

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

In the Matter of the Application of Kansas City)
Power & Light Company for Approval to Make) **File No. ER-2010-0355**
Certain Changes for Electric Service to Continue) Tariff No. JE-2010-0692
the Implementation of Its Regulatory Plan)

In the Matter of the Application of KCP&L)
Greater Missouri Operations Company for) **File No. ER-2010-0356**
Approval to Make Certain Changes in its) Tariff No. JE-2010-0693
Charges for Electric Service)
)

**STAFF’S REQUEST FOR A PRIVILEGE LOG AND TO SUBMIT STAFF DATA
REQUEST NO. 651(4) TO THE SPECIAL MASTER**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and requests that the Special Master order KCPL/GMO to provide a privilege log for Staff Data Request No. 651(4) and submits Staff Data Request No.651(4) to the Special Master for review, and respectfully states as follows:

1. Staff submitted Staff Data Request No. 651 to Kansas City Power & Light Company (KCPL) and KCP&L Greater Missouri Operations (GMO) which subsection 4 states: “Please provide a copy of all correspondence with MarksADR and all documents included in KCPL’s ‘correspondence file’ associated with the Marks ADR contract (if no contract, that communications in regards to work performed).”¹

2. KCPL/GMO’s general response to Staff Data Request No. 651 states: “Please see the attached Highly Confidential response. These attachments have been marked as Highly Confidential and Proprietary because they contain reports, work-papers or other documentation related to work produced by internal or external auditors or consultants and strategies employed,

¹ Mr. William H. Downey, President, Chief Operating Officer, and member of the Board of Directors Of Great Plains Energy, Inc. and president and Chief Operating Officer of KCPL, in his prepared direct testimony in File No. ER-3010-0355 at page 16 and in his prepared direct testimony in File No. ER-2010-0356 at page 16 refers to Mr. Jonathan Marks as being used as a resource throughout the Iatan 1 and Iatan 2 projects.

to be employed, or under consideration in contract negotiations.” KCPL/GMO’s specific response to Staff Data Request No. 651(4) states: “See KCP&L’s response to Question No. 1 above. [‘Please see KCP&L’s response to MPSC_20090722 Data Request No. 649 Question No. 3.’] All other communications are mediation communications that are confidential and cannot be produced pursuant to Missouri Law.”

3. In referring to Missouri Law, KCPL/GMO is referring in its response to Section 435.014 which treats arbitration and mediation proceedings as settlement negotiations. Section 435.014(2) RSMo (2000) states: “Any communication relating to the subject matter of such disputes made during the resolution process by any participant, mediator, conciliator, arbitrator or any other person present at the dispute resolution shall be a confidential communication. No admission, representation, statement or other confidential communication made in setting up or conducting such proceeding not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery.” However, case law relates as the statute indicates that “no fact independently discoverable shall be immune from discovery by virtue of having been disclosed in such confidential communication.” *Williams v. Kansas City Title Loan Co.*, 314 S.W.3d 868, 871 (Mo. App. W.D. 2010); see *Group Health Plan, Inc. v. BJC Health Systems, Inc.*, 30 S.W.3d 198, 203 (Mo. App. E.D. 2000); *State ex rel. Webster v. Douglas Toyota III, Inc.*, 830, S.W.2d 491, 495 (Mo. App. S.D. 1992).

4. The Staff contends that Missouri Supreme Court Rule 57.01(c)(3) regarding privilege logs is not limited to the attorney-client privilege. The literal language of Missouri Supreme Court Rule 57.01(c)(3) refers privilege, not “attorney-client” privilege. KCPL/GMO have also asserted the accountant-client privilege.

5. Presently there is no assurance that the documents that KCPL/GMO are withholding pursuant to Section 435.014 have been properly classified by KCPL/GMO as covered by Section 435.014 in its entirety or even in part. Staff requests that the Special Master review the documents relating to Staff Data Request No. 651(4) to determine whether the document(s) are protected by Section 435.014(2) in its entirety or in part and if the document is not covered in its entirety by Section 435.014 KCPL/GMO be directed to provide the document to the Staff and if the document is only covered in part by Section 435.014 KCPL/GMO be directed to redact the document and provide a copy of the redacted document to the Staff. Finally, just because KCPL/GMO produced a document for arbitration and mediation does not preclude the document from being discovered. The document may be independently discoverable.

WHEREFORE, Staff respectfully submits Staff's Data Request No. 651(4) to the Special Master Judge Stearley for an order to KCPL/GMO that it provide a privilege log and for inclusion of the documents withheld by KCPL/GMO in the Special Master review process.

Respectfully submitted,

/s/ Jaime N. Ott

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 3rd day of December, 2010.

/s/ Jaime N. Ott