

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

FILED

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STATE ex rel. SIERRA CLUB and
CONCERNED CITIZENS OF PLATTE COUNTY,

Appellants,

v.

MISSOURI PUBLIC SERVICE COMMISSION
and
KANSAS CITY POWER & LIGHT CO.,

Respondents.

Case No. WD66893

FILED³

APR 13 2007

Missouri Public
Service Commission

JOINT MOTION TO DISMISS APPEAL

Appellants Sierra Club and Concerned Citizens of Platte County (collectively, "Sierra Club") and Respondent Kansas City Power & Light Company ("KCPL") jointly move the Court to dismiss this appeal and to withdraw its Opinion of February 27, 2007.

This Joint Motion is submitted by Sierra Club and KCPL pursuant to the Collaboration Agreement executed on March 19, 2007 by which these parties have resolved all of their disputes relating to KCPL's Comprehensive Energy Plan. The elements of this settlement affect not only this appeal of regulatory proceedings before the Missouri Public Service Commission, but also proceedings on appeal from the Kansas Corporation Commission and the Missouri Air Conservation Commission, as well as an action pending in the United States District Court of the Western District of Missouri.

Sierra Club and KCPL have been advised that Respondent Missouri Public Service Commission does not oppose this Motion.

In light of the efforts made by the parties to achieve this global settlement and the substantial public interest benefits which the Collaboration Agreement provides, Sierra Club and

KCPL request that this appeal be dismissed and that the Court's Opinion be withdrawn. Suggestions in Support of this Motion follow below.

WHEREFORE, Appellants Sierra Club and Concerned Citizens of Platte County and Respondent Kansas City Power & Light Company request that this Motion be granted.

SUGGESTIONS IN SUPPORT

The moving parties state to the Court:

1. After extensive negotiations, KCPL and the Sierra Club signed a far reaching Collaboration Agreement on March 19, 2007 which is designed to settle all of the many outstanding issues between them. The Agreement resolves disputes pertaining to emissions limits, renewable energy, the construction of the Iatan 2 generating unit, energy efficiency, community investment and utility regulatory matters. Importantly, the Collaboration Agreement provides for the resolution of all litigation pending between Sierra Club and KCPL, including this appeal. See Exhibit A (Collaboration Agreement).

2. In Section IV(c) of the Agreement, KCPL and Sierra Club agreed to file a joint motion for remand of this appeal or, if such motion were denied, the Appellants agreed to seek dismissal of the appeal. Sierra Club has agreed that it will not oppose the Experimental Regulatory Plan approved by the Missouri Public Service Commission in the proceedings that generated this appeal, or otherwise oppose approval of the Plan as originally approved by the Commission.

3. After further review of its obligations of Section IV(c), Sierra Club has concluded that it is in the best interests of all parties to terminate these proceedings and that it would be appropriate for the Court to dismiss its appeal. Sierra Club and KCPL jointly seek withdrawal of

the Court's Opinion issued on February 27, 2007, given the global settlement between the parties and the substantial public benefits which the Collaboration Agreement provides.

4. These public benefits are numerous. Section I provides for changes in the emission limits in the Iatan Generating Station's Prevention of Significant Deterioration Permit relating to nitrogen oxide, sulfur dioxide, opacity and sulfuric acid mist. KCPL has agreed not to seek increases for these and other emissions from the Iatan Station, as set forth in Exhibit 1 to the Collaboration Agreement.

5. Section II provides for new emissions limits to be included in a proposed Consent Agreement between the Kansas Department of Health and Environment and KCPL regarding the emissions limits to be set pursuant to the Best Available Retrofit Technology ("BART") regulations. Additionally, KCPL has agreed to use its best efforts to install pollution control technologies that will allow it to reduce emissions at its two plants at the La Cygne Generating Station in Kansas to assure that compliance with the BART regulations occurs on an accelerated schedule and, in any event, no later than June 1, 2015.

6. The Collaboration Agreement's Section III sets forth KCPL's commitment to seek regulatory approval from both the Missouri Public Service Commission and the Kansas Corporation Commission to undertake renewable energy, energy efficiency and other measures with the goal of offsetting the annual carbon dioxide emissions generated from KCPL's Iatan Unit 2. This commitment is set forth in Exhibit 3 to the Agreement. Among the innovative aspects of this Agreement are the development of a "net metering tariff" which would allow customers to reduce their electricity bills by means of qualified solar or wind self-generation projects. The parties have further agreed to collaborate on legislation and regulatory initiatives in both Missouri and Kansas to encourage the reduction of emissions, including carbon dioxide,

through energy efficiency building standards, appliance standards and other energy efficiency investments by utilities. KCPL has also agreed to grant \$180,000 to implement the recommendations of the Climate Protection Plan administered by the City of Kansas City, Missouri; to grant \$60,000 to support ozone and particulate matter monitoring within the Kansas City metropolitan region by the Mid-America Regional Council; and to grant \$100,000 to the City of Weston to improve its drinking water infrastructure.

7. In consideration of these many promises and representations, the parties have agreed to terminate all of their pending litigation. It is therefore important that this appeal be terminated as quickly as possible and that the parties be returned to the status quo ante in order for KCPL to proceed with its Experimental Regulatory Plan approved by the Commission, which Sierra Club has agreed in Section IV(c) of the Collaboration Agreement that it will no longer oppose. As a result, Sierra Club respectfully requests that the Court grant its request to dismiss this Appeal, as well as the movants' joint request that the Court vacate its Opinion.

8. The effect of the Collaboration Agreement upon this case is that the appeal has become moot. Bonner v. State Board of Registration for the Healing Arts, 167 S.W.3d 293 (Mo. App. 2005). It is therefore entirely appropriate for this Court to dismiss the appeal because it is moot and to withdraw its Opinion, pursuant to the request of the parties and in light of the equitable grounds supporting such action. See State ex rel. Chastain v. City of Kansas City, 968 S.W.2d 232, 242-43 (Mo. App. 1998). Although this Court in Chastain vacated the judgment of the trial court, rather than its own judgment, the Court possesses full authority to vacate or withdraw an opinion on its own motion or pursuant to the motion of the parties prior to the issuance of a mandate. See Buskuehl v. State, 719 S.W.2d 504, 505 (Mo. App. 1986).

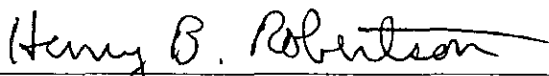
9. The equitable grounds supporting dismissal of the appeal and withdrawing the Court's Opinion are manifest. KCPL and Sierra Club believe that the Collaboration Agreement is a groundbreaking event that can serve as a national model for environmental groups and electric utilities to work together on a common set of initiatives to offset carbon dioxide and to reduce other emissions. This approach will improve the environment and offer additional value to energy customers across the Kansas City region through the use of new technology and innovative approaches. Indeed, this settlement is perhaps the most far reaching ever made by an environmental group with a utility in the United States.

10. In light of these tangible benefits, there are exceptional circumstances that militate in favor of withdrawal of this Court's judgment and opinion. Cf. U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership, 513 U.S. 18, 29, 115 S. Ct. 386, 393 (1994).

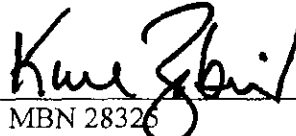
11. As noted above, Sierra Club and KCPL have been advised that Respondent Missouri Public Service Commission does not oppose this Motion.

WHEREFORE, Appellants Sierra Club and Concerned Citizens of Platte County and Respondent Kansas City Power & Light Co. respectfully request that the Court withdraw its Opinion of February 27, 2007 and dismiss this Appeal as moot:

Respectfully submitted,



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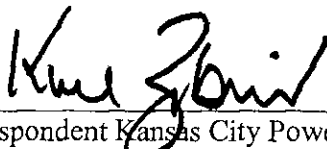
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CERTIFICATE OF SERVICE

A copy of the foregoing was served on this 3rd day of April, 2007, by First Class U.S.

Mail or overnight Express Delivery to:

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