

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

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

PUBLIC COUNSEL’S STATEMENT OF POSITIONS

COMES NOW the Office of the Public Counsel (“Public Counsel” or “OPC”) and submits its statement of positions:

Issue A: Does the evidence establish that, through the relationship with Allconnect, the Company has violated section 393.190.1 RSMo?

OPC Position:

The evidence establishes that Kansas City Power & Light Company (“KCPL”) and KCP&L Greater Missouri Operations Company (“GMO”) (Collectively, the “Companies”) have violated § 393.190.1, RSMo. In pertinent part, the law provides that:

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.

Mo. Rev. Stat. § 393.190.1 (Cum. Supp. 2013).

To find that the companies violated that section of the law, the Commission should examine the evidence as it relates to the following points:

1. Is information concerning the customers and prospective customers of KCPL and GMO part of KCPL's and GMO's works or system?

Yes, the customer information is a part of the companies' works or system. The Commission has said that "a utility's system is greater than the physical parts which would be its 'works.'" *In the Matter of the Application of Kansas City Power & Light Co.*, Order Establishing Jurisdiction and Clean Air Act Workshops, 1 Mo. P.S.C. 3d, 359, 362. "A utility's system is the whole of its operations which are used to meet its obligation to provide service to its customers." *Id.* The customer information provided to Allconnect is necessary for KCPL and GMO to provide service to their customers, thus, it is a part of a utility's works or system. (Hyneman Direct, p. 32; Majors Surrebuttal, p. 20). Without the customer information the utility would be unable to bill or provide electric service to its customers. Furthermore, Customers have paid, in rates, for the necessary equipment and expenses incurred relating to customer information (Majors Surrebuttal, p. 16).

2. Did the transfer by KCPL or GMO of those telephone calls and customer information constitute a transfer of part of their works or system?

Yes, the customer information is a part of the utilities' works or system and was transferred to Allconnect. It is undisputed that KCPL and GMO transfer customer telephone calls and customer information to Allconnect for a fee.

3. Did such transfers require prior authorization from the Commission pursuant to § 393.190.1, RSMo.?

Missouri law is unambiguous on this point. No utility may transfer any part of its franchise, works or system, necessary or useful in the performance of its duties to the public “without having first secured from the commission an order authorizing it so to do.” Mo. Rev. Stat. § 393.190.1.

4. Did KCPL and GMO violate § 393.190.1, RSMo., by making unauthorized transfers of part of their works or system?

There is no Commission order that permits KCPL and GMO to transfer any part of their works or system related to the Allconnect relationship. Even though the Companies have no permission to do so, KCPL and GMO transfer telephone calls and customer information to Allconnect. The customer information provided to Allconnect is necessary for KCPL and GMO to provide service to customers, and is, thus, a part of the utility “works or system.” Because the Companies have made these transfers of their works or systems without prior Commission approval KCPL and GMO have violated § 393.190.1, RSMo.

Issue B: Does the evidence establish that, through the relationship with Allconnect, the Company has violated 4 CSR 240-20.015(2)(C)?

OPC Position:

Yes, the evidence establishes that KCPL and GMO have violated Commission Rule 4 CSR 240-20.015(2)(C) related to disclosure of customer information. In pertinent part, that rule provides that “[s]pecific 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 rule or orders.” Commission Rule 2 CSR 240-20.015(2)(C).

To assist the Commission’s decision on this point, Public Counsel suggests that the Commission should examine the evidence as it relates to the following points:

1. Did Great Plains Energy Services (“GPES”), an affiliate of KCPL and GMO, enter into the Allconnect Direct Transfer Service Agreement on behalf of itself, KCPL and GMO?

Yes, it is the contract between GPES and Allconnect that governs KCPL and GMO’s interactions with Allconnect and commits the regulated utilities to provide the services to Allconnect (Hyneman Surrebuttal, p. 7).

2. Does the Commission’s Affiliate Transaction Rule 4 CSR 240-20.015(2)(C) apply to the transactions in this case?

Yes, the affiliate transaction rule applies to the transactions in this case. An “affiliate transaction” is defined as:

any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of an product or service, between a regulated electrical corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated electrical corporation and the regulated business operations of a electrical corporation.

Commission Rule 4 CSR 240-20.015(1)(B).

In the first instance, GPES commits KCPL and GMO to provide services and information to Allconnect. These entities are affiliates falling within the rule. Second, an affiliate transaction includes transactions carried out between any “unregulated” business operations of a utility and the “regulated” business operations of a utility. Through the GPES/Allconnect contract, KCPL and GMO provide information and services using regulated assets and employees. The profits of that transaction are then applied to the unregulated operations of the utility (Hyneman Surrebuttal, p. 8). Because the Allconnect agreement results in a transaction between the regulated and unregulated utility operations the affiliate transaction rule applies.

3. Do KCPL and GMO transfer telephone calls and customer information to Allconnect?

It undisputed that KCPL and GMO customer telephone calls and customer information are transferred to Allconnect.

4. Do KCPL and GMO receive customer consent prior to transferring the telephone calls and customer information to Allconnect?

KCPL and GMO do not receive customer consent prior to transferring the telephone calls and customer information to Allconnect. Instead, the companies use the “no-customer consent” or “confirmation model” to transfer customers to Allconnect (Kremer Surrebuttal, p. 4). Under the confirmation model, the utility customer service representatives do not provide the customer a confirmation number, as they did in the past, but instead they forward the customer call and customer information to Allconnect representatives who provide the confirmation number after verifying the information and after making a sales pitch. Notably, this “verification service” did not arise until 2013 when KCPL and GMO needed to create a “legitimate” reason to transfer its regulated customers to a nonregulated company without the customer’s consent (Hyneman Surrebuttal, p. 17).

5. Do KCPL and GMO receive a fee for each transferred telephone call?

Allconnect pays a fee for each transferred telephone call. However, all of the revenues and profits associated with the Allconnect transactions are transferred to non-regulated operations of KCPL and GMO (Hyneman Surrebuttal, p. 28).

6. Did KCPL and GMO violate Commission Rule 4 CSR 240-20.015(2)(C), by making unauthorized disclosure of specific customer information?

Yes, KCPL and GMO violated the customer information protections of the Commission Rule 4 CSR 240-20.015(2)(C). Section (2)(C) of the affiliate transaction rule also prohibits specific customer information from being made available to unaffiliated entities without the

consent of the customer. Commission Rule 4 CSR 240-20.015(2)(C). Allconnect is not an affiliate of KCPL or GMO, and so, in addition to any transactions between GPES and regulated KCPL and GMO operations, the rule prohibits KCPL or GMO from releasing customer specific information to Allconnect unless the customer gives consent or as otherwise provided by law or Commission order. *Id.*

Issue C: Does the evidence establish that, through the relationship with Allconnect, the Company has violated 4 CSR 240-13.040(2)(A)?

OPC Position:

The evidence establishes that Kansas City Power & Light Company (“KCPL”) and KCP&L Greater Missouri Operations Company (“GMO”) (Collectively, the “Companies”) have violated Commission Rule 4 CSR 240-13.040(2)(A). In pertinent part, that rule provides that “[a]t all times during normal business hours, qualified personnel shall be available and prepared to receive and respond to all customer inquiries, service requests, safety concerns, and complaints.” Commission Rule 4 CSR 240-13.040(2)(A). To assist the Commission’s decision on this point, Public Counsel suggests that the Commission should examine the evidence as it relates to the following points:

1. Do KCPL and GMO transfer phone calls and customer information to Allconnect to allow Allconnect to attempt to sell additional services to the caller?

Once a customer is transferred to Allconnect, the Allconnect representative attempts to sell additional services to the caller. The sales pitch appears to be the primary reason for transferring the caller. Although the company has claimed that transferring the call is necessary for an account verification function, the facts do not support the company’s contention (Caisley Rebuttal, p. 4). As explained in Public Counsel’s surrebuttal testimony, this “verification service” did not arise until 2013 when KCPL and GMO needed to create a “legitimate” reason to

transfer its regulated customers to a nonregulated company without the customer's consent (Hyneman Surrebuttal, p. 17). Further, the Commission's Staff analyzed 86 phone calls provided in this case and found that 55% of the callers either did not receive a confirmation number or received it only after listening to the Allconnect sales pitch (Kremer Surrebuttal, p. 13). The reason callers are transferred is to allow Allconnect to attempt to sell additional services to the caller.

2. Do KCPL and GMO defer to Allconnect their service quality obligations?

KCPL/GMO witness Ms. Trueit explains that "[w]hen a customer calls the Company about a poor experience related to Allconnect, Contact Center personnel collect pertinent information to review and determine the nature of the complaint." (Trueit Rebuttal, p. 6). Ms. Trueit then describes the companies' deferral to Allconnect, stating "[i]f it is determined that the concern is related to Allconnect actions, the Company notifies Allconnect within one business day." *Id.* Thereafter, an Allconnect resolution specialist contacts the customer within two business days. *Id.*

When the KCPL or GMO customer calls the utility, he or she is transferred – without consent – to a third-party marketing company, Allconnect. Then, if the caller has a complaint about Allconnect, KCPL and GMO do not solve the problem, but refer the caller back to Allconnect, potentially subjecting the caller to continued problems.

3. Are Allconnect's service personnel "qualified personnel" as required by Commission Rule 4 CSR 240-13.040(2)(A)?

KCPL and GMO customer service representatives are evaluated on how well they provide utility services to customers (Hyneman Surrebuttal, p. 19). Allconnect agents, however, have an incentive to "optimize each call to get the best possible financial outcome" which is a significantly different business type than a regulated utility[.] (Kremer Surrebuttal, p. 31).

Rather than ensuring the best outcome for the customer, Allconnect representatives are evaluated by their opportunities to “increase conversions” which the Commission’s Staff understands to be sales. *Id.* KCPL and GMO themselves admit that, in certain instances, Allconnect agents handled calls with utility customers “in what could be fairly characterized as a pushy or aggressive manner in an effort to sell Allconnect products.” (Caisley Rebuttal, p. 9). Allconnect representatives are not an adequate substitute for utility customer service representatives.

4. Did KCPL and GMO violate Commission Rule 4 CSR 240-13.040(2)(A) by deferring their service quality obligations?

Yes, for the reasons explained above, KCPL and GMO violate Commission Rule 4 CSR 240-13.040(2)(A) by deferring their service quality obligations to Allconnect.

Issue D: If the Commission finds in the affirmative on any of the preceding three issues, should the Commission direct its general counsel to seek monetary penalties against the Company?

OPC Position:

The Commission should find that KCPL and GMO have violated § 393.190.1 RSMo, Commission Rule 4 CSR 240-20.015(2)(C), and Commission Rule 4 CSR 13.040(2)(A). Monetary penalties may be assessed when a utility violates the law:

Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

Mo. Rev. Stat. § 386.570.1 (2000). All penalties are cumulative. Mo. Rev. Stat. § 393.590 (2000).

The evidence in this case, applied to the law, supports that a sufficient number of offenses have occurred to justify monetary penalties in excess of the revenues recorded by KCPL and GMO's non-regulated operations resulting from the GPES/Allconnect contract. (Trueit Rebuttal, p. 6; Kremer Surrebuttal, p. 15). At the very least, the Commission should seek monetary penalties against KCPL and GMO for the amounts received by each company's non-regulated operations.

WHEREFORE Public Counsel submits its statement of positions.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 11th day of January 2016:

/s/ **Tim Opitz**