



Martha S. Hogerty
Public Counsel

State of Missouri

Mel Carnahan
Governor

Office of the Public Counsel
Harry S Truman Building
Suite - 250
P.O. Box 7800
Jefferson City, Missouri 65102

Telephone: 573-751-4857
Facsimile: 573-751-5562
Relay Missouri
1-800-735-2966 TDD
1-800-735-2466 Voice

July 9, 1999

FILED

JUL 9 1999

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

**RE: In the matter of 4 CSR 240-20.015 Proposed Rule -
Electric Utilities Affiliate Transactions, Case No. EX-99-442**

Dear Mr. Roberts:

Enclosed for filing in the above referenced case, please find the original and 14 copies of Public Counsel's **Motion to Compel Data Requests Submitted to Kansas City Power and Light Company**. Please "file stamp" the extra enclosed copy and return it to this office. I have on this date mailed, faxed, or hand-delivered the appropriate number of copies to all counsel of record.

Thank you for your attention to this matter.

Sincerely,


John B. Coffman
Deputy Public Counsel

JBC:kh

cc: Lera L. Shemwell, Assistant General Counsel
Gerald A. Reynolds, Kansas City Power & Light Co.

Enclosure

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

FILED

JUL 9 1999

Missouri Public
Service Commission

In the matter of 4 CSR 240-20.015 proposed)
Rule - electric utilities affiliate transactions.)

Case No. EX-99-442

MOTION TO COMPEL DATA REQUESTS
SUBMITTED TO KANSAS CITY POWER AND LIGHT COMPANY

COMES NOW the Office of the Public Counsel (Public Counsel), pursuant to Section 386.450 RSMo. 1994, and for its Motion to Compel states as follows:

1. On June 4, 1999, Public Counsel propounded a series of sixteen data requests to each regulated electric utility in Missouri as part of its discovery and research into the subject matter of the Public Service Commission's (Commission's) proposed affiliated transaction rule in this case. (The text of these data requests, numbered 501 through 516, is provided on Attachment 1 to this Motion.) In general, the data requests at issue in this Motion were designed to allow Public Counsel to illustrate to the Commission the current trend of diversification by utility companies and examples of the type of affiliate transactions that could affect regulated ratepayers and the public interest in Missouri. It was hoped that these data requests were to provide Public Counsel with enough information that its initial and reply comments might include specific examples of current activity that should be covered by an affiliated transaction rule.

2. On June 25, 1999, the Commission issued its Order Adopting Protective Order, which provided protection for highly confidential materials and procedures by which this information may be reviewed by the Commission for purposes of this case, and further acknowledged Public Counsel's discovery powers in this matter, stating "Data requests are

allowed to be filed by OPC in a rulemaking even though there is no contested proceeding or case *per se.*”

3. On June 13, 1999, Public Counsel received a letter from Kansas City Power and Light Company (Company) objecting to Data Requests 501 through 516. (Attachment 2) This letter makes a blanket objection to all sixteen data requests “to the extent they seek documents protected by the attorney client privilege and/or the attorney work product doctrine.” However, KCPL does not identify at all to what extent each data request covers material that is allegedly protected by these doctrines.

The remaining objections made in KCPL’s letter have already been addressed by this Commission in its June 25, 1999, Order. KCPL objects to each of the data requests in question on the grounds that it is improper to conduct discovery in a rulemaking proceeding, and further objects to each data request on the ground that KCPL is not a party to this case. The Commission has already affirmed in this case Public Counsel’s right to conduct discovery in a rulemaking and has issued a protective order that protects KCPL’s highly confidential documents from public release.

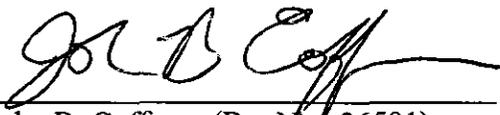
4. Public Counsel and KCPL have thus far been unsuccessful in good-faith attempts to resolve this discovery matter. In view of the pending deadline for reply comments (August 1, 1999), Public Counsel believes that it would be in the public interest to expedite the resolution of this discovery dispute, so that the production of any information that is compelled could be reviewed in a sufficient time prior to the reply comment deadline.

WHEREFORE, Public Counsel respectfully requests that, pursuant to Commission rule 4 CSR 240-2.090, and Civil Rule 56, the Commission issue an order compelling KCPL to answer data requests 501 through 516, along with any other relief deemed just and reasonable.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY:



John B. Coffman (Bar No. 36591)

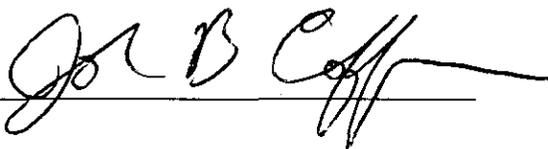
Senior Public Counsel
P. O. Box 7800, Suite 250
Jefferson City, MO 65102-0250
Telephone: (573) 751-5565
Facsimile: (573) 751-5562

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been either faxed, mailed, or hand-delivered to the following counsel of record on this 9th day of July, 1999:

Gerald A. Reynolds
Kansas City Power and Light Company
1201 Walnut
P. O. Box 418679
Kansas City, Missouri 64141-9679

Lera L. Shemwell
Assistant General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102



- 501 Please provide copies of the Company's two most recent annual reports.
- 502 Does the Company use the monthly bill that is sent to its customers to bill some of these same customers for unregulated products and services that are provided by the Company or its affiliates? If yes, please: (1) list and describe each of the unregulated products and services that are (or have been) included in the charges on monthly utility bills for some customers and (2) describe procedures that the Company has in place to allocate a portion of utility billing costs to the Company's unregulated operations.
- 503 Does the Company use the monthly bill that is sent to its customers to promote/inform some of these same customers about unregulated products and services that are provided by the Company or its affiliates? If yes, please: (1) list and describe each of the unregulated products and services that are (or have been) promoted on monthly utility bills for some customers within the last three years and (2) describe procedures that the Company has in place to allocate a portion of utility billing costs to the Company's unregulated operations.
- 504 Does the Company make customer lists or other customer specific information available to its unregulated operations that are selling unregulated products and services? If yes, please describe each of the unregulated operations to which customer lists and other customer specific information have been made available over the last three years and provide a complete description of the customer information that has been made available to each unregulated operation.
- 505 Does the Company's regulated operation solicit business for or make leads available to its unregulated operations that are selling unregulated products and services? If yes, please describe each of the unregulated operations for which the Company's regulated operations have solicited business or made leads available over the last three years and provide a complete description of the business leads provided and business solicitation that has occurred over the last three years.
- 506 Does the Company promote or inform its customers about unregulated products and services that are provided by the Company or its affiliates at the time when new customers sign up for utility service with the Company? If yes, please: (1) list and describe each of the unregulated products and services that are (or have been) promoted in this manner and (2) describe procedures that the Company has in place to allocate a portion of utility "sign up" costs to the Company's unregulated operations.
- 507 Please provide a copy of the Company's two most recent strategic plans (business

- plans) for its (1) overall regulated and (2) overall non-regulated electric operations. If the Company does not possess or have access to some of the documents within the scope of those requested in this DR, please identify which of the requested documents that the Company does not possess or have access to.
- 508 Please provide a copy of the Company's most recent strategic plans (business plans) for each of its unregulated business units and affiliates. If the Company does not possess or have access to documents within the scope of those requested in this DR, please provide a statement to that effect..
- 509 Does the Company ever receive compensation for providing leads to its unregulated affiliates or to partners in joint ventures, strategic alliances, or joint marketing? If yes, please provide a copy of the contracts or agreements that provide for this compensation and provide a copy of all documents created in the last three years that contain summaries or analysis of the level of compensation that has been provided.
- 510 Does the Company ever receive compensation for allowing its unregulated affiliates or partners in joint ventures, strategic alliances, or joint marketing to use the Company's name or logo? If yes, please provide a copy of the contracts or agreements that provide for this compensation and provide a copy of all documents created in the last three years that contain summaries or analysis of the level of compensation that has been provided.
- 511 Please provide a list of all entities with which the Company or its affiliated entities have entered into partnership, joint venture, strategic alliance, or joint marketing agreements within the last three years and provide a copy of all such contracts or agreements that have been entered into within the last three years. For purposes of this DR, the term "affiliated entities" should be interpreted to have the same meaning that it has in the proposed affiliate transactions rule. If the Company or its affiliated entities have NOT entered into any partnership, joint venture, strategic alliance, or joint marketing agreements within the last three years, please provide a statement to that effect.
- 512 Please provide a list of the Company's top ten (by amount of regulated revenues or however the Company classifies these customers) customers. Also, please provide a copy of all contracts, agreements, or letters of intent that the Company has entered into over the last three years with its top ten customers for nonregulated products or services.
- 513 Please provide an organizational chart that shows the relationships between the

Company and all of its affiliated entities. For purposes of this DR, the term “affiliated entities” should be interpreted to have the same meaning that it has in the proposed affiliate transactions rule. If the Company does not have any affiliates, please provide a statement to that effect.

- 514 Please provide a copy of all documents created by or for the Company within the last five years that contain policies or guidelines for selling or leasing dark fiber that has been installed as part of the Company’s internal communications network. If no such documents exist, please provide a statement to that effect.
- 515 Please provide a list of all affiliated entities and other non-affiliated entities to whom the Company has sold or leased or otherwise allowed use of dark fiber that has been installed as part of the Company’s internal communications network. Also, please provide a copy of all documents created by or for the Company within the last three years that contain summaries or analysis of the amount of revenues that the Company has received for the sale or lease of dark fiber that has been installed as part of the Company’s internal communications network. If the Company has NOT sold or leased or otherwise allowed use of dark fiber that has been installed as part of the Company’s internal communications network, please provide a statement to that effect.
- 516 Please provide a copy of all comments, affidavits, testimony, and briefs that the Company or its affiliates have filed in affiliated transaction cases or rulemakings or similar proceedings in other jurisdictions. If no such filings have been made by the Company or its affiliates, please provide a statement to that effect.



Gerald A. Reynolds

(816) 556-2138
(816) 556-2787 (Facsimile)

COPY

FILE COPY

June 14, 1999

**VIA OVERNIGHT DELIVERY
& FACSIMILE (573) 751-5562**

Mr. John B. Coffman
Deputy Public Counsel
Office of the Public Counsel
Post Office Box 7800
Jefferson City, MO 65102

Re: Case No. EX-99-442

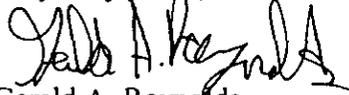
Dear Mr. Coffman:

We are in receipt of data request numbers 501 through 516 in the above-referenced case. Kansas City Power & Light Company objects to each of these data requests to the extent they seek documents protected by the attorney client privilege and/or the attorney work product doctrine.

KCPL objects to each of the data requests on the grounds that the Commission elected to initiate a rulemaking proceeding rather than an evidentiary hearing. By publishing the proposed rules on affiliated transactions in the Missouri Register, the Missouri Public Service Commission sought to provide interested parties with an opportunity to freely comment on the proposed rules. The proposed rule in no way contemplates discovery by any party involved in the rulemaking proceedings. This is by necessity. To permit discovery by any party involved in rulemaking proceedings would needlessly discourage interested parties from participating in rulemaking proceedings. In addition, this departure from customary practice would open the door to delays caused by discovery disputes.

Lastly, KCPL objects to each of the data requests on the ground that at this time KCPL is not a party to these proceedings. However, KCPL reserves the right to participate in the rulemaking proceedings associated with Case No. number EX-99-442 at a later date.

Very truly yours,


Gerald A. Reynolds

cc: William G. Riggins
Chris B. Giles

Attachment 2