

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

James Dickson and Angela Dickson,)	
)	
Complainants,)	
)	
v.)	File No. EC-2016-0230
)	
KCP&L Greater Missouri Operations Company,)	
)	
Respondent.)	

**RESPONSE OF KCP&L GREATER MISSOURI OPERATIONS COMPANY TO
COMPLAINANTS' POST-HEARING MOTIONS**

KCP&L Greater Missouri Operations Company (“GMO” or “Company”), by and through its counsel, hereby submits its *Response to Complainants’ Post-Hearing Motions* (“Response”), pursuant to the Commission’s November 17, 2016 *Order Setting Deadline for Filing Responses to Complainants’ Motions*. For its Response, GMO states as follows:

1. Complainants’ have submitted the following documents to the Missouri Public Service Commission (“Commission”) in this docket via EFIS:
 - a. Motion to Admit Rebuttal Evidence to Statement Regarding Fires Associated with KCP&L and GMO Smart Meters, dated November 17, 2016;
 - b. Four (4) separate Motions to Enter Exhibits Into Evidence and Or Judicial Review, dated November 17, 2016;
 - c. Nine (9) separate documents identified as *Additional Section of BIO Initiative Report, Sections 1-3, 4-7, 8-9, 10-11, 12-13, 14-19, 20, 22, and 23-28*, dated November 17, 2016;
 - d. Two (2) separate Motions to Enter Exhibits Into Evidence and or Judicial Review, dated November 18, 2016; and
 - e. Motion in Limine to Exclude Testimony of Julie Dragoo, dated November 17, 2016;

2. The filings identified in subparts a. – d. above all involve documents which the Company either objected to as hearsay at the October 26, 2016 hearing (“Evidentiary Hearing”) (an objection which was sustained.¹), or are filings that involve new data/documentation that was neither introduced at the Evidentiary Hearing nor filed in EFIS prior to the Evidentiary Hearing.

3. All of the documents² that Complainant seeks to introduce in post hearing motions are barred by the hearsay rule. Hearsay is broadly defined as any out of court statement offered for the truth of the matter asserted.³ The Commission has recognized that the problem with hearsay is that the person who made the statement or wrote the article cannot be cross examined by the other parties.⁴ For that reason, hearsay to which another party objects is not admitted into evidence and is not considered competent and substantial evidence upon which the Commission can base its decision.⁵ Complainants have not shown that any of these documents involve an exception to the hearsay rule. In addition, the Complainants have not provided a proper foundation for scientific studies or surveys as required under 536.070(11) RSMo., because no witness testified to the accuracy of the studies which Complainants’ seek to introduce into evidence. The Commission should reject Complainants’ motions to admit rebuttal evidence.

4. The motion in limine identified in subpart e. above requests that the Commission exclude the testimony of Company witness Julie Dragoo “as to the safety of Smart Meters.”

¹ Tr. at p. 13, ln. 7 – p. 14, ln. 8; and p. 29, lns. 3-9; p. 52, lns. 2-4.

²The documents that Complainants seek to introduce are: 2011 Amended Declaration of Barrie Trower; June 2013 article by Samuel Milham; YouTube video regarding Smart Meters; BioInitiative 2012 Report and Updated 2014 Summary to the Public; 2011 Seletun Scientific Statement; 2015 article by Martin L. Pall; and 2016 article by Andy Alcock.

³ *State v. Winfrey*, 337 S.W. 3d. 1 (Mo. banc 2011).

⁴ *In the matter of the Application of Union Electric Company, d/b/a Ameren Missouri for Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage a Utility Waste Landfill and Related Facilities at its Labadie Energy Center*, EA-2012-0281, Order Regarding Objections and Motion to Strike, August 28, 2013, p.2.

⁵ *State ex rel. Marco Sales, Inc. v. Public Service Com’n*, 685 S.W. 2d. 216 (Mo. App. W.D. 1984).

Complainants made a similar request during the Evidentiary Hearing but the Commission declined to strike Ms. Dragoo's testimony.⁶ Ms. Dragoo has seven years' experience managing the Company's meter department and is familiar with the meters that the Company deploys as well as their safety and performance records.

5. Complainants argue that because Ms. Dragoo did not know how many times a smart meter emits a radio frequency ("RF") signal or the cumulative effects of other utility meters on the Dickson's residence that she is not qualified to testify on the safety of AMI meters. But her testimony on the matter was clear⁷; the meter meets the exposure limits for RF exposure. Ms. Dragoo stated that:

*The FCC sets limits on the maximum permissible exposure for emissions of RF-emitting devices and GMO's AMI meters operate at a level well below the maximum exposure level permissible by the FCC. Specifically the RF power density of a smart meter compared to other common devices is as follows. So if you're measuring the power density in the microwatts per centimeter squared, a smart meter is approximately .1 where a Wi-Fi or a laptop would be anywhere from 10 to 20. A cell phone ranges anywhere from 30 to 10,000 microwatts per centimeter squared and a walkie-talkie is 500 to 42,000 and even a microwave in your home is about 5,000 microwatts per centimeter squared.*⁸ [Emphasis added]

6. There is no requirement that the Company calculate the cumulative effects of its AMI meter with other meters in the Complainants' neighborhood. However, even if (for illustrative purposes only) the Company assumes Complainants' home is surrounded by three neighbors each with an AMI meter for electric, gas and water—the cumulative effect from all of the AMI meters will total approximately 1.2 mW/cm² (including the Complainants' meters, i.e., 12 meters x .1) or approximately 12% the strength of the lowest power density of one laptop;

⁶ Tr. at p. 92, ln. 14 – p. 93, ln. 2.

⁷ Staff witness Poston confirmed Ms. Dragoo's testimony when he testified that his observation of the testing of the meter showed that it transmitted RF signals intermittently. Tr. at p. 123.

⁸ Tr. at p. 76, lns. 1-14.

approximately 4% the strength of the lowest power density of one cell phone; and approximately 0.024% the strength of the lowest power density of one microwave. The evidence in the record shows that the RF signals from GMO's meter, even when added to the RF signals from other meters in the Complainants' vicinity, are much less than the power density of a laptop computer, cell phone or microwave.

7. Complainants also argue that because Ms. Dragoo did not know if "Smart Meters have thinner blades" or "if the plastic back of the Smart Meters can melt faster than a metal alloy back" that her testimony should be excluded. But Ms. Dragoo testified that neither GMO nor its sister company Kansas City Power & Light Company are aware of any fire being caused by an AMI meter.⁹ Ms. Dragoo testified that there have been rare instances of fires caused by faulty meter clips but these clips are part of the wiring at a house and not part of the meter itself and that there is no greater potential for fire with an AMI meter over an analog meter.¹⁰ The manufacturer of the meter, Landis+Gyr, indicates that there are no instances of a fire being attributed to any of its 40 million meters that have been installed throughout the country.¹¹ Ms. Dragoo's testimony regarding the safety record of AMI meters was properly admitted at the hearing and should not be excluded.

8. Complainants' "Motion to Admit Rebuttal Evidence to Statement Regarding Fired Associated with KCP&L/GMO Smart Meters" seeks the submission of a news article regarding a fire at a residence. This article should be excluded as inadmissible hearsay for the reasons above. Moreover, the article's statements listed in the motion do not contradict Ms. Dragoo's statements at hearing. The six meter fires mentioned in the article were not caused by

⁹Tr. p. 77, lns. 17-18.

¹⁰Tr. 101, lns. 2-11; Tr. 93, lns 16-25.

¹¹Tr. p.77, lns. 18-22.

the AMI meter but rather the clips which are not part of the meter. Complainants' claim that the Company did not provide complete or truthful answers to questions and Complainants' request that the Commission order the Company to provide additional documents should be rejected. The Company stated in response to the Dickson's question regarding how many fires have been started by smart meters that it has no evidence that suggests any smart meter started any fire in Kansas City. The Company has had meters damaged due to fires that have been started with service entrance issues. This is essentially the same response that Ms. Dragoo gave at the hearing.

WHEREFORE, KCP&L Greater Missouri Operations Company respectfully submits this Response to Complainants' Motions and again moves the Commission for an order dismissing the Complaint with prejudice for failure to state a claim upon which relief can be granted, and for any such further relief the Commission deems appropriate.

Respectfully submitted,

/s/ Roger W. Steiner

Robert J. Hack MBN 36496
Roger W. Steiner MBN 39586
Kansas City Power & Light Company
1200 Main Street, 19th Floor
Kansas City, MO 64105
(816) 556-2314 (Phone)
(816) 556-2110 (Fax)
rob.hack@kcpl.com
roger.steiner@kcpl.com

ATTORNEYS FOR KCP&L GREATER
MISSOURI OPERATIONS COMPANY

CERTIFICATE OF SERVICE

A copy of the foregoing has been served this 28th day of November 2016 upon parties of record in this proceeding.

/s/ Roger W. Steiner

Roger W. Steiner