PUBLIC VERSION

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. EC-2015-0309
	)	
Kansas City Power & Light Company	)	
	)	
And	)	
	)	
KCP&L Greater Missouri Operations Company,	)	
	)	
Respondents.	)	

INITIAL POST-HEARING BRIEF OF KANSAS CITY POWER & LIGHT COMPANY AND KCP&L GREATER MISSOURI OPERATIONS COMPANY

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Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO") (collectively, "KCP&L/GMO", "Respondents" or "Company") submit this Initial Post-Hearing Brief ("Brief") pursuant to 4 CSR 240-2.140 and in accordance with the Missouri Public Service Commission's ("Commission" or "PSC") *Order Adopting Procedural Schedule* issued July 28, 2015.

I. INTRODUCTION

In this proceeding, Commission Staff ("Staff") and the Office of the Public Counsel ("Public Counsel") are requesting that the Commission micro-manage the Company by dictating that KCP&L and GMO cease their relationship with Allconnect, Inc. ("Allconnect") as it now exists and/or authorize the Commission General Counsel to seek penalties in circuit court. (Complaint, pp. 29-32) As the Complainant, the Staff has the burden of proof to demonstrate that the Allconnect relationship with the Company violates any provision of law, Commission rule, order, or decision of the Commission. Section 386.390.1, RSMo.

For the reasons stated herein, the Commission should find that the Company has not violated any statute or PSC rule in seeking to provide customers with a one-stop shopping opportunity to establish unregulated home services such as home phone, internet, satellite or cable television, and home security services through the Allconnect Movers Program. The Commission should decline to step into the shoes of management by micro-managing the scripts that are used by KCP&L customer service representatives to transfer the customers to Allconnect.

In the event the Commission finds a technical violation of one of its rules, the Commission should grant the Company a variance from the regulation so that KCP&L and GMO

customers may continue to be given an opportunity to learn about and take advantage of Allconnect's Savers and Movers Programs.[1]

II. BACKGROUND

On May 20, 2015, Staff filed a Complaint against KCP&L and GMO alleging that KCP&L and GMO are violating a Commission statute and two Commission rules by providing certain customer information (i.e. unique customer identifier, customer name, service address, service commencement date, and service confirmation number) to Allconnect, an unaffiliated company. KCP&L/GMO provide this information so that Allconnect can (1) verify customer information for the provision of electric service by KCP&L and/or GMO, and (2) provide customers the opportunity to secure other home-related services (i.e. telephone, internet access, cable television, and home security services) on a one-stop shopping basis without the need to contact other providers of such home services.

More specifically, the Staff Complaint alleges that KCP&L and GMO are violating Missouri statutes and Commission rules by:

(1) transferring what Staff characterizes as "valuable system assets", namely, a unique customer identifier, customer name, service address, service commencement date, and service confirmation number, to Allconnect without first obtaining authorization from the Commission to do so, in violation of § 393.190.1, RSMo.;

(2) providing customer information to Allconnect without the consent of the affected customers in violation of Commission Rule 4 CSR 240.015(2)(C); and

[1] Allconnect's Savers Program involves offering customers discount coupons from Home Depot, Lowe's and Best Buy (Tr. 341, 406). As explained more fully herein, the Allconnect Movers Program involves offering customers unregulated services such as home phone, internet access, cable television or satellite, and home security services with a single contact to Allconnect. (Ex. 103, Scruggs Rebuttal, p. 3)

(3) allowing Allconnect personnel to investigate and respond to KCP&L/GMO customer inquiries and complaints in violation of Commission Rule 4 CSR 240-13.040(2)(A). (*See* Staff Suggestions In Support of Its Motion For Summary Determination filed on October 6, 2015 ("Suggestions"), pp. 1-2)

For its requested relief, Staff prays that the Commission will enter its order finding that KCP&L/GMO violated:

(1) § 393.190.1, RSMo.;

(2) 4 CSR 240.015(2)(C);

(3) 4 CSR 240-13.040(2)(A);

(4) authorizing its General Counsel to seek penalties under Sections 386.570, and 386.590; and

(5) requiring KCP&L/GMO to improve and modify their operations so that they are no longer in violation of the above provisions via their relationship with Allconnect. (Suggestions, pp. 1-2 and Complaint, pp. 31-32) On June 22, 2015, the Respondents filed their Answer, including affirmative defenses, which denied that they were violating the Commission's rules or related statutes, and requested dismissal of Staff's Complaint.

On June 23, 2015, the Commission issued its *Order Scheduling A Procedural Conference* for July 15, 2015. Representatives of Respondents, Staff, and the Public Counsel attended the procedural conference held on July 15.

On July 27, 2015, the Staff, Respondents and the Public Counsel filed a Proposed Procedural Schedule. On July 28, 2015, the Commission issued its *Order Adopting Procedural Schedule* which ordered the following procedural deadlines:

Direct Testimony - August 21, 2015
Rebuttal Testimony - November 19, 2015
Surrebuttal/Cross Surrebuttal Testimony - December 18, 2015

Last Day to Request Discovery - December 30, 2015
List of Issues - January 6, 2016
Statements of Position - January 11, 2016
Hearing - January 19-21, 2016
Initial Post-Hearing Briefs - February 11, 2016
Reply Post-Hearing Briefs - February 25, 2016

On October 6, 2015, the Staff filed its Motion For Summary Determination and Suggestions. On November 5, 2015, Respondents filed their Response In Opposition to Staff's Motion and Suggestions.

On November 12, 2015, the Commission issued its *Order Denying Motion For Staff Motion For Summary Determination*. In its Order, the Commission noted that Staff's motion alleged that the transfer of calls to Allconnect is inconvenient for KCP&L and GMO's customers, and this was a factual issue that needed to be determined by the Commission.

Following the filing of pre-filed testimony, position statements and related pleadings, hearings were held on January 19-20, 2016. This brief will address the issues raised in the List of Issues, and the issues raised by the Commission at the end of the hearing.

III. ARGUMENT

A. The KCP&L/GMO Relationship With Allconnect Is Convenient For Consumers And Promotes The Public Interest.

As explained in the Company's testimony, the Company seeks ways to improve the way the Company does business with our customers in order to enhance the overall customer experience. Following discussions with Allconnect as well as discussions with other utilities that do business with Allconnect, the Company decided that entering into the relationship with Allconnect was likely to improve its customers' overall experience and satisfaction levels. Based upon the results of customer satisfaction surveys, this has been proven to be a correct assessment. (Ex. 100 NP, Caisley Rebuttal, pp. 2-3)

Allconnect has partnerships with 61 energy operating companies, covering 33 states, and over 50 million households. Allconnect receives approximately three million calls annually from eligible residential movers who were transferred to Allconnect and residential move customers who call Allconnect directly. Allconnect has three company-owned customer contact centers, with a total of approximately 600 Allconnect employed agents. Allconnect answers calls 24 hours a day, seven days a week, 365 days a year. Allconnect's highly trained agents act as consultants for the customers, whether they buy or not. Allconnect offers video, internet, home phone and home security via a variety of service providers. (Ex. 103, Scruggs Rebuttal, p. 3)

The Company's relationship with Allconnect makes a service offering available to a specific group of customers -- residential customers initiating or moving service. The Allconnect Movers Program provides customers an opportunity to save time and money in connection with establishing a new residence. About 6.4% of the Company's total agent calls were transferred to Allconnect in 2015. (Ex. 104 NP, Trueit Rebuttal, p. 4)

Allconnect provides a convenient single source which helps millions of consumers across the country who are establishing or transferring household services. These consumers receive education about the services, save time, and save money on video, internet, home phone and home security services via a variety of home service providers.

The average Allconnect contact center agent spends approximately 11 minutes of call time with these consumers to offer them this one-stop shopping option. From the responses received from customer surveys, customers have saved on average 90 minutes of their time in understanding and selecting their home services. Some customers have remarked that they saved three hours or more of time. (Ex. 103, Scruggs Rebuttal, pp. 2-3)

As explained by Jean Trueit, KCP&L's Director–Customer Care Center, after the KCP&L Customer Service Representative ("CSR") submits the customer's order for electric service, the CSR advises the customer that the call will be transferred to Allconnect. The KCP&L CSR explains to the customer that Allconnect will verify the order, provide the order confirmation number as well as offer additional home services such as home phone, internet, cable/satellite or home security. (Ex. 104 NP, Trueit Rebuttal, p. 4)

At times the customer has general questions about the services. The KCP&L CSR addresses any questions the caller might have. Then the KCP&L CSR asks the customer if there is anything else they can assist with. (*Id*. at 4-5) This is an important question, and gives the customer the opportunity to ask questions about the service or the process of being transferred to Allconnect. At that point, a customer can easily decline to be transferred to Allconnect if that is his or her desire.

If the customer has no further questions, the KCP&L CSR will transfer the customer phone call to Allconnect. Some customers will advise they are not interested in additional services. In this instance, the KCP&L CSR will provide the customer the order confirmation number and end the call. (*Id*. at 5) Nine percent (9%) of the customers choose not to be transferred to Allconnect and they are not transferred. (Tr. 322)

If the customer indicates they do not have time to transfer but are interested in home services, then the KCP&L CSR will provide the customer the order confirmation number and the Allconnect contact information for future use by the consumer. (Ex. 104 NP, Trueit Rebuttal, p. 5)

After the KCP&L CSR transfers the call, the Allconnect agent verifies account information for the regulated business including the customer name, service address, start date of the service, account number, and provides a confirmation number. (Ex. 104 NP, Trueit Rebuttal,

p. 5) Once verification is complete, the Allconnect representative engages the customer in a conversation and offers additional home services. (Ex. 104 NP, Trueit Rebuttal, pp. 4-5)

A significant number of customers **[redacted]** have found this option convenient and have purchased home services offered from Allconnect. (Ex. 100 HC, Caisley Rebuttal, p. 8) From the customers' perspective, this one-stop shopping option avoids making numerous calls and hold times associated with separate calls to obtain home services from individual home service providers—like telephone, internet, cable or satellite service, and home security providers.

For the customer who wants these services, the one-stop shopping option avoids the hassle and inconvenience associated with calling separate toll free numbers and waiting in multiple automated calling queues to obtain individual home services. It also avoids having to repeatedly give the customer's name, address, and other identical customer-specific information to numerous individual providers of these home services.

Not everyone chooses to utilize this one-stop shopping option. Some customers prefer to arrange their other home services separately. In those cases, the customers simply indicate that they don't want to be transferred to Allconnect, and the KCP&L CSR thanks them and provides them with a confirmation number and ends the call. It is not a difficult process to decline to be offered additional home services if that is the customer's choice.

The Company is also paid a fee of **[redacted]** for each call transferred to Allconnect. (Ex. 102 HC, Klote Rebuttal, p. 6) KCP&L and GMO have recorded the revenues and the costs associated with this service below-the-line since they relate to unregulated services. The total revenue recorded to the Allconnect project was **[redacted]** in 2013, 2014 and through September of 2015, respectively (for a sum total through September 2015 of **[redacted]**). (Ex. 102 HC, Klote Rebuttal, p. 8) Since the Allconnect relationship began in 2013 continuing through September 2015, the Company has directly assigned or allocated

approximately $563,952 in operations and maintenance ("O&M") and depreciation expense in Allconnect-related costs to below-the-line non-regulated accounts. In addition, during the start-up phase of the project $417,123 of capitalized software costs was assigned to the Allconnect project. (Ex. 102 NP, Klote Rebuttal, p. 8)

One of the issues that has been raised by Staff witness Keith Majors and Public Counsel's witness Mr. Charles Hyneman, is whether the accounting for the Allconnect relationship should be above-the-line and credited to the regulated operations. (Ex. 4 NP, Majors Surrebuttal, pp. 23-24; Ex. 6 NP, Hyneman Surrebuttal, pp. 9, 28-32) While the Company continues to believe that it makes sense to treat the costs and revenues below-the-line since it involves unregulated operations, KCP&L and GMO are willing to change their accounting method on a going forward basis and book the revenues and the costs above-the-line. (Tr. 60-61)

Contrary to the Staff's inferences in this proceeding (Tr. 12; Ex. 2 NP, Kremer Surrebuttal, pp. 1, 40), the dollars associated with the KCP&L/GMO and Allconnect relationship, while important, are not material for the companies that generate in excess of $1.5 billion in Missouri (and $2.2 billion in total revenues including Kansas) revenues. (Tr. 231-233)

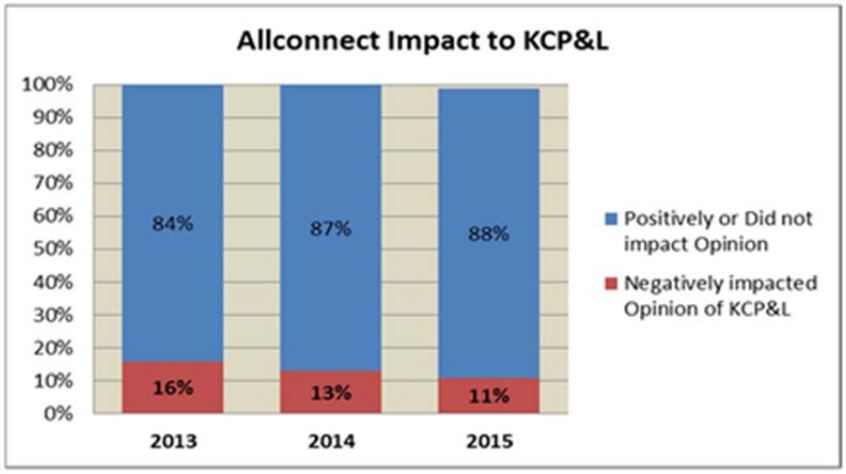
As explained by Mr. Caisley and Mr. Klote, from the Company's perspective, the Allconnect one-stop shopping option is concerned primarily about enhancing the customer experience of the Company's customers. (Tr. 268) It is not primarily about the amount of revenues generated by the Allconnect relationship. (Tr. 232, 268)

The numerous customer satisfaction surveys and comments from the Company's customers show that a one-stop shopping option is a convenience for a large number of its customers. In fact, **[redacted]** of the Company's new and transferred customers, a relatively high percentage of customers, choose to take advantage of this one-stop shopping option, and purchase or transfer other home services when offered by Allconnect. (Ex. 100 HC, Caisley

Rebuttal, p. 8) This high take rate shows that the Allconnect one-stop shopping offering is attractive and convenient to a significant segment of KCP&L and GMO customers. From a customer satisfaction perspective, just the fact that KCP&L and GMO makes this one-stop shopping service available for customers is considered a positive, from the customers' perspective.

This is borne out by the customer satisfaction survey results which consistently show that the Allconnect Movers Program has a positive impact on the customer experience, even if the customer declines to use the one-stop shopping option.

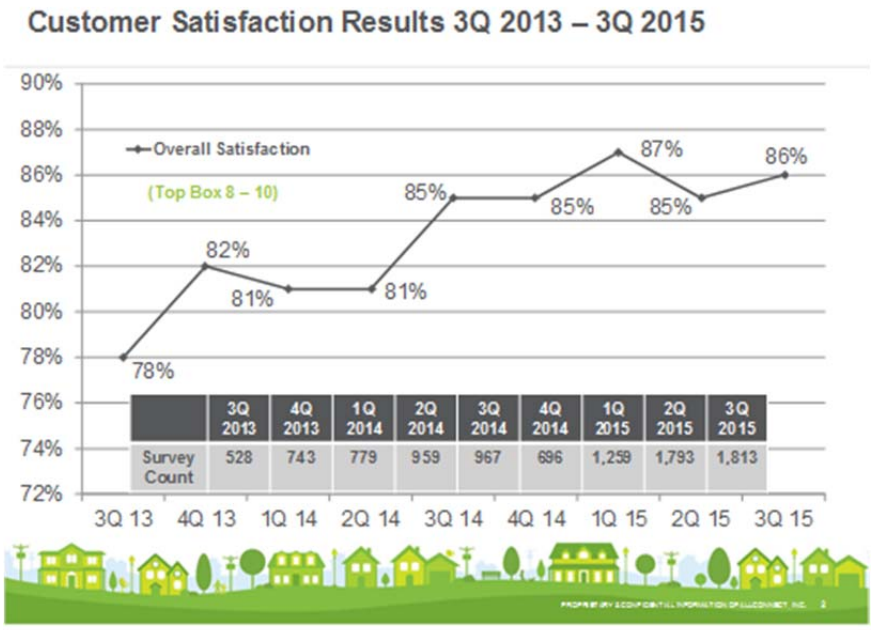
About 87-88% of customers surveyed by the Company held the opinion that Allconnect had either positively impacted their opinion of KCP&L or did not negatively impact their opinion of KCP&L. The following bar graph shows the results for 2013, 2014, and 2015:



About one-half (49% in 2015) of the customers indicated in KCP&L surveys that their experience with Allconnect positively impacted their perception of KCP&L overall. Another 39% said Allconnect did not have any impact on their perception of KCP&L. There was a small

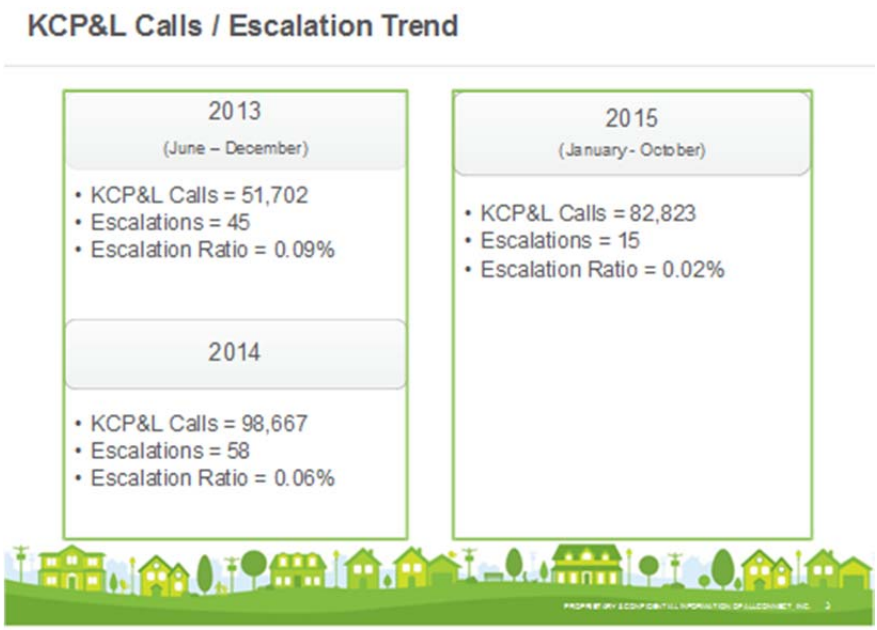
group of customers (about 11%) whose perceptions of KCP&L decreased in 2015 as a result of the Company's relationship with Allconnect. (Ex. 104 NP, Trueit Rebuttal, p. 9 and Sch. JAT-4).

In 2013, the customer satisfaction results were about 78%, but by the end of 2014 and into 2015, those positive satisfaction results had risen to the 85%-87% range. (*Id.*):



(Ex. 103, Scruggs Rebuttal, Sch. DS-2)

Another measure of the quality of the Allconnect experience relates to what are called "escalated calls." An escalated call is any customer call that is escalated by a Company [KCPL/GMO] employee for a customer who has a concern, question, and/or issue specific with or about the Allconnect experience.



(Ex. 103 NP, Scruggs Rebuttal, Sch. DS-2, page 3 of 3)

From launch in June 2013 through October 2015, there have been 118 escalations out of 233,192 customer calls received during that time frame. That is about ½ of 1 percent, or 5 out of every 10,000 calls. Since launch, the escalations as a percent of calls have continued to decline. The escalation rate in 2013 was 0.09% and that rate declined to 0.06% in 2014, and during the first 10 months of 2015, the escalation rate had declined further to 0.02% or 15 escalated calls out of 82,823 calls handled. (*Id.*)

If the Commission reviews the quantitative evidence in the record related to customer satisfaction, the Commission will find that there is indisputable competent and substantial evidence that overall the customers' experience is improved by the Allconnect program.

B. The Evidence Does Not Establish That, Through The Relationship With Allconnect, The Company Has Violated Section 393.190.1 RSMo.

First, Staff alleges that "KCP&L/GMO have violated § 393.190.1, RSMo., by transferring these assets [i.e. specific customer information][2] to Allconnect without first obtaining permission to do so from the Commission." (Suggestions, p. 4) Staff is incorrect that Section 393.190.1 requires prior approval of the Commission to provide Allconnect with the customer information in question in this case.

Section 393.190.1 states that an electrical corporation may not transfer "the whole or any part of its franchise, works, or system necessary or useful in the performance of its duties to the public" without first obtaining Commission authorization.[3] The Staff is incorrectly arguing that the "customer information" provided to Allconnect is part of the utility's "franchise, works or system." The Staff offers no legal support for that interpretation. In fact, it provides no PSC decision or court holding that such customer information is part of the "franchise, works or system" of a public utility.

Staff cites only one Commission decision which dealt with SO_2 emission allowances, and not customer information. In *Re Kansas City Power & Light*, Case No. EO-92-250, 1 M.P.S.C.3d 359, 360-62 (Aug. 26, 1992), the Commission found that SO_2 emission allowances

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[2] Apparently, the customer information of concern to Staff includes the provision of "a customers' name, service address, billing address, unique number, dates of turn-on and turn-off and service confirmation number. . . " (Suggestions, p. 5)

[3] Section 393.190.1 states in relevant part:

> 393.190.1 **No . . . electrical corporation** . . . **shall hereafter** sell, assign, lease, **transfer**, mortgage or otherwise dispose of or encumber **the whole or any part of its franchise, works or system**, **necessary or useful in the performance of its duties to the public**, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, **without having first secured from the commission an order authorizing it so to do.** Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void. (*emphasis added*)

attached to each generating unit and became "an integral part of its generating system." *Id*. at 362. As a result, the Commission concluded that emission allowances were necessary and useful in the performance of KCP&L's duties to the public and were part of KCP&L's "system." Even though the Commission in 1992 found that emission allowance sales or transfers were subject to its jurisdiction, the Commission concluded that it would not impede the trading of those allowances, and would allow flexibility in the approval process. (*Id*.) This decision was not appealed to the courts, and as a result, there is no case law reviewing the Commission's decision related to the sale or transfer of SO_2 emission allowances. (Ex. 100 NP, Ives Rebuttal, pp. 12-13)

In a more recent case, the Commission found that Staff failed to meet its burden to show that a public utility violated Section 393.190.1 when it transferred personnel and local distribution plant in Texas without prior Commission approval. In its *Order Closing Case, Re: Transfer of Assets, Including Much of Southern Union's Gas Supply Department, to EnergyWorx, a Wholly Owned Subsidiary*, Case No. GO-2003-0354, 12 Mo.P.S.C.3d 488 (Aug. 5, 2004), the Commission rejected a Staff allegation that the sale of local distribution plant in Texas, and the transfer of public utility employees, required prior approval of the Commission under Section 393.190.1. In that decision, the Commission interpreted Section 393.190.1 as follows: "Section 393.190 requires a utility to obtain this Commission's approval before consummating a transaction in which it sells <u>property</u> used to serve customers." *Id.* at 489 (*emphasis added*) *See also Concurring Opinion of Commissioner Jeff Davis,* Case No. GO-2003-0354, 12 Mo.P.S.C.3d 490-93. (Ex. 101 NP, Ives Rebuttal, pp. 10-12)

Regarding the property located in Texas and included in the allocation of corporate costs to the Missouri utility, the Commission ruled as follows:

> So, with respect to the corporate allocation, the issue facing the Commission is this: Section 393.190 requires a utility to obtain this Commission's approval before consummating a transaction in which it sells property used to serve customers. Here, none of the property sold was in Missouri, or directly used to serve Missouri customers, but a very small part (.002) of the transaction consisted of property the costs of which had been allocated to MGE's Missouri customers.
>
> As the moving party, Staff has the burden of production (also called the burden of going forward). (footnote omitted) Staff has not met its burden to show that the Commission has jurisdiction over the sale of office equipment in Texas even when the costs of that equipment were allocated for ratemaking purposes to Missouri customers. Id. at 2-3.
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> Regarding the transfer of employees, the Commission ruled as follows:
>
> Staff's second allegation is that Southern Union transferred "its assembled experienced and trained gas supply workforce." Staff devotes most of its report to this allegation and the related argument that the transfer of personnel invokes the Commission's oversight pursuant to Section 393.190. Staff does not allege that Southern Union did not meet its obligation to procure gas for its customers a as result of the transfer. Southern Union points out, and Staff does not disagree, that all the functions that had been provided by the transferred gas procurement personnel were still performed after the transfer, either by in-house personnel or through other arrangements. Again, Staff has the burden of production, and has failed to meet it.
>
> This is not to say that the transfer of the gas supply department was a good idea, or that the Commission would have approved of it if asked. It may or may not have been wise, and there may or may not be ratemaking consequences. But in this case, Staff has not met its burden of showing that the transfer of personnel invokes the Commission's jurisdiction. Id. at 3.

(Ex. 101 NP, Ives Rebuttal, pp. 11-12)

Contrary to the arguments of Staff, Section 393.190.1 does not reference customer information at all – it requires Commission approval for transfers of a utility's franchise, works or system.[4] A utility franchise is simply local permission to use public roads and rights-of-way.[5] The term "works" is not defined by statute or Commission rule, but that the Missouri

[4] *State ex rel. Martigney Creek Sewer Co. v. Public Service Comm'n,* 537 S.W.2d 388, 399 (Mo. banc 1976).
[5] *See, e.g., State ex rel. Union Elec. Co. Public Service Comm'n,* 770 S.W.2d 283, 285 (Mo.App.W.D. 1989).

Supreme Court has determined that the gas works of Missouri Public Service (later to become Aquila and now Empire District Gas) is synonymous with the term "gas plant."[6] Other statutes, however, use the term in the context of physical assets and not "customer information".[7] The term "gas plant" is defined at section 386.020(19) RSMo., but since KCP&L and GMO are electric corporations, the relevant term is "electric plant" which is defined at section 386.020(14) as including ". . . all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power." Thus, the term "works" as applicable to KCP&L and GMO is restricted in scope to that real or tangible operational plant (i.e., right-of-ways, poles, wires, meters, transformers, substations, generating units etc.) actually used to deliver electricity to the public in this state. Clearly, the customer information provided by the Company to Allconnect does not constitute the "works" of KCP&L and/or GMO. The same is true of the term "system."[8] However, Section 386.020 RSMo does contain definitions including the terms "plant" and "system":

> (14) "Electric Plant" includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing or electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power;
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> * * *
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> (19) "Gas Plant" includes all real estate, fixtures and personal property owned, operated controlled used or to be used for or in connection with or to

[6] *See, State ex rel. City of Trenton v. Public Service Comm'n*, 174 S.W.2d 871, 879-880 (Mo. Banc 1943).
[7] Sections. 393.260.2, 393.140(2), 88.770.1 RSMo. In addition, a Montana case has defined "works," in a utility context, to consist of physical property and legal rights. *State v. State Water Conservation Board,* 332 P.2d 913, 917 (Mont. 1958).
[8] Sections 393.298(2), 393.025.2, 393.829(11), 386.800.5(2), 393.200.1 RSMo.

> facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power;
>
> * * *
>
> (50) "Sewer System" includes all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for municipal, domestic or other beneficial or necessary purpose;
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> * * *
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> (60) "Water System" includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for municipal, domestic or other beneficial use.

The terms "sewer system" and "water system" are defined at Section 386.020(50) and (60) RSMo., respectively. Each of these statutory definitions enumerates a series of hard operational plant items and "other real estate, fixtures and personal property" used to provide that type of utility service. Thus a utility's "system" encompasses the organization of the discrete parts of the plant and property used by the utility into an interdependent whole for the purpose of providing service to the public. Again, the customer information provided by the Company to Allconnect is not a part of KCP&L and GMO's property interests and, therefore, cannot be considered a part of KCP&L and GMO's system.

If the Missouri General Assembly had intended for "customer information" to be part of an electric company's "works", as alleged by Staff, they would have included such a reference into Section 386.020(14).

More importantly, KCP&L has been unable to find any precedent in Missouri where the Commission has required prior regulatory approval for the provision of customer information to unaffiliated companies for regulated or unregulated purposes. To the contrary, Staff witness Lisa Kremer admits in answer to Data Request No. 8 in this proceeding that Staff is "aware that utilities regulated by the Commission engage third party contractors to undertake functions in

support of regulated operations." Staff is also "aware that third party contractors performing certain activities/functions require utility customer information to perform their contractual duties." Finally, Staff witness Kremer concedes that "I am not aware of any utility in Missouri obtaining the consent of customers prior to providing customer information to a third party contractor to perform an activity in support of its regulated operations." (Ex. 101 NP, Ives Rebuttal, Sch. DRI-2, Staff Response to DR No. 8)

If the Commission interpreted Section 393.190.1 as requiring prior regulatory approval for the provision of customer information to unaffiliated companies for regulatory purposes, as advocated by Staff, this policy would certainly raise a host of practical problems for every public utility dealing with routine customer matters. Public utilities would arguably be required to obtain Commission approval any time a public utility referred a customer account with an outstanding bad debt to an unaffiliated collection agency. In addition, public utilities "transferring" customer information to third party contractors for meter reading and call center operations purposes would require prior Commission approval under Staff's construction. All of these circumstances would encompass the disposal of an "asset", according to Staff's incorrect interpretation of Section 393.190.1. This analysis illustrates that the Staff's assertion that "customer information" are assets has consequences beyond the issue of KCP&L providing customer information to Allconnect. It also raises the question of the extent to which the Commission may become involved in the management decisions of KCP&L. Of course, it is not the function of the Commission to manage the operations of public utilities.

This Commission should reject Staff's argument that Section 393.190.1 requires regulatory approval prior to the transfer of customer information to an unaffiliated company for regulated purposes because "customer information" is not part of a utility's "franchise, works or system."

C. The Evidence Does Not Establish That, Through The Relationship With Allconnect, The Company Has Violated 4 CSR 240-20.015(2)(C).

Second, Staff incorrectly alleges that the Respondents violate 4 CSR 240-20.015(2)(C) by providing customer information to Allconnect without specific customer consent. This rule is part of the Commission's Affiliated Transactions Rule which "is intended to prevent regulated public utilities from subsidizing their non-regulated operations." *See Purpose Section*, 4 CSR 240-20.015.[9] However, in the case at hand, Allconnect is not an affiliated entity with KCP&L or GMO[10], and there is no affiliated transaction[11] involved in the arrangements between the Respondents and Allconnect.[12] Therefore, 4 CSR 240-20.15(2)(C) should not be applicable to this case.

Staff and Public Counsel have argued that since GPES contracts with Allconnect on behalf of KCP&L and GMO, this fact brings this case under the Affiliated Transaction Rule. (Tr. 11-13; Ex 3 NP, Hyneman Surrebuttal, pp. 6-9) The Commission should reject this argument.

GPES contracts with many entities, as a matter of efficiency, on the behalf of KCP&L and GMO. (Ex. 101 HC, Ives Rebuttal, pp. 4-8 and Sch. DRI-1) This fact does not invoke the Affiliated Transaction Rule. There are no transactions between GPES and Allconnect. No money or customer information is exchanged between GPES and Allconnect. All transactions are

[9] The *Purpose Section* of 4 CSR 240-20.015 goes on to explain the reason for the Affiliated Transaction Rule: "In order to accomplish this objective, the rule sets forth financial standards, evidentiary standards and record-keeping requirements applicable to any Missouri Public Service Commission (commission) regulated electrical corporation whenever such corporation participated in transactions with any affiliated entity. . . The rule and its effective enforcement will provide the public the assurance that their rates are not adversely impacted by the utilities' nonregulated activities."
[10] *See* 4 CSR 240-20.020(1)(A).
[11] *See* 4 CSR 240-20.020(1)(B).
[12] Staff raises the specter of an affiliated transaction in this case since Great Plains Energy Services ("GPES") is the technical entity that contracts with Allconnect on behalf of KCP&L and GMO. This fact does not make the arrangement an affiliated transaction between KCP&L/GMO and Allconnect.

between KCP&L/GMO and Allconnect. The Commission should therefore reject Staff's and Public Counsel's argument that the Allconnect relationship is an affiliated transaction.

However, if the crux of Staff's complaint is that the Respondents provide specific customer information to Allconnect as an unaffiliated third party service provider assisting KCP&L/GMO in the provision of regulated utility service, and that this practice violates Commission Rule 4 CSR 240-20.015(2)(C), then 4 CSR 240-20.015(2)(C) is vague and overbroad and KCP&L/GMO are being subjected to disparate regulatory treatment from other utilities in Missouri in violation of the equal protection clause of the Missouri and United States Constitutions.

Staff has admitted in its surrebuttal testimony and in response to Company data requests that utilities in Missouri make specific customer information available without specific customer consent to unaffiliated entities, namely third party service providers engaged by those utilities to assist in the provision of regulated utility service (for function such as collections, meter reading, call center operations). (Ex. 4 NP, Majors Rebuttal, p. 20; Ex. 101 NP, Ives, Sch. DRI-2, Staff Response to KCP&L DR No. 8). Staff also has admitted that no such utility in Missouri obtains the consent of customers to make such information available to such unaffiliated third party service provides. (*Id*.) Staff has further admitted that no such utility in Missouri has requested, or been granted, a waiver of or variance from the provisions of Commission Rule 4 CSR 240-20.015(2)(C) regarding the provision of specific customer information to unaffiliated third party service providers. (*Id*.) Staff also admits that confirmation of order/account accuracy is a part of providing regulated utility service and has further admitted that the decision about whether such services should be provided outsourced is a matter of management prerogative that is beyond the Commission's regulatory authority. (Tr. 142; 145-46)

It would be unreasonable to interpret 4 CSR 240-20.015(2)(C) as argued by Staff which would require specific customer consent to provide customer information to unaffiliated third parties in support of regulated operations. As explained above, such an interpretation would jeopardize customary practices of public utilities in Missouri which have routinely provided specific customer information to outside third parties without customer consent to support their regulated operations (e.g. collection agencies, meter readers, and out-sourced call center operations).

The initial purpose of KCP&L/GMO's transfer of each phone call and customer information is so that Allconnect can assist in the provision of regulated utility service by confirming and verifying account information entered into the Company's customer information system. The specific and limited customer information provided by KCP&L/GMO (i.e. unique customer identifier, customer name, service address, service commencement date, and service confirmation number) is only utilized by Allconnect to assist in the provision of regulated utility service unless and until the customer agrees and consents to do business with Allconnect.

In the event that the Commission disagrees with this practical and common sense interpretation of 4 CSR 240-20.015(2)(C) and finds that express customer consent is required to transfer customer information to Allconnect, then the Company would request that the Commission grant it a variance from this rule. Mr. Ives explained the rationale for this variance as follows:

> The Company would respectfully request that the Commission grant such a variance because the Company's relationship with Allconnect is beneficial to customers because (1) the Company appropriately assigns and allocates costs and revenues related to the Allconnect relationship to prevent subsidization of nonregulated activities by rates paid by regulated customers; (2) periodic and regular customer surveys demonstrate that the Company's relationship with Allconnect improves overall customer satisfaction levels; and (3) termination of the Allconnect relationship would slightly increase costs and rates paid by customers due to the fact that the Company would need to replace the customer order and account verification function currently performed by Allconnect at no charge to the Company. (Ex. 101 NP, Ives Surrebuttal, p. 21)

In summary, Staff has failed to demonstrate that there is an affiliate transaction involved in the relationship between Allconnect and the Company. Therefore, the Commission should not look to the Affiliate Transaction rule as the basis for its decision in this case. However, if the Commission determines that 4 CSR 240-20.105(2)(C) is applicable, then the Company requests that it be granted a variance from the rule.

D. The Evidence Does Not Establish That, Through The Relationship With Allconnect, The Company Has Violated 4 CSR 240-13.040(2)(A).

Third, Staff has incorrectly alleged that "KCP&L-GMO have transferred service quality responsibilities to Allconnect which, by Commission Rule 4 CSR 240-13.040(2)(A), KCP&L are required to provide." (Complaint, p. 30) KCP&L and GMO have qualified personnel available and prepared to receive and respond to all customer inquiries, service requests, safety concerns and complaints related to regulated service at all times during normal business hours.

The rule requires that a utility must have qualified personnel available to respond to customer inquiries, service requests, safety concerns and complaints. The rule does not prescribe the manner in which this response is to be achieved and does not require that the personnel be employees of the utility. Complaints of KCP&L and GMO customers related to Allconnect may be handled by either KCP&L personnel, Allconnect personnel or both. Staff has not alleged that the Company lacks adequate resources to respond to customer complaints, customer inquiries, service requests and safety concerns, but instead appears to be arguing that customer complaints must be handled by employees of the utility, that is by KCP&L personnel. This is incorrect. The Company handles customer complaints concerning Allconnect in a way which best utilizes its resources while at the same time ensuring compliance with Commission rules and customer satisfaction. Neither the Commission nor the Staff has the authority to tell the Company how to

manage its business as long as the Commission's regulations are being satisfied. *See State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177, 181 (Mo. App. 1960).[13]

Staff has failed to demonstrate that the Respondents are violating 4 CSR 240-13.040(2)(A) by providing customer information to Allconnect. As a result, Staff's Complaint should be denied since it has failed to demonstrate that the Staff is entitled to relief as a matter of law.

E. The Commission Should Not Direct Its General Counsel To Seek Monetary Penalties Against The Company.

As discussed above, the evidence establishes the Company has not violated Section 393.190.1 or the PSC rules. However, even if the Commission finds a violation of a statutory provision or a PSC rule, the Commission should not direct its General Counsel to seek monetary penalties against the Company. The Company had very good reasons to believe that the relationship with Allconnect did not violate Section 393.190.1 RSMo., 4 CSR 240-20.015(2)(C), or 4 CSR 240-13.040(2)(A). Moreover, the evidence establishes that there are substantial and robust governance processes in place to ensure that the Company's relationship with Allconnect is not detrimental to the interests of customers.

The substantial and robust governance process in place to ensure that the Company's relationship with Allconnect is not detrimental to the interests of customers include, but are not limited to, the following:

1. Regular periodic customer satisfaction surveys are undertaken by both the Company and Allconnect which, to date, have consistently shown that the services provided by

[13] In the *Harline* decision, the Missouri Court of Appeals explained this important principle:

> The utility's ownership of its business and property includes the right to control and management, subject, necessarily to state regulation through the Public Service Commission. The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to the public welfare. *Id.* at 181.

Allconnect have a positive impact on customers' perceptions of the Company and satisfaction levels of the Company's customers (Ex. 100 NP, Caisley Rebuttal, Sch. CAC-1, pp. 1-2; Ex. 104 NP, Trueit Rebuttal, Sch. JAT-4, Sch. JAT-5 and Sch. JAT-6; and Ex. 103, Scruggs Rebuttal, p. 8, line 15 through p. 10, line 6, and Sch. DS-1 and Sch. DS-2, p. 2);

2. Specific procedures – applicable to Company personnel and Allconnect personnel – are in place for the handling of escalated calls (Ex. 104 NP, Trueit Rebuttal, p. 6, line 9 through p. 7, line 2; and Ex. 103, Scruggs Rebuttal, p. 11), with a result being that the percentage of escalated calls from the Company's customers (relative to total calls transferred by the Company to Allconnect) have fallen from 0.09% in 2013, to 0.06% in 2014, to 0.02% in 2015 (Ex. 103, Scruggs Rebuttal, p. 11, line 21 through p. 12 line 12);

3. Periodic meetings occur between Company personnel and Allconnect personnel for the purpose of ensuring that the Company's relationship with Allconnect, with adjustments as appropriate, is as beneficial as possible to the Company's customers, the Company and Allconnect (Ex. 104 NP, Trueit Rebuttal, p. 3, line 21 through p. 4, line 4; and Ex. 103, Scruggs Rebuttal, p. 10, line 7 through p. 11, line 3);

4. Specific procedures are in place to ensure that customer-specific information provided by the Company to Allconnect is secure (Ex. 103, Scruggs Rebuttal, p. 7, line 16 through p. 8, line 14);

5. Appropriate assignment and allocation of costs and revenues is undertaken in connection with the Company's relationship with Allconnect to ensure that no cross-subsidization of non-regulated operations is provided by regulated customers (Ex. 102 NP, Klote Rebuttal, p. 3, line 16 through p. 12, line 7); and

6. A commitment has been made by the Company, in the form of testimony of the Company executive primarily responsible for initiating the relationship with Allconnect, that the Company will terminate its relationship with Allconnect if the Allconnect relationship is negatively affecting customer satisfaction and it is not possible to remedy the underlying causes. (Ex. 100 NP, Caisley Rebuttal, p. 3, line 20 through p. 4, line 5)

Because the Company had very good reasons to believe that the relationship with Allconnect did not violate Section 393.190.1 RSMo, 4 CSR 240-20.015(2)(C) or 4 CSR 240-13.040(2)(A) and because substantial and robust governance processes are in place to ensure that the Company's relationship with Allconnect is not detrimental to the interests of the Company's customers, the Commission should not direct its general counsel to seek monetary penalties against the Company.

F. Additional Matters Raised By the Commission.

At the conclusion of the evidentiary hearing (Tr. 525), Chairman Daniel Hall requested the parties brief the following issues:

1. Assuming That The Commission Found No Violation Of Any Statutes Or Commission Rules, Does The Allconnect Mover's Program Violate Public Policy?

If the Commission finds that there are no violations of any statute or Commission rules (which it should), it is the Company's position that there is no factual or legal support for a finding that the Allconnect Movers Program violates public policy. In fact, as explained above, the competent and substantial evidence in the record supports a finding that the Allconnect Movers Program promotes the public interest since it provides a convenient one-stop shopping option for consumers that desire to arrange home services at the time that electric service is being established in the residence.

Furthermore, it would beyond the Commission's statutory authority to order the cessation of the Allconnect Movers Program and its related contract with KCP&L and GMO if the Commission finds that the Allconnect relationship does not violate any provision of law, or of any rule or order or decision of the Commission. Section 386.390.1 RSMo. The Commission "is purely a creature of statute," *State ex rel. City of West Plains v. Public Service Comm'n,* 310 S.W.2d 925, 928 (Mo. banc 1958), and its "powers are limited to those conferred by the statutes, either expressly, or by clerar implication as necessary to carry out the prowers specifically granted." *State ex rel. Utility Consumers Council of Missouri v. Public Service Comm'n,* 585 S.W.2d 41, 49 (Mo. Banc 1979). The Commission has the authority that is specifically granted to it by statute, and "neither convenience, expediency or necessity are proper matters for consideration in the determination of" whether or not an act of the commission is authorized by the statute, *State ex rel. Kansas City v. Public Service Comm'n,* 301 Mo. 179, 257 S.W. 462

(banc 1923). In this case, the Commission does not have the statutory authority to manage the Company, or determine that the Allconnect relationship is "violative of public policy" if the Company's operations are consistent with requirements of the statutes and Commission rules.

2. Explain The Parties' Position On The Allconnect Relationship If Customer Consent Was Expressly Required Before The Company CSRs Transferred The Customer To Allconnect, And The Costs And Revenues Related To The Allconnect Relationship Were Booked Above-The-Line.

While the Company continues to believe that it makes sense to treat the costs and revenues related to the Allconnect relationship below-the-line since it involves unregulated operations, KCP&L and GMO are willing to change this accounting on a going forward basis and book the revenues and the costs above-the-line if this would resolve the case. (Tr. 60-61)

With regard to a condition that required express customer consent, the Company is concerned that a condition requiring explicit customer consent to transfer the call and customer information to Allconnect, may result in (1) customer confusion, (2) additional time spent by the Company's customer service representatives dealing with questions about unregulated services, and (3) a dramatic reduction in the number of customers that are given the opportunity to hear about the one-stop shopping options for other home services.

In answer to Chairman Hall's question regarding why the Company stopped using the transfer model with Allconnect, Mr. Caisley explained the reasons as follows:

> First, the transfer model wasn't working and was causing problems in our call center and wasn't resulting in a lot of calls being transferred. Principally, what would occur is a customer would call in and when we talked to them about why we were transferring them to Allconnect and asked them if they would be willing to do that, what happened a great many times is they would say, well, do they have this service provider or that service provider, and they would start asking questions that our call center representatives frankly weren't prepared to answer. So it ended up being confusing, it ended up being time-consuming, which could have the effect of hurting other performance matrix that we care very much about, and ultimately, it did not result in a significant number of people being transferred. So if you take that into consideration, my understanding at the time

was that there was not a significant amount of training that went on to start the program. (Tr. 449-50)

In the past when a more explicit customer consent to transfer to Allconnect was included in the process, a much smaller percentage of customers were given the opportunity to learn about the one-stop shopping option for home services provided by Allconnect. From April 2005 – November 2007, Allconnet received 11,548 calls from the Company when specific customer consent was a part of the transfer process. This amounts to approximately 361 calls per month ($11,548 ÷ 32 months = 361 calls per month)[14]. From June 2013 through October 2015, Allconnect received 233,192 calls from the Company using the present Confirmation Model. This amounts to approximately 8,041 calls per month (51,702 (June-Dec. 2013) + 98,667 (2014) + 82,823 (Jan.-Oct. 2015) = 233,192 ÷ 29 = 8,041 calls per month) (Ex. 103, Scruggs Rebuttal, pp. 11-12 and Sch. DS-2, page 3 of 3.

Based upon this actual experience, the Commission should conclude that the current method of transfer gives many more consumers (i.e. 22 times) the opportunity to take advantage of Allconnect's Savers and Movers Programs.

Since the Allconnect relationship is viewed as a positive by a large segment of the Company's customers, KCP&L and GMO believe it would be unfortunate if the Company was not permitted to provide this opportunity to their customers. A Commission order requiring express customer consent to be transferred to Allconnect for regulated or unregulated purposes could reduce the number of customers that would learn of this convenient option. As Mr. Caisley testified, however, if the Commission orders that express customer consent be required, then the Company will endeavor to fashion a script that would accomplish this directive without

[14] *See* Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company's Response To Request For Late-Filed Information, Attachment A filed February 8, 2016).

unduly minimizing the number of customers that are presented with the one-stop shopping option or causing the problems that have existed with past practices. (Tr. 452)

IV. CONCLUSION

For the reasons discussed herein, the Staff's Complaint should be denied, and the case dismissed.

Respectfully submitted,

/s/ Robert J. Hack

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 11th day of February, 2016, to all counsel of record.

/s/ Robert J. Hack

Robert J. Hack