

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 17th day of
June, 2010.

In the Matter of the Application of Kansas City)	
Power & Light Company Regarding the Sale of)	<u>File No. EO-2010-0353</u>
Assets and Property Rights Located Near)	
Spearville, Kansas)	

ORDER REGARDING APPLICATION

Issue Date: June 17, 2010

Effective Date: June 23, 2010

Kansas City Power & Light Company (KCP&L) filed an application and motion for expedited treatment on May 28, 2010, asking the Commission to decline to exercise jurisdiction over a proposed transaction whereby KCP&L would sell 32 unused wind turbine generators and related property rights regarding a proposed wind farm near Spearville, Kansas. KCP&L states that it expects to complete the sale in late-June 2010 and therefore asks the Commission to act quickly on its application so that the sale can proceed as planned.

KCP&L explains that it filed the application when it did because it had been negotiating to sell the property on the assumption that this Commission does not have jurisdiction over the transaction. However, in May 2010, the Commission's Staff informed KCP&L that in Staff's opinion, KCP&L would need to obtain authority from the Commission to complete the sale.

Staff responded to KCP&L's application on June 4. Staff contends KCP&L must obtain authority from the Commission before completing the proposed transaction because

the 32 wind turbines stored at the site of the planned wind farm are part of KCP&L's "franchise, works or system" and are "necessary or useful in the performance of its duties to the public." Staff does not take a position on whether the proposed sale of the wind turbines would be contrary to the public interest, but it asks the Commission to order KCP&L to seek authority from the Commission before completing the proposed sale.

So that it could gather more information about KCP&L's application, the Commission conducted an on-the-record discussion with KCP&L, Staff, and Public Counsel on June 16. Counsel for the parties answered questions from the Commission at that proceeding, but no testimony or evidence was taken.

The disagreement among the parties turns on the interpretation of the meaning of the controlling statute. The relevant part of that statute, section 393.190.1, RSMo 2000, states:

"No ... electrical corporation ... shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, ... without first having secured from the commission an order authorizing it to do so."

The statute indicates that any such transaction that occurs without an order from the Commission granting the necessary authority is void. The statute goes on to state that the requirement that an electric utility obtain prior authorization to sell property does not apply to the sale of "property which is not necessary or useful in the performance of its duties to the public." Thus, the question the Commission must address is whether the 32 wind turbines and related property rights in the Spearville wind farm project are "necessary or useful in the performance of KCP&L's duties to the public."

After considering the uncontested facts plead by KCP&L in its application and subsequent pleadings, the Commission is unable to conclude as a matter of law that section 393.190.1, RSMo 2000, does not require KCP&L to obtain authorization from this Commission before completing the transaction. Therefore, the Commission must deny KCP&L's application.

In denying that application, the Commission is taking no position on the merits of the proposed transaction. Indeed the Commission is hesitant to become overly involved in the business decisions of KCP&L and the other utilities it regulates. Certainly, the Commission does not want to unnecessarily delay what may be a very worthwhile renewable energy project.

In order to move this matter along as expeditiously as possible, the Commission will order KCP&L to file an application for approval of the proposed transaction. Staff indicates it will be able to analyze the merits of KCP&L's proposed transaction quickly after it receives responses from the company regarding data requests it has already submitted. Public Counsel may wish to submit its own data requests and the Commission will also expect a prompt recommendation from Public Counsel after its data requests are answered.

THE COMMISSION ORDERS THAT:

1. Kansas City Power & Light Company's May 28, 2010, application asking the Commission to decline to exercise jurisdiction under Section 393.190.1, RSMo 2000, with regard to the sale of certain wind turbine generators and related property rights, is denied.
2. No later than June 23, 2010, Kansas City Power & Light Company shall file an application with the Commission seeking authorization from the Commission to transfer

32 wind turbine generators and related property rights regarding a proposed wind farm near Spearville, Kansas. Kansas City Power & Light Company shall file its application in this case.

3. Kansas City Power & Light Company shall respond to any submitted data requests no later than July 2, 2010.

4. The Staff of the Commission shall submit its recommendation regarding Kansas City Power & Light Company's application no later than July 13, 2010.

5. If the Office of the Public Counsel wishes to file a recommendation regarding Kansas City Power & Light Company's application, it shall do so no later than July 13, 2010.

6. If any party finds the procedural schedule established in this order unworkable, that party may file an appropriate motion asking the Commission to modify that schedule.

7. This order shall become effective on June 23, 2010.

BY THE COMMISSION

(S E A L)



Steven C. Reed
Secretary

Clayton, Chm., Davis, Jarrett, and Gunn, CC., concur;
Jarrett, C., dissents with separate dissenting opinion to follow.

Woodruff, Chief Regulatory Law Judge