

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 Continue the Implementation of Its Regulatory Plan)
)
) **File No. ER-2010-0355**
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In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges for Electric Service)
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) **File No. ER-2010-0356**
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)

ORDER AND NOTICE REGARDING DISCOVERY DISPUTES

Issue Date: January 26, 2011

Effective Date: January 26, 2011

On November 23, 2010, at Staff's request, the Commission appointed a Special Master for discovery disputes in ER-2010-0355 and ER-2010-0356 to review documents that were either withheld or redacted in instances where Kansas City Power and Light Company (KCPL") asserted privilege. Since that date, the Special Master has been reviewing documents and conferring with the parties by phone and email. The Special Master has reviewed approximately 60,000 pages of documents from data requests that date back to January 2009.¹ The disposition of the data requests that are the subject of the dispute is listed below.

Data Requests: 0339, 0342, 0350, 0353, 0358, 0360, 0363, 0370, 0373, 394, 0411, 0413, 0430, 0471, 0471r, 0490, 0630.4, 0677, 0715.1.

The Special Master identified the following documents where portions of the documents were required to be disclosed:

- (1) Presentation Dated November 23, 2005.

¹ It is unclear why the Commission's Staff did not bring these discovery disputes to the attention of the Commission at an earlier date or during the monthly status conferences that were held in these two cases.

- (2) Memorandum dated January 29, 2006 from Virgil Montgomery to William Riggins.
- (3) Memorandum dated July 28, 2006 from Virgil Montgomery to William Riggins.
- (4) Memorandum dated January 31, 2007 from Virgil Montgomery to William Riggins.
- (5) Memorandum dated August 7, 2007 from Virgil Montgomery to William Riggins.
- (6) Memorandum dated September 11, 2007 from Virgil Montgomery to William Riggins.
- (7) Memorandum dated October 28, 2007 from Carrie Okizaki to William Riggins.
- (8) Memorandum Dated December 7, 2007 from Kenneth Roberts to William Downy.
- (9) Letter Dated February 13, 2008 from Charles Whitney to William Riggins.

All other redactions in relation to these data requests are appropriate because the items redacted are privileged -- either attorney-client or work product or both.

Data Requests: 0397, 0415.1, 0415I, 0415I2, 0415S, 0631, 0673, 0673.1, 0710, 0710.1S, 0710S, 0710S1, 0720, 0817, 0865, 0888, 0871, 0900.1, 0902.1.

With regard to DR 0415I, the Special Master determined that:

Invoice # 1364066, page 43, item dated 1/27/09 – the first two words must be disclosed.

Invoice # 1364066, page 44, item dated 1/28/09 – Third sentence, the word “checklist” must be disclosed.

With regard to DR0415S, there were missing pages of un-redacted versions for:

Invoice # 1024343 – one page with redactions dated 1-1-06 to 1-31-06; K501B.

Invoice # 1039761 – three pages with redactions dated 6-1-06 to 6-30-06; K501B-2.

KCPL provided the missing pages and upon review the redactions are appropriate because the items redacted are privileged.

With regard to DR 0673, a number of draft documents were reviewed and it was confirmed that the drafts were privilege protected, but that final copies had been provided to Staff. These documents included: (1) KCP&L Strategic Infrastructure Status Reports from 2007; (2) LaCygne Phase 2 Project status reports; and, (3) a Joint Owners Meeting report dated June 21, 2007.

KCPL was ordered to disclose two additional documents: (1) a Supplier Diversity Monthly update from June 30, 2007, which KCPL confirmed was a final draft; and (2) a B&M Vendor Report spreadsheet, which KCPL identified as a document included with the privileged documents by mistake.

All other redactions in relation to these data requests are appropriate because the items redacted are privileged -- either attorney-client or work product or both.

Data Requests: 0398, 0622.5R, 0865R.

All redactions are appropriate because the materials are either attorney-client or work product privileged or both.

Data Requests: 360S, 368, 418, 418R, 433, 433R, 436, 436R, 872.

Previously identified memoranda from July 28, 2006, January 31, 2007, September 11, 2007, and October 28, 2007 were included with these documents, but these have all ready been addressed.

There were five other memorandums identified that require partial disclosures:

- (1) Memorandum from Montgomery to Riggins dated August 25, 2006.
- (2) Memorandum from Montgomery to Riggins dared March 29, 2007.

(3) Memorandum from Montgomery to Riggins date July 17, 2007.

(4) Memorandum from Montgomery to Riggins dated November 14, 2007.

(5) Memorandum from Okizaki to Riggins dated November 6, 2008.

All other redactions in relation to these data requests are appropriate because the materials are either attorney-client or work product privileged or both.

Data Request: DR 651(4).

All documents are privileged as they relate to confidential settlement agreements.

Data Request: 220S.

All documents are appropriately redacted because the redacted materials are either attorney-client or work product privileged or both.

Data Requests: 853 and 873.

While these data requests were initially identified to the Special Master, it was determined that there were no privileged documents to be reviewed.

Data Requests: 337, 348, 422, 424, 427, 439.2, 630.3, 650, 843, 899, 963 and 964.

While these data requests were initially identified to the Special Master, the parties state that they are no longer in dispute. The data requests were fully responded to and there are no privileged documents to produce in relation to those requests.

On January 13, 2011, five days before the start of the evidentiary hearing, the Special Master requested KCPL and Staff to confirm that the documents identified

above requiring additional disclosures were provided to Staff. Ultimately, KCPL has confirmed that it has complied with the Special Master's directives. As of this date, Staff has not responded; however, based upon the e-mail correspondence it appears that KCPL has provided the documents in the form ordered by the Special Master.

THE COMMISSION ORDERS THAT:

1. No later than January 28, 2011, the Staff of the Missouri Public Service Commission shall comply with the Special Master's directive to confirm whether it has received the documents referenced in the body of this order pursuant to the Special Master's orders.

2. No later than January 31, 2011, Kansas City Power and Light Company and the Staff of the Missouri Public Service Commission shall identify any other discovery matters that remain in dispute, related to claims of privilege, that have not been resolved by the Special Master -- with the exception of Staff's Data Request 580, which is already under review.

3. This order shall become effective immediately on issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Harold Stearley, Senior Regulatory Law Judge,
by delegation of authority under
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 26th day of January, 2011.