

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

MOTION FOR SUMMARY DETERMINATION

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and for its *Motion for Summary Determination* pursuant to Commission Rule 4 CSR 240-2.117(1), states as follows:

Introduction:

1. Staff filed its *Complaint* on May 20, 2015, charging that Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO"; together, "KCP&L-GMO") are violating Missouri statutes and Commission rules by (1) transferring valuable system assets, namely, customer names, customer addresses, customer identification numbers, service start dates, and customer service confirmation numbers to Allconnect, Inc. ("Allconnect") without first obtaining authorization from the Commission to do so, in violation of § 393.190.1, RSMo.; (2) by making the aforementioned transfers without the consent of the affected

customers, in violation of Commission Rule 4 CSR 240.015(2)(C); and (3) by transferring certain customer phone calls to Allconnect and allowing Allconnect's personnel to deal with customer inquiries and complaints in violation of Commission Rule 4 CSR 240-13.040(2)(A).

2. Commission Rule 4 CSR 240-2.117(1) provides as follows:

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than sixty (60) days prior to the hearing except by leave of the commission.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

* * *

(E) The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

* * *

3. There are two Respondents in this case, to-wit: KCP&L and GMO; and Respondents filed their *Answer* on June 22, 2015; this motion therefore,

is filed after Respondents have filed their responsive pleading as required by Rule 4 CSR 240-2.117(1)(A).

4. According to the *Order Adopting Procedural Schedule* issued herein on July 28, 2015, the hearing in this case will begin on January 19, 2016, which is more than sixty days following the filing of this motion as required by Rule 4 CSR 240-2.117(1)(A).

Undisputed Material Facts:

5. There is no genuine issue as to the material facts set out in Paragraphs 6 through 22, below.

6. Complainant is the Staff of the Missouri Public Service Commission, acting through the Chief Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1). (*Answer*, ¶ 6).¹

7. KCP&L, a Missouri general business corporation in good standing, and GMO, a Delaware general business corporation in good standing, are both electric corporations and public utilities, subject to regulation by this Commission. (*Answer*, ¶¶ 7, 8, 9, and 10). KCP&L and GMO are wholly-owned subsidiaries of Great Plains Energy (“GPE”), a publicly-traded, public utility holding company. (*Answer*, ¶¶ 7, 8; Hyneman Direct, p. 4). KCP&L’s employees act on behalf of both KCP&L and GMO as GMO has no employees. (Hyneman Direct, p. 12).

8. Great Plains Energy Services (“GPES”) is also owned by GPE and is an affiliate of KCP&L and GMO. (*Answer*, ¶ 39; Hyneman Direct, p. 4). GPES provides no services and has no employees. (Hyneman Direct, p. 4). In May of 2013,

¹ Admitted in the *Answer of Kansas City Power & Light Company And KCP&L Greater Missouri Operations Company*, filed June 22, 2015 (“*Answer*”).

GPES entered into an agreement with non-affiliate Allconnect, the Allconnect Direct Transfer Service Agreement (“Agreement”) on behalf of KCP&L and GMO. (*Answer*, ¶¶ 1, 17; Hyneman Direct, p. 14).

9. Allconnect is a non-regulated marketing company based in Atlanta, Georgia. (Hyneman Direct, pp. 4, 12). Allconnect was founded in 1998 and has Sales & Customer Care Centers in Atlanta, Lexington, Kentucky, and St. George, Utah. (Kremer Direct, p. 11). On its web page, Allconnect states that it is an “authorized reseller” of services and a “one stop shop for utilities.” (Kremer Direct, p. 11).

10. The Agreement provides for the transfer of certain customer information by KCP&L and GMO to Allconnect for purposes of Allconnect verifying the customers’ information and providing the customers with their confirmation number as well as offering products and services to them. (*Answer*, ¶¶ 1, 19, 21). In exchange, Allconnect pays a fee to KCP&L for each call transferred as well as other monetary benefits if sales of products or services are made. (*Answer*, ¶¶ 2, 17, 31). This revenue and the costs associated with Allconnect are not reflected in rates. (*Answer*, ¶ 2).

11. The transfer works like this: KCP&L and GMO’s Customer Service Representatives receive the customers’ request for service and input customer data into utilities’ customer information systems. The utility representatives then instruct those same customers to remain on the line while their calls are transferred to Allconnect, who will “verify the accuracy of their data” and provide them a confirmation number regarding their electric service order. (*Answer*, ¶ 3). The Company’s Customer Service Representatives may also inform the customer that the Allconnect Customer Service Representative can help the customer connect or transfer other services for his or her

home. (*Answer*, ¶ 3). The information transferred is the unique customer identifier customer name, service address, service commencement date, and service confirmation number. (*Answer*, ¶ 40). The customer is not asked if he or she consents to being transferred to the nonregulated, unaffiliated marketing company, Allconnect. (Hyneman Direct, p. 26; Kremer Direct, p. 12).

12. ** _____

_____ ** (Kremer Direct, pp. 15, 16).

KCP&L does not record the transferred call revenue as a reduction to the regulated cost to serve customers and also does not charge its regulated customers for customer service representative time associated with Allconnect. (*Answer*, ¶¶ 2, 32).

13. The transfer of calls to Allconnect is inconvenient for KCP&L and GMO's customers because they often do not receive their confirmation number until after they have had to listen to a prolonged sales pitch from the Allconnect representative. (Kremer Direct, p. 18, 19). In a number of instances, Staff found that the customer confirmation number failed to transfer to Allconnect or that the Allconnect representative simply failed to give it to the customer. (Kremer Direct, p. 19). Only about ** ____ ** of transferred customers bought at least one additional product or service (home phone, internet, television, or home security) from Allconnect over the ten-month period from June 2013 to March 2014. (Kremer Direct, p. 23). That percentage had declined to ** ____ ** as reported in the December 2-3, 2014, *Allconnect Business Review*. (Kremer Surrebuttal, Case No. ER-2014-0370, p. 5).

14. KCP&L and GMO contend that the relationship with Allconnect is neither an affiliate relationship nor a regulated relationship and, therefore, Commission Rule 4 CSR 240-20.015(2)(C), requiring that customer consent be obtained before customer information is made available by KCP&L and GMO to Allconnect, is not applicable: “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. In order to accomplish this objective, the rule sets forth financial standards, evidentiary standards and record keeping requirements applicable to any commission regulated electrical corporations whenever such corporation participates in transactions with any affiliated entity.” (*Answer*, ¶ 47).

15. The Allconnect Direct Transfer Service Agreement itself states that the Agreement is by and between Allconnect and GPES on behalf of GPES and its affiliates KCP&L and GMO. In Case No. EO-2014-0189, KCP&L-GMO witness Darrin Ives testified (Surrebuttal, page 8, lines 2 – 6) that: “. . . The only role for GPES with respect to Allconnect is that it is a contracting entity for the purposes of administrative efficiency. GPES does not transfer customer information to Allconnect. Customer information is transferred to Allconnect by KCP&L and GMO in a manner that the Company believes is consistent with section [4 CSR 240-20.015(2)(C)] of the affiliate transaction rule.” (*Answer*, ¶ 48).

16. Respondent admits that it stated to Staff, “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. Because of this past practice, the Company believes that under a common sense reading of the affiliate transactions rule[s], the limited customer information provided to Allconnect for regulated purposes does not violate the affiliated transactions rule. Furthermore, only after the customer consents to engage in transactions with Allconnect does Allconnect make use of the customer's information for non-regulated purposes." (*Answer*, ¶ 48).

17. KCP&L and GMO admit that their own employees are qualified to verify orders and that the check of the accuracy of customer information performed by Allconnect at no cost is beneficial to them and their customers. (*Answer*, ¶¶ 2, 58; *Kremer Direct*, p. 20). Nevertheless, KCP&L and GMO allow Allconnect to investigate customer complaints and customer escalations even though the customers did not call Allconnect and did not consent to the transfer. (*Kremer Direct*, p. 6). KCP&L and GMO have assumed a "hands-off" approach to difficulties their customers encounter with Allconnect, the result of a managerial decision KCP&L and GMO have made at the expense of their customers. (*Kremer Direct*, p. 6). KCP&L and GMO leave the great majority of the investigation and resolution of the complaint/escalation or inquiry to Allconnect. (*Kremer Direct*, p. 6).

18. Through their relationship with Allconnect and GPES, KCP&L and GMO are exploiting their monopoly position and subsidizing their nonregulated operations.

(Hyneman Direct, p. 10). Although they have no contract with Allconnect, “KCPL and GMO are servicing the contract between GPES and Allconnect by providing the use of regulated utility physical assets (computer equipment, software, office equipment, buildings, etc.) regulated utility employees (customer service, IT support and management overhead) and regulated utility intangible assets (such as access to customer phone calls and customer information).” (Hyneman Direct, p. 12). Regulated utility customer access and regulated utility customer information, such as the names and addresses, future mailing addresses, relocation dates, etc., of KCP&L and GMO customers, are regulated utility assets of KCP&L and GMO. (Hyneman Direct, pp. 36, 37). They are “a necessary and useful part of the utilities’ works and systems.” (Kremer Direct, p. 4).

19. KCP&L does not record the transferred call revenue as a reduction to the regulated cost to serve customers and also does not charge its regulated customers for customer service representative time associated with Allconnect. (*Answer*, ¶ 32). Instead, KCP&L is booking the Allconnect proceeds “below the line” to its non-regulated operations and ultimately financially benefiting its unregulated parent company, GPE. (Kremer Direct, p. 4). KCP&L and GMO are selling their customers’ information and access without the customers’ knowledge or consent and without even sharing any part of the proceeds with the customers. (Kremer Direct, pp. 6-7).

20. ** _____

** (Kremer Direct,

p. 5). ** _____

_____ ** (Kremer Direct, p. 18).

21. The use of KCP&L and GMO's regulated assets to support unregulated business activities constitutes improper subsidization of an unregulated business line. (Hyneman Direct, pp. 27, 31). KCP&L's management, which also acts for GMO, is acting in manner that is detrimental to KCP&L and GMO's customers, both from a customer service standpoint in unsolicited and forced transfers of regulated customers and their information to an unregulated marketing company and the use of regulated rate base plant in service assets and regulated utility employees in the process. (Hyneman Direct, p. 38). The revenues earned by KCP&L through its relationship with Allconnect are not credited to the regulated operations of either KCP&L or GMO. (Hyneman Direct, p. 38; Kremer Direct, p. 4).

22. Approximately ten percent of KCP&L and GMO's customers that were transferred to Allconnect without their knowledge or consent are listed on the No Call List maintained by and available from the Attorney General of Missouri. (Kremer Direct, p. 10). KCP&L and GMO's activities pursuant to the Allconnect Direct Transfer Service Agreement permit Allconnect to avoid the No Call List and needlessly expose utility customers to unwanted telephone solicitation. (Kremer Direct, pp. 9-10).

KCP&L-GMO's Affirmative Defenses:

23. For their First Affirmative Defense, Respondents assert that *Staff's Complaint* fails to state a claim upon which relief may be granted.² Staff will address this legal defense in its accompanying *Suggestions*.

² Answer, p. 8, *Affirmative Defenses*, ¶ 1.

24. For their Second Affirmative Defense, Respondents assert that Staff “seeks to unfairly and unconstitutionally punish Respondent for conduct in which other utilities in the State regularly engage.”³ Staff admits that it has never brought a complaint against any utility for transferring customer information to a collection agency for purposes of collecting unpaid bills for utility service. Staff will address the legal aspects of this defense in its accompanying *Suggestions*.

25. For their Third Affirmative Defense, Respondents assert that “[t]he rules Staff alleges Respondent has violated (4 CSR 240-20.015(2)(C) and 4 CSR 240-13.040(2)(A)) are unconstitutionally vague and overbroad.”⁴ Staff will address this legal defense in its accompanying *Suggestions*.

WHEREFORE, Staff prays that the Commission will grant summary determination of its *Complaint* filed herein and enter its order (1) finding that KCP&L-GMO violated § 393.190.1, RSMo.; (2) finding that KCP&L-GMO violated Commission Rule 4 CSR 240-20.015(2)(C); and finding that KCP&L-GMO violated Commission Rule 4 CSR 240-13.040(2)(A); and (4) authorizing its General Counsel to seek penalties under Sections 386.570, and 386.590; and (5) requiring KCP&L-GMO 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.

³ *Answer*, p. 8, *Affirmative Defenses*, ¶ 2.

⁴ *Id.*, *Affirmative Defenses*, ¶ 3.

Respectfully submitted,

/s/ Kevin A. Thompson

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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 6th day of October, 2015, 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, which date is not later than the date on which this pleading is filed with the Commission as required by Rule 4 CSR 240-2.117(1)(B), relating to Summary Determination.

/s/ Kevin A. Thompson