

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

Office of the Public Counsel,)	
)	
Complainant,)	
)	
v.)	<u>File No. EC-2017-</u>
)	
Kansas City Power & Light Company)	
)	
And)	
)	
KCP&L Greater Missouri Operations)	
Company,)	
)	
Respondents.)	

COMES NOW the Office of the Public Counsel (“OPC” or “Public Counsel”) and for its *Complaint*, states as follows:

Introduction

1. This matter concerns the deliberate and ongoing decision by Kansas City Power & Light Company (“KCPL”) and KCP&L Greater Missouri Operations Company (“GMO”) to ignore the Commission’s Report and Order in EC-2015-0309 and violate Commission Rule 4 CSR 240-20.015(2)(C) by transferring customer information and calls to Allconnect, Inc., a third party telemarketer, without informed customer consent in exchange for a fee.

Complainant

2. Complainant OPC is authorized to file complaints against public utility corporations under Section 386.390 RSMo. and 4 CSR 240-2.070. OPC’s address is 200 Madison Street, Suite 650, Jefferson City, Missouri 65102.

Respondents

3. Respondent KCPL is a Missouri corporation with its principal office and place of

business at One Kansas City Place, 1200 Main, Kansas City, Missouri 64105. Its registered agent is CSC-Lawyers Incorporating Service Company, 221 Boliver Street, Jefferson City, Missouri 65101. In KCPL has an Application filed July 1, 2016 pending before the Commission in Case No. ER-2016-0285 in which it states:

KCP&L is primarily engaged in the generation, transmission, distribution, and sale of electricity in western Missouri and eastern Kansas, operating primarily in the Kansas City metropolitan area. KCP&L is an “electrical corporation” and “public utility” as those terms are defined in Mo. Rev. Stat. §386.020 (2000) and, as such, is subject to the jurisdiction of the Commission as provided by law.

(See In the Matter of Kansas City Power & Light Company's Request for Authority to Implement A General Rate Increase for Electric Service, Case No. ER-2016-0285, Doc. No. 15, p. 1).

4. Respondent GMO is a Delaware corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105. Its registered agent is CSC-Lawyers Incorporating Service Company, 221 Boliver Street, Jefferson City, Missouri 65101. On February 23, 2016, GMO filed an Application in Case No. ER-2016-0156 in which it stated:

GMO is primarily engaged in the business of providing electric and steam utility service in Missouri to the public in its certificated areas. GMO is an “electrical corporation” and “public utility” as those terms are defined in Mo. Rev. Stat. § 386.020 (2000) and, as such, is subject to the jurisdiction of the Commission as provided by law.

(See In the Matter of KCP&L Greater Missouri Operations Company's Request for Authority to Implement a General Rate Increase for Electric Service, Case No. ER-2016-0156, Doc. No. 7, p. 1).

Jurisdiction over the Parties

5. Section 386.250, RSMo., provides:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter (1) To the manufacture, sale or distribution of ... electricity for light, heat and power, within the state, and to persons or corporations owning,

leasing, operating or controlling the same; and to gas and electric plants, and to persons or corporations owning, leasing, operating or controlling the same[.]

6. Section 386.020(14) defines “Electric plant”:

"Electric plant" includes 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[.]

7. Section 386.020(15) defines “Electrical corporation”:

"Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others[.]

8. Section 386.020(43) defines “Public utility”:

"Public utility" includes every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heat or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]

9. Respondents’ own descriptions of their activities set out above in Paragraphs 3 and 4 show that Respondents are engaged in the business of providing electric and steam utility service in Missouri to the public in Missouri. Respondents KCPL and GMO are therefore electric corporations and public utilities subject to the jurisdiction and regulation of this Commission pursuant to §§ 386.020, (14), (15) and (43), and 386.250.

10. Prior to this filing, representatives from OPC directly contacted a representative of KCPL and GMO about this complaint.

Jurisdiction over the Action

11. Section 386.390.1 authorizes the Commission to hear and determine complaints:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission

12. Section 386.390 RSMo. and 4 CSR 240-2.070 authorize the Public Counsel to bring complaints against public utilities for Commission determination.

13. Section 386.570.1 provides for a penalty between \$100.00 to \$2,000.00, per offense, for “[a]ny 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” Pursuant to § 386.570.2, each day that a continuing violation persists is counted as a separate offense. Pursuant to § 386.570.3, the acts and omissions of the officers, agents and employees of a corporate respondent are deemed to be the acts and omissions of the corporation. Section 386.590 provides that all penalties are cumulative.

Count I

Violations of Commission Order

14. Public Counsel hereby realleges and incorporates by reference all of the

allegations set out in Paragraphs 1 through 13 above.

15. In its Report and Order in EC-2015-0309, the Commission found “KCP&L and GMO have violated 4 CSR 240-20.015(2)(C).” (*Staff the Missouri Public Service Commission, Complainant, vs. Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, Respondents*, Case No. EC-2015-0309, Doc. No. 119, p. 18). As a consequence, the Commission ordered “[KCPL and GMO] shall immediately cease violating Commission Rule 4 CSR 240-20.015(2)(C).” *Id* at 23. However the Commission also indicated that if KCPL or GMO wished to continue their 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” (*Id*).

16. The Companies filed a revised transfer script on May 10, 2016 that both Public Counsel and the Commission’s Staff argued did not comply with the Commission’s Report and Order in EC-2015-0309 (*Staff the Missouri Public Service Commission, Complainant, vs. Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, Respondents*, Case No. EC-2015-0309, Doc. Nos. 126, 128, 129, 130, and 132).

17. Ultimately, the Commission rejected KCPL and GMO’s proposed scripts and provided a script designed to give customers informed consent stating the companies “shall use the following script[.]” (*Staff the Missouri Public Service Commission, Complainant, vs. Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, Respondents*, Case No. EC-2015-0309, Doc. No. 133, p. 5). In other words, if the KCPL and GMO wished to continue subjecting its customers to the Allconnect high-pressure sales pitch, they must adhere to the Commission-approved script.

18. Based on the *Kansas City Power & Light Company's Notice of Termination of Transferring Missouri Customer Calls to Allconnect* ("Notice") filed December 9, 2016 in Case No. ER-2016-0285, KCPL and GMO continue to transfer customer information and calls to Allconnect without adhering to the Commission-approved Script (*In the Matter of Kansas City Power & Light Company's Request for Authority to Implement A General Rate Increase for Electric Service*, Case No. ER-2016-0285, Doc. No. 105). The Notice is attached to this complaint as **Appendix A**.

19. Furthermore, KCPL and GMO have continued to, and intend to continue, transferring calls and customer information to Allconnect. In its Notice, the companies give the impression that they will cease transferring customer calls and information without consent to a third party telemarketer by January 1, 2017. This is not compliance or a commitment to follow the law.

20. If this were a real commitment to comply with the Commission's order and rules, KCPL and GMO would either follow the Commission-approved script or *immediately* cease transferring calls from Missouri customers to Allconnect, Inc. Rather than committing to compliance, KCPL and GMO continue to play word games as they did in proposing scripts that would mislead customers into believing a transfer to Allconnect was required to complete their utility transaction.

21. Worse, the Companies cravenly imply that Staff is wrong to insist that KCPL and GMO actually comply with the Commission's order in EC-2015-0309. Such a posture shocks the conscious. The only thing KCPL and GMO appear committed to is transferring customer information and calls to a telemarketer without informed consent and in exchange for a fee.

22. By their conduct set out in Paragraphs 18-21, Respondents KCPL and GMO have

violated the Commission's Order in EC-2015-0309 in that they have deliberately deviated from the Commission's ordered script in the past and intend to do so until January 1, 2017.

WHEREFORE, OPC prays that the Commission will provide notice to the Respondents as required by law and, after due hearing, (1) find that Respondents have violated Commission's Order in EC-2016-0309 as set out herein; (2) direct its General Counsel to seek in Circuit Court the penalties allowed by law; and to grant such other and further relief as is just in the circumstances.

Count II

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

23. Public Counsel hereby realleges and incorporates herein by reference all of the allegations set out in Paragraphs 1 through 22 above.

24. 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 rule or orders.

25. As explained above, in its Report and Order in EC-2015-0309, the Commission found that KCPL and GMO violated 4 CSR 240-20.015(2)(C). The Commission directed KCPL and GMO to immediately cease violating the Commission Rule and indicated they could do so by adhering to the Commission-approved script.

26. In the Notice discussed in paragraphs 18-21 above, KCPL and GMO admit they do not adhere to the script approved by the Commission in Case No. EC-2015-0309.

27. The Companies also admit that they have continued to transfer customer calls to Allconnect and will continue to do so until at least January 1, 2017.

28. By their conduct set out in Paragraphs 18-21 and 26-27, Respondents KCPL and

GMO have violated and continue to violate Commission Rule 4 CSR 240-20.015(2)(C) in that they transfer customer information and calls to a third-party without first receiving informed consent.

WHEREFORE, OPC prays that the Commission will provide notice to the Respondents as required by law and, after due hearing, (1) find that Respondents have violated Commission Rule 4 CSR 240-20.015(2)(C); (2) direct its General Counsel to seek in Circuit Court the penalties allowed by law; and grant such other and further relief as is just in the circumstances.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

BY: /s/ Tim Opitz
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 13th day of December 2016:

/s/ Tim Opitz

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

In the Matter of Kansas City Power & Light Company's)
Request for Authority to Implement A General) Case No. ER-2016-0285
Rate Increase for Electric Service)

**KANSAS CITY POWER & LIGHT COMPANY'S NOTICE OF TERMINATION OF
TRANSFERRING MISSOURI CUSTOMER CALLS TO ALLCONNECT**

COMES NOW Kanas City Power & Light Company ("KCP&L" or "Company") and for its *Notice of Termination of Transferring Missouri Customer Calls to AllConnect* ("Notice of Termination"), states as follows:

1. The Company has decided to stop transferring calls from its Missouri customers (including calls from customers of KCP&L Greater Missouri Operations Company) to AllConnect effective January 1, 2017. This decision has not been made lightly and is driven by the Commission Staff's continued opposition to the program which, in the opinion of KCP&L management, is not likely to abate soon. The Staff's continued opposition to this program has been manifested most recently in their insistence that compliance with the order in Case No. EC-2015-0309 requires 100% adherence by KCP&L customer service representatives to the script approved by the Commission in that case. The Company does not view this Staff position as reasonable or attainable and has told Staff so, but to no avail. As the Company has seen through the course of Case No. EC-2015-0309, the Staff has strong negative feelings about this program and the Company is concerned that continued transfer of calls from Missouri customers to AllConnect will result in the Staff filing a complaint alleging non-compliance. This would be damaging to important regulatory relationships and, consequently, the Company has made the difficult decision to stop transferring calls to Missouri customers effective January 1, 2017. The

Company values its relationship with AllConnect and will continue transferring calls from its Kansas customers.

WHEREFORE, KCP&L respectfully submits this Notice of Termination to the Commission.

Respectfully submitted,

/s/ Robert J. Hack

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Attorneys for
Kansas City Power & Light Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all parties of record on this 9th day of December, 2016.

/s/ Robert J. Hack

Robert J. Hack