

**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) **File No. ER-2010-0355**
Service to Continue the Implementation of Its)
Regulatory Plan)

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

ORDER QUASHING AND LIMITING THE SCOPE OF SUBPOENAS

Issue Date: January 21, 2011

Effective Date: January 21, 2011

On January 13, 2011, the Secretary of the Commission issued a subpoena directing David McDonald, Procurement Director of the Iatan Generating Station Construction Project, to appear at a deposition in Jefferson City at the Commission's offices on January 24, 2011. In addition, Mr. McDonald was directed to bring with him the following:

1. Description of your current duties and responsibilities.
2. Description of the duties and responsibilities of those individuals you supervise.
3. Iatan Construction Project book charge policies and procedures since June of 2005.
4. Any e-mails, memorandums, or other correspondence, documentation, or communications to or from supervisors or project managers regarding Iatan Construction Project procurement or contract administration matters for the Iatan Construction Project.
5. Your current resume/curriculum vitae.¹

¹ Subpoena to David McDonald, Attachment A.

In addition, on January 14, 2011, the Secretary issued subpoenas to compel the appearance of Terry Bassham, Denise Shumaker, and David McDonald to appear at the hearing on January 25, 2011. The requests were made to the Secretary on the second and on the last business days prior to the hearing which began on January 18.

Included in its January 13 letter to the Secretary, Staff indicated that the subpoena for Mr. McDonald's deposition is "in part" needed as the result of rebuttal testimony filed by Kansas City Power & Light Company (KCPL). Staff did not indicate what else necessitated the deposition. In its January 14 letters to the Secretary, Staff stated that "new relevant information related to the rebuttal testimony of KCPL/GMO witness Dr. Kris Nielsen respecting the Iatan 1, Iatan 2 and Iatan Common Plant Construction Projects . . ." became apparent at the depositions taken on January 12. Staff indicated this was its good cause for requesting the subpoena so late.

KCPL and KCP&L Greater Missouri Operations Company (GMO) filed motions to quash the subpoenas on January 20. With regard to the deposition subpoena, KCPL and GMO argue that this request to bring Mr. McDonald to Jefferson City during the hearing for a deposition requested at the last minute, and to require him to produce thousands of pages of documents, many of which the company claims predate Mr. McDonald's employment with the company, is an attempt to annoy, embarrass, oppress, or cause undue burden or expense on KCPL and GMO. As such, KCPL and GMO request that the subpoena and request for documents be quashed. KCPL and GMO offer a compromise (previously rejected by the Staff) of a telephone deposition along with documents responsive to paragraphs 1, 2, and 5 of Attachment A to the subpoena.

Similarly, KCPL and GMO request that the subpoenas requiring the presence of three witnesses at the hearing on January 25 also be quashed. KCPL and GMO suggest that Mr. Bassham and Ms. Shumaker have previously been deposed and that in place of the witnesses, the Commission might allow the depositions or portions of the depositions to be produced at the hearing with the appropriate responses and objections also being considered. On January 20, 2011, KCPL and GMO filed suggestions in support of their motions with similar arguments.

Staff filed responses on January 21. In its responses Staff again states that the need to depose Mr. McDonald only became apparent in the weeks immediately preceding hearing. Staff also offers a telephone deposition and indicates limits on its document production requests. With regard to the witnesses' appearing at hearing, Staff argues that they should be required to appear so that the Commission may observe the witnesses' demeanor and so that Commissioners may ask questions of their own.

Commission rule 4 CSR 240-2.100 requires good cause to be shown if a request for a subpoena is filed within 20 days of the evidentiary hearing. Staff made a weak showing of good cause and the subpoena for Mr. McDonald's deposition was issued. Having heard arguments on the motion to quash, however, the Commission will allow the subpoena to stand only with regard to the compromise position of KCPL and GMO. That is, the deposition may take place by telephone and Mr. McDonald shall only be required to produce the items in paragraphs 1, 2, and 5 of Attachment A to the subpoena. The parties may set a different time for the deposition if it is mutually agreeable.

As for the subpoenas for Mr. Bassham, Ms. Shumaker, and Mr. McDonald to appear at the hearing, Staff has not shown good cause to add witnesses at this late date. Those subpoenas are quashed. Relevant excerpts of the depositions of those witnesses will be allowed to be introduced into evidence, subject to rebuttal and clarification portions of the depositions also being produced, and subject to any objections.

THE COMMISSION ORDERS THAT:

1. The subpoena issued on January 13, 2011, requiring David McDonald to appear at a deposition and produce documents is limited to Mr. McDonald being required to appear at a telephone deposition and produce only the items specified in paragraphs 1, 2, and 5 of Attachment A to the original subpoena.

2. The subpoenas issued on January 14, 2011, requiring Terry Bassham, Denise Shumaker, and David McDonald to appear as witnesses at the evidentiary hearing on January 25, 2011, are quashed.

3. Relevant portions of the depositions of Terry Bassham, Denise Shumaker, and David McDonald may be produced as evidence at the hearing, subject to the appropriate rebuttal and clarification portions also being produced and subject to any relevant objections.

4. This order is effective upon issuance.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'S. Reed', is positioned above the printed name of the Secretary.

Steven C. Reed
Secretary

(S E A L)

Nancy Dippell, Deputy Chief Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 21st day of January, 2011.