chapters 386 and 393, RSMo 2000.²

2. Both KCP&L and GMO are wholly-owned subsidiaries of Great Plains Energy, Inc., a publically-traded Missouri general business corporation and a public utility holding company, also located at 1200 Main Street, Kansas City, Missouri 64105.³

3. KCP&L and GMO provide retail electric service to areas in Metropolitan Kansas City, Missouri, and in other areas of western Missouri. Together, they serve 565,000 residential, commercial, and industrial customers in 36 Missouri counties. KCP&L also has retail and wholesale service territory in 11 counties in the State of Kansas.⁴

4. Effective April 30, 2013, Great Plains Energy Services Incorporated (GPES) acting on behalf of itself and its affiliates, KCP&L and GMO, entered into a Direct Transfer Service Agreement with Allconnect, Inc.⁵

¹ Staff’s Complaint, Paragraph 7. Admitted by KCP&L and GMO in their June 22, 2015 Answer.

² Staff’s Complaint, Paragraph 8. Admitted by KCP&L and GMO in their June 22, 2015 Answer.

³ Staff’s Complaint, Paragraphs 7 and 8. Admitted by KCP&L and GMO in their June 22, 2015 Answer.

⁴ Staff’s Complaint, Paragraph 9. Admitted by KCP&L and GMO in their June 22, 2015 Answer.

⁵ Hyneman Direct, Ex. 3, Schedule CRH-d2. Hyneman filed direct testimony on behalf of Staff, but subsequently changed his employment to the Office of the Public Counsel and offered surrebuttal testimony on behalf of that entity. Hyneman’s direct testimony was adopted by Staff’s witness Keith

5. GPES is also a direct wholly-owned subsidiary of Great Plains Energy, Inc. It is used as a contracting vehicle to eliminate redundant administrative expense when negotiating duplicate contracts that would otherwise be required when contracting for goods or services needed by both KCP&L and GMO. The use of GPES as a contracting vehicle began in 2008, when Great Plains Energy, Inc. acquired what would be the GMO system from Aquila.⁶

6. Aside from signing the contract with Allconnect, GPES has no other involvement in the transaction.⁷

7. Allconnect is a corporation headquartered in Atlanta, Georgia. Dwight Scruggs, Senior Vice President of Client Services and Business Development for Allconnect⁸ testified on behalf of KCPL/GMO. Scruggs described Allconnect as “a leading multi-channel marketplace that simplifies the purchase of services for the connected home”.⁹ Allconnect does that by offering its services to customers of major utilities and home service providers by assisting them in transferring or establishing other household services such as communication bundles, video, internet, home phone, and home security through a variety of service providers.¹⁰

8. Consumers pay nothing to Allconnect for its services.¹¹ Rather, Allconnect is

Majors for purposes of cross-examination.

⁶ Ives Rebuttal, Ex. 101, Page 4, Lines 9-23.

⁷ Ives Rebuttal, Ex. 101, Page 7, Lines 9-22.

⁸ Scruggs Rebuttal, Ex. 103, Page 1, Lines 17-18.

⁹ Scruggs Rebuttal, Ex. 103, Page 2, Lines 12-13.

¹⁰ Scruggs Rebuttal, Ex. 103, Page 2, Lines 13-16.

¹¹ Scruggs Rebuttal, Ex. 103, Page 2, Lines 22-23.

paid by the service providers for whom Allconnect provides a new customer.¹² As a result, Allconnect has a financial incentive to sell services to KCP&L and GMO customers. That also means that Allconnect sells only the services of the providers with which it has a business relationship.¹³ Not all providers enter into a business relationship with Allconnect, so customers who use Allconnect's services may not be aware of all their service options.¹⁴

9. Pursuant to their agreement, KCP&L and GMO transfer certain callers to Allconnect. Allconnect pays a fee to KCP&L and GMO for every call transferred.¹⁵

10. In general terms, when a residential customer of KCP&L or GMO calls their electric provider to turn on or transfer their electric service to a new residence, the KCP&L and GMO call center first obtains all the information it needs from the customer to turn on or transfer the customer's electric service. After the KCP&L and GMO customer service representative has obtained the needed information, he or she will determine whether the call is eligible for transfer to Allconnect.¹⁶

11. The KCP&L and GMO customer service representative tells customers that their call will be transferred to Allconnect, who is to verify the information provided by the customers before providing them with an order confirmation number. They are also told Allconnect will offer them additional home services, such as home phone, internet, cable/satellite, or home security. Their call is then transferred to Allconnect.¹⁷

¹² Transcript, Page 402, Lines 13-16. The citation is to a portion of the testimony given in camera and is therefore confidential. The Commission finds that this broad statement of how Allconnect is paid is important to an understanding of this complaint, and should be made public, as permitted by Section 386.480, RSMo 2000. See *also*, Kremer Direct, Ex. 1, Schedule LAK-d2, Page 12.

¹³ Caisley Rebuttal, Ex. 100, Page 10, Lines 5-19.

¹⁴ Kremer Direct, Ex. 1, Page 8, Lines 26-33.

¹⁵ The amount of the fee paid by Allconnect is highly confidential, but can be found at Klote Rebuttal, Ex. 102HC, Page 6, Lines 10-11.

¹⁶ Trueit Rebuttal, Ex 104, Page 4, Lines 6-18.

¹⁷ Trueit Rebuttal, Ex. 104, Pages 4-5, Lines 19-23, 1-9.

12. When transferring the customer's call to Allconnect, the KCP&L and GMO customer service representative also transfers certain customer-specific information directly to Allconnect. The customer information provided to Allconnect is the customer's name, service address, start-date of service, account number and confirmation number.¹⁸ The Allconnect representative is supposed to verify the accuracy of that information with the customer¹⁹ and then may use that information if the customer accepts Allconnect's offer of assistance in arranging other services.²⁰ Customers are not told that their customer information is being transferred to Allconnect.²¹

13. Although KCP&L and GMO share the customer-specific information with Allconnect, the companies retain that information in their own customer information system.²²

14. The Allconnect representatives are supposed to verify the customer information and give the customer a confirmation number before attempting to sell Allconnect's services to the customer.²³ In actual practice, the Allconnect representatives sometimes attempt to sell their services to the utilities' customers before giving them their confirmation number.²⁴ Staff's review of 86 customer calls transferred to Allconnect revealed that approximately 55 percent of those customers either received their confirmation number at the end of their conversation with Allconnect or never did receive a

¹⁸ A customer's phone number and e-mail address are not transferred to Allconnect. Transcript, Page 520-521, Lines 22-25, 1.

¹⁹ Trueit Rebuttal, Ex. 104, Page 5, Lines 16-18.

²⁰ Transcript, Page 304, Lines 2-14.

²¹ Transcript, Pages 303-304, Lines 22-25, 1.

²² Trueit Rebuttal, Ex. 104, Page 5, Lines 19-22.

²³ Trueit Rebuttal, Ex. 104, Page 5, Lines 11-13.

²⁴ Transcript, Page 111, Lines 4-10. See *also*, Kremer Surrebuttal, Ex. 2, Schedule LAK-s3.

confirmation number from Allconnect.²⁵

15. The confirmation number is the tracking source of KCP&L and GMO's commitment to transfer or turn on electric service and provides a means for the customer to communicate with the utility if anything needs to be changed or something goes wrong on the day the service is to be connected.²⁶ KCP&L and GMO transfer the confirmation number to Allconnect along with the customer information, so the transfer of the customer call to Allconnect is not needed to get that number to the KCP&L or GMO customer.²⁷

16. While the accuracy of the information taken by the utilities regarding the turn-on or transfer of electric service is very important, the transfer of callers to Allconnect to verify that information is not necessary. KCP&L and GMO performed that verification function for themselves for many years before entering into a contract with Allconnect, and every other regulated utility in Missouri, to the best of Staff's knowledge, performs that verification function for itself.²⁸ In fact, KCP&L and GMO's own customer service representatives continue to perform that verification function today, Allconnect is just another verification layer.²⁹

17. The limited value of the verification performed by Allconnect is shown by the small number of corrections that resulted from that verification. From 80,741 calls transferred to Allconnect by KCP&L and GMO between January and October, 2015, Allconnect informed KCP&L and GMO of 10,217 "corrections" to its collected customer data. After reviewing those proposed "corrections", KCP&L and GMO actually made only

²⁵ Kremer Surrebuttal, Ex. 2, Page 13, Lines 8-18.

²⁶ Kremer Surrebuttal, Ex. 2, Page 4-5, Lines 20-22, 1.

²⁷ Transcript, Page 299, Lines 2-11.

²⁸ Kremer Surrebuttal, Ex. 2, Page 14, Lines 9-14.

²⁹ Transcript, Page 320, Lines 10-23.

279 corrections to its customer data.³⁰ KCP&L and GMO's witness, Jean Trueit, conceded that the number of mistakes identified by Allconnect is a small number that does not concern her.³¹

18. Trueit explained that the large number of identified corrections that do not need to be corrected occurs when Allconnect sends KCP&L and GMO a file of error corrections each day. Most of the corrections identified by Allconnect do not require correction. For example, Allconnect's system spells out the word apartment in an address, while KCP&L and GMO's system uses the abbreviation APT; that discrepancy would generate an error notice.³²

19. Allconnect uses two transfer models in its dealings with utilities. In the agent transfer model, the utility's customer service representative explains the services offered by Allconnect to the caller and explicitly asks permission before transferring the call to Allconnect.³³

20. KCP&L had a prior contractual relationship with Allconnect in the period of 2005 to 2007. Under that contract, the company's customer service representatives used an agent transfer model in transferring calls to Allconnect.³⁴ KCP&L terminated that contract because the transfer model was not working. It required KCP&L's customer service representative to spend too much time with customers trying to explain the services offered by Allconnect and resulted in too many customers refusing to be transferred to Allconnect.³⁵

³⁰ Kremer Surrebuttal, Ex. 2, Page 15, Lines 6-13, and Schedule LAK-s4.

³¹ Transcript, Page 319, Lines 15-24.

³² Transcript, Page 318, Lines 5-17.

³³ Transcript, Page 380, Lines 15-21.

³⁴ Transcript, Page 448, Lines 5-11.

³⁵ Transcript, Pages 449-450, Lines 6-25, 1-11.

21. The other transfer model is the confirmation model. Under that model, which is the model used by KCP&L and GMO, the utility customer service representative simply tells the customer that their call will be transferred to Allconnect with minimal explanation and no request for permission.³⁶

22. Specifically, the script used by KCP&L and GMO customer service representatives states:

Is there anything else I can help you with? Ok, Mr/Mrs _____
Now, I'm going to transfer you to Allconnect. They will confirm your order to ensure accuracy and can help you connect or transfer other services to your home. Thank you for calling KCP&L. Please hold while I transfer you now.³⁷

23. KCP&L and GMO witness Jean Trueit testified that from the above statement, customers are made aware that Allconnect will provide them with sales options. She further testified that “[i]f they do not wish to be transferred they are able to advise the CSR [customer service representative] of this. The Company CSR does not force the customer to be transferred to Allconnect”.³⁸ According to KCP&L and GMO, nine percent of customers refuse to be transferred to Allconnect.³⁹ Nevertheless, in some recorded calls to which Staff listened as part of its investigation, KCP&L or GMO customers were transferred to Allconnect despite their objections.⁴⁰

24. KCP&L and GMO's witness, Charles Caisley, who is KCP&L's Vice President for Marketing and Public Affairs,⁴¹ testified that the company is willing to consider changes to the script used by the customer service representatives to better inform customers about

³⁶ Transcript, Page 381, Lines 8-15.

³⁷ Exhibit 119, Attachment B.

³⁸ Trueit Rebuttal, Ex. 104, Page 7, Lines 13-17.

³⁹ Transcript, Page 322, Lines 2-4

⁴⁰ Transcript, Page 209, Lines 3-18.

⁴¹ Caisley Rebuttal, Ex. 100, Page 1, Lines 5-6.

Allconnect and to obtain their consent before their call is transferred.⁴²

25. KCP&L and GMO have conducted customer satisfaction surveys to determine whether their customers are satisfied with their experience with Allconnect. Those surveys showed that in 2014, approximately 43 percent of customers taking the survey reported that the fact that “your electric utility offered you the opportunity to purchase additional home services such as phone, internet, and cable all in one call” greatly or somewhat improved their “impression or perception of KCP&L”. On the other side, 18 percent of the customers taking the survey responded to that question by saying that their impression or perception of KCP&L had been greatly or somewhat decreased.⁴³

26. KCP&L and GMO have an adequate number of employees available to handle customer inquiries, service requests, safety concerns and complaints.⁴⁴

27. If a KCP&L or GMO customer makes a complaint related to their experience with Allconnect, the KCP&L/GMO customer service representatives are expected to collect the pertinent information and determine the nature of the complaint. If the complaint is about actions by KCP&L/GMO, the KCP&L/GMO customer service representative will resolve the complaint with the customer. If the KCP&L/GMO employee determines that the complaint is about Allconnect actions, he or she will notify Allconnect of the complaint. Allconnect will attempt to resolve the complaint with the customer. Allconnect then provides a summary of the complaint resolution to KCP&L/GMO.⁴⁵

28. KCP&L and GMO account for the revenues received from Allconnect, as well as the costs associated with its relationship with Allconnect, “below the line” in non-

⁴² Transcript, Page 452, Lines 5-21.

⁴³ Caisley Rebuttal, Ex. 100, Schedule CAC-1, Page 1.

⁴⁴ Trueit Rebuttal, Ex. 104, Page 7, Lines 3-7.

⁴⁵ Trueit Rebuttal, Ex. 104, Pages 6-7, Lines 14-22, 1-2.

regulated accounts. That means that those costs and revenues are not included when the rates paid by KCP&L and GMO customers for regulated electric service are determined.⁴⁶ In contrast, costs and revenues that are included when rates for regulated service are calculated are said to be “above the line”.

29. The amount of revenue KCP&L and GMO receive from Allconnect is highly confidential so it will not be included in this order.⁴⁷ KCP&L and GMO’s costs associated with the Allconnect relationship are significantly lower than the associated revenues,⁴⁸ so the relationship is a source of profit for the utilities, albeit a small source when compared to the companies’ total annual revenues of \$2.3 billion.⁴⁹

30. KCP&L and GMO indicated a willingness to change the Allconnect program, including a willingness to move the costs and revenues associated with that program “above the line,” if directed to do so by the Commission.⁵⁰

Conclusions of Law

A. KCP&L and GMO are electrical corporations as that term is defined at Section 386.020(15), RSMo (Supp. 2013). As electrical corporations, KCP&L and GMO are subject to regulation by this Commission as described in Chapters 386 and 393, RSMo.

B. The Commission’s Staff is authorized to file a complaint against KCP&L and GMO by Section 386.390, RSMo 2000, and by Commission Rule 4 CSR 240-2.070(1).

C. As the party asserting the affirmative of the issues, Staff, as the complainant,

⁴⁶ Klote Rebuttal, Ex. 102, Page 4, Lines 2-9.

⁴⁷ The total revenue numbers through September 2015 can be found at Klote Rebuttal, Ex. 102, Pages 8-9, Lines 21-22, 1-2.

⁴⁸ The total allocated costs are also highly confidential, but can be found at Klote Rebuttal, Ex. 102, Page 8, Lines 17-21.

⁴⁹ Transcript, Page 266, Lines 3-6.

⁵⁰ Transcript, Pages 455-456, Lines 22-25, 1-11. See *a/so*, Transcript, Page 495, Lines 2-10.

has the burden of proof.⁵¹

Application of Section 393.190.1, RSMo

D. Section 393.190.1, RSMo (Cumm. Supp. 2013), provides, in part, that:

[n]o ... electrical corporation, ... shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, ... without having first secured from the commission an order authorizing it so to do.

Staff and Public Counsel contend KCP&L and GMO have violated this statute by selling specific customer information to Allconnect without having sought or obtained permission from the Commission.

E. That statute restricts the utility's ability to dispose of or encumber any part of its "franchise, works or system." A utility franchise is "no more than local permission to use the public roads and rights of way in a manner not available to or exercised by the ordinary citizen."⁵² No one contends that the customer information that has been sold is a part of the utilities' "franchise", so the question narrows to whether it is part of their "works or system".

F. Missouri's statutes do not define either "works" or "system" in the context of service by an electric utility. However, the term "electric plant" is defined by Section 386.020(14), RSMo (Cumm. Supp. 2013) as including:

all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power[.]

⁵¹ See. *AG Processing, Inc. v. KCP&L Greater Missouri Operations Company*, 385 S.W. 3d 511 (Mo. App. 2012), *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n*, 116 S.W. 3d 680 (Mo. App. W.D. 2003).

⁵² *State ex rel Union Elec. Co. v. Pub. Serv. Com'n*, 770 S.W.2d 283, 285 (Mo. App. W.D. 1989).

That definition includes tangible items of property used to provide electric service. It does not include intangible assets such as the customer information KCP&L and GMO have sold to Allconnect.

G. Although there is no statutory or case law stating that electric “plant”, “works”, and “system” are synonymous,⁵³ that is a reasonable conclusion consistent with the apparent purpose of the statute to restrict the sale or transfer of a utility’s works or system so as to protect the physical integrity and the financial viability of the works or system needed to serve the utility’s customers.

H. The idea that Missouri’s statutes treat “plant” and “system” as synonymous is supported by other definitions within section 386.020, RSMo. While that statute defines “electric plant” and “gas plant” for electric and gas service, it offers definitions of “sewer system”⁵⁴ and “water system for those types of service.”⁵⁵ Although the labels of “plant” and “system” are placed on the definitions for the different types of service, all the definitions refer to tangible, physical items of property used by a utility to serve customers.

I. In support of their position, Staff and Public Counsel point to a 1992 Commission decision that found the Commission had power under Section 393.190.1 to

⁵³ KCP&L and GMO’s initial brief cites *State on Inf. of McKittrick ex rel. City of Trenton v. Missouri Public Service Corp.*, 174 S.W.2d 871 (Mo. banc 1943) for the proposition that the term gas works is synonymous with gas plant. However, a close reading of the decision reveals that the court was interpreting the language of a municipal ordinance, not a state statute, and is using the terms “electric light plant” and “gas plant” as subsets of the broader term “works” in deciding that the Missouri Public Service Corporation had not forfeited a municipal franchise. The decision does not support KCP&L and GMO’s position.

⁵⁴ Section 386.020(50) RSMo (Cumm. Supp. 2013) ““Sewer system” includes all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the collection carriage, treatment and disposal of sewage for municipal, domestic or other beneficial or necessary purpose[.]”

⁵⁵ Section 386.020(60) RSMo (Cumm. Supp. 2013) ““Water system” includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for municipal, domestic or other beneficial use.

require Kansas City Power & Light Company to seek authority from the Commission before selling sulfur dioxide (SO₂) allowances created under the Clean Air Act Amendments of 1990.⁵⁶ In that decision, based on the facts established in that case, the 1992 Commission did indeed find that a utility's "system" describes something broader than its "works". The Commission concluded that "[a] utility's system is the whole of its operations which are used to meet its obligation to provide service to its customers."⁵⁷ In support of that statement, the 1992 Commission cited a 1934 Missouri Supreme Court decision, *State ex rel. City of St. Louis v. Pub. Serv. Comm'n*.⁵⁸

J. A review of that Supreme Court decision reveals that it concerned the sale of stock by one utility holding company to another layer of holding company. The 1930s Commission had approved that sale of stock, finding no detriment to the public. In its decision, the Supreme Court rejected the City of St. Louis' contention that public policy required the Commission to make an affirmative finding that the stock sale was in the public interest, not just a finding of no detriment. The Supreme Court's decision has nothing to do with the definition of a utility's system and whether such a system is limited to physical, tangible property. It does not support the statement for which it was cited. The 1992 Commission cited no other legal authority for its conclusion that a utility's "system" was something broader than its "works" and that intangible SO₂ allowances were part of that "system".

Application of Commission Rule 4 CSR 240-20.015(2)(C)

K. Commission Rule 4 CSR 240-20.015 generally applies to affiliate transactions

⁵⁶ *In the matter of the application of Kansas City Power & Light Company for review of its Phase I Compliance Plan and other activities under the Clean Air Act*, Order Establishing Jurisdiction and Clean Air Act Workshops, 1 Mo. P.S.C. 3d 359 (1992).

⁵⁷ *Kansas City Power & Light Company*, at 362.

⁵⁸ 73 S.W. 2d 393 (Mo. banc 1934).

by electric utilities. A provision of that rule defines an “affiliated entity” as one that is “... controlled by, or is under common control with the regulated electrical corporation.”⁵⁹ By terms of that definition, GPES is an affiliate of KCP&L and GMO; Allconnect is not.

L. The affiliate transaction rule defines an affiliate transaction as one “... between a regulated electrical corporation and an affiliated entity ...” including “...all transactions between any unregulated business operation of a regulated electrical corporation and the regulated business operations of a electrical corporation.”⁶⁰

M. Commission Rule 4 CSR 240-20.015(2)(C) provides “[s]pecific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders. ...” Although this provision is included in the affiliate transaction rule, there is nothing in the rule that limits its restrictions on sharing customer information to affiliate transactions.

Application of Commission Rule 4 CSR 240-13.040(2)(A)

N. Chapter 13 of the Commission’s rules concerns the service and billing practices of Missouri’s regulated utilities. Commission Rule 4 CSR 240-13.040(2)(A) provides: “At all times during normal business hours qualified personnel shall be available and prepared to receive and respond to all customer inquiries, service request, safety concerns and complaints. ...”

Financial Penalties

O. Section 386.570, RSMo 2000 provides that public utilities that violate any provision of statute, rule, or order of the Commission are subject to a penalty of not less than one hundred dollars, nor more than two thousand dollars for each offense.

P. Section 386.600, RSMo 2000 authorizes the Commission to file an action in

⁵⁹ 4 CSR 240-20.015(1)(A).

⁶⁰ 4 CSR 240-20.015(1)(B).

any circuit court to recover such penalty.

Authority to Order Changes to Transfer Script and Accounting Practices

Q. Section 393.130.1, RSMo (Cumm. Supp. 2013) requires every electrical corporation to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.” Further, Section 393.140(5), RSMo 2000 provides in relevant part:

[w]henever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that ... the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe ... the just and reasonable acts and regulations to be done and observed.

R. Section 393.140(4), RSMo 2000 give the Commission authority to “prescribe by order, forms of accounts, records and memoranda to be kept by such persons and corporations.”

Decision

Based on its findings of fact and conclusions of law, the Commission has made the following decision. In describing its decision, the Commission will respond to the list of issues set forth by the parties before the evidentiary hearing.

I. Does the evidence establish that, through the relationship with Allconnect, the Company has violated section 393.190.1 RSMo?

Section 393.190.1, RSMo requires regulated utilities to seek authority from the Commission before disposing of, or encumbering any part of its “franchise, works, or system, necessary or useful in the performance of its duties to the public”. KCP&L and GMO have not violated that statute.

The purpose of the statute is to ensure that a regulated utility does not impair its ability to provide service to the public by selling or encumbering (because of the possibility

the utility could lose control of the property if the incurred debt is not paid) the property it needs to serve the public. KCP&L and GMO's transfer of customer information does not fall within the strictures of the statute for two reasons.

First, the transfer of customer information to Allconnect that occurs under the contract is just a sharing of that information. KCP&L and GMO retain that information and can continue to use it to perform their duties to the public. The statute's concern to protect the integrity of the utility's means of serving the public is not affected by that transaction. Thus, the Commission determines there is no disposal or encumbering.

Second, customer information is not physical, tangible property that generally falls within the statutory definition of "plant", "works", and "system", the disposition of which is restricted by the statute. Staff and Public Counsel point to the Commission's 1992 *Kansas City Power & Light Company* decision that concluded, under the facts established in that case, that federal SO₂ allowances, were a part of the utility's "plant", "works" or "system", such as to bring them within the disposition restrictions of the statute. This Commission has concluded that part of the legal basis for the 1992 Commission's decision is questionable, but this Commission has not been asked to set aside that earlier decision and will not do so. In the future, the Commission may once again examine the circumstances presented in a particular case and conclude, as was done in 1992, that some item of intangible, non-physical property is a part of a utility's "plant", "works" or "system." But that conclusion is not appropriate in the circumstances described in Staff's complaint. The Commission finds and concludes that KCP&L and GMO have not violated section 393.190.1 RSMo.

II. Does the evidence establish that, through the relationship with Allconnect, the Company has violated 4 CSR 240-20.015(2)(C)?

Staff and Public Counsel assert that KCP&L and GMO have violated the

Commission's affiliate transaction rule by transferring customer information to Allconnect without having obtained the consent of those customers. Despite Staff and Public Counsel's claims to the contrary, KCP&L and GMO's transaction with Allconnect is not a transaction between affiliates. In that transaction, Allconnect pays money to KCP&L and GMO. In return, the utilities transfer certain customer calls and related customer information to Allconnect. GPES, which is an affiliate of KCP&L and GMO, signed the contract with Allconnect as a contracting vehicle on behalf of KCP&L and GMO, but GPES is not otherwise involved in the transaction. GPES' signature on the contract does not turn KCP&L and GMO's transaction with a wholly unaffiliated Allconnect into an affiliate transaction.

Nevertheless, KCP&L and GMO have violated 4 CSR 240-20.015(2)(C). That regulation requires that customer information be made available to "affiliated or unaffiliated entities" only with the consent of the customer, or as otherwise allowed by Commission rules or orders. The plain language of the rule says that it applies equally to the transfer of customer information to either affiliated or unaffiliated entities. The fact that the provision is found in a rule that otherwise regards affiliated transactions, does not change the clear language of the rule. That rule applies even though KCP&L and GMO's transaction with Allconnect is not an affiliate transaction.

KCP&L and GMO argue that the rule's restriction on the transfer of customer information should not apply to its transaction with Allconnect because in many other circumstances, utilities transfer customer information to other entities without having first obtained consent from the customers. For example, a utility may engage the services of another company to collect past-due accounts, read meters, or operate a customer call center on behalf of the utility. Customer information may routinely be transferred to those entities without the consent or knowledge of the utility's customer.

However, those situations differ from the transaction with Allconnect in that such contractual relationships are designed to effectuate some aspect of the utility's obligation to provide safe and adequate service to its customers. In contrast, the transfer of customer information to Allconnect does not serve any utility-service related purpose. The transaction is simply designed to deliver customer information to a third-party that wants to sell an unrelated service to the utility's customer.

KCP&L and GMO attempt to mask the true nature of the transaction by having Allconnect "confirm" the accuracy of the customer information already taken by KCP&L and GMO's customer service representatives. The evidence established that the KCP&L and GMO customer service representatives are capable of "confirming" the accuracy of the information they obtain from their customers. They did so for many years before KCP&L and GMO entered into their contract with Allconnect and are capable of doing so now. Rather, the confirmation function performed by Allconnect is a pretext to attempt to avoid regulatory problems of the type represented by Staff's complaint. Indeed, the confirmation function serves as a marketing hook to discourage utility customers from dropping off the line when their call is transferred to Allconnect.

The Commission finds and concludes that KCP&L and GMO have made customer-specific information available to Allconnect without the consent of their customers in violation of 4 CSR 240-20.015(2)(C).

III. Does the evidence establish that, through the relationship with Allconnect, the Company has violated 4 CSR 240-13.040(2)(A)?

Commission Rule 4 CSR 240-13.040(2)(A) requires a utility to have qualified personnel available to respond to customer inquiries and complaints. The evidence established that KCP&L and GMO have adequate numbers of trained customer service representative available to serve the needs of their customers. Staff and Public Counsel

did not question that KCP&L and GMO have such representative available. Rather they are concerned that some customer complaints about their treatment by Allconnect are transferred to Allconnect for resolution rather than being resolved by the KCP&L and GMO customer service representatives. The Commission shares Staff and Public Counsel's concerns. It is vital that KCP&L and GMO's customer service representatives respond and resolve any complaints related to the transfer of a utility customer to Allconnect. Such complaints must not be transferred to Allconnect. However, if the customer calls KCP&L or GMO to complain about the service they received from Allconnect after the call was transferred, it is appropriate for the utilities to pass that complaint along to Allconnect for resolution, so long as the utilities continue to monitor the complaint to ensure that their customers are treated fairly.

Despite those concerns, the Commission finds and concludes that KCP&L and GMO have qualified personnel available to respond to complaints and have not violated Commission Rule 4 CSR 240-13.040(2)(A).

IV. If the Commission finds in the affirmative on any of the preceding three issues, should the Commission direct its general counsel to seek monetary penalties against the Company?

The Commission has found and concluded that KCP&L and GMO have violated Commission Rule 4 CSR 240-20.015(2)(C) by transferring customer information to Allconnect without having obtained the consent of those customers. The question then becomes, does the Commission wish to exercise its discretion to direct its General Counsel to file an action in circuit court to seek financial penalties against KCP&L and GMO?

The Commission will not do so. While KCP&L and GMO have violated a Commission Rule by transferring customer information to Allconnect without the customers consent, that action does not convince the Commission that penalties are appropriate.

There is nothing inherently wrong with the service that Allconnect is offering to KCP&L and GMO's customers. It is a service that many customers seem to appreciate, based on the favorable reaction measured by the customer surveys reported by the utilities. But not all customers appreciate the offer, and if KCP&L and GMO wish to continue offering that service, they must obtain customer consent before transferring their calls and customer information to Allconnect.

In addition to the issues identified by the parties before the hearing, the following issues developed during the course of the hearing.

V. Should the Commission order KCP&L and GMO to end their relationship with Allconnect as a matter of good public policy even if that relationship does not violate any statute, rule, or Commission order?

This question was raised by the Commission as it heard the evidence and considered whether the relationship with Allconnect was in violation of any statute or Commission Rule. Having found and concluded that KCP&L and GMO have violated a Commission Rule, the question of whether the relationship should be ended even if it does not violate any rule has been effectively eliminated. Nevertheless, having found that KCP&L and GMO's current practices with regard to transferring customers to Allconnect are unjust and unreasonable, the Commission will prescribe the changes KCP&L and GMO must make to bring the Allconnect relationship into compliance with the Commission's rule, as it is authorized to do by Section 393.140(5), RSMo 2000.

If KCP&L and GMO wish to continue their contractual relationship with Allconnect by transferring customer calls and related information, they must ensure that customers understand that they have the option to transfer to Allconnect; that they can complete their business with KCP&L or GMO without having to transfer to Allconnect; and that Allconnect

is a third-party that offers services separate and apart from the services offered by the utility. KCP&L and GMO will need to modify the script used by their customer service representatives regarding the proposed transfer to Allconnect to obtain the informed customer consent.

In addition to changing the transfer script, KCP&L and GMO will also need to modify how they account for the revenues and expenses associated with the Allconnect relationship. That leads to the final issue.

VI. Should KCP&L and GMO be ordered to account for the Allconnect revenue and expenses “above the line”?

KCP&L and GMO currently account for revenues and expenses associated with the Allconnect relationship “below the line”; meaning they are treated as non-regulated revenue and expense that is not considered by the Commission when the companies’ rates are set. That also means the companies’ shareholders bear the risk of any associated loss and keep any resulting profit. The companies indicated at the hearing that they are willing to modify their accounting practices to bring the Allconnect revenue and expenses “above the line”, treating it as regulated revenue and expense, if the Commission directs them to do so.

The Commission finds and concludes that the revenue and expense associated with the Allconnect relationship should be treated as regulated revenue and expense and brought “above the line”. While the services Allconnect offers are not regulated by this Commission, KCP&L and GMO’s relationship with its customers is regulated. Further, the customer information and contacts that KCP&L and GMO are selling to Allconnect are developed through that regulated relationship. Finally, moving the revenue and expenses above the line reduces the impression that KCP&L and GMO are selling their customer’s information to increase their unregulated profits.

THE COMMISSION ORDERS THAT:

1. Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company shall immediately cease violating Commission Rule 4 CSR 240-20.015(2)(C).
2. If Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company wish to continue their contractual relationship with Allconnect, Inc. they shall file for Commission approval a modified customer service representative script to ensure that customers give their informed consent before their calls and related information are transferred to Allconnect.
3. Effective with the date of this order, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company shall treat all revenues and expenses associated with its contractual relationship with Allconnect, Inc. "above the line" as regulated revenues and expenses.
4. This report and order shall become effective on May 27, 2016.

BY THE COMMISSION



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur;
and certify compliance with the
provisions of Section 536.080, RSMo

Dated at Jefferson City, Missouri,
on this 27th day of April, 2016.