

**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 )  
Certain Changes in Its Charges for Electric Service to ) File No. ER-2009-0089  
Continue the Implementation of Its Regulatory Plan. )  
)

In the Matter of the Application of KCP&L Greater )  
Missouri Operations Company for Approval to Make ) File No. ER-2009-0090  
Certain Changes in its Charges for Electric Service. )  
)

In the Matter of the Staff construction audit and )  
prudence review investigation of the Iatan 1 AQCS, )  
Iatan common plant, and Iatan 2 generating plant ) Case No. E\_-2010-\_\_\_\_  
projects of Kansas City Power & Light Company. )

**STAFF MOTION TO OPEN CONSTRUCTION AUDIT AND  
PRUDENCE REVIEW INVESTIGATION CASE**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and respectfully requests the Missouri Public Service Commission (Commission) to (a) open a formal case for the Staff's construction audit and prudence review investigation of the Iatan 1 air quality control system (AQCS) environmental enhancements, Iatan common plant, and Iatan 2 generating plant construction projects established by the Kansas City Power & Light Company Experimental Regulatory Plan Stipulation And Agreement in Case No. EO-2005-0329, which has been occurring in Case/File Nos. ER-2009-0089 and ER-2009-0090<sup>1</sup>, and (b) direct that Kansas City Power & Light Company Inc. (KCPL) and KCP&L Greater Missouri Operations Company (GMO) follow Commission Rule 4 CSR 240-2.090, in particular as it relates to data requests. In support thereof, the Staff states as follows:

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<sup>1</sup> Relevant information and materials also are in Case No. EM-2007-0374, In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company, and Aquila, Inc., for Approval of the Merger of Aquila, Inc., with a Subsidiary of Great Plains Energy Incorporated and for Other Related Relief.

1. A version of this pleading was nearing completion when Kansas City Power & Light Company Inc. (KCPL) and KCP&L Greater Missouri Operations Company (GMO) filed on February 16, 2010 KCP&L's And GMO's Initial Response To Staff Report Of The Construction Audit/Prudence Review Of Environmental Upgrades To Iatan 1 And Iatan Common Plant (Initial Response). With the February 16, 2010 Initial Response filing of KCPL/GMO, Staff counsel turned its attention from filing this pleading to drafting a response to the KCPL/GMO February 16, 2010 Initial Response. Staff counsel is aware that at the public Agenda Session held Wednesday, March 10, 2010, Regulatory Law Judge Harold Stearley and the Commissioners discussed dispensing with utilizing File Nos. ER-2009-0089 and ER-2009-0090 on a going forward basis and opening a new docket for matters relating to the construction audit and prudence review of Iatan 1 air quality control system (AQCS) environmental enhancements, Iatan common plant, and Iatan 2. Undersigned counsel was in St. Louis at the time of Commission's Wednesday, March 10, 2010, Agenda Session, and as a consequence, had to view the Agenda Session as archived. (Parts of the Agenda Session discussion were not entirely intelligible because the Agenda Room's speaker phone picked up a constant shuffling of papers near the speaker phone's speakers.) This pleading is being filed as soon as possible after the Commission's Wednesday, March 10, 2010, Agenda Session and the Staff's filing on March 9, 2010 of Staff's Reply To KCPL's And GMO's February 16, 2010 Initial Response.

2. KCPL is a Missouri general business corporation formed on July 29, 1922, with its principal place of business located at 1200 Main Street, Kansas City, Missouri 64105. Its registered agent is National Registered Agents, Inc., 300-B East High Street, Jefferson City, Missouri 65101. KCPL is an integrated electric utility that provides electricity to retail customers in the states of Missouri and Kansas. GMO is a Missouri general business corporation in good

standing, formed on March 27, 1987<sup>2</sup>, with its principal place of business located at 1200 Main, Kansas City, Missouri 64106. Its registered agent is National Registered Agents, Inc., 300-B East High Street, Jefferson City, Missouri 65101. GMO is an integrated electric utility that provides electricity to retail customers in the state of Missouri.

3. KCPL and GMO are electrical corporations defined in Section 386.020(15) RSMo Supp. 2009, and each is a public utility defined in Section 386.020(43) RSMo Supp. 2009, subject to the Commission’s jurisdiction pursuant to Chapter 386 and 393 RSMo.

4. The Commission has the authority to establish a case for the purpose of supervising, investigating, prescribing, examining, fixing, and determining, among other things, matters relating to the manufacture, sale, or distribution of electricity for light, heat, and power by electrical corporations and to require from electrical corporations specific answers to questions upon which the Commission may need information. Sections 386.250(1) and (7), 386.310.1, and 393.140(1), (2), (3), (5), (7), (8), (9), and (10), RSMo 2000. Section 393.130.1, RSMo 2009 requires that “. . . every electrical corporation . . . shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.” Pursuant to Section 386.240 RSMo 2000 “[t]he commission may authorize any person employed by it to do or perform any act, matter or thing which the commission is authorized by this chapter to do or perform . . .” and pursuant to Section 393.140(9) “[t]he commission may require of all such [gas, electrical, water and sewer] corporations or persons specific answers to questions upon which the commission may need information . . .”<sup>3</sup>

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<sup>2</sup> GMO was initially incorporated under the business name of UtiliCorp United, Inc., then was under the name Aquila Corporation. Pursuant to the Missouri Secretary of State, KCP&L Greater Missouri Operations Company fictitious name was registered on July 14, 2008.

<sup>3</sup> Section 386.010 RSMo 2000 (“This chapter shall be known as the ‘Public Service Commission Law’ . . .”) contains a note from the Revisor of Statutes which states as follows: “Reference to ‘chapter’ is taken from RSMo 1939 and includes all of chapter 386. . . and 393.110 to 393.290.”

5. Section 386.420.2 RSMo. 2000 states, in part: “Whenever an investigation shall be made by the commission, it shall be its duty, to make a report in writing in respect thereto, which shall state the conclusions of the commission, together with its decision, order or requirement in the premises. . . .” The Commission’s report(s) would be in the rate cases of KCPL, GMO, and Empire. The Commission cited in its footnote 6 on page 5 of its December 9, 2009 Order Regarding Staff’s Motion To Compel in File No. ER-2009-0089 additional statutory sections for the Commission’s investigatory authority: Sections 386.310, 386.360, 386.390, 386.440, 386.460, 386.470, 393.110, 393.130, 393.140, 393.145, 393.146, 393.160, 393.170, 393.190, 393.260, and 393.270 RSMo.

6. There are two necessary and/or proper provisions in the Public Service Commission Law respecting the powers of the Commission. Section 386.040 RSMo. 2000 provides as follows:

A “Public Service Commission” is hereby created and established, which said public service commission shall be vested with and possessed of the powers and duties in this chapter specified, and also all powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter.

Section 386.250(7) RSMo. 2000 states as follows:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

(7) To such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly.

7. The Commission’s rule authorizing the use of data requests (4 CSR 240-2.090(2)) has been upheld on the basis of Section 392.210.1 RSMo, respecting telecommunications companies, and Section 386.410.1 RSMo., which states in part that “in all investigations, *inquiries* or hearings the commission or commissioner shall not be bound by the technical rules

of evidence.” (Emphasis added). *State ex rel. Southwestern Bell Tel. Co. v. Public Serv. Comm’n*, 645 S.W.2d 45, 50 (Mo.App. W.D. 1982) (*SWBT*)(*SWBT* involved contested cases – two rate proceedings, initiated at different times by *SWBT*, and a third proceeding denominated as a cost of service study).<sup>4</sup> In the *SWBT* decision, the form of discovery in dispute is denominated “interrogatories,” but it is Commission Rule, 4 CSR 240-2.090, that is at issue.

8. On the basis of the aforementioned sections and Section 393.140(9) RSMo., which is the Chapter 393 counterpart to Section 392.210.1,<sup>5</sup> the Staff believes that the Commission is not limited solely to the authority in Section 383.450 RSMo. as authority for the Staff to use data requests outside the context of a contested case. Both Section 392.210.1 and Section 393.140(9) state, in part, that the commission may require of any utility specific answers to questions upon which the Commission may need information. The Western District Court of Appeals also noted in *SWBT* that rather than the provisions of the Administrative Procedures Act controlling, Section 393.140(9), Section 392.210.1, and Section 386.410.1 are “special statutory provisions directed solely to proceedings before the Public Service Commission” which are “considerably different from and vastly more complicated than the type of proceedings involved in” Chapter 536. *Id.* In fact, the Court commented that “[t]he authority under Section 386.410-1 for the Commission to adopt its own rules of procedure seems to be a rather uncommon grant to an administrative agency . . .” *Id.*<sup>6</sup>

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<sup>4</sup> The Commission is still bound by the fundamental rules of evidence even though it is not bound by the technical rules of evidence. *State ex rel. AT&T v. Public Serv. Comm’n*, 701 S.W.2d 745, 754-55 (Mo.App. W.D. 1985).

<sup>5</sup> The Western District Court of Appeals noted the comparable statutory section respecting gas, electrical, water and sewer corporations to Section 392.210.1 is Section 393.140(9) RSMo. 645 S.W.2d at 50.

<sup>6</sup> The St. Louis District Court of Appeals in the first *UCCM* case, *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm’n*, 562 S.W.2d 688, 693 n.11 (Mo.App. St.L. D. 1978)(*UCCM*) stated:

Chapter 536, the Missouri Administrative Procedure Act, supplements Chapter 386 regulating the Public Service Commission, except where in direct conflict with it. *See Patterson v. Thompson*,

9. The Court further stated in *SWBT* regarding the Commission’s powers:

. . . Surely Public Counsel could apply to the Commission under Section 392.210-1 for an order calling upon Bell to provide specific answers to questions. Thus, Public Counsel in any event has a method whereby to get the same answers from Bell under Section 392.210-1 that it can under Regulation 4 CSR 240-2.090. The only difference is that under the Regulation, Public Counsel is spared the time and inconvenience of filing a prior application to the Commission and the Commission is spared the time and the inconvenience of filing a prior application to the Commission [sic] and the Commission is spared the time and the inconvenience of processing a special order. The impact upon Bell of either procedure would be virtually the same.

The only purpose of Section 386.410-1 was to serve the convenience of the Commission and the parties before it and to expedite proceedings. That purpose will be best served by upholding Regulation 4 CSR 240-2.090.

645 S.W.2d at 50-51.

10. The Commission, at pages 5-7 in its December 9, 2009 Order Regarding Staff’s Motion To Compel in File No. ER-2009-0089, noted that the file was formally closed on August 8, 2009 and that use of data requests in a non-case audit fall under the Commission’s investigatory power, and production of documents in this procedural context can only be compelled by use of a subpoena as provided for in Sections 386.440 and 536.077.

11. The Staff of the Missouri Public Service Commission moves for the Commission to open a formal case for the Staff’s investigation (a) by and through Staff’s Counsel Office as authorized by delegated authority from the General Counsel and by Section 386.071 RSMo 2000 and Commission Rules 4 CSR 240-2.040(1) and 4 CSR 240-2.070(1), (b) if not additionally by direct delegated authority of the Commission. The Commission is authorized to investigate and inquire concerning electrical corporation operations, practices, installations, and facilities, and to

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277 S.W.2d 314, 317(5) (Mo.App.1955). Thus, the procedures delineated in Chapter 536 for a hearing and for the presentation of evidence during a hearing apply unless a contrary provision exists in Chapter 386.

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*State ex rel. Noranda Aluminum, Inc. v. Public Serv. Comm’n*, 24 S.W.3d 243, 245 (Mo.App. W.D. 2000): “One purpose of Chapter 536 is to fill in gaps in administrative procedures. [Citations omitted.] . . .”

establish a case for the purpose of receiving information from electrical corporations under its jurisdiction pursuant to Sections 386.250(1) and (7), 386.310.1, and 393.140 (1), (2), (3), (5), (7), (8), (9) and (10), RSMo 2000, and Section 393.130.1, RSMo Supp. 2009.

12. KCPL filed with the Commission its KCPL Experimental Regulatory Plan (EARP) / Comprehensive Energy Plan (CEP) Stipulation And Agreement on March 28, 2005, which was designated Case No. EO-2005-0329. The EARP / CEP set forth the Iatan 1 construction project in which KCPL planned to retrofit Iatan 1 with a Selective Catalytic Reduction (SCR) facility, a Baghouse (Fabric Filters (FF)), and a Flue Gas Desulphurization (FGD) unit referred to as the air quality control system (AQCS). During the overhaul placing the Iatan 1 AQCS into service, other equipment including new Low NO<sub>x</sub> Burners and Over-Fire Air Systems, Bottom Ash Chair Conveyor Systems, new Digital Control System (DCS), and a new Economizer were installed. Although not part of the EARP / CEP, KCPL is now adding an auxiliary boiler as part of the Iatan 1 project. The overall Iatan Project includes the construction of a new 850MW coal-fired steam electric generating facility, referred to as Iatan 2, at the Iatan Station.

13. Iatan 1 is the initial 673 MW baseload coal-fired plant located north of Weston, Missouri, still experiencing construction activity, of which KCPL owns 70%; KCP&L Greater Missouri Operations Company (GMO) 18%; and The Empire District Electric Company (Empire) 12%. Of the 850 MW Iatan 2 coal-fired baseload generating unit, presently under construction, ownership shares are held as follows: KCPL - 465 MW (approximately 55%); GMO - 153 MW (18%); Empire - 102 MW (12%); Missouri Joint Municipal Electric Utility Commission (MJMEUC) - 100 MW (approximately 12%); and Kansas Electric Power Cooperative, Inc. (KEPCO) - 30 MW (approximately 4%).

14. On December 31, 2009, the Staff submitted its *Report Regarding Construction Audit and Prudence Review of Environmental Upgrades to Iatan 1 and Iatan Common Plant* (Report). This Report disaggregated the Iatan Projects into four components:

- a. Iatan 1 AQCS – this segment is related to costs that are solely related to the operation of the Iatan 1 generating unit.
- b. Common Plant Used to Operate Iatan 1 – this segment is related to facility costs that are related to the operation of both Iatan 1 and Iatan 2 for components that were fully operational and used for service on or before April 30, 2009.
- c. Common Plant-Remainder – this segment is related to the Iatan Project costs that are related to the operation of both Iatan 1 and 2 for components that were not fully operational and used for service on or before April 30, 2009.
- d. Iatan 2 Only – this segment is related to costs that are solely related to the operation of the Iatan 2 generating unit. This generating unit is not yet fully operational and used for service.

For purposes of the Report, the Staff addressed the prudence of Iatan 1 AQCS and Common Plant Used to Operate Iatan 1. The Staff did not address Common Plant-Remainder or Iatan 2.

15. While the Staff has submitted its December 31, 2010 Report on Iatan 1 AQCS and Common Plant Used to operate Iatan 1, it has continued its investigation into KCPL's prudence of Common Plant-Remainder and Iatan 2 and Iatan 1 AQCS and Common Plant Used to operate Iatan 1. The Staff is actively investigating KCPL's expenditures for reasonableness and prudence. The Staff has been using File No. ER-2009-0089 as the receptacle for the discovery process for the Common Plant-Remainder and Iatan 2 and Iatan 1 AQCS and Common Plant Used to operate Iatan 1 audits.

16. On January 13, 2010 Great Plains Energy Incorporated and KCPL made a Form 8-K filing with the United States Securities And Exchange Commission stating, in part, as follows:



. . . Great Plains Energy and KCP&L have previously announced a late summer 2010 anticipated in-service date for Iatan No. 2. Due to construction delays and unusually cold weather, Great Plains Energy and KCP&L currently anticipate that the in-service date of Iatan No. 2 will shift approximately two months into the fall of 2010.

The shift in the expected in-service date will likely cause approximately the same movement in the effective dates of rates to be set in KCP&L's pending Kansas rate case and KCP&L's and GMO's anticipated Missouri rate cases, which had been originally projected to be October 17, 2010 and early first quarter 2011, respectively. . . .

As a consequence of the shift in the in-service date of Iatan 2, it is not clear when KCPL and GMO will file their Iatan 2 rate cases. Thus, although for a period of time it had been thought that those rate cases would be filed in late 2009, then early 2010, it is not clear when in Spring 2010 those cases will be filed.

17. The Staff is requesting that the Commission open an investigation docket for the evaluation of Iatan 2, Iatan Common Plant-Remainder, Iatan 1 AQCS and Common Plant Used to operate Iatan 1 for the purpose of there being a formal case for the Staff to conduct discovery within, prior to KCPL and GMO filing their Iatan 2 rate cases. Of course, the Staff is suggesting that 4 CSR 240-2.090 of the Commission's Rules apply to this investigation docket.

18. It is the Staff's intention to use the information obtained in this investigation and the information obtained in the context of Case No. EM-2007-0374 and Case/File Nos. ER-2009-0089 and ER-2009-0090 in the future KCPL, GMO, and Empire rate cases in which the prudence and reasonableness of the Iatan 1 AQCS, Iatan common plant and Iatan 2 construction and construction related costs are addressed for ratemaking determination by the Commission.

19. Finally, in anticipation of the next KCPL rate case, the Staff in the context of File No. ER-2009-0089 submitted to KCPL a data request on February 25, 2010 requesting that KCPL update maintenance data by KCPL power plant, labor and non-labor, and operations, maintenance and transmission. The Staff submitted a similar data request to GMO in File No.

ER-2009-0090 on February 25, 2010. Beginning mid-December 2009 KCPL and GMO have sought to negotiate a procedural schedule and other matters respecting their next rate cases. The Staff has indicated that it believes it is premature to attempt to reach any such agreement. For example, besides not knowing when KCPL and GMO will file those cases, the identity of the entities that will be granted party status in those cases is not known. Regardless, the aforementioned Staff Data Requests were submitted to KCPL and GMO. Although KCPL objected to the Staff Data Requests, KCPL and GMO have provided responses. The Staff wanted to bring this item to the attention of the Commission in order for the Staff to fully disclose its activity in File Nos. ER-2009-0089 and ER-2009-0090. The Staff would not utilize the investigation proceeding that the Commission would establish to acquire this type of information. The Staff will seek to acquire information relevant to KCPL's and GMO's next rate cases through processes other than discovery in the investigation proceeding that the Commission is planning and that the Staff is requesting.

**WHEREFORE**, the Staff prays that the Commission (a) formally open a case for a construction audit and prudence review investigation of the costs respecting Iatan 1 AQCS, Iatan common plant, and Iatan 2 and to receive in said investigation proceeding the information and materials obtained by the Staff in the context of Case No. EM-2007-0374 and Case/File Nos. ER-2009-0089 and ER-2009-0090, and (b) direct KCPL and GMO to follow Commission Rule 4 CSR 240-2.090, in particular, as it relates to data requests.

Respectfully submitted,

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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 12th day of March, 2010.

/s/ Steven Dottheim