BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

The Staff of the Missouri Public Service Commission,	)	
Complainant,	)	
vs.	)	**Case No. EC-2015-0309**
Kansas City Power & Light Company	)	
and	)	
KCP&L Greater Missouri Operations Company,	)	
Respondents.	)	

STAFF'S INITIAL BRIEF

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and for its *Initial Brief,* states as follows:

Introduction:

Staff's Complaint:

Staff filed its *Complaint* on May 20, 2015, charging that Kansas City Power & Light Company ("KCPL") and KCP&L Greater Missouri Operations Company ("GMO") are violating Missouri statutes and Commission rules by (1) transferring useful and necessary system assets, namely, customer names, addresses, telephone numbers, service commencement dates, service confirmation numbers, and unique customer numbers, to Allconnect without first obtaining authorization from the Commission to do

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so, in violation of § 393.190.1, RSMo.;[1] (2) by making the aforementioned transfers, in the context of an affiliate transaction, without the consent of the affected customers in violation of Commission Rule 4 CSR 240-20.015(2)(C); and (3) by transferring certain customer phone calls to Allconnect and relinquishing KCPL and GMO control and responsibility to Allconnect's non-qualified personnel to investigate and respond to customer inquiries and complaints in violation of Commission Rule 4 CSR 240-13.040(2)(A). For relief, Staff prays that the Commission will enter its order finding that KCPL and GMO violated the statute and rules cited above; directing KCPL and GMO to cease the offending conduct immediately; and authorizing its General Counsel to seek penalties under §§ 386.570, and 386.590.

The Complainant's Burden:

As in any complaint case, Staff's burden is to show, by a preponderance of the credible evidence, that facts exist that correspond to all of the elements of the violations charged. These elements are found in the language of the respective statute and rules. Proof can be found in evidence adduced at hearing, both through testimony and exhibits, and in Respondents' admissions.

Why is this case important?

This case is important as a cautionary tale. It demonstrates that, with the regular appearance of new technologies and new ways of doing business, the Commission

[1] All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo) as currently supplemented; Kremer Direct, Ex. No. 1, Schedule LAK-d2, p.5.

must remain ever vigilant to protect the ratepaying consumer from the monopoly power of the utility. The Missouri Supreme Court has said repeatedly:

> The first PSC law regulating utilities was enacted in 1913. The purpose of such regulatory laws is to allow a utility to recover a just and reasonable return while at the same time protecting the consumer from the natural monopoly power that the public utility might otherwise enjoy as the provider of a public necessity.[2]

Respondents argue that, by their relationship with Allconnect, they are doing their customers a favor and that most of their customers appreciate it. They are even, they maintain, reducing the cost of service that their customers would otherwise have to pay. Staff, on the other hand, charges that the Respondents are violating a statute and two Commission rules by exploiting their customers to obtain a new, however paltry, revenue stream. The Commission must determine which theory is correct. In doing so, the Commission must pass judgment on Respondents' new business practice.

KCPL and GMO are hardly the only regulated utilities looking for new sources of revenue. For that reason, Staff said in its opening statement, and repeats here, that if the Commission concludes that Respondents' conduct in the Allconnect relationship is permissible, then other utilities will start doing the same thing. Their shareholders will demand it.

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[2] ***State ex rel. Sprint Missouri, Inc. v. Public Service Com'n of State,*** 165 S.W.3d 160, 161 (Mo. banc 2005); ***State ex rel. Util. Consumers Council, Inc. v. Pub. Serv. Comm'n,*** 585 S.W.2d 41, 47 (Mo. banc 1979); ***May Dep't Stores Co. v. Union Electric Light & Power Co.,*** 341 Mo. 299, 107 S.W.2d 41, 48 (1937); ***State ex rel. City of Sikeston v. Public Service Com'n of Missouri,*** 336 Mo. 985, 999, 82 S.W.2d 105, 110 - 111 (Mo.1935).

Argument

Count I

Violation of Section 393.190.1, RSMo

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

Section 393.190.1, RSMo, provides:

> No . . . electrical corporation . . . shall hereafter . . . transfer . . . 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.

To prove a violation, Staff must show (1) that KCPL and GMO are each an electrical corporation; (2) that the information that each Company collects from its customers upon initiating or transferring service is part of its franchise, works or system; (3) that this customer information is necessary and useful in serving those customers which is part of the performance of the Company's duties to the public; (4) that both KCPL and GMO have transferred this information to Allconnect; and (5) that the Commission has not authorized these transfers.

1. KCPL and GMO are each an electrical corporation:

In their *Answer,* filed on June 22, 2015, KCPL and GMO admit that they are electrical corporations as defined in § 386.020(15).[3]

[3] *Answer,* ¶ 10.

2. The information collected from customers is part of KCPL and GMO's franchise, works or system:

In their *Answer,* KCPL and GMO denied that the information collected from new or transferring customers is a part of their franchise, works or system.[4] However, this Commission has previously determined that a utility's system is the whole of its operations which are used to meet its obligations to provide service to its customers.[5] Considering SO2 emission allowances under the federal Clean Air Act Amendments of 1990, the Commission held that the allowances are necessary and useful in the performance of KCPL's duties to the public and are thus part of KCPL's "system" and that any sale or transfer of these allowances is void without prior Commission approval, pursuant to Section 393.190.1.[6] It follows that customer specific information, including a customer's name, service address, unique customer number, date of service connection, and service confirmation number, is also part of the utility's system. Courts have recognized that a customer list constitutes a valuable trade secret[7] and Charles Caisley admitted as much in testimony.[8] Its value is also manifest in the care that KCPL and GMO take to safeguard it.[9] Clearly, the information that KCPL and GMO collect

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[4] *Id.,* ¶ 31; *and see* James Fischer, Tr. 2:65-66.

[5] ***In the Matter of Kansas City Power & Light Co., Order Establishing Jurisdiction And Clean Air Act Workshops,***1 Mo.P.S.C.3d 359, 362 (August 26, 1992).

[6] *Id.*

[7] ***National Rejectors, Inc. v. Trieman,*** 409 S.W.2d 1, 18-19 (Mo. banc 1966).

[8] Tr. 4:446, lines 5-8.

[9] Tr. 4:445, line 10, to 446, line 3.

from their customers is a utility asset and its value is evident in the fact that Allconnect is willing to pay to access it.[10]

The Respondents strongly resist Staff's allegation that this customer information cannot be shared without prior Commission approval. Respondents deny that customer information is part of their "franchise, works or system."[11] In his opening statement, Respondents' counsel, James Fischer, referred to an opinion of the Supreme Court of Missouri that understood the phrase "gas works" as a synonym for "gas plant."[12] In context, the Court was commenting on the use of the word "works" in an ordinance and noting that it signified one plant, not two.[13] The Court was not construing the use of the word "works" in § 393.190.1. Bootstrapping from that Supreme Court opinion, Mr. Fischer went on to note that § 386.020 defines "electric plant" as "physical assets, all real estate, fixtures and personal property operated, controlled, owned, used or to be used in connection with the provision or generation, transmission or the distribution of electricity" but not "customer information."[14] This reference by Mr. Fischer is no help at all because § 386.020 does not include any definition of the word "works."[15]

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[10] Tr. 4:446-7.

[11] Ives Rebuttal, p. 9, lines 1-5.

[12] Tr. 2:65, referring to ***State on Inf. of McKittrick ex rel. City of Trenton v. Missouri Pub. Serv. Corp.,*** 351 Mo. 961, 977, 174 S.W.2d 871, 879-80 (1943): "Upon a reading of the entire ordinance (set forth in the footnotes), it will be noted that in many of its parts the word 'works' is used as applying to either an electric light plant, a gas plant or both."

[13] ***McKittrick ex rel. City of Trenton,*** *supra.*

[14] Tr. 2:65-6.

[15] Tr. 4:440-41.

The rules of statutory construction direct us to the dictionary in the case of a statutory term left undefined by the legislature. "In the absence of a statutory definition or established judicial interpretation, analysis . . . begins with the proposition that the primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute."[16] "To discern legislative intent, the Court looks to statutory definitions or, if none are provided, the text's plain and ordinary meaning, which may be derived from a dictionary."[17] Among the definitions of "works" are physical things including engineering structures; fortifications; and "[a] factory, plant, or similar building or complex of buildings where a specific type of business or industry is carried on";[18] as well as less concrete things including the collected output of an artist, composer or author; righteous acts or deeds; and "[t]he full range of possibilities; everything."[19] Staff agrees with Respondents that the statutory term "works" refers to the physical facilities of a utility.

Notice that Mr. Fischer has tried to confuse the issue with his focus on the word "works." Staff never suggested that customer information is part of a utility's "works"; rather, Staff insists that it is part of a utility's "system." The word "system" means "a group of interacting, interrelated, or interdependent elements forming a complex

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[16] ***Gash v. Lafayette County,*** 245 S.W.3d 229, 232 (Mo. banc 2008), *quoting* ***State ex rel. Burns v. Whittington,*** 219 S.W.3d 224, 225 (Mo. banc 2007) (internal punctuation and citations omitted).

[17] ***Campbell v. County Commission of Franklin County,*** 453 S.W.3d 762, 768 (Mo. banc 2015) (internal punctuation and citations omitted).

[18] ***The American Heritage Dictionary of the English Language*** at 2065 (3rd ed., Boston: 1996).

[19] *Id.* The last listed definition is noted as "slang."

whole."[20] In doing so, the Staff is merely following the Commission's lead. In 1992, this Commission held:

> The term "works" as supported by KCPL and the other utilities could be limited to a literal meaning of things physical in nature, part of the tangible property used to generate electricity. The same limitation could be placed on the term "system," thus indicating that "system" is almost a redundancy of' works." The Commission does not believe the term "system" is intended to be so literally construed. It is, of course, true that court cases and Commission decisions interpreting Section 393.190 have dealt with tangible property such as generating plants, transmission lines and substations. Those are the issues that have been before the courts and the Commission and concerning which decisions were made. The Commission, though, believes that a utility's system is greater than the physical parts which would be its "works." A utility's system is the whole of its operations which are used to meet its obligation to provide service to its customers. ***City of St. Louis*** at 400.[21] The U.S. Congress has mandated that KCPL meet emission standards. Those standards are based upon KCPL's steam-electric generating units. To enable KCPL to meet the emission limits, Congress created emission allowances which attach to each generating unit. These emission allowances have been made an integral part of KCPL's generating facilities and, thus, an integral part of its generating system. KCPL must utilize these allowances in meeting its obligations under the CAAA[22] and in meeting its obligations to its Missouri ratepayers. The Commission finds that emission allowances are necessary and useful in the performance of KCPL's duties to the public and are part of KCPL's "system," and any sale or transfer of these allowances is void without prior Commission approval.[23]

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[20] ***American Heritage Dictionary,*** *supra,* at 1823.

[21] ***State ex rel. City of St. Louis v. Public Service Commission,*** 73 S.W.2d 393, 400 (Mo. banc 1934).

[22] *Clean Air Act Amendments of 1990,* 42 U.S.C. § 7651 *et seq.*

[23] ***In the Matter of Kansas City Power & Light Co., Order Establishing Jurisdiction And Clean Air Act Workshops,***1 Mo.P.S.C.3d 359, 362 (August 26, 1992).

The Missouri Supreme Court has held that "[t]he interpretation and construction of a statute by an agency charged with its administration is entitled to great weight."[24] By the phrase "franchise, works or system," the General Assembly intended to encompass the entire universe of things useful or necessary to a utility in performing its obligations to the public, from its authority to use public rights of way for its distribution facilities to the physical property, methods, and information used to serve the public. Otherwise, the requirement imposed by § 393.190.1 would be dangerously incomplete.

Staff suggests that the customer information in question is undoubtedly part of Respondents' "franchise, works or system."

3. The information collected from customers is necessary and useful to KCPL and GMO in the performance of its duties to the public:

It is self-evident that the customer specific information collected by KCPL and GMO from their new and transferring customers is both necessary and useful because the utility would be unable to deliver services to its customers, or to bill its customers for services rendered, without it. The utility cannot deliver service without knowing the address of the customer; the utility cannot bill the customer for services rendered without the customer's name and address. Respondents do not deny that this information is both necessary and useful.

[24] ***Foremost-McKesson, Inc. v. Davis,*** 488 S.W.2d 193, 197 (Mo. banc 1972).

4. Both KCPL and GMO have transferred this information to Allconnect:

In their *Answer,* KCPL and GMO admit that they transferred customer specific information to Allconnect, including unique customer number, customer name, service address, service commencement date, and service confirmation number.[25] The "Allconnect Direct Transfer Service Agreement" demonstrates that both customer calls and customer data are transferred to Allconnect.[26] Additionally, Darrin Ives testified, "In June of 2013, the relationship between Allconnect and KCP&L and GMO became operational. As a result, certain residential customer calls to the contact center serving KCP&L and GMO are now being transferred, and a limited amount of customer information (customer name, service address, start date of service account number, and confirmation number) is being provided, to an Allconnect contact center."[27]

However, although they admit that they shared customer information with Allconnect, Respondents deny that this action equated to any of those listed in § 393.190.1 because Respondents never lost possession of the information.[28] Mr. Fischer stated in his opening statement:

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[25] *Answer,* ¶¶ 1, 3, 19, 21, 40. Additionally, in surrebuttal testimony in Case No. EO-2014-0189, KCPL-GMO witness Darrin Ives stated at page 8 that: "Customer information is transferred to Allconnect by KCP&L and GMO . . . ." Kremer Direct, Ex. No.1, Sched. LAK-d2, p. 22. Charles Caisley testified that calls were transferred to Allconnect by KCPL and GMO pursuant to contract. Tr. 4:439.

[26] Kremer Direct, Attachment 2, Allconnect Direct Transfer Service Agreement p.1 (2.3 Definitions) and p.11 Call Transfer Section 1.1).

[27] Ives Rebuttal, p. 3, lines 19-23.

[28] Ives Rebuttal, p. 8, lines 18-22: "I am advised by counsel that the statute's general purpose is to prohibit a utility from selling, disposing of or otherwise compromising its ability to use property needed to serve the public without first getting approval from the Commission. KCP&L and GMO are not violating the statute because they retain all rights to use the customer information upon and after providing it to Allconnect."

> The evidence establishes that, because the Company retains all of the rights to the information and has the ability to use that customer information that it provides to Allconnect after it transfers the call, the Company has not sold or disposed of that information. [29]

Section 303.190.1 requires prior Commission authorization to "sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber" utility assets. Certainly, Respondents *sold* the information to Allconnect – Allconnect gave Respondents money and Respondents gave Allconnect the information; we all understand that to be a sale. There is nothing in the word "sale" that requires that the seller no longer have the item sold at the end of the transaction; it only requires that the buyer has the item at the end of the transaction. Consider, people buy music every day and the seller not only retains the music after the transaction is complete but retains all the rights to it. Like music, customer information in digital form is something that can exist in many copies; but that does not make its transfer in exchange for money any less of a sale. The word "transfer" equally applies; ironically, Mr. Fischer cannot even discuss the matter without using the word "transfer."[30] Again, the fact that Respondents retained a copy of the information after the transfer to Allconnect does not make it any less a transfer.

5. The transfers were unauthorized:

Staff has found no record of any Commission authorization for these transfers and Respondents do not contend that they were authorized. Rather, Respondents contend that authorization was not required. Respondents admit that they replied as follows to Staff DR 24 in Case No. EO-2014-0189:

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[29] *See, e.g.,* James Fischer at Tr. 2:64-5.

[30] Tr. 2:64, line 24.

> Since before the affiliate transactions rule was enacted and continuing after enactment, the Company has been providing customer information to non-affiliated entities, such as bill collectors, in furtherance of providing regulated service offerings. The Company fully expects that many other utility companies in the state are similarly situated. The Company is unaware of any utility company in Missouri seeking approval of the Commission under the affiliate transactions rule to provide customer information to non-affiliated entities under such circumstances . . . .[31]

Staff witness Ms. Kremer testified that there is no similarity between Allconnect and third party contractors that are functioning solely in support of the regulated utility's operations, including work that must be done for the utility to provide service. Rather, Allconnect is a third-party marketing company that is paying KCPL for the transfer of customer data, customer calls, and the circumstance of customers moving/relocating to sell those customers services and products.[32]

Conclusion:

Staff suggests that the evidence shows that Respondents' conduct of selling and transferring customer information to Allconnect, without the prior authorization of this Commission, violates § 393.190.1 because it is the unauthorized sale and transfer of a part of Respondents' "franchise, works or system," necessary or useful in serving the public.

[31] *Answer,* ¶ 34; Kremer Direct, Ex. No.1, Sched. LAK-d2, p. 22.

[32] Kremer Direct, Ex. No. 2, p. 32, ln. 21 – p. 34, ln. 2.

Count II
Violation of Rule 4 CSR 240-20.015(2)(C)

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

Rule 4 CSR 240-20.015(2)(C) is part of the Affiliate Transactions Rule for electric utilities. The cited section provides, in part:

> Specific 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. . . .

To prove a violation, Staff must show (1) that KCPL and GMO are each an electrical corporation and public utility, subject to regulation by the Commission; (2) that KCPL and GMO transferred customer specific information to Allconnect; (3) that these transfers occurred in the context of affiliate transactions;[33] and (4) that the customers of KCPL and GMO did not consent to the transfers and no law or Commission rule or order otherwise authorized them to do so.

1. KCPL and GMO are each an electrical corporation:

In their *Answer,* KCPL and GMO admit that they are electrical corporations as defined in § 386.020(15).[34]

[33] Only the fact that the provision in question is part of the Affiliate Transactions Rule suggests that Staff must show that the violation occurred in the context of an affiliate transaction; the plain language of 4 CSR 240-20.015(2)(C) contains no such requirement.

[34] *Answer,* ¶ 10.

2. KCPL and GMO transferred customer specific information to Allconnect:

In their *Answer,* KCPL and GMO admit that they transferred customer specific information to Allconnect, including customer name, service address, service commencement date, and service confirmation number.[35] Additionally, Darrin Ives testified, "In June of 2013, the relationship between Allconnect and KCP&L and GMO became operational. As a result, certain residential customer calls to the contact center serving KCP&L and GMO are now being transferred, and a limited amount of customer information (customer name, service address, start date of service account number, and confirmation number) is being provided, to an Allconnect contact center."[36]

3. These transfers occurred in the context of affiliate transactions:

Rule 4 CSR 240-20.015(1)(B) defines "affiliate transaction" as follows:

> Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated electrical corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated electrical corporation and the regulated business operations of a [sic] electrical corporation. An affiliate transaction for the purposes of this rule excludes heating, ventilating and air conditioning (HVAC) services as defined in section 386.754 by the General Assembly of Missouri.

The rule also defines "affiliated entity" at 4 CSR 240-20.015(1)(A):

> Affiliated entity means any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including

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[35] *Answer,* ¶¶ 1, 3, 19, 21, 40. Additionally, in surrebuttal testimony in Case No. EO-2014-0189, KCPL-GMO witness Darrin Ives stated at page 8 that: "Customer information is transferred to Allconnect by KCP&L and GMO . . . ." Kremer Direct, Ex. No.1, Sched. LAK-d2, p. 22.

[36] Ives Rebuttal, p. 3, lines 19-23. Additionally, Charles Caisley testified that calls were transferred to Allconnect by KCPL and GMO pursuant to contract. Tr. 4:439.

> a public utility district, city, town, county, or a combination of political subdivisions, which directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated electrical corporation.

KCPL and GMO deny that these were affiliate transactions;[37] but Staff contends that they fall within the definition in two different ways: First, because KCPL and GMO transferred specific customer information to Allconnect pursuant to the contract made on their behalf by GPES.[38] GPES is an affiliated entity within the meaning of Rule 4 CSR 240-20.015(1)(A) because it, like both KCPL and GMO, is controlled by Great Plains Energy.[39] Second, because the Allconnect relationship is an unregulated business operation of KCPL that engages in transactions with the regulated business operations of both KCPL and GMO, which are regulated electric corporations. [40] What transactions? The information and calls were transferred to Allconnect by KCPL and GMO Customer Service Representatives in the course of conversations with customers that are undeniably part of the regulated business operations of those utilities.

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[37] *See* Ives Rebuttal, p. 6: "Q. Does the use of GPES as a contracting vehicle for KCP&L and GMO mean that contracts executed by GPES on behalf of KCP&L and GMO should be considered affiliate transactions as that phrase is defined in Commission Rule 4 CSR 240-20.015? A. No. Although GPES is an affiliate of KCP&L and GMO as defined in the Commission's affiliate transactions rule, when GPES executes contracts related to goods and services used by KCP&L and GMO, those contracts are executed by GPES on behalf of itself and KCP&L and GMO." *See also* Klote Rebuttal, p. 3, lines 13-15.

[38] *See* Ives Rebuttal, p. 3, lines 19-23, admitting that calls and information were transferred, as Staff alleges, starting in June of 2013 when "the relationship between Allconnect and KCP&L and GMO became operational."

[39] KCPL and GMO are both "wholly owned direct subsidiaries of Great Plains Energy Incorporated." Ives Rebuttal, p. 1, lines 9-10. "GPES is a direct wholly owned subsidiary of Great Plains Energy Incorporated." Ives Rebuttal, p. 4, line 9. *And see* Respondents' *Answer,* ¶¶ 2 and 3, admitting that Great Plains Energy owns KCPL, GMO and GPES. Mr. Ives contention that GPES is just a cost-saving "contracting vehicle" does not somehow make this *not* an affiliate transaction.

[40] Tr. 4:442-3.

The relationship with Allconnect is an affiliate transaction because GPES is an "affiliated entity":

Respondents admit that GPES is an affiliate of both KCPL and GMO and that it is an "affiliated entity" within the meaning of Rule 4 CSR 240-20.015(1)(A).[41] Necessarily, that admission means that the relationship of KCPL and GMO with Allconnect, which is governed by a contract between the affiliated entity GPES and Allconnect, falls within the scope of the Affiliate Transactions Rule. The only remaining question is whether the relationship violates the rule. And, as a matter of fact, it does violate the rule, which provides at 4 CSR 240-20.015(2)(C) that "[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." The information is transferred without customer consent, which is a violation of the rule. The analysis is simple and straightforward.

Respondents' theory, as set out in the testimony of Darrin Ives, is that the Affiliate Transactions Rule does not apply because GPES is a mere "contracting vehicle." However, this is not an exception found in the rule.[42] There would be no point to an Affiliate Transactions Rule if utilities could so easily remove their transgressions from its reach; but the reality is that KCPL and GMO cannot evade the rule simply by

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[41] Ives Rebuttal, p. 6, lines 5-8: "Although GPES is an affiliate of KCP&L and GMO as defined in the Commission's affiliate transactions rule, when GPES executes contracts related to goods and services used by KCP&L and GMO, those contracts are executed by GPES on behalf of itself and KCP&L and GMO."

[42] The rule does include a specific exception for "heating, ventilating and air conditioning (HVAC) services as defined in section 386.754 by the General Assembly of Missouri," *See* 4 CSR 240-20.015(1)(B). Respondents do not contend that GPES is an HVAC services provider.

saying the magic words "contracting vehicle." Regardless of where the contractual obligations[43] – and the revenue stream[44] – run, the participation of GPES in the deal makes it an affiliate transaction. The rule does not require any particular amount or degree of participation by an affiliated entity and the fact that GPES' only activity was as a "contracting vehicle" is irrelevant. The reality is that KCPL and GMO transferred specific customer information to Allconnect at the behest of their affiliate, GPES, which had contracted with Allconnect. That is unmistakably an affiliate transaction.

The relationship with Allconnect is also an affiliate transaction because it involves transactions between an unregulated business operation of a regulated electrical corporation and its regulated business operations:

In addition to being an affiliate transaction because of the participation of GPES, the Allconnect relationship is an affiliate transaction because it involves transactions between KCPL's regulated business operations and unregulated business operations.[45] The Affiliate Transactions Rule, at 4 CSR 2540-20.015(1)(B), expressly provides that such transactions are within the scope of the rule.[46] Charles Caisley testified that the

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[43] Ives Rebuttal, p. 6, lines 8-12: "The specific provisions of the contract prescribe which obligations run to which parties. Whereas GPES is the named counterparty of the Allconnect contract (on behalf of itself and its affiliates referenced in the contract, in this instance KCP&L and GMO), the contract terms clearly provide that the obligations run from KCP&L and GMO to Allconnect, and from Allconnect to KCP&L and GMO."

[44] Mr. Klote testified that the revenues flow first to KCPL and then to GPE. Tr. 2:253. *And see* Tr. 4:446, Mr. Caisley: "Yes, Kansas City Power & Light is paid per transferred call, correct."

[45] Rule 4 CSR 240-20.015(1)(B): "Affiliate transaction . . . shall include all transactions carried out between any unregulated business operation of a regulated electrical corporation and the regulated business operations of a [sic] electrical corporation."

[46] *Id.*

Allconnect relationship is an unregulated business operation of KCPL.[47] Mr. Klote and Mr. Caisley both testified that KCPL, a regulated electric corporation, realizes revenue from the Allconnect relationship.[48] Mr. Klote explained in painstaking detail how certain costs were allocated from KCPL's regulated business operations to the unregulated business operation with Allconnect based on the amount of time the KCPL Customer Service Representatives spent transferring the calls and data.[49] A time study revealed that KCPL and GMO Customer Service Representatives spent approximately 10 seconds, out of a call averaging 5 minutes in length, transferring the call and the associated customer information to Allconnect.[50] Those Customer Service Representatives and those calls are undeniably part of KCPL's regulated business operations.

In response to a Staff Data Request in File No. EO-2014-0189, KCPL's and GMO's Application for Approval of Cost Allocation Manuals case, KCPL responded to Staff questions regarding 4 CSR 240-20.015(2)(C) requiring that customer consent be obtained before customer information is made available to an unaffiliated entity, on the basis that the contract is between Allconnect and KCPL and GMO:

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[47] Tr. 4:442-3. And Respondents' counsel, James Fischer, admitted as much in his opening statement, "KCPL and GMO have reported the revenues and the costs associated with this service below the line, since they relate to unregulated services." Tr. 2:60, lines 5-7.

[48] Klote: Tr. 2:253 and 3:246 (HC); Caisley: Tr. 4:446.

[49] Klote Rebuttal, pp. 6-12.

[50] *Id.,* at p. 7, line 21, to p. 8, line 1.

> KCP&L does not believe that the affiliate transaction rule applies to the transfer of information to non-affiliated entities. As set forth in the purpose section of the rule, the rule is intended to prevent regulated utilities from subsidizing their non-regulated operations. . . .[51]

Even if the Allconnect Direct Transfer Service Agreement were only between Allconnect and KCPL and GMO, the "purpose" section of the rule does not control. The "purpose" section of the rule is a general / broad statement of what follows. The actual provisions of the rule are what matters. The "purpose" section can only explain the rule in a general manner. Regarding the transfer of electrical corporation customer information and customers 4 CSR 240-20.015(2)(C) applies to non-regulated unaffiliated entities such as Allconnect.

Despite the repeated assertions of various KCPL executives and attorneys that the Allconnect relationship is not an affiliate transaction, the reality is otherwise. As the above analyses demonstrate, the Allconnect relationship is doubly an affiliate transaction. The Respondents' position reflects wishful thinking rather than legal reasoning.

4. The customers of KCPL and GMO did not consent to the transfers and no law or Commission rule or order otherwise authorized them:

Staff witness Lisa Kremer testified that the Allconnect relationship was based on a customer approach model – the "Confirmation Model" – that intentionally avoided seeking customer consent for the transfer to Allconnect.[52] Respondents' witness Jean Trueit admitted that the calls and customer information were – and are – transferred to

[51] Kremer Direct, Sched. LAK-d2, pp.19-20; File No. EO-2014-0189 Company DR Response No. 3.

[52] Kremer Direct , p. 13, line 13, to p. 14, line 7.

Allconnect without the customer's consent.[53] Mr. Caisley testified that a previous relationship with Allconnect, in which the customer approach model used – the "Transfer Model" – required that consent for the transfer to Allconnect be obtained, was unsuccessful due to the small number of transfers.[54] Mr. Caisley admitted that it was the matter of obtaining customer consent that made the prior relationship unsuccessful:

> Q. Concerning the other problem that you mentioned that not a significant amount of calls were being transferred, why were those calls not transferred?
>
> A. Because ultimately, the person chose not to be transferred. After having a dialogue with the customer service representative, they would make the determination they did not want to be transferred.[55]

Chairman Hall at hearing asked for the late-filing of certain information, which KCPL filed on February 8, 2016. The Chairman asked for the script used by KCPL Customer Service Representatives for transferring calls to Allconnect during 2005-2007 when the Agent Transfer Model was used.[56] KCPL stated the script could not be found but provided the following script which it stated is currently in use by an Allconnect utility partner's Customer Service Representatives for transfer of calls to Allconnect when customer consent for call transfer is obtained:

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[53] Tr. 3:277 (HC); 4:303-4; 309-10. *See also* Hyneman Direct, p. 17, line31 to p. 18, line 1.

[54] Tr. 4:449-50; especially p. 450, lines 7-8: ". . . it did not result in a significant number of people being transferred."

[55] Tr. 4:451, lines 7-14.

[56] Tr. Vol. 4, p. 415.

Script of Agent Transfer Model

> I have completed your order. And now with your permission, I would like to get you to Allconnect, a company that will help you with other services regarding your move at no additional charge. Is that ok?[57]

KCPL and GMO reported that they could not find the percentage of calls transferred to Allconnect during the 2005-2007 period but the number of calls transferred to Allconnect Customer Service Representatives from April 2005 through November 2007 was 11,548 calls.[58] KCPL and GMO also provided in its filing the script currently in use by KCPL and GMO's Customer Service Representatives for transferring a call to Allconnect:

> Eligible for Transfer to Allconnect:
>
> 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 insure accuracy
> And help you connect or transfer other
> services for your home.
> Thank you for calling KCP&L.
> Please hold while I transfer you now.[59]

The adoption in the affiliate transactions rulemaking process of the prohibition regarding the provision of customer information to affiliates and non-affiliates alike without customer consent was suggested by Union Electric Company, d/b/a Ameren UE (now Ameren Missouri).[60] AmerenUE began using Allconnect in the 2004 time period. Members of Staff had been informed at that time of Allconnect's relationship with

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[57] KCPL Filing 2/8/16, Attachment C.

[58] *Id*., Attachment A.

[59] *Id*., Attachment B.

[60] Kremer Direct, Ex. No. 1, Sched. LAK-d2, p. 20 (Attachment 6, paragraph at the bottom of p. 3 and pp. 4-5).

AmerenUE, but Staff did not contemplate the potential consequences to customer service quality to pursue an investigation at that time. AmerenUE originally used the Confirmation Model, and later switched to the Agent Transfer Model.[61]

The evidence conclusively shows that the customer calls and customer specific information were transferred without the customers' consent.

Conclusion:

Staff suggests that the evidence shows that Respondents transferred, and continue to transfer, customer specific information to Allconnect, without the consent of the customers or authorization from this Commission or from any law, in the context of an affiliate transaction and thereby violated Rule 4 CSR 240-20.015(2)(C).

Count III

Violation of Rule 4 CSR 240-13.040(2)(A)

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

Rule 4 CSR 240-13.040(2)(A) is part of the Commission's Service and Billing Practices for Residential Customers of Electric Utilities. The cited section provides:

> At all times during normal business hours qualified personnel shall be available and prepared to receive and respond to all customer inquiries, service requests, safety concerns, and complaints. . . .

To prove a violation, Staff must show (1) that KCPL and GMO are each an electrical corporation and public utility, subject to regulation by the Commission; (2) that

[61] *Id*. at pp. 34, 11.

KCPL and GMO each transferred to Allconnect certain customer calls and customer information, including the customer confirmation number generated by the addition or change of customer information in the records of KCPL and GMO; (3) that KCPL and GMO abdicated their customer service responsibilities imposed by Rule 4 CSR 240-13.040(2)(A) by allowing Allconnect personnel to perform customer service functions that should be performed by their own Customer Service Representatives; and (4) that Allconnect's personnel are not "qualified personnel" within the intendments of Rule 4 CSR 240-13.040(2)(A).

1. KCPL and GMO are each an electrical corporation:

In their *Answer,* KCPL and GMO admit that they are electrical corporations as defined in § 386.020(15).[62]

2. KCPL and GMO transferred customer calls and customer information to Allconnect:

In their *Answer,* KCPL and GMO admit that they transferred customer specific information to Allconnect, including customer name, service address, service commencement date, and service confirmation number.[63] Additionally, Darrin Ives testified, "In June of 2013, the relationship between Allconnect and KCP&L and GMO became operational. As a result, certain residential customer calls to the contact center serving KCP&L and GMO are now being transferred, and a limited amount of customer

[62] *Answer,* ¶ 10.

[63] *Answer,* ¶¶ 1, 3, 19, 21, 40. Additionally, in surrebuttal testimony in Case No. EO-2014-0189, KCPL-GMO witness Darrin Ives stated at page 8 that: "Customer information is transferred to Allconnect by KCP&L and GMO . . . ." Kremer Direct, Ex. No.1, Sched. LAK-d2, p. 22.

information (customer name, service address, start date of service account number, and confirmation number) is being provided, to an Allconnect contact center."[64]

3. KCPL and GMO abdicated their customer service responsibilities imposed by Rule 4 CSR 240-13.040(2)(A) by allowing Allconnect personnel to perform customer service functions that are required to be performed by qualified Customer Service Representatives:

KCPL and GMO abdicated their customer service responsibilities by allowing Allconnect personnel to perform customer service functions that, pursuant to Commission rule, must be performed by qualified personnel. In particular, KCPL and GMO allowed Allconnect personnel to investigate and resolve customer complaints involving Allconnect. These are core customer service functions and require the involvement of trained personnel, not telemarketers.

4. Allconnect's personnel are not "qualified personnel" within the intendments of Rule 4 CSR 240-13.040(2)(A):

Allconnect's personnel are not "qualified personnel" within the intendments of Rule 4 CSR 240-13.040(2)(A) because Allconnect is a telemarketer and Allconnect "Associates" are trained telemarketers, not trained regulated utility call center representatives; because Allconnect "Associates'" are evaluated on different criteria than are KCPL and GMO regulated utility call center representatives; and because Allconnect "Associates" interact with KCPL and GMO customers in a different manner

[64] Ives Rebuttal, p. 3, lines 19-23. Additionally, Charles Caisley testified that calls were transferred to Allconnect by KCPL and GMO pursuant to contract. Tr. 4:439.

than KCPL and GMO customer service representatives, including using "pushy" and aggressive sales tactics, because their goal is to make sales rather than to resolve customer issues.

Although Mr. Scruggs and the KCPL and GMO witnesses have sought to draw a very limited picture of the Allconnect customer service representatives, the objectives of the KCPL and GMO call center and the Allconnect call centers are very different. The former is to obtain and impart correct information regarding the connection of service related to a move. The latter is the same but also to sell home services and products related to a residential move. The Staff's Report notes that Allconnect customer service representatives are trained and subsequently scored on their ability to "rebut" customer objections to optimize each transferred call to get the best possible financial outcome for Allconnect. Thus, "no" does not mean "no" for Allconnect customer service representatives.[65] **

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[65] Kremer Direct, Ex. No. 1, Sched. LAK-d2, p. 32; Kremer Sur., Ex. No. 2, p. 16, lns. 13-18.

[66] Kremer Sur., Ex. No. 2HC, Sched. LAK-s5, p. 3 (File No. EW-2013-0011 Company DR Response No. 29, "The New QA Guideline 2012") (emphasis added).

Allconnect operates a telemarketing type of call center, with a type of training that is inherently different than that of KCPL and GMO utility call center representatives.[67] Consequently, Allconnect has an incentive to demonstrate that it is not providing detrimental service to KCPL and GMO customers and therefore may mischaracterize call resolutions, classifying contentious calls as neutral or benign.[68] Allconnect is a third-party marketing company and its customer service representatives are trained to "rebut" utility customer objections to the services and products being offered by Allconnect to optimize each call to get the best possible financial outcome for Allconnect.[69] For example, the Allconnect "Score Card" for 2013 failed to acknowledge that Allconnect representatives treated customers in a pushy manner but the Staff Report included written documentation of instances in which customers indicated they had been treated in such a manner and call recordings also demonstrated such behavior.[70] Ms. Kremer testified that KCPL and GMO are still receiving free form negative comments into the October 2015 Allconnect Tracking Study Verbatims.[71] Ms. Kremer testified, "Allconnect's call center is inherently different from a Missouri regulated utility call center and in Staff's opinion should not be investigating the

[67] Kremer Sur., Ex. No. 2, p. 16, lns.7-8.

[68] *Id.*, p. 16, lns. 8-12

[69] *Id.* p. 16, lns. 13-15; Kremer Direct, Ex. No. 1, Sched. LAK-d2, p. 32.

[70] Kremer Sur., Ex. No. 2, p. 16, ln.19 - p. 17, ln. 4.

[71] *Id.*, p. 20, lines 5-18.

complaints made by Missouri electric customers who did not consent to the transfer of their call. To Staff, this seems much like putting the 'fox in charge of the hen house.'"[72]

The evidence demonstrates that Allconnect's sales personnel are not "qualified personnel" within the meaning of the Commission's rule.

Conclusion:

The evidence shows that Respondents violated Rule 4 CSR 240-13.040(2)(A), and continue to violate it, by allowing Allconnect personnel -- who are not qualified personnel within the meaning of the rule -- to perform customer service functions.

Penalties

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 is authorized to direct its General Counsel to initiate a penalty action against the Respondents if it determines that they violated any statute or Commission rule or order or a tariff provision.[73] Section 386.570 provides for penalties:

> 1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

[72] *Id.,* p. 17, lines 7-10.

[73] Section 386.600.

> 2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.
>
> 3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

Section 386.590 provides that penalties shall be cumulative.

Should the Commission authorize penalties?

The evidence shows that KCPL and GMO received a fee from Allconnect for each transferred call. While Respondents insist that the revenues realized from the Allconnect relationship were trivial, Staff suggests that the evidence reveals that the revenue stream was a primary reason that the Respondents entered into the Allconnect relationship. Allconnect arose tangentially as an issue in KCPL's last rate case and so did the question of KCPL's reason for re-introduction of the mover services program. In response to Staff Data Request No. 613 in File No. ER-2014-0370 (Exhibit No. 147HC in File No. ER-2014-0370),[74] KCPL stated:

> ****** _____
>
> - _____ _____ _____
>
> - _____ _____

[74] Kremer Direct, Ex. No. 1HC, p. 17, ln. 4 – p. 18, ln. 12 (emphasis added).

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Mr. Caisley asserts that although the revenue stream from the Allconnect mover servers program was a factor in KCPL's decision to re-enter into the Allconnect relationship "[t]he most important factor was and remains the overall impact on customer satisfaction."[75] Contrary to KCPL and GMO's protestations that the purpose of the Allconnect program is to increase customer satisfaction, in the January 19, 2013, KCP&L Senior Leadership Team Meeting Presentation,[76] under the heading on page 3, ** _____ ** and the sub-heading **_____ ** is the statement: ** _____
_____ ** To be fair, Staff notes that on page 4, under the heading **_____ ** is the statement: ** _____
_____ **
Also on page 4, under the sub-heading ** _____ ** is the bullet point: **
_____

[75] Caisley Rebuttal, Ex. No. 100, p. 5, lns. 11-14.

[76] Kremer Direct, Ex. No. 1HC, p. 5, lns. 1-12 and Schedule LAK-d2, p. 29 (Attachment 3 to the Report of Staff's Investigation, File No. EW-2013-0011, Company Data Request No. 0045) (emphasis added).

NP

_____ ** On page 5, under the sub-heading ** _____ ** one of the bullet points is ** _____ _____ ** The primary focus of the presentation is financial, including a projection of positive non-regulated revenue and earnings impact. Ms. Kremer testified in camera about these matters.[77]

The evidence shows that KCPL and GMO not only did not ask for their customers' consent to transfer their calls, and their personal information, to Allconnect but purposefully gave them the impression that they had to remain on the line with Allconnect to get their confirmation number. As a further inducement, customers were told that they had qualified for a Home Depot savings program.[78] A careful review of Ms. Trueit's rebuttal testimony reveals that her description of "the manner in which customers are transferred to Allconnect" does not involve asking the customer for consent to transfer him or her, and his or her customer information, to an Allconnect sales person:[79]

> After the CSR submits the customer's order, the CSR advises the customer that the call will be transferred to Allconnect. The CSR explains to the customer that **Allconnect will verify the order, provide the order confirmation number** as well as offer additional home services such as home phone, internet, cable/satellite or home security. At times the customer has general questions about the services. The CSR addresses any questions the caller might have. Then the CSR asks the customer if there is anything else they can assist with. **If the customer has no further questions, the CSR will transfer the customer phone call to Allconnect via a pre-programmed number.** Some customers will

[77] Tr. Vol. 3, p. 164, lns. 4 - p.165, ln. 3.

[78] Kremer Direct, Ex. No. 1, Sched. LAK-d2, p. 21.

[79] Trueit Reb., Ex. No. 104, p. 4, ln. 19.

advise they are not interested in additional services. In this instance, the CSR will provide the customer the order confirmation number and close the call. If the customer indicates they do not have time to transfer but are interested in other services, the CSR will provide the customer the order confirmation number and the Allconnect contact information for their future use.[80]

Mr. Caisley and Mr. Ives testified that KCPL and GMO customers are transferred to Allconnect customer service representatives without the customer's explicit consent:

A. **[Mr. Caisley]** Well, customers -- customers are told that they will be transferred to Allconnect and that they're going to be also told about other services that they might be interested for their home. Those services are given examples of, and then if there is no objection, the customer is transferred.

Q. **[Mr. Thompson]** Okay. So would you agree with me it's fair to characterize that as an opt-out model?

A. I would say that that's implicit consent.

Q. The customer will be transferred unless they affirmatively opt out; isn't that correct?

A. If the customer does not say I do not wish to be transferred or don't transfer me, then the customer service representative transfers the customer.[81]

and

Q. **[Mr. Westen]** If the customer doesn't decline, if the customer says nothing, you believe they are consenting to the transfer, yes or no?

A. **[Mr. Ives]** I believe they -- they have the expectation that they're being transferred, yes.

Q. They are consenting to the transfer if they do not speak up, yes or no?

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[80] *Id*. at p. 4, ln. 20 - p. 5, ln. 9; Emphasis added.

[81] Tr. Vol. 4, p. 482, lns. 1-14.

A. Yes.

* * *

Q . . . . So the KCP&L position, then, is that as long as the customer remains silent, they are consenting to the transfer. Isn't that what you just said?

A. Yes.[82]

Mr. Scruggs identified the Allconnect model chosen and used by KCPL and GMO as the Confirmation Model.[83] The Commissioners should take note of the great effort that KCPL and GMO and Allconnect have taken to avoid directly answering the question whether the Confirmation Model does not require customer consent for the customer and his/her information to be transferred to Allconnect by the KCPL or GMO customer service representative, but the Agent Transfer Model does require the customer's consent. Mr. Scruggs finally admitted what the above excerpt of rebuttal testimony of Ms. Trueit shows: the Confirmation Model of the Allconnect mover services program chosen by KCPL and GMO does not directly ask KCPL and GMO customers for their consent to transfer them and their customer information before transferring them and their customer information to an Allconnect customer service representative.[84]

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[82] Tr. Vol. 4, p. 519, ln. 11 – p. 12, ln. 1.

[83] Tr. Vol. 4, p. 408, ln. 23 - p. 409, ln. 3.

[84] Tr. Vol. 4, p. 381, lns. 8-15.

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_____ **[85]

Ms. Kremer testified, "Staff's investigation into KCP&L-GMO's utilization of Allconnect during the approximate two and one-half years since Staff began its investigation demonstrates that the primary interest Of KCP&L-GMO is for 'non-regulated net margin,' convenience to KCP&L-GMO and support for Allconnect's interests."[86] She went onto testify, "KCP&L-GMO's actions and Staff's review of documentation indicate KCP&L-GMO's stated desire to enhance customer satisfaction, if in fact true, are subordinate to its desire to grow revenue and earnings."[87] Ms. Kremer also testified:

> Staff believes the ** _____ ** reference is the withholding of the utility confirmation number, which the KCP&L-GMO customer service representatives do not provide their customers but instead transfer to Allconnect customer service representatives to provide. One definition of

[85] Kremer Direct, Ex. No. 1HC, Sched. LAK –d2 p. 24; Emphasis added.

[86] Kremer Surr., p. 3, lines 16-19.

[87] *Id.,* lines 19-21.

> ** _____ ** provided by the Merriam-Webster dictionary is "the ploy of offering a person something desirable to gain favor (as political support) then thwarting expectations with something less desirable." Bait and switch is a tactic to entice a person to continue to listen to someone because of the listener's interest in learning or obtaining some item while the person talking hopes to induce the listener to commit to something beyond the listener's original item of interest.[88]

The utility has overwhelmingly greater control in the service turn-on process than do its customers. Other than the customer making the initial service request to the utility, the utility controls all remaining processes. Thus, when the Company instructs customers that their calls will be transferred to Allconnect to verify the accuracy of the information keyed in and so that the customer may receive a confirmation number, most customers simply believe that the transfer is a necessary part of the process. The customers want to be certain that the utility will begin service on the day committed, at the address arranged, and for the correct customer. Customers very likely believe there is value in having the confirmation number to resolve problems with the service orders if they occur. Consequently, customers permit the transfer to get the confirmation number allowing Allconnect an opportunity to sell non-utility services to these captive customers.

Respondents have attempted to show that, in the absence of the Allconnect relationship, their cost of service will increase. KCPL and GMO witnesses Ives, Caisley, and Trueit testified that Allconnect is verifying KCPL and GMO customer information and providing a confirmation number at no cost to KCPL and GMO.[89] They further testified that if KCPL and GMO were required to terminate their relationship with

[88] *Id.,* p. 8, lines 4-12.

[89] Ives Reb., p. 21, lns. 5-9, 14-17; Caisley Reb., p. 4, ln. 21- p. 5, ln. 2; Trueit Reb., p. 10, ln. 23 - p. 11, ln. 4.

Allconnect, KCPL and GMO would need to undertake this function and incur increased costs that would have to be reflected in higher rates to KCPL's and GMO's customers.[90] KCPL and GMO in response to a Staff data request stated that they had not pursued if Allconnect might increase what it pays per transferred call if the Allconnect customer service representatives did not verify customer information and provide the confirmation number. KCPL and GMO also responded that it had not conducted a time and motion study to (1) isolate the costs for KCPL and GMO customer service representatives to verify the customer information and provide the confirmation number and (2) determine the necessary increase in rates if KCPL and GMO customer service representatives were to verify the customer information and provide the confirmation number.[91] Mr. Scruggs testified that Allconnect had not performed any analysis of the cost of Allconnect customer service representatives verifying KCPL and GMO customer information and providing confirmation numbers.[92]

Ms. Trueit indicated in an exchange with Chairman Hall that before the engagement with Allconnect, KCPL and GMO performed the verification of information, and KCPL and GMO customer service representatives still verify certain information:

> Q. **[Chairman Hall]** Okay. So prior to your contractual relationship with Allconnect, I believe -- well, let me ask this: How did you perform the verification function?

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[90] *Id.*

[91] Majors Sur., Ex. No. 4, p. 23, ln. 17 - p. 24, ln. 7, Sched. KM-s2, p. 1.

[92] Tr. Vol. 4, p. 394, ln. 22 - p. 395, ln. 1.

A. **[Ms. Trueit]** The CSR does the order repeat before they close. We didn't have this added layer prior to our contractual relationship with Allconnect. So if an error –

Q. So -- I'm sorry.

A. That's okay.

Q. So prior to Allconnect, you had a repeat function where the -- where your -- your staff would repeat the information to verify it; is that correct?

A. It's part of our call, yes.

Q. And does that still occur?

A. During the close of the call, the CSR will repeat some of that information, yes.

Q. So -- so that verification -- that aspect of the verification process has not changed pre-2013 to the present?

A. That's correct.

Q. So the only thing that you've added an additional verification layer?

A. That's correct.[93]

Although Respondents offered evidence that the Allconnect revenues were offset by an appropriate share of allocated costs, there are embedded residual costs that are retained by KCPL and GMO and are paid for by KCPL and GMO's customers, for example, KCPL and GMO customers pay for the customer information system, the call center, the insurance, the mainframe equipment, the rent, etc. The evidence shows that KCPL booked the Allconnect revenues "below the line" to benefit its parent company, although these revenues were earned using embedded regulated assets, and thus

[93] Tr. Vol. 4, p. 319, ln. 25 - p. 320, ln. 20.

should be shared with ratepayers like the margin realized on off-system sales. Ratepayers are subsidizing the transactions related to the Allconnect Direct Transfer Service Agreement by the lack of allocation of embedded costs.[94]

KCPL routinely uses its generation and transmission assets to produce and market electricity that is sold outside its service territory, commonly referred to as "off system sales" as capacity in excess of what is needed to serve its regulated native load customers. The rates of electricity and transmission service in such an instance are not governed by this Commission and may be considered non-regulated revenue. The excess revenue over the incremental costs to produce the electricity is referred to as "off-system sales margin." This revenue is used to offset the overall cost of service in the Missouri retail ratemaking process. Since this revenue is used to offset cost of service, there is no need to fully allocate the embedded costs to determine off-system sales margin. In this case, KCPL is retaining all the Allconnect revenues, and only allocating the incremental costs. The comparison to off-system sales would be if KCPL were retaining all the off-system sales revenues and only allocating the incremental fuel costs to produce the electricity. Ratepayers would be subsidizing KCPL's off-system sales if this were the case, and it would not be appropriate.[95]

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[94] Majors Sur., Ex. No. 4, p. 26. ln. 16 – p. 28, ln. 13.

[95] *Id*.

Conclusion:

For all of these reasons, should the Commission determine that KCPL and GMO violated any statute or Commission rule or order or a tariff provision, then Staff urges the Commission to authorize its General Counsel to seek monetary penalties from KCPL and GMO for this conduct because, otherwise, these and other regulated entities will think little of violating the law. Additionally, Staff recommends that the Commission order KCPL and GMO to sever their relationship with Allconnect forthwith because of the violation of Section 393.190.1 or, in the alternative, only to transfer calls and customer information to Allconnect with express prior customer consent consistent with 4 CSR 240-20.015(2)(C). If the Commission allows the Allconnect relationship to continue, it should be subject to conditions designed to safeguard the ratepayers and to protect the public interest.

Chairman Hall's Questions:

1. Does public policy require that the Allconnect relationship be terminated whether or not it violates any statute or rules?

Yes, public policy does require that the Allconnect relationship be terminated because, fundamentally, it is a betrayal of trust. The utility's relationship with its customers exists only to further the public purpose of providing a necessary service to them; it is not an opportunity for the owners of the utility to enrich themselves. Frankly, it is an outrage that KCPL and GMO have sold their trusting and unaware customers' private information to a third party, and for a pittance. Customers provide information to the utility only to facilitate the utility's provision of service to themselves. They certainly

do not provide it so that the utility can profit by selling it to a third party. Likely, they would be very angry to learn of it. For this reason, the Allconnect relationship must end. Whether or not it is unlawful, in its present form, it is a betrayal of trust.

2. If the Allconnect relationship is permitted to continue, should it be conditioned on (1) obtaining prior informed consent from the consumer before transfer to Allconnect and (2) booking of all revenues above the line as an offset to revenue requirement?

The Allconnect relationship should not be permitted to continue unless it is specifically authorized by the Commission. In that case, it must be on at least these two conditions: First, that calls and data be transferred to Allconnect occur only with the affirmative, prior, informed consent of the customer. Second, that the resulting revenues be recorded above the line and thus shared with the customers. The inevitable result of the implementation of these conditions is that there would be very few transfers to Allconnect and, consequently, little revenue.

WHEREFORE, Staff prays that the Commission will find and determine that the Respondents have violated a statute and Commission rules as charged herein by Staff and enter its order (1) finding that KCPL and GMO violated § 393.190.1, RSMo.; (2) finding that KCPL and GMO violated Commission Rule 4 CSR 240-20.015(2)(C); (3) finding that KCPL and GMO violated Commission Rule 4 CSR 240-13.040(2)(A); (4) authorizing its General Counsel to seek penalties under §§ 386.570, and 386.590; and (5) requiring KCP&L and GMO to either end their relationship with Allconnect forthwith or, alternatively, to improve and modify their operations so that they are no

longer in violation of the above provisions via their relationship with Allconnect; and granting such other and further relief as the Commission deems just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 11th day of February, 2016, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Kevin A. Thompson