

**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**

**STAFF REPLY TO KANSAS CITY POWER & LIGHT COMPANY’S OPPOSITION TO  
STAFF’S MOTION IN LIMINE REGARDING INTERIM ENERGY CHARGE**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through its attorney, and submits to the Missouri Public Service Commission (“Commission”) its Staff Reply as follows:

**I. A Motion in Limine is Appropriate**

KCPL bases its opposition to the Staff’s Motion in Limine on the argument that such motions are inappropriate in administrative proceedings because there is no jury, and the main purpose of a motion in limine is to keep prejudicial questions out of the jury’s earshot. This argument has no merit. In Missouri, a motion in limine is proper even where there is no jury. *See Hemsath v. City of O’Fallon*, 261 S.W.3d 1 (Mo App. 2008) (motion in limine used in a bench trial). Further, motions in limine have been used to exclude, or at least to attempt to exclude, testimony in many cases before the commission. *See e.g. Ag Processing, Inc. v. KCPL Greater Missouri Operations*, File No. HC-2010-0235, Order Shortening Time for Response (October 29, 2010) (Motion to Strike interpreted by Commission as motion in limine).

## **II. KCPL has Failed to Show How the Objected to Testimony is Relevant.**

In its Motion in Limine Staff stated that because KCPL is not requesting an IEC in this case, identified portions of the prefiled verified direct testimony and schedules of the Kansas City Power & Light Company witnesses were irrelevant and should therefore be found inadmissible by the Commission. In its response, KCPL has failed to show how the testimony objected to is relevant to this case. Therefore, KCPL has provided no basis for the Commission to deny Staff's motion.

## **III. The Motion is Not Premature**

"In limine," is defined as, "in or at near the beginning," and such a motion is designed to accomplish *at the beginning of litigation*, some purpose which may be known only by reference to its' content. *Rhodes v. Blair*, 919 S.W.2d 561, 563 (Mo. App. 1999) (emphasis added).

The Staff's Motion in Limine was not filed to "choke off" any claim made by KCPL. KCPL has not requested an IEC. KCPL argues that it would be unfair to limit its testimony on the issue of an IEC because KCPL does not know if another party will raise the issue. If another party properly raises the issue in direct or rebuttal testimony, KCPL will have the opportunity then to respond in rebuttal or surrebuttal testimony, respectively. KCPL filed its direct testimony in this case on June 4, 2010. Commission rule 4 CSR 240-2.130(7)(A) provides: "Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief." Further, Commission rule 4 CSR 240-2.130(7)(B) provides: "Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony." Parties are entitled to know what a party's case-in-chief is so that they can prepare appropriate rebuttal testimony. If testimony is allowed

in a party's direct testimony that is irrelevant if objected to other parties will be prejudiced by having to expend their time and energy responding to matters of no relevance, but which, if not objected to, the Commission may rely upon. KCPL has stated in its prefiled direct testimony that it is not requesting an IEC. Staff, and other parties, are prejudiced if they are required to expend time and resources responding to irrelevant testimony.

Furthermore, a prehearing motion is the best way to address the irrelevant testimony, since under the rules of the Commission testimony is prefiled. 4 CSR 240-2.130. Limiting the testimony at this stage of the proceedings will save Staff, and other parties, both time and resources. Whereas, it would be a drain on Staff's resources to prepare testimony and address the possibility of an IEC that the company has not asked for, and that is unlikely to become a part of this case.

**WHEREFORE**, Staff requests the Commission issue an order in which it grants Staff's Motion in Limine Regarding Interim Energy Charge.

Respectfully submitted,

**/s/ Meghan E. McClowry**  
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#### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, emailed, sent by facsimile or hand-delivered to all counsel of record this 14<sup>th</sup> day of December, 2010.

/s/ Meghan E. McClowry