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October 8, 2007

Hon. Linward (Lin) Appling
Missouri Public Service Commission
P. O. Box 360
100 Madison Street, Suite 900
Jefferson City, MO 65101

**Re: Pending Application of Kansas City Power & Light
Co., Case No. ER-2007-0291**

Dear Commissioner Appling:

It is with deep personal regret that I must use this means to respectfully request that you recuse from attending or participating directly or indirectly in any further deliberations, proceedings, decisions or orders in Commission Case No. ER-2007-0291.

I have reflected upon the need to write this letter for several days during which period I have waited for the official transcript of the proceedings on Monday, October 1, 2007, to be made available so as to confirm what I thought I heard. I have also reviewed the recent motion requesting your recusal submitted by the Office of Public Counsel.

On October 1, 2007, during the on-the-record proceedings, and during your questioning of one of the Kansas City Power & Light Company ("KCPL") witnesses, Mr. Chris Giles, I witnessed the following exchange between the two of you concerning rate of return on equity, that has now been confirmed by the transcript at pages 100-101:

Q Last year, we gave you 11.25, correct?
A Correct.
Q And that's what you're asking for again this year?
A Correct.
Q Is that going -- is that going to do what you need to do? Is that going to give you what you need for this next year?
A Yeah. If --
Q You and I talked a lot about this when I visited the plant up there three or four months ago. We walked the whole thing, and we talked about a lot of things. What I'm trying to get in my

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own mind, what did you -- what did you find
there, you know? Go ahead.

Obviously, I have no personal knowledge of these events and must rely on your own on-the-record statement reflected in the transcript of the proceeding. Given that the period you identified of the contact or conversation is well within the time boundaries of this case being set for hearing as a contested case before the Commission, that the rate of return on equity is unquestionably a contested (and significant) issue in the case and that Mr. Giles is a witness for whom testimony was filed in the proceeding, the contact that you described above in your question identifies an *ex parte* contact between you and an identified witness in the proceeding concerning the merits of a contested issue in the case. Moreover, no transcript of the "lot of things" that your statement referenced you as having "talked about" with Mr. Giles appears to have been arranged for or provided nor has a notice of *ex parte* contact been submitted as I understand is both required by law and by Commission rules and procedures. Accordingly, other than the discussion you referenced regarding the rate of equity return, I am unable to identify from your statement what other "things" may have been discussed, at least by you and Mr. Giles, at that place and time.

Close to 30 years ago, our Court of Appeals considered a case involving an earlier PSC Commissioner, Alberta Slavin. The Court ruled that ". . . officials occupying quasi-judicial positions [are held] to the same high standard as apply to judicial officers by insisting that such officials be free of any interest in the matter to be considered by them." *Union Electric Co. v. Public Service Com.*, 591 S.W.2d 134 (Mo. Ct. App. 1979). The Canons of Judicial Conduct, thus apply to Commissioners of the Public Service Commission just as to a member of Missouri's judicial branch. That being the case, I have particular concern about Canons 2 and 3.

Canon 2 addresses the appearance of impropriety by a person serving as judge.

2.03. Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

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The associated commentary is instructive and provides:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in this Rule 2. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Rule 2. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

In addition, Canon 2.03. ["Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently"], Subpart B.1(7) provides:

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. **A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding . . .** [exceptions concerning scheduling and either advance or timely concurrent notice to parties omitted as not relevant]. (Emphasis added).

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Further, Canon 3 addresses recusal:

E. Recusal.

(1) A judge shall recuse in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or **personal knowledge of disputed evidentiary facts concerning the proceeding . .**
. . (Emphasis added)

Again, the commentary provided relevant to this portion of the rule is instructive.

Under this Canon 3E(1), a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Canon 3E(1) apply. For example, if a judge was in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification. (Emphasis added)

All this confronts me with a serious concern as an attorney and a very troubling personal decision. Under the ethical rules governing the Missouri Bar, Rule 4-8.3(b),^{1/} I

^{1/} This rule provides: "(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial
(continued...)"

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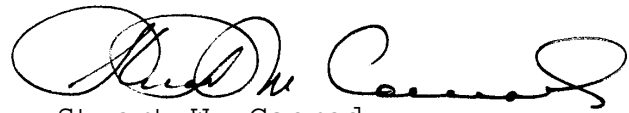
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have reluctantly come to the conclusion that as a Missouri attorney I must act, at the least, to seek your voluntary recusal in this proceeding.

The identity of an "appropriate authority" under the rule noted above, is unclear. Under the Supreme Court precedent noted above, the Public Service Commission itself may not have jurisdiction to require recusal of one of its members. Instead, attorneys are directed to report such circumstances to the "appropriate authority," which may in this case be the Judicial Commission on Retirement, Removal. Moreover, given that the statutes governing the Commission appear to suggest that a sitting commissioner could be removed for cause and that such a process, if it is to be commenced, would need to begin with the Executive Authority, I have also provided a copy of this letter to the Governor.

As I stated above, it is not with any relish nor certainly with any personal animus that I write you in this matter. Indeed, I would wish that the *ex parte* contact you disclosed had not occurred. I simply feel that, having witnessed this statement on your part and having my recollection of your disclosure confirmed by the transcript as well as finding some additional confirmation that others may also have concerns through Public Counsel's motion, my ethical obligations as an attorney compel this action. I sincerely hope that you will accept and act upon this letter in that spirit.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Stuart W. Conrad", with a large, stylized initial "S" and "C".

Stuart W. Conrad

SWC:s

cc: Chairman Jeff Davis
Commissioner Connie Murray
Commissioner Robert Clayton
Commissioner Terry Jarrett
Missouri Commission on Retirement, Removal and Discipline

¹/₂ (...continued)
conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority."

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Executive Office of the Governor
All Parties to ER-2007-0291 by their attorneys of record
Commission Records for ER-2007-0291