

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 28th day
of September, 2006.

In the Matter of the Application of Kansas City)	
Power & Light Company for Approval to Make)	<u>Case No. ER-2006-0314</u>
Certain Changes in Its Charges for Electric)	Tariff No. YE-2006-0594
Service to Begin the Implementation of Its)	
Regulatory Plan.)	

**ORDER DENYING MOTION TO
COMPEL RESPONSES TO DATA REQUESTS**

Issue Date: September 28, 2006

Effective Date: September 28, 2006

On August 25, 2006, Trigen-Kansas City Energy Corporation filed a Motion to Compel Responses to Data Requests and for Expedited Treatment. Trigen asks the Commission to compel Kansas City Power & Light Company to answer Data Requests 26, 27(b) and (c), 28 through 32, 34, 35, 37 and 39 of its 4th Set of Data Requests.

KCPL responded on September 1, stating that it objects to answering those requests because the information Trigen seeks is irrelevant to the ratemaking process, and is simply Trigen's attempt to gain a competitive edge versus KCPL. However, KCPL also stated that it intended to answer all of those requests except for DR Nos. 28(h), 31(g), and 32(a)(iv), to which KCPL objects on the grounds that they are not reasonably calculated to lead to admissible evidence, and on the grounds that the information Trigen seeks in those requests is private communications between KCPL and its customers.

On September 18, the Commission ordered Trigen to confirm whether KCPL did indeed answer the data requests it claimed it would answer and to inform the Commission

which data requests it still wished the Commission to compel KCPL to answer. Trigen replied on September 21, stating that KCPL completely failed to answer Data Requests 27(b) and (c); 28(a), (c) through (h); 29(d) and (e); 31(c), (d), (f), (g), (h) and g).¹ Furthermore, Trigen avers that KCPL's attempt to answer DRs 37(a) through (d) and 39(a)(iii) and (iv) were unresponsive. Trigen asks the Commission to compel KCPL to answer all of those requests.

KCPL responded on September 25, claiming that it inadvertently neglected to include its answers for DR Nos. 27 and 28, and has since served Trigen with those answers. In addition, KCPL alleges that its answers for DR Nos. 27 and 28 also include its answers to DR Nos. 29(d) and (e), as well as DR Nos. 31(c), (d), (f), (g), and (h). Also, KCPL claims that its answers to DR No. 37(a) through (d) are available to Trigen through KCPL's computerized system called "CaseWorksEX", which the parties agreed to use. KCPL says that it does not have promotional marketing materials for the purpose of converting Trigen customers from the use of steam heating to electric heating, and therefore has no such materials to provide to Trigen in response to DR 32(a)(iii). Finally, KCPL continues to object to DR 32(a)(iv) on the grounds that it would be burdensome to answer this late in the proceeding, so near to the time that its surrebuttal testimony is due, and that the DR would intrude upon private communications between KCPL and its actual and prospective customers.

¹ According to Trigen, DR 31 erroneously had two subparagraphs denominated as (g), and KCPL failed to respond to either of them.

Discussion

Commission Rule 4 CSR 240-2.090(1) states that discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court. The civil court standards for discovery are found in Missouri Rule of Civil Procedure 56.01(b), which states that parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter. Determining the appropriate scope of discovery involves "the pragmatic task of weighing the conflicting interests of interrogator and the respondent."² In ruling on an objection to a discovery request, the trial court must not only consider questions of privilege, work product, relevance, and the tendency of the request to lead to the discovery of admissible evidence, it must also balance the need of the interrogator to obtain the information against the respondent's burden of furnishing it, including the extent to which the request will be an invasion of privacy, particularly the privacy of a non-party.³

With these precepts in mind, and upon review of the pleadings, the Commission will deny Trigen's motion. The Commission finds that KCPL has substantially answered all of Trigen's data requests, with the exception of a request concerning private communications between KCPL and its customers. Those answers may not be perfect, and obviously are not to Trigen's liking. But it is not lost upon the Commission that the hearing in this matter is scheduled to commence on October 16, less than three weeks away. In that time, the parties must file a List of Issues, surrebuttal testimony, a reconciliation, a Statement of the Issues, and prehearing briefs, as well as otherwise prepare for the hearing. To require

² *State ex rel. LaBarge v. Clifford*, 979 S.W.2d 206, 208 (Mo.App. E.D. 1988)(quoting *State ex rel. Anheuser v. Nolan*, 692 S.W.2d 325, 328 (Mo.App. E.D. 1985)).

³ *LaBarge*, 979 S.W.2d at 208; *Anheuser*, 692 S.W.2d at 328.

KCPL to further supplement its answers at this late date would burden KCPL to the point of tipping the scales too far in favor of Trigen.

IT IS ORDERED THAT:

1. The Motion to Compel Responses to Data Requests and for Expedited Treatment filed by Trigen-Kansas City Energy Corporation is denied.
2. This order shall become effective on September 28, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Gaw, Clayton,
and Appling, CC., concur.
Murray, C., absent.

Pridgin, Senior Regulatory Law Judge