

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

In the Matter of the Application of)
Kansas City Power & Light Company)
For the Issuance of an Order Authorizing)
Construction Accounting Relating to its)
Electrical Operations)

File No. EU-2014-0255

STAFF’S REPLY TO KCP&L’S RESPONSE

COMES NOW the Staff of the Missouri Public Service Commission, by and through undersigned counsel, and hereby files *Staff’s Reply to KCP&L’s Response*, stating as follows:

Background

1. On July 17, 2014¹, Staff issued data request (“DR”) number 0025 to Kansas City Power & Light Company (“KCP&L” or “Company”) requesting:

“For each and every data request response, please provide the identity of all Great Plains Energy and Kansas City Power & Light personnel that are responsible for the actual data request response for those requests that have already been responded to and all those that will be responded in this Case No. EU-2014-0255.”²

2. On July 24, KCP&L sent a letter to Staff objecting to the DR. The objection raised is that Commission Rule 4 CSR 240-2.090(2) “does not require this information be provided when responding to data requests.”³

3. On July 30, Staff filed *Staff’s Request for Ruling on Objection* requesting that the Commission rule on KCP&L’s objection.

¹ All dates refer to calendar year 2014 unless otherwise stated.

² DR requested by staff member Cary Featherstone from Kansas City Office

³ *EFIS*. Data Request. 0025Response.

4. On August 5, a prehearing conference was held in the matter. The presiding regulatory law judge (RLJ) requested that KCP&L's response to Staff's request be filed no later than August 8. Additionally, Staff's reply to KCP&L's response is to be filed no later than August 15. This reply is to comply with the RLJ's directive.

Argument

5. The Company argues that Staff's "motion" should be denied because Staff has failed to observe applicable Commission rules regarding discovery disputes. More specifically, rule 4 CSR 240-2.090(8)(A) and (B). According to KCP&L, Staff's July 30th pleading amounted to a "motion to compel" and as such, the requirements under subsection (A) and (B) of the rule should have been complied with before any such motion was filed with the Commission.

6. The above rule cited by the Company in its response describes what is required of parties in a discovery dispute before a motion to compel may be entertained by the Commission. Subsection (A) of the rule states that the "counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion." Subsection (B) states that "if the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the commission for an immediate telephone conference with the presiding officer and opposing counsel. No written discovery motion shall be filed until this telephone conference has been filed."⁴

7. KCP&L is correct in that the rules describe certain requirements that must be met before the moving party files a motion to compel with the Commission. However,

⁴ 4 CSR 240-2.090(8)(A) and (B).

Staff's June 30th *Staff's Request for Ruling on Objection* is not a "motion to compel" as the Company suggests.

In the context of how objections are handled in civil practice, what Staff filed on June 30th is equivalent to a party asking the judge to rule on the opposing party's objection verbally in court. The request for a ruling on the objection was just that, a request for the Commission to either, based on the reason given for the objection by the Company, overrule or sustain the objection. Staff is not "motioning" the Commission to do anything, rather "noticing up" an issue Staff would like the Commission to rule on, as allowed in civil actions. Thus, the requirements under subsection (A) and (B) whereby Staff was required to hold a telephone conference with the opposing party and the assigned RLJ before a motion to compel was filed is not applicable to Staff.

8. However, if the Commission informs Staff that it views Staff's request for a ruling on the Company's objection to be a "motion to compel" for purposes of rule 4 CSR 240-2.090(8) and thus requiring compliance with the rule, Staff will advise the Commission it has already conferred with KCP&L regarding its objection and will arrange with the Commission a telephone conference with the presiding officer and opposing counsel to discuss the discovery concern.

9. With respect to the reason for the objection to providing the requested information that was raised by KCP&L, Staff requests that the Commission rule that the reason lacks merit and is not valid. Supreme Court Rule 56.01(b):

"allows discovery regarding any matter, not privileged, that is relevant to the subject matter...whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and

location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter.”⁵

The stated reason for the objection by the Company is that “...Answers to data requests need not be under oath or be in any particular format, but shall be signed by a person who is able to attest to the truthfulness and correctness of the answers.”⁶

10. Rule 4 CSR 240-2.090(2), raised as the “reason for the objection” is not a valid objection because this rule only addresses and describes the *process and form* by which DR’s are to be submitted. It does not provide a substantive reason for objecting. KCP&L does not raise relevancy as an objection or that Staff’s request is not reasonably calculated to lead to the discovery of admissible information, rather, the Company’s only stated objection is that it is not required to provide the information under the rule.

11. In response to the RLJ’s desire, Staff addresses the use of interrogatories versus data requests for inquiries such as that Staff made with its DR number 0025, Staff responds that the Commission’s discovery rules create no preference and that the request is permissible as a data request. Section 386.410-1 of the Missouri Revised Statutes gives the Commission authority to adopt its own rules of procedure.⁷ Pursuant to that statutorily given authority, the Commission promulgated 4 CSR 240-2.090(1) which gives parties authority to use data requests as a means of discovery.

⁵ *In the Matter of Laclede Gas's Tariff to Increase Its Annual Revenues for Natural Gas Service*. 2010 WL 2995518 (Mo.P.S.C.).

⁶ Rule 4 CSR 240-2.090(2).

⁷ Section 386.410-1 states: “All hearings before the commission or a commissioner shall be governed by rules to be adopted and prescribed by the commission. And in all investigations, inquiries or hearings the commission or commissioner shall not be bound by the technical rules of evidence.” *See also State ex rel. Southwestern Bell Telephone Company*, 645 S.W.2d 44 (Mo. Ct. App. W.D. 1983).

12. When dealing with complex and highly technical cases that are routinely brought before the Commission, the importance and utility of certain discovery should be recognized. The Missouri Supreme Court allows for discovery of the “identity and location of persons having knowledge of any discoverable matter.”⁸ Staff believes this information is important and necessary for it to effectively carry out its duties with the Commission. Staff’s data request will allow Staff to identify who to depose if it decides to explore in discovery the scope of the knowledge of that person or those persons that created the substance of the information. For purposes of effectively investigating, clarifying and analyzing the information given to Staff by KCP&L as it pertains to its Accounting Authority Order application, knowing which Company personnel created the substance of the information would be beneficial to Staff.

WHEREFORE, Staff files *Staff Reply to KCP&L’s Response* and respectfully requests, for the reasons stated above, that the Commission overrule KCP&L’s objection and order KCP&L to provide to Staff all Great Plains Energy and Kansas City Power & Light Company personnel that are responsible for the actual data request responses for those data requests that have already been responded to and all those that will be responded in this Case No. EU-2014-0255.

⁸ Missouri Supreme Court Rule 56.01(b).

Respectfully submitted,

/s/ Akayla J. Jones

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed with first-class postage, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 15th day of August, 2014.

/s/ Akayla J. Jones