

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

In the Matter of the Verified Joint Application)	
Of Kansas City Power & Light Company)	
and KCP&L Greater Missouri Operations)	File No. EE-2018-0108
Company for a Variance from the Commission's)	
Affiliate Transactions Rule, 4 CSR 240-20.015.)	

PUBLIC COUNSEL'S RESPONSE TO APPLICANTS' MOTION TO DISMISS

COMES NOW the Office of the Public Counsel (OPC), by and through undersigned counsel, and for *Public Counsel's Response to Applicants' Motion to Dismiss*, states as follows:

INTRODUCTION

Kansas City Power & Light Company (KCPL) and KCP&L Greater Missouri Operations Company (GMO) (or jointly, the "Applicants") initiated this matter by requesting a variance from complying with consumer protections of the Missouri Public Service Commission's affiliate transaction rules. Instead of identifying non-complying transactions from which they sought a variance and instead of identifying categories of suspect activity from which they sought a variance, the Applicants asked to be excused from compliance with the Commission's rules for an unlimited duration and for *every* "transaction[]" between KCP&L, GMO and Grid Assurance." In response to a data request from the Staff of the Commission, Applicants explained that their application had described their variance as "limited" because the "requested variance is 'limited' to KCP&L's and GMO's interactions with Grid Assurance." Applicants' view of what constitutes a limited variance is meaningfully different from the OPC's view, and what quickly became clear to

the OPC is that the Applicants want broad authority to operate outside of the Commission's rules with respect to their dealings with Grid Assurance.

On January 9, 2019, the Applicants filed their *Motion to Dismiss* seeking leave of the Commission to dismiss their application pursuant to 4 C.S.R. 240-2.116(1). In Applicants' *Motion to Dismiss*, they explain that they no longer feel the need to get the Commission's permission to engage in their anticipated transactions because the Applicants "no longer believe that Grid Assurance would or could be considered an affiliated entity of Joint Applicants under the Rule at this time." See *Motion to Dismiss*, Pg. 2, Para. 4. The OPC disagrees, and had this case gone forward without modifications or stipulations that remedied OPC's concerns, the OPC's position would have been to ask the Commission to deny Applicants' broad variance request. Given the current posture, the OPC will not oppose the Commission granting dismissal of their application; however, the OPC will take this opportunity to put Applicants on notice of the OPC's concerns with their business dealings with Grid Assurance so that fair notice has been afforded to Applicants in the event the Applicants carry forward with their dealings with this affiliated entity. OPC reserves the right to pursue a complaint or argue for prudence disallowances, or both, in future proceedings.

CONCERNS WITH GRID ASSURANCE

OPC supports strategic resiliency planning and preparing for potential "worst case" scenarios in which acts of God or sabotage could result in significant damage to Missouri's electric infrastructure. Just like any other cost incurred by an electric utility, resiliency planning costs must be prudently incurred. The Commission adopted its affiliate transaction

rules to protect the customers of Missouri's regulated utilities from unlawfully subsidizing a utility's unregulated affiliated businesses. The rules accomplish this protection by, in part, ensuring utilities transacting business with affiliates do not compensate that affiliate for more than the cost the utility would otherwise incur if dealing with a non-affiliate. The Applicants' *Motion to Dismiss* asserts that changes made by Grid Assurance will avoid affiliate transactions and requirements to comply with the affiliate transaction rules. These changes, however, do not alleviate OPC's concerns with the Applicants' dealings with Grid Assurance.

The Applicants are presumptively exerting control over Grid Assurance. The affiliate transaction rules apply when a utility exerts "control," which the affiliate transaction rules define liberally:

Control means "the possession, directly or indirectly , of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one or more other entities whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of ten percent (10%) or more of voting securities or partnership interest of an entity constitutes control for purposes of this rule. This provision, however, shall not be construed to prohibit a regulated electrical corporation from rebutting the presumption that its ownership interest in an entity confers control." See 4 CSR 240-20.015(1)(C).

The Applicants assert that they are not in "control" of Grid Assurance for two reasons: first, because Grid Assurance would eventually stop employing a KCPL employee as the chief executive officer, and second, because Applicants would eventually own less than 10% of Grid Assurance. However, negotiations and business dealings with Grid Assurance are

being conducted at a time when these hallmarks of control are still in effect. In fact, Grid Assurance's entire business model was formed during the time when Applicants exerted control over Grid Assurance. Removing these two elements of control going forward does not change the historical dealings that underlie the decision to enter this transaction and does not provide any guarantee that Applicants will not continue to exert control - in a direct or indirect manner.

In the event that Applicants have control over Grid Assurance, the Applicants erroneously rationalize their actions by arguing that the "the likelihood of the Joint Applicants subsidizing Grid Assurance is very low, if not zero" because all subscribers are receiving the same terms and conditions as other subscribers to the Grid Assurance program. *See* Chris Kurtz Direct Testimony, P. 25:7- 21. Applicants are mistaken because they fail to take into consideration that any one or all of the subscribers could be providing preferential treatment to an entity in which they have a financial stake - regardless of whether each are offered similar terms. Indeed, all of the participants in Grid Assurance currently have an ownership stake in the entity, and there is a risk of self-dealing with each strand of Grid Assurance's web of ownership.

Additionally, and very importantly, Applicants mistake the standard upon which to review whether a subsidy or preferential treatment is at issue. Applicants' should view all transactions with Grid Assurance as compared to how they would normally conduct arms' length business transactions (i.e., would terms and conditions that are at issue result in preferential treatment as compared to how the utility normally conducts its business?) - not the other way around (i.e., is Grid Assurance departing from its own business standards?).

The OPC's investigation, thus far, reveals evidence that Applicants are giving preferential treatment to Grid Assurance, that Applicants are exerting control over Grid Assurance, and that Applicants have refused to meaningfully look at alternatives to Grid Assurance, like the RESTORE program, for which Ameren Missouri has found satisfactory for its grid resiliency obligations to its customers.¹ At this time, the OPC is not confident that Grid Assurance is even a viable business model but for Applicants involvement as a subscriber. For example, Applicants went so far as **

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Based on the evidence in the OPC's possession and the lack of evidence provided from the Applicants, the OPC concludes that further Applicant dealings with Grid Assurance under the current terms of service would be unreasonable (i.e., imprudent), especially if Applicants do not adhere to the pricing standards of 4 CSR 240-20.015. The OPC reserves its right to challenge costs associated with this program and to assert violations of the affiliate transaction rules in future rate cases or other applicable cases.

WHEREFORE, the OPC respectfully requests the Commission accept *Public Counsel's Response to Applicants' Motion to Dismiss*, and that the Commission order any additional relief it deems just.

¹ <http://ameren.mediaroom.com/news-releases?item=1597>

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail on January 18, 2019 to all counsel of record.

/s/ Ryan D. Smith