

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

| | | |
|--|---|------------------------|
| In the Matter of the Staff Investigation of Allconnect |) | |
| Direct Transfer Service Agreement Between |) | |
| Allconnect, Inc. and Great Plains Energy Services |) | File No. EO-2014-_____ |
| Incorporated Respecting Itself and Its Affiliates |) | |
| Kansas City Power & Light Company and KCP&L |) | |
| Greater Missouri Operations Company |) | |

**STAFF MOTION FOR INVESTIGATION AND
OPENING OF FILE NO. FOR THAT PURPOSE**

COMES NOW the Staff of the Missouri Public Service Commission, by and through undersigned counsel of the Staff Counsel's Office, and files a Staff motion for Commission authorization of a formal Staff investigation of the Allconnect Direct Transfer Service Agreement ("Transfer Service Agreement") dated April 30, 2013¹, and activities of the parties related to the Transfer Service Agreement. The Transfer Service Agreement is between Allconnect, Inc. ("Allconnect") and Great Plains Energy Services Incorporated ("GPES")² on behalf of itself and its affiliates Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO"). The Staff further requests the opening of a File No. in the Commission's Electronic Filing and Information System ("EFIS") for the purpose of the investigation. In support thereof, the Staff states as follows:

1. The Staff has been engaged in an informal investigation for some time of the activities between KCPL-GMO and Allconnect under the Transfer Service Agreement and believes a formal investigation is now appropriate. In second quarter 2013, the Staff became aware that KCP&L-GMO was planning to implement certain

¹ First Amendment To Transfer Service Agreement dated August 31, 2013.

² GPES is a nonregulated affiliate of KCPL and GMO.

third party activities among Allconnect, KCP&L-GMO, and KCP&L-GMO customers. Allconnect is based in Atlanta, Ga. and contracts with utilities throughout the United States for access to certain customers of these utilities to attempt to sell them communications and home product services. In the given situation, telephone, wireless, cable TV, satellite TV, high-speed internet, and premises security residential service providers pay Allconnect for selling their services by telephone sales. Allconnect pays KCP&L-GMO a fee per phone call of either a new or moving, but remaining, KCP&L-GMO customer transferred from a KCP&L-GMO customer representative to an Allconnect representative.³ The KCP&L-GMO customer representative tells the new or moving, but remaining, KCP&L-GMO customer that his/her call is being transferred to an Allconnect representative ostensibly to provide a service confirmation number and verify the “accuracy” of the information regarding the customer’s electric service order. The then transferred new or moving, but remaining, KCP&L-GMO customer is also offered for purchase, communications and home product services by the Allconnect representative.⁴

2. KCP&L-GMO customer information that is transferred to Allconnect representatives, as the KCP&L-GMO customer is transferred to the Allconnect representative, is the KCP&L-GMO customer’s name, account number,

³ KCP&L-GMO also receive reimbursement of some costs from Allconnect for training of KCP&L-GMO personnel, and, furthermore for KCP&L-GMO, there is the possibility of commissions from Allconnect.

⁴ Allconnect contracted previously with (a) KCP&L in 2005 and (b) Union Electric Company, d/b/a AmerenUE/Ameren Missouri from 2004-13 utilizing very different script - transfer procedures under which the electric utility customer representative transferred electric utility customers to the Allconnect representative if the electric utility customer consented to being transferred to the Allconnect representative.

service address, new service start date, telephone number, e-mail address, and new electric service confirmation number.⁵

3. The Commission's Affiliate Transaction Rule, **Subsection 4 CSR 240-20.015(2)(C)**, covers the matter of transfer of customer information by the electric utilities regulated by the Commission. It provides that customer information shall be

⁵ The Staff notes that the Commission has no affiliate transaction rule for telecommunications companies, but the Commission has a Customer Proprietary Network Information ("CPNI") Rule 4 CSR 240-33.160 for telecommunications companies. The "PURPOSE" section of Rule 4 CSR 240-33.160 states that this rule proscribes the procedures by which telecommunications companies may use, disclose, or permit access to CPNI. Subsection 4 CSR 240-33.160(2) provides, in part, that under very limited situations a telecommunications company may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings without customer approval. Subsection 4 CSR 240-33.160(1)(G) of the rule specifically states that CPNI does not include "subscriber list information" ("SLI"). Subsection 4 CSR 240-33.160(1)(R) identifies SLI as:

. . . any information identifying the listed names of subscribers of a telecommunications company and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and that the telecommunications company or an affiliate has published, caused to be published, or accepted for publication in any directory format.

CPNI is defined in Subsection 4 CSR 240-33.160(1)(G) as:

. . . information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications company, and that is made available to the telecommunications company by the customer solely by virtue of the customer telecommunications company relationship. Customer proprietary network information also is information contained in bills pertaining to basic local exchange telecommunications service or interexchange telecommunications service received by a customer of a telecommunications company.

There are scenarios that present three options regarding possible use/disclosure/access of CPNI: (1) instances where no customer approval is necessary; (2) instances where opt-in customer approval process is applicable; (3) instances where opt-out customer approval process is applicable. Opt-out requires that the telecommunications company notify the customer electronically or by writing of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI by notifying the telecommunications company within a thirty (30) day minimum period of time that the customer wants to opt-out of the approval process. If the telecommunications company does not receive anything electronically or in writing within 30 days from the customer opting out of the process, the customer will be assumed to have approved use/disclosure/access to CPNI. Opt-in requires affirmative, express customer consent respecting the requested use/disclosure/access of the CPNI after the customer is provided appropriate notification. Customer notification requirements are set out in Subsection 4 CSR 240-33.160(4). The Commission's Rule also indicates that the privacy section of the Federal Communications Act of 1934, 47 U.S.C. Section 222, is applicable.

made available to unaffiliated entities, such as Allconnect, only upon consent of the customer, or as otherwise provided by law or commission rules or orders⁶:

4 CSR 240-20.015(2)(C): Specific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders. General or aggregated customer information shall be made available to affiliated or unaffiliated entities upon similar terms and conditions. The regulated electrical corporation may set reasonable charges for costs incurred in producing customer information. Customer information includes information provided to the regulated utility by affiliated or unaffiliated entities. [Emphasis added.]

The Staff is not aware of any law or commission rules or orders providing otherwise. Subsection 4 CSR 240-20.015(2)(C) does not refer to customer information with greater specificity. “Customer information” is not referred to in Subsection 4 CSR 240-20.015(2)(C) as “highly confidential” or “proprietary,” but in essence it is to be treated as “highly confidential” / “proprietary.” The Commission’s Affiliate Transaction Rule, **Subsection 4 CSR 240-20.015(1)(G)**, defines “information” as follows:

4 CSR 240-20.015(1)(G): Information means any data obtained by a regulated electrical corporation that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

4. The Staff has been afforded the opportunity to (a) read the KCP&L-GMO and Allconnect telephone scripts and (b) listen to recorded conversations between the KCP&L-GMO customer representatives and KCP&L-GMO customers and (c) listen to recorded conversations between the Allconnect representatives and KCP&L-GMO customers. Presently, the KCP&L-GMO customer representatives do not request the

⁶ In fact it has belatedly occurred to the Staff Counsel's Office that there may be a question whether utilities should seek Commission authorization to transfer customer information when they transfer customer information to companies to collect bad debts / accounts receivables.

KCP&L's-GMO's customer's consent to transfer the KCP&L-GMO customer and the KCP&L-GMO customer information to the Allconnect representative before the customer and the customer information is transferred. The Staff's concerns about the present KCP&L-GMO-Allconnect activities go beyond the lack of obtaining customer consent before the KCP&L-GMO customer representative transfers the KCP&L-GMO customer and the KCP&L-GMO customer information to the Allconnect representative, which itself alone warrants further investigation. The Staff is concerned about how the KCP&L-GMO customer is treated by the Allconnect representative. Nonetheless, the Staff considers this operation to be a KCP&L-GMO customer service matter agreed to by GPES on behalf of itself and its affiliates KCP&L and GMO.

5. In general, Chapters 386 and 393 empower the Commission to authorize the Staff to conduct investigations as to any matter of which complaint may be made with a view to the public welfare, efficient utility facilities, and substantial justice between customers and public utilities:

Section 393.270.1 RSMo. 2000 provides in pertinent part that:

. . . An investigation may be instituted by the commission as to any matter of which complaint may be made as provided in sections 393.110 to 393.285, or to enable it to ascertain the facts requisite to the exercise of any power conferred upon it. [Emphasis added.]⁷

Section 393.130.1 RSMo. 2000 provides in pertinent part that:

⁷ The very first section of the Commission's rule on complaints, **4 CSR 240-2.070(1)**, states: "Any person or public utility who feels aggrieved by an alleged violation of any tariff, statute, rule, order, or decision within the commission's jurisdiction may file a complaint. A complaint may also be filed by the commission on its own motion, the commission staff through the staff counsel, or the Office of the Public Counsel." [Emphasis added.]

. . . every electrical corporation . . . shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. . . . [Emphasis added.]⁸

Section 386.610 RSMo. 2000 provides in pertinent part that:

. . . The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities. [Emphasis added.]

Section 386.040 RSMo. 2000 and **Section 386.250(7)** RSMo. 2000 indicate that the Commission has certain powers as a matter of necessary implication from the practical requirements / necessity of utility regulation:

Section 386.040: A "Public Service Commission" is hereby created and established, which said public service commission shall be vested with and possessed of the powers and duties in this chapter specified, and also all powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter. [Emphasis added.]

Section 386.250(7): The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

* * * *

(7) To such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly. [Emphasis added.]

Section 386.240 RSMo. 2000 provides that the Commission may authorize the Staff to do an act, matter, or thing:

⁸ An indication of the scope of the safety jurisdiction of the Commission is **Section 386.310.1** RSMo. 2000 which provides, in pertinent part, that:

(continued)

The commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every person, corporation, municipal gas system and public utility to maintain and operate its line, plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety and other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the public may demand . . . [Emphasis added.]

The commission may authorize any person employed by it to do or perform any act, matter or thing which the commission is authorized by this chapter to do or perform; provided, that no order, rule or regulation of any person employed by the commission shall be binding on any public utility or any person unless expressly authorized or approved by the commission. [Emphasis added.]

Finally, the Staff would comment that **Section 386.420.2** RSMo. 2000 provides, in pertinent part, that whenever an investigation is made, a report shall be made:

Whenever an investigation shall be made by the commission, it shall be its duty, to make a report in writing in respect thereto, which shall state the conclusions of the commission, together with its decision, order or requirement in the premises. . . . [Emphasis added.]⁹

6. As a general matter, the Staff considers the customer information of the utilities regulated by the Commission, including the most basic information such as the identity of the utilities' customers, as highly confidential / proprietary information, unless previously published. When the Staff commenced submitting data requests to KCP&L-GMO on May 6, 2013, regarding KCP&L's-GMO's activities with Allconnect, the Staff did so informally, in neither a case nor a file in the EFIS. On September 25, 2013, when the Staff submitted additional data requests to KCP&L-GMO regarding its activities with Allconnect, the Staff submitted the data requests in EFIS in File No. EW-2013-0011. On July 9, 2012, the Commission opened a working case, File No. EW-2013-0011, to address effective cybersecurity practices for protecting essential electric utility infrastructure, such as information systems and information. The Staff chose File No. EW-2013-0011 because the data requests deal with electric

⁹ The Staff notes that another section of the Commission's rule on complaints, **4 CSR 240-2.070(11)**, states, in relevant part, that any time after the filing of a complaint by an entity, the Commission may direct an investigation as to the cause of the complaint and the investigative report of the Staff shall not be made public unless released in accordance with Section 386.480 RSMo. 2000, Section 393.140(3) RSMo. 2000, or during the course of the hearing involving the complaint.

utilities' treatment of customer information and affiliated and unaffiliated entities' treatment of customer information obtained from the electric utilities, which the Staff believes is covered by 4 CSR 240-20.015(2)(C) and is highly confidential / proprietary.

7. On December 16, 2013, KCP&L-GMO filed their proposed cost allocation manual ("CAM") establishing File No. EO-2014-0189¹⁰, which CAM was to reflect certain understandings of various parties reached in 2013 in File Nos. EA-2013-0098¹¹ and EO-2012-0367¹², cases filed by Transource Missouri, LLC and KCP&L-GMO, respectively. Tab G of the proposed CAM is entitled "Customer Information." The Staff subsequently submitted some data requests respecting Allconnect in the presently pending KCP&L-GMO CAM case, i.e., File No. EO-2014-0189.

8. The establishment of a formal Staff investigation and the opening of a File No. for that purpose will permit the Staff to file its Allconnect related data requests in EFIS under one File No. and should facilitate attempting to address any discovery disputes in one File No. should any disputes arise. The Staff asks that the Allconnect related data requests filed in EFIS by the Staff in File Nos. EW-2013-0011 or EO-2014-0089 and responded to by KCP&L-GMO in EFIS in File Nos. EW-2013-0011 or EO-2014-0089 be treated as having been filed and responded to in the File No. opened by the Commission for the purpose of a formal Staff investigation, should the Commission grant the Staff's motion.

¹⁰ In the Matter of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company's Application for Approval of Cost Allocation Manual.

¹¹ In the Matter of the Application of Transource Missouri, LLC for a Certificate of Convenience and Necessity Authorizing it to Construct, Finance, Own, Operate and Maintain the Iatan-Nashua and Sibley-Nebraska City Electric Transmission Projects.

¹² In the Matter of the Application of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for Approval To Transfer Certain Transmission Property to Transource Missouri, LLC and for Other Related Determinations.

WHEREFORE the Staff requests the Commission authorize a formal Staff investigation of the April 30, 2013 Transfer Service Agreement between Allconnect and GPES on behalf of itself and its affiliates KCP&L and GMO, and the activities related thereto, and the opening of a File No. for that purpose.

Respectfully submitted,

/s/ Steven Dottheim

Steven Dottheim
Chief Deputy Staff Counsel
Missouri Bar No. 29149
(573) 751-7489 (Telephone)
(573) 751-9285 (Fax)
steve.dottheim@psc.mo.gov (e-mail)

Jennifer Hernandez
Senior Staff Counsel
Missouri Bar No. 59814
(573) 751-8706 (Telephone)
(573) 751-9285 (Fax)
jennifer.hernandez@psc.mo.gov (e-mail)

Alexander Antal
Assistant Staff Counsel
Missouri Bar No. 65487
(573) 751-8517 (Telephone)
(573) 751-9285 (Fax)
alexander.antal@psc.mo.gov (e-mail)

Attorneys for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Staff Motion For Investigation And Opening Of File No. For That Purpose* have been transmitted electronically to Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company and the Office of the Public Counsel this 25th day of April, 2014.

/s/ Steven Dottheim