

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
April 19, 2001**

CASE NO: ES-99-581

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Kansas City Power & Light Company
1201 Walnut
Kansas City, MO 64106

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

At a session of the Public Service Commission held at its office in Jefferson City on the 19th day of April, 2001.

ORDER DIRECTING FILING

The investigation required a lengthy interval to complete. Staff filed interim reports on October 8, 1999, February 4, 2000, and June 6, 2000. In the last of these, Staff advised the Commission that it would file KCPL's final in-house investigation report, as well as the final report of Crawford and Company, the investigator for KCPL's insurer, as soon as these became available.¹ On August 22, 2000, Staff notified the

¹No report from Crawford and Company has ever been filed.

Commission that it intended to file its own final investigation report on or before January 25, 2001.

On September 6, 2000, anticipating the imminent completion of its final in-house investigation report, KCPL filed its motion for a protective order. In its motion, KCPL asserted that its final investigation report in this matter would contain highly confidential information which was nowhere publicly available. The Commission granted the protective order requested by KCPL on September 28, despite KCPL's failure to meet the express requirements of Commission Rule 4 CSR 240-2.085(1). That rule requires the movant to describe with particularity why protection is sought and to describe the harm that may occur should the information in question be made public. The Commission granted the requested protective order because the Commission frequently grants protective orders to protect sensitive company information and also because no party objected to KCPL's request.

KCPL submitted its report to Staff on October 2, 2000; the entire report of 22 pages and 16 appendices was designated "highly confidential." Despite its promise to the Commission on June 6, 2000, that it would file KCPL's report as soon as it became available, Staff did not file it until January 25, 2001, approximately three and one-half months after it became available.²

On January 25, 2001, Staff filed its Motion to File Staff Final Electric Incident Report accompanied by its Staff Final Electric Incident Report (Incident Report), in HC and NP versions as required by the

²Staff filed KCPL's report on January 25, 2001, as Appendix E of Staff's *Final Electric Incident Report*.

protective order.³ A significant portion of the *Incident Report* was designated HC: Eleven out of 26 pages were designated HC in the entirety, as were two out of five appendices. Substantial portions of the remaining pages and appendices were also designated HC; only two pages of the report contained no HC text. Of the appendices, only Appendix C, the Glossary, contained no HC text. The items designated HC included the chronology of the events leading up to the explosion, the discussion of the events leading up to the explosion, the timeline of events of February 16-17, 1999, and the determination of why the event occurred as discovered by the KCPL investigation. Of Staff's seven recommendations, five were designated HC.

On February 1, 2001, the Commission directed KCPL to respond to Staff's *Incident Report* within 30 days and to respond to Staff's report concerning maintenance and performance over the past ten years, due to be filed on or before February 26, within 30 days of the date that report was filed. The Commission also directed Staff to file a reply to each of KCPL's responses, within 30 days of the filing of each response.

On February 26, 2001, Staff filed its Motion to File Staff Final Electric Incident Report⁴ accompanied by its *Evaluation of Kansas City Power & Light Company's System Performance and Employee Safety and Training Programs (Performance Evaluation)*, in HC and NP versions as required by the protective order. A much smaller percentage of this report was designated HC, limited to figures expressing the reliability and output of KCPL's various generating facilities. Of 13 appendices,

³"HC" is "Highly Confidential," that is, protected from further disclosure. "NP" is "Non-Proprietary," that is, public.

⁴Actually, this motion should have referred to Staff's *Performance Evaluation* and not its *Incident Report*.

eight were designated HC. Each of these eight appendices concerned performance data of KCPL's facilities.

Also on February 26, KCPL filed its response, in HC and NP versions, to the Incident Report. Seven out of the nine pages of KCPL's response contained HC text; both attached exhibits were designated HC. The purpose of KCPL's response was to address "several statements in the Staff Report that needs [sic] further discussion to increase the overall accuracy of the report."

On March 9, Staff filed a Motion to Correct Record, stating that the official case file maintained by the Commission's Records Department did not include the correct version of the HC report entitled, *Hawthorn 5 February 17, 1999, Boiler Explosion Investigation Report*, prepared by KCPL.⁵ The Commission granted this motion on April 10 and Staff filed the correct report on April 11.

On March 27, the parties filed their Stipulation and Agreement, intending thereby to finally resolve this case. The six-page Stipulation and Agreement was designated HC in the entirety, as were the five pages of accompanying attachments. The Stipulation and Agreement contains 17 numbered provisions, none of which are available to the public.

On March 28, Staff filed its reply to KCPL's response to Staff's *Incident Report*. This document contains no HC text. Staff stated therein that all of its recommendations contained in the Incident Report were satisfactorily addressed in the HC Stipulation and Agreement filed on March 27. Also on March 28, KCPL filed its response to Staff's *Performance Evaluation*. This document also contains no HC text. KCPL

⁵That is, the KCPL final in-house investigation report referred to previously, finally filed as Appendix E to Staff's *Incident Report*.

stated that it concurred with Staff's conclusions as stated in the *Performance Evaluation*.

On April 5, Staff filed its Memorandum in Support of the Stipulation and Agreement. This document, too, contains no HC text. Therein, Staff states that the Stipulation and Agreement addresses the way in which KCPL will review the fuel-trip-control logic of the burner management system of its boilers and the fuel management system of its combustion turbines. Staff further states that the Stipulation and Agreement details the information that KCPL is to submit in interim reports to Staff and in a final report to the Commission. Staff also points out that the Stipulation and Agreement contains a complete list of the units to be included in this review and the schedule for performing the reviews. Finally, Staff states that KCPL has agreed in the Stipulation and Agreement to shut off the fuel to any boiler or combustion turbine that is shut down for work on the burner management system or fuel management system.

Discussion:

The Commission has long recognized that protective orders are appropriate in many cases to protect trade secrets and other confidential business information from public disclosure. Commission Rule 4 CSR 240-2.085 provides for protective orders and such are commonly issued in Commission proceedings. The Missouri Court of Appeals has held that protective orders are appropriate in Commission proceedings to protect

trade secrets, confidential information and commercial information.⁶ It is troubling, however, that a protective order is being used in the present case to shield from public scrutiny the chain of events that resulted in the boiler explosion at Hawthorn Station because it is not clear that there are trade secrets or other commercially sensitive information involved.

The Commission's duty to the public includes supervision of a public utility to require it to "maintain and operate its line, plant, system, apparatus, tracks and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers and the public[.]"⁷ An electric utility, such as KCPL, is required to "furnish and provide such service instrumentalities and facilities as shall be safe[.]"⁸ The Hawthorn explosion is a matter of public interest, as is the Commission's investigation of and response to this event. Therefore, the information gathered in the course of these proceedings should be made available to the public to the extent possible.

The Protective Order adopted herein by the Commission on September 28, 2000, permits only certain types of information to be held in confidence:⁹

HIGHLY CONFIDENTIAL: Information concerning (1) material or documents that contain information relating directly

⁶State ex. rel. Arkansas Power & Light Co. v. Missouri Public Service Commission, 736 S.W.2d 457, 461 (Mo. App., W.D. 1987).

⁷Section 386.310.1, RSMo 2000.

⁸Section 393.130.1, RSMo 2000.

⁹In the Matter of Kansas City Power & Light Company Regarding an Incident at the Hawthorn Station, Kansas City, Missouri, on February 17, 1999, Case No. ES-99-581 (Order Adopting Protective Order, iss'd Sept. 28, 2000), Attachment A, Paragraph A. Because all of the information involved in this case has been designated "highly confidential," only the five types of information appropriately so classified are at issue here.

to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration in contract negotiations.

PROPRIETARY: Information concerning trade secrets, as well as confidential or private technical, financial and business information.

Where the information in question is sought during discovery, the party seeking to hold the information in confidence must "provide to counsel for the requesting party . . . the ground or grounds for the designation."¹⁰ Where the information in question is filed with the Commission, the party seeking to hold the information in confidence must "file with the Commission the specific ground or grounds for each claim."¹¹ The Commission necessarily retains authority to inquire into the propriety of any claims that information should be held confidential.¹²

Therefore, with respect to KCPL's final in-house investigation report and Staff's *Incident Report and Performance Evaluation*, and their appendices and attachments, those parties who desire to hold these documents in confidence shall file pleadings showing with particularity the grounds for the "highly confidential" designations applied to those documents, in whole or in part. These grounds must fall within the five grounds listed in Attachment A, Paragraph A, of the protective order as

¹⁰*Id.*, Attachment A, Paragraph B.

¹¹*Id.*, Attachment A, Paragraph I. No such pleading has been filed in this case.

¹²See *id.*, Attachment A, Paragraph U.

justifying a "highly confidential" designation. The pleadings must also specify the harm that is likely to occur should the information in question be made public.

IT IS THEREFORE ORDERED:

1. That any of the parties to this case that desire to maintain the "highly confidential" designation given to certain documents filed in this case as discussed above shall file a pleading showing with particularity the grounds for the "highly confidential" designations applied to those documents, in whole or in part, with reference to the five grounds listed in Attachment A, Paragraph A, of the Commission's Protective Order issued in this case on September 28, 2000, and specifying the harm that is likely to occur should the information in question be made public. Any such pleading must be filed on or before May 1, 2001.

2. That this order shall become effective on April 29, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray,
Simmons, and Gaw, CC., concur.

Thompson, Deputy Chief Regulatory Law Judge

ALJ/Secretary: Thompson / Pope

4-18
Date Circulated

ES-99-581
CASE NO.

[Signature]
Lumpe, Chair

[Signature]
Drainer, Vice Chair

CM 3
Murray, Commissioner

KS
Simmons, Commissioner

[Signature]
Gaw, Commissioner

4-19
Agenda Date

Action taken: 5-0 AS

Must Vote Not Later Than _____

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 19th day of April 2001.

Dale Hardy Roberts
Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

