



Gerald A. Reynolds

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

FILED²

AUG 31 1999

Missouri Public
Service Commission

August 30, 1999

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

RE: Case No. EX-99-442

Dear Mr. Roberts:

Enclosed for filing with the Commission in the above-referenced matter are the original and 15 copies of Kansas City Power & Light Company's Reply to the Office of Public Counsel's Motion to Compel dated August 24, 1999. Please time stamp one of the copies and return it to KCPL in the enclosed self-stamped envelope. A copy of the foregoing Reply was mailed to the parties listed below.

Please bring this filing to the attention of the Commission.

Thank you for your attention to this matter.

Sincerely yours,

A handwritten signature in black ink that reads "Gerald A. Reynolds". The signature is written in a cursive, flowing style.

Gerald A. Reynolds

Enclosures

cc: Office of the Public Counsel
Dan Joyce
Gary W. Duffy
James J. Cook

KANSAS CITY POWER & LIGHT COMPANY

1201 WALNUT • P.O. BOX 418679 • KANSAS CITY, MO 64141-9679 • 816-556-2200 • WWW.KCPL.COM

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²
AUG 31 1999

In the Matter of 4 CSR 240-20.015 Proposed)
Rule – Electric Utilities Affiliate Transactions)

Case No. EX-99-442

Missouri Public
Service Commission

**KANSAS CITY POWER & LIGHT COMPANY'S REPLY TO
THE OFFICE OF PUBLIC COUNSEL'S MOTION TO COMPEL**

COMES NOW Kansas City Power & Light Company ("KCPL" or "Company"), by and through its attorneys, and states the following in response to the Office of the Public Counsel's Motion to Compel that was filed on or about August 24, 1999 ("Motion to Compel").

1. On August 6, 1999, the Office of the Public Counsel ("Public Counsel") propounded Data Requests 520 through 527 on KCPL. By letter dated August 16, 1999, KCPL informed Public Counsel that it was "in the process of gathering the documents that are responsive to Data Requests Nos. 520, 521, 522, 523, 524 and 525" ("August 16th Letter"). A copy of the August 16th Letter is attached to Public Counsel's Motion to Compel as Attachment A. In addition, in that letter KCPL objected to Data Requests Nos. 526 and 527.

DATA REQUEST NO. 526

2. Data Request No. 526 states the following: "Please provide a copy of the first two paragraphs from page 62 (this is the second page of Appendix E from the plan) of the 1998 *KLT Strategic Business Plan*¹ that was included in KCPL's response to OPC DR No. 585 in Case No. EM-97-515."

3. By propounding Data Request No. 526, Public Counsel has chosen to ignore a recent Commission ruling issued in this case that sustained KCPL's "relevancy objections" to a data request propounded by Public Counsel that sought the strategic plans (business plans) of

¹ Emphasis supplied.

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KCPL's unregulated business units and affiliates. See Order Granting Public Counsel's Motion to Compel Answers to Data Requests Presented to AmerenUE, Kansas City Power & Light Company and the Empire District Electric Company, and Sustaining Certain Objections dated August 3, 1999 (the "Order"). A copy of the Order is attached hereto as Exhibit A.

4. The relevant data request that was the subject of the Commission's Order stated the following: "Please provide a copy of the Company's most recent strategic plans (business plans) for each of its unregulated business units and affiliates." See Data Request No. 508 (which is quoted in its entirety on page 7 of the Order.).

5. As stated in the August 16th Letter, the issue of whether the business plans of KCPL's affiliates are relevant to the proposed affiliated transaction rules has been decided by the Commission in the Order. In the Order the Commission states the following:

The proposed rule is not concerned with strategic plans. In fact, the purpose is not to restrict regulated or nonregulated activities, but to ensure that such activities are substantially kept separate and apart, and, to the extent that they are not, that the Commission has sufficient information to determine the effect on the regulated activity.

See Order, P.7.

7. Public Counsel should be permitted to circumvent the Order by seeking a portion of the 1998 KLT Strategic Business Plan instead of the entire document.

8. Public Counsel's intransigence is puzzling in light of the fact that in its Order the Commission explicitly stated that "Public Counsel can obtain information about "current activities without viewing [or disclosing] strategic plans simply by asking about current activities." Id. Why Public Counsel has refused to ask about KCPL's current unregulated activities is unclear. The Commission's Order, however, is perfectly clear. "The proposed rule is not concerned with strategic plans." See Order, p.7.

9. Assuming *arguendo* that Data Request No. 526 is proper, the Commission should exercise its discretion to limited discovery because the requests are intrusive, over broad, and constitute an invasion of a non-party's privacy. See LaBarge v. Clifford, 979 S.W.2d 206, 208 (Mo.App. 1998).

10. As previously stated in KCPL's Reply to the Office of Public Counsel's Motion to Compel Data Requests dated July 19, 1999 (the "Reply"), a copy of which is attached hereto as Exhibit B, the Commission is vested with broad discretion in administering the rules of discovery. Spacewalker, Inc. v. American Family Mutual Ins. Co., 954 S.W.2d 420, 423 (Mo.App. 1997).

11. The Commission's discretion, however, is not unlimited. Missouri courts have ruled that a

[d]etermination of the appropriate boundaries of discovery requests involves the pragmatic task of weighing the conflicting interests of the interrogator and the respondent. Therefore, in ruling upon objections to discovery requests, [the Commission] must consider not only questions of privilege, work product, relevance and tendency to lead to discovery of admissible evidence, but they should also balance the need of the interrogator to obtain the information against the respondent's burden in furnishing it. Included in this burden may well be the extent of an invasion of privacy, particularly the privacy of a non-party.

Anheuser v. Nolan, 692 S.W.2d 325, 328 (Mo.App. 1985)

Public Counsel seeks a portion of the 1998 KLT Strategic Business Plan. What Public Counsel seeks is a business asset that belongs to KLT, Inc. ("KLT"), a non-party. It is clear to all reasonable parties that KLT has an interest in preventing the disclosure of its confidential business plans or a portion thereof to third parties. KLT's business plan establishes the company's goals, analyzes the feasibility of new businesses and product lines, identifies potential customers and competitors, and points out the company's strengths and weaknesses. As the

Commission has stated in the Order, none of this information is relevant to the stated purpose of this rulemaking proceeding.

12. KLT will be irreparably harmed if its strategic business plans or a portion thereof are disclosed to third parties, especially its business competitors, many of whom are parties in this rulemaking proceeding. Missouri courts will issue a Writ of Prohibition where “irreparable harm may come to a litigant due to discovery, and an appeal is not adequate to rectify the harm.” Blue Cross and Blue Shield of Missouri, 897 S.W.2d 167, 169 (Mo.App. 1995).

13. The damage that KLT will suffer if its confidential business plans are provided to its competitors is incalculable. The Commission’s standard protective order does not provide complete protection to KLT. It would be unreasonable to subject KCPL to the risks associated with providing this information when the Commission has already ruled that the business plans of KCPL or its affiliates are not relevant to this rulemaking proceeding.

DATA REQUEST NO. 527

14. The Commission has authorized KCPL to offer electric service to certain customers pursuant to Special Contract Service Schedule SCS (“Schedule SCS”), a copy of which is attached hereto as Exhibit C.

15. Data Request No. 527 seeks information that in no way relates to the stated purpose of this proceeding. Data Request No. 527 states the following:

Please provide a copy of the contract documentation that KCPL submitted to satisfy the Schedule SCS contract documentation requirements for the contracts that are the subject of Case EC-99-485.

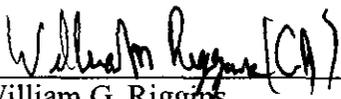
As stated earlier, the purpose of this proceeding is to adopt rules to ensure that Missouri electric customers do not subsidize the unregulated activities of Missouri utilities. Data Request No. 527 simply seeks information that relates to the regulated sale of electricity by KCPL to its retail

customers. Schedule SCS's contract documentation requirements do not relate to KCPL's unregulated activities. See Exhibit C.

16. In summary, in its Motion to Compel Public Counsel has to:

- a) distinguish Data Request No. 526 from Data Request No. 508²;
- b) explain why it refused to follow the guidance offered in the Commission's Order by crafting a data request that seeks information on "current activities;" and
- c) demonstrate how KCPL's sale of electricity to a retail customer pursuant to a Commission-approved tariff relates to KCPL's unregulated activities.

WHEREFORE, KCPL requests that the Commission deny Public Counsel's Motion to Compel and requests that the Commission grant such further relief as deemed just and proper.



William G. Riggins MO# 42501
Gerald A. Reynolds CT# 407871
Kansas City Power & Light Company
1201 Walnut Street
Kansas City, MO 64106
(816) 556-2785 (Telephone)
(816) 556-2787 (Facsimile)

Attorneys for Kansas City Power & Light Company

² Data Request No. 508 sought the strategic business plans of KCPL's affiliates. As discussed earlier, the Commission sustained KCPL's objection to Data Request No. 508 on the grounds that it was not relevant to the prevention of cross subsidies which is the subject of this proceeding.

Certificate of Service

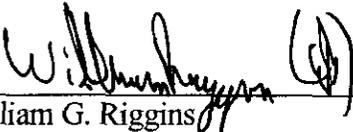
I, the undersigned, hereby certify that a copy of the above and foregoing was sent via facsimile and the United States mail, postage prepaid, on the 30th day of August, 1999, and addressed to:

John B. Coffman
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Dan Joyce
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Gary W. Duffy
Brydon, Swearingen & England, P.C.
312 Capitol Street
Jefferson City, MO 65102

James J. Cook
AmerenUE
P.O. Box 66149
St. Louis, MO 63166



William G. Riggins

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 3rd
day of August, 1999.

In the Matter of 4 CSR 240-20.015 Proposed)
Rule - Electric Utilities Affiliate) Case No. EX-99-442
Transactions.)

ORDER GRANTING PUBLIC COUNSEL'S MOTION TO COMPEL ANSWERS TO
DATA REQUESTS PRESENTED TO AMERENUE, KANSAS CITY POWER & LIGHT
COMPANY AND THE EMPIRE DISTRICT ELECTRIC COMPANY, AND
SUSTAINING CERTAIN OBJECTIONS

On April 26, 1999, the Missouri Public Service Commission
(Commission) filed proposed rule 4 CSR 240-20.015 *Affiliate Transactions*
with the Secretary of State. This formal rulemaking proceeding has been
assigned case number EX-99-442. The Proposed Rule was published in the
Missouri Register on June 1, 1999, and provided a comment period through
July 1, 1999, a reply comment period through August 1, 1999 (comments due
Monday, August 2), and scheduled a public hearing for September 14, 1999.

On June 4, 1999, the Office of the Public Counsel (OPC) served
data requests on each electric utility in Missouri in order to obtain
information the OPC believed would support its initial and reply comments
concerning the proposed rule. On June 14, 1999, UtiliCorp United, Inc.,
d/b/a Missouri Public Service (MPS), filed its motion asking the
Commission to issue its standard protective order in this proceeding
stating that the OPC's data requests sought information that MPS
considered to be highly confidential business information. On June 23,

1999, the OPC requested a blanket standard protective order for this rulemaking proceeding. On June 26, 1999, the Commission adopted and issued its standard protective order for this rulemaking proceeding effective July 6, 1999. The effective date of the order was later changed to June 30, 1999, so that if any comments referenced highly confidential information those comments containing highly confidential information could be timely filed under seal on July 1, 1999.

In addition to issues concerning protection of confidential and sensitive information, certain utilities have presented the OPC with additional objections, in writing, pursuant to 4 CSR 240-2.090, concerning the data requests. The participants have not been able to resolve all the issues presented. On July 9, 1999, the OPC filed its *Motion to Compel Data Requests Submitted to AmerenUE* in this proceeding and filed similar motions for data requests submitted to Kansas City Power & Light Company (KCPL) and The Empire District Electric Company (Empire). Pursuant to 4 CSR 240-2.080(12) and the Commission's *Order and Notice Regarding Motions to Compel Data Requests* responses to OPC's motion were due by July 19, 1999. On July 19, 1999, AmerenUE, KCPL and Empire each filed responses.¹

¹ On August 2, 1999, AmerenUE filed its *Satisfaction of Outstanding Data Requests*. AmerenUE stated that it had determined to respond "without requiring the Commission to address the issues" presented and "without waiving the positions taken" by AmerenUE. With respect to specific data requests that were still pending AmerenUE prefaced its responses by noting it was one of 32 subsidiaries of Ameren Corporation, that AmerenUE was the only subsidiary that was a Missouri public utility subject to the Commission's jurisdiction, and, that AmerenUE did not have the information requested in the data requests.

The responses collectively raise three challenges to the data requests submitted by the OPC: 1) that this discovery procedure (data request) is available only in a "contested case" and is not available in a rulemaking proceeding; 2) that the data requests seek information that is outside the jurisdiction of the Commission and from persons outside the jurisdiction of the Commission; and, 3) that the data requests do not seek information that is relevant to this proceeding.

Availability of Data Requests in a Formal Rulemaking Proceeding

Section 386.450, RSMo 1994², provides statutory authority for the OPC to issue data requests and provides for the Commission to compel production for good cause shown. This statute states no condition that there be a contested case. In fact, this statute does not require any type of proceeding to be pending before the Commission.

Even if a pending proceeding is required, pursuant to Section 386.710(2), RSMo, the public counsel may represent and protect the interests of the public in "any proceeding" before the Commission. And, under Section 386.710(4), RSMo, the public counsel has "all powers necessary or proper to carry out" her duties. The proposed rulemaking in this case is a "proceeding before the Commission." Public interests are at issue.

The public counsel's access to information is co-extensive with that of the Commission as provided in Section 386.450, RSMo. The Commission's authority to obtain information from a corporation, person

² Statutory references are to the Revised Statutes 1994, unless indicated otherwise.

or public utility is not limited to contested case proceedings. The Commission's rule regarding data requests, 4 CSR 240-2.090, is applicable in "proceedings before the commission" without restriction to contested case proceedings.

Because the OPC's authority to make data requests is not conditioned upon a contested case proceeding, the assertions to deny the *Motion to Compel* on this basis are without merit.

Jurisdiction Over Persons and Subject Matter

The jurisdictional arguments are premised on a presumption that the data requests cannot be enforced if the persons or subject matter to which the requests are directed are outside the jurisdiction of the Commission.

KCPL asserted that data requests could not extend to entities over which the Commission has no jurisdiction. This argument presents no genuine issue. The data requests are addressed to regulated public utility companies and seek information from these companies. The data requests were not served on unregulated companies and do not require such companies to produce any information.

A more complex issue is presented with respect to whether the information sought is subject matter that is within the Commission's jurisdiction. KCPL and Empire each raised subject matter jurisdiction issues.

The purpose of the proposed rule being considered in this proceeding is to prevent regulated utilities from subsidizing their non-regulated operations. In order to accomplish this purpose, the proposed rule sets financial standards, evidentiary standards and record-keeping

requirements applicable to regulated electrical corporations engaging in affiliate transactions. An affiliate entity under the proposed rule is an entity that directly or indirectly controls or is controlled by or is under common control with the regulated electrical corporation. Transactions between the affiliate and the regulated company may occur on less than an arms-length basis and affect the regulated company. The Commission must consider how these transactions affect regulated activities.

KCPL and Empire have each cited and relied on Section 393.140(12), RSMo, as a basis to argue against subject matter jurisdiction. Under Section 393.140(12), RSMo, a regulated gas utility is not required to obtain the Commission's consent to carry on "other business" outside the Commission's jurisdiction and "such other business shall not be subject" to any of the provisions of Chapter 393 (Regulation of Certain Utilities) - so long as - the operations of the "other business" are "substantially kept separate and apart" from the regulated activity. The statute expressly provides that it does not limit or restrict the Commission with regard to its powers in respect to the regulated activity and states that "said powers shall include also the right to inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by" the public utility operations and business "as distinguished from such other business."

To raise subject matter jurisdiction, KCPL and Empire have miscast the statute, the proposed rule, and OPC's data requests. The proposed rule will simply assure that "affiliate" or "other" businesses are "substantially kept separate and apart" from the regulated activity

and to the extent this does not occur assures that the Commission has the information necessary to carry out its duties. The proposed rule addresses matters within the Commission's jurisdiction and actually will enable greater compliance with Section 393.140(12), RSMo.

OPC's data requests concern matters that are the subject of the proposed rule and therefore are within the subject matter jurisdiction of the Commission.

Relevance

KCPL and Empire each raised and mixed relevancy objections with jurisdictional issues in their responses. Jurisdiction has been addressed. Relevancy objections must be considered in the context of each data request where an objection was specifically presented to the Commission in the responses filed by each utility.

In addition, KCPL bolstered its argument by asserting that the data requests it has declined to answer are "intrusive, over broad, and constitute an invasion of privacy." And, also, that even with a protective order, the disclosure risk of business plan information falling into a competitor's hands presents such potential for "incalculable" harm, so as to make the data requests unreasonable, particularly if the information requested is not relevant.

AmerenUE raised specific relevancy objections to data requests 507 and 508³. These data requests were as follows:

(507) Please provide a copy of the Company's two most recent strategic plans (business plans) for its

³ AmerenUE subsequently responded to the data requests as noted previously.

(1) overall regulated and (2) overall non-regulated electric operations.

(508) Please provide a copy of the Company's most recent strategic plans (business plans) for each of its unregulated business units and affiliates.

The OPC stated that "the data requests were to provide Public Counsel with enough information so that its initial and reply comments might include specific examples of current activity that should be covered by an affiliated transaction rule." The proposed rule is not concerned with strategic plans. In fact, the purpose is not to restrict regulated or nonregulated activities, but to ensure that such activities are substantially kept separate and apart, and, to the extent that they are not, that the Commission has sufficient information to determine the effect on the regulated activity. Strategic plans might or might not reflect "current activity." Nevertheless, the Public Counsel can obtain information about current activities without viewing strategic plans simply by asking about current activities. These data requests are not relevant to the matters presented by the proposed rule.

Sustaining the relevancy objections to these data requests also substantially resolves the additional concerns expressed by KCPL for privacy and competitive harm if, despite the protective order in this matter, its business strategies were somehow disclosed publicly or were made available to competitors as a result of the data requests.

Empire made a general assertion that the OPC's data requests were not relevant. Further, Empire argued that OPC's intent to "illustrate" an alleged "current trend toward diversification" did not support the relevance of its data requests.

The proposed rule would be unnecessary if regulated utilities were not diversifying their business activities. Information showing diversification supports the proposed rule. OPC's data requests seek information to support the proposed rule and therefore the data requests are generally relevant to the proposed rule. The Commission cannot and need not speculate about issues concerning relevance Empire had with the data requests. However, the Commission has determined that data requests numbered 507 and 508 are not relevant. Empire and KCPL will not be compelled to respond to data requests that have been found not to be relevant.

KCPL specifically directed its objections to data requests numbered 508 and 511. Number 508 was addressed above. Number 511 requested a listing of affiliate entities and copies of existing contracts. This information is particularly relevant to the Proposed Rule, which is exclusively addressed to affiliate transactions. Sensitive information will be protected under the Commission's protective order.

The Commission's Order and Notice Regarding Motions to Compel Data Requests indicated that OPC would be permitted to supplement its comments and reply comments if its Motion to Compel were granted in whole or in part. OPC will be permitted additional time accordingly.

IT IS THEREFORE ORDERED:

1. That the relevancy objections to data requests 507 and 508 are sustained.

2. That Kansas City Power & Light Company and The Empire District Electric Company are ordered to respond to all other data requests as previously submitted by August 19, 1999.

3. That the Office of the Public Counsel shall adhere to the comment and reply comment deadlines for this rulemaking, but may supplement these comments by filing supplemental comments and reply comments on or before August 27, 1999; however, any supplemental filing shall be limited to only the information resulting from the late-filed responses to the subject data requests.

4. That this Order shall be effective on August 3, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer,
and Schemenauer, CC., concur.
Murray, C., dissents.

Thornburg, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY

August 3, 1999

CASE NO: EX-99-442

Office of the Public Counsel

P.O. Box 7800
Jefferson City, MO 65102

Gary W. Duffy

Brydon, Swearingen & England P.C.
P. O. Box 456
312 East Capitol Ave.
Jefferson City, MO 65102

General Counsel

Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

William J. Niehoff

Ameren Services Company
One Ameren Plaza
1901 Chouteau Avenue
St. Louis, MO 63166

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

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Uncertified Copy:

Gerald A. Reynolds

Kansas City Power and Light Co.
1201 Walnut
P. O. Box 418679
Kansas City, MO 64141-9679

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of 4 CSR 240-20.015 Proposed)
Rule – Electric Utilities Affiliate Transactions)

Case No. EX-99-442

**KANSAS CITY POWER & LIGHT COMPANY'S REPLY TO
THE OFFICE OF PUBLIC COUNSEL'S MOTION TO COMPEL DATA REQUESTS**

Comes Now Kansas City Power & Light Company ("KCPL" or "Company"), by and through its attorneys, and states the following in response to the Office of Public Counsel's Motion to Compel Data Request Submitted to Kansas City Power and Light Company on July 9, 1999:

Background

1. On June 1, 1999, the Public Service Commission of the State of Missouri (the "Commission") caused a proposed rule regarding electric utilities affiliate transactions to be published in the *Missouri Register* and established Case No. EX-99-442 to address the issues relating to the rule.

2. It should be noted that the stated purpose of the proposed rule is to ensure that the rate paid by Missouri electric customers is not adversely affected by the unregulated business activities of Missouri utilities.

3. On June 4, 1999, the Office of Public Counsel ("Public Counsel") served its first set of data requests on KCPL ("Data Requests"), which consisted of 16 data requests numbered 501 through 516. A copy of the Data Requests is attached to Attachment 1 of Public Counsel's "Motion to Compel Data Requests Submitted to Kansas City Power and Light Company. By letter dated June 14, 1999, KCPL objected to each of the Data Requests.

**In the Instant Case, The Commission Lacks the Authority
to Compel Discovery Relating to KCPL's Unregulated Activities**

4. It is KCPL's position that Public Counsel is not legally entitled to any of the information sought in its Data Requests that relates to unregulated activities. Missouri law explicitly prohibits the Commission from regulating non-jurisdictional businesses. Section 393.140(12) (RSMo 1994). Associated Natural Gas Co. v. Public Serv. Comm'n of Missouri, 706 S.W.2d 870, 880 (Mo. App. 1985). KCPL's unregulated business activities are beyond the Commission's jurisdiction. See Section 393.140(12) RSMo. Accordingly, the Commission lacks statutory authority to compel production of information that relates to KCPL's unregulated activities. Fourteen of the 16 Data Requests address the Company's regulated activities. KCPL has informed Public Counsel that it is in the process of gathering information responsive to these 14 data requests and intends to deliver them to Public Counsel as soon as possible.

5. The Commission is not investigating KCPL's unregulated business activities to determine if they are increasing the cost of providing electric service to Missouri customers. If it believes that widespread cross-subsidization has resulted in increased electric rates, Public Counsel could have requested that the Commission open a docket to investigate those Missouri utilities it believes are subsidizing their unregulated activities.

6. KCPL maintains its objections with respect to Data Request Nos. 508 and 511 because it is improper to seek specific, confidential information about KCPL's unregulated business activities in a generic rulemaking proceeding.

7. The data requests aimed at KCPL's unregulated activities seek information concerning the Company's unregulated strategic plans. Data Request No. 508 requests the following information:

Please provide a copy of the Company's most recent strategic plans (business plans) for each of its unregulated business units and affiliates. If the Company does not possess or have access to documents within the scope of those requested in this DR, please provide a statement to that effect.

Data Request No. 511 requests the following information:

Please provide a list of all entities with which the Company or its affiliated entities have entered into partnership, joint venture, strategic alliance, or joint marketing agreements within the last three years and provide a copy of all such contracted [sic] or agreements that have been entered into within the last three years. For purposes of this DR, the term "affiliated entities" should be interpreted to have the same meaning that it has in the proposed affiliated transaction rule. If the Company or its affiliated entities have NOT entered into any partnership, joint venture, strategic alliance, or joint marketing agreements within the last three years, please provide a statement to that effect.

8. Missouri courts have recognized that there are definite limits upon the scope of discovery. Kawasaki Motors Corp. v. Ryan, 777 S.W.2d 247, 251 (Mo.App. 1989). As stated by the Missouri Court of Appeals, rules of discovery are not "talismans without limitations." Id. The courts have established limits on the broad scope of Missouri's discovery so that discovery requests are kept within reasonable bounds. At a minimum, discovery requests must be relevant to the subject matter involved in the pending action. Id.; see Plank v. Koehr, 831 S.W.2d 926, 927 (1992). By seeking information concerning KCPL's unregulated activities, Data Requests Nos. 508 and 511 seek information that is beyond the Commission's subject matter jurisdiction.

**Equity Requires the Commission to Consider the Likely Effect
Granting Public Counsel's Discovery Requests Would
Have on KCPL's and its Affiliates' Economic Health**

9. The Commission is vested with broad discretion in administering the rules of discovery. Spacewalker, Inc. v. American Family Mutual Ins. Co., 954 S.W.2d 420, 423 (Mo.App. 1997). However, the Commission discretion is not unlimited. Missouri courts have ruled that a

[d]etermination of the appropriate boundaries of discovery requests involves the pragmatic task of weighing the conflicting interests of the interrogator and the respondent. Therefore, in ruling upon objections to discovery requests, [the Commission] must consider not only questions of privilege, work product, relevance and tendency to lead to discovery of admissible evidence, but they should also balance the need of the interrogator to obtain the information against the respondent's burden in furnishing it. Included in this burden may well be the extent of an invasion of privacy, particularly the privacy of a non-party.

Anheuser v. Nolan, 692 S.W.2d 325, 328 (Mo.App. 1985)

10. Assuming *arguendo* that Public Counsel's discovery requests regarding KCPL's unregulated activities are proper, the Commission should exercise its discretion to limited discovery because the requests are intrusive, over broad, and constitute an invasion of privacy. See LaBarge v. Clifford, 979 S.W.2d 206, 208 (Mo.App. 1998). Public Counsel seeks information concerning KCPL's unregulated business plans. Like most business plans, KCPL's business plan for its unregulated business units establishes the company's goals, analyzes the feasibility of new businesses and product lines, identifies potential customers and competitors, and points out the company's strengths and weaknesses. None of this information has a direct bearing on the stated purpose of this rule making proceeding. Moreover, Public Counsel's discovery requests seek confidential information from KCPL's "affiliates."

KCPL's affiliates are non-parties to the extent they are not participating in this rulemaking proceeding.

11. KCPL and its affiliates have spent a great deal of time and significant sums of money planning their future unregulated business activities. This information is valuable. Needless to say, KCPL and its affiliates have taken precautions to ensure that this confidential information does not fall into their competitors' hands. If discovery by Public Counsel of KCPL's confidential business plans relating to unregulated activities is permitted, KCPL's competitors will request the same information. Missouri courts have ruled that a Writ of Prohibition is appropriate where "irreparable harm may come to a litigant due to discovery, and an appeal is not adequate to rectify the harm." Blue Cross and Blue Shield of Missouri, 897 S.W.2d 167, 169 (Mo.App. 1995).

12. Thus, if the Commission concludes that KCPL's unregulated business plans are discoverable, KCPL's competitors will have access to a blueprint of the Company's business plans, and will be well positioned to thwart KCPL's unregulated business ventures. KCPL and its affiliates have spent years developing their business plans. The damage that KCPL and its affiliates will suffer if their plans are provided to their competitors is incalculable.

13. The Commission's standard protective order does not provide complete protection to KCPL. It would be unreasonable to subject KCPL to the risks associated with providing this information when the information itself is not relevant to this generic, industry-wide rulemaking proceeding.

WHEREFORE, KCPL requests that the Commission deny Public Counsel's Motion to Compel and requests that the Commission grant such further relief as deemed just and proper.

Gerald A. Reynolds

William G. Riggins MO#42501 *by jmr*
Gerald A. Reynolds CT# 407871
Kansas City Power & Light Company
1201 Walnut Street
Kansas City, MO 64106
(816) 556-2785 (Telephone)
(816) 556-2787 (Facsimile)

Attorneys for Kansas City Power & Light Company

Certificate of Service

I, the undersigned, hereby certify that a copy of the above and foregoing was deposited in the United States mail, postage prepaid, on the 19th day of July, 1999, and addressed to:

Office of the Public Counsel
P O. Box 7800
Jefferson City, Missouri 65102

Ernie A. Reynolds
by JMT-

KANSAS CITY POWER & LIGHT COMPANY

Name of Issuing Corporation or Municipality

For Missouri Retail Service Area

Community, Town or City

Special Contract Service Schedule SCS

AVAILABILITY

Electric Service is available under this schedule at points on the Company's existing transmission or distribution facilities located within its retail service area for customers that either have competitive alternatives for serving a portion or all of their electric load requirements or require a special form of service not available in the Company's other available tariffs. In order to receive service under this schedule, the Customer must have a maximum half hour demand in excess of 1000 kW and must enter into a contractual agreement (Special Contract) with the Company. This schedule is not available for wholesale or resale service. The Company will not use undue discrimination in the application of this schedule. The Company reserves the right to determine the applicability or the availability of this schedule to any specific applicant for electric service who meets the above criteria.

SPECIAL PROVISIONS

A. Pricing Methodology:

The expected annual average prices for each customer under this schedule will be higher than the expected average marginal costs incurred by KCPL to serve each customer. In general, the marginal costs are calculated using the approach that underlies the pricing of the Company's experimental Real-Time Pricing (RTP or RTP-Plus) rate schedules, Incremental Energy Rider (IER), or Two Part Time-of-Use (TPP) schedule. Real-Time Pricing operations under this tariff will have the transmission of the hourly prices conform to the methods used by the Company in the RTP and RTP-Plus schedules.

Customers will pay a monthly Access Charge that depends on: 1) the tariff prices of the standard tariff (SGS, MGS, LGS, LPS, SGA, MGA, or LGA) at which the Customer would otherwise be taking service; 2) the billing determinants derived from the historical Customer Baseline Loads; and 3) the costs or cost savings anticipated from special provisions of the individual contract. The Company will adjust the Access Charge, energy prices, and/or other pricing components to maximize the Customer's expected contribution to margin without exercise of undue price discrimination.

KCPL will bill customers on this tariff on a monthly basis.

B. Metering of Load:

Customers taking service under this option must have or have installed an hourly recording meter. This metering must be accessible to the Company at any time.

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ISSUED BY M. C. Sholander General Counsel 1201 Walnut, Kansas City, Mo.

KANSAS CITY POWER & LIGHT COMPANY

Name of Issuing Corporation or Municipality

For **Missouri Retail Service Area**
 Community, Town or City

**Special Contract Service
 Schedule SCS**

(cont.)

TERM OF CONTRACT AND TERMINATION

The Customer may return to service under a standard, generally available tariff if they no longer require the specific service arrangement provided for in the Special Contract. The conditions for return to a standard tariff must be negotiated in the Special Contract. However, any incremental Facilities and Administrative costs must be paid during the remainder of the term of the Special Contract if the Customer returns to service under a standard, generally available tariff. The Special Contract must contain provisions to address pricing and service conditions, and to provide pricing options if required by the Customer, in the event that the choice of alternative electric power suppliers becomes available to the Customer's standard tariff class subsequent to the effective date of the Special Contract.

CUSTOMER BASELINE LOAD (CBL)

The Access Charge is based on a Customer Baseline Load, which is defined as one complete year of Customer-specific load data representative of the electricity consumption pattern and level typical of this Customer's operation under the standard price schedule, unless otherwise agreed. In order to formulate a CBL that achieves this representative load pattern, the Company may make adjustments to historical usage data.

BILL DETERMINATION

The bill for Special Contracts will depend substantially on the specific form of the Contract. However, the following is an example of the default form of these contracts. It is specified in terms of a two-part tariff similar to that found in the Company's RTP schedule.

$$\text{Customer Bill} = \text{Access Charge} + \sum_{hr} [\text{PRTP}_{hr} \times \text{ActualkWh}_{hr}] + \text{Reactive} + \text{PC}$$

Where:

$$\begin{aligned} \text{Access Charge} &= \text{The difference between the Standard Bill and the monthly sum of the} \\ &= \text{product in each hour of the CBLkWh multiplied by the hourly RTP price;} \\ &= \text{Standard Bill} - \sum_{hr} [\text{CBLkWh}_{hr} \times \text{PRTP}_{hr}]; \end{aligned}$$

Where:

- Standard Bill = Customer's bill for a specific month on CBL usage billed under the standard price schedule, including reactive pricing if applicable;
- CBLkWh_{hr} = The Customer Baseline kWh in each hour; and
- PRTP_{hr} = The hourly Real Time Prices.

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BILL DETERMINATION (continued)

Actual kWh_{hr} = The Customer's actual usage during each hour;

PC = Facilities Charge + Administrative Charge ; and

Reactive = Incremental reactive power charge, calculated by taking the difference between the bill for reactive power using the standard rate applied to the current month quantities and the bill based on the historical CBL quantities. This charge may be positive or negative.

PRICES

The baseline tariff prices that are used in the calculation of the Access Charge may be found on the Customer's standard tariff sheets (SGS, MGS, LGS, LPS, SGA, MGA, or LGA), plus any adjustments for applicable riders. Special conditions as specified in the Special Contract can result in changes from these prices based on the Company's anticipated cost savings or market conditions. The hourly real time prices are equal to the Company's expected or actual hourly marginal costs, plus an adder. The adder may vary in size depending on the marginal cost and market considerations.

ADMINISTRATIVE CHARGE

This charge will cover billing and administrative costs beyond those that are covered in the standard tariff. These costs will be collected from customers for the full term of the Special Contract even if they return to service under the standard tariff before the contract period is complete.

FACILITIES CHARGE

A Facilities Charge incorporates incremental costs of serving the Customer that are not included elsewhere in the tariff. If the Company is required to either increase the capacity or accelerate its plans for increasing the capacity of transmission or distribution facilities to accommodate a customer's altered load served under this schedule, then an additional Facilities Charge will be assessed if the expansion is not revenue justified using KCPL's current methodology. The incremental costs related to these facilities will be collected from customers during the full term of the Special Contract, even if they return to service under the standard tariff before the contract period is complete.

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SPECIAL RIDERS

Applicable riders will be addressed with provisions in the Special Contract.

CONTRACT DOCUMENTATION

Prior to the effective date of the Special Contract, the Company will provide a copy of the Special Contract and supporting documentation to the Missouri Public Service Commission Staff. The supporting documentation will include the following eight items:

1. Customer Needs: The Company shall provide a narrative description of the reasons why the Special Contract Customer should not or cannot use the generally available tariff. This description shall include the special needs of this Customer for a different form of service and/or the competitive alternatives available to the Customer. In addition, this description shall include the consequences to the Customer if the Special Contract is approved.
2. Customer Alternatives: The Company shall provide its estimate of the cost to the Customer for each competitive alternative available to the Customer. This estimate shall be for the time frame of the Special Contract, or by each year for multi-year contracts.
3. Incremental and Assignable Costs: The Company shall quantify the incremental cost that can be avoided if the Special Contract Customer reduces load or leaves the system, and the incremental cost incurred if the Special Contract Customer is a new load or expands existing load. The Company shall also identify and quantify the embedded and replacement value of all specific facilities (e.g., distribution) that are assignable to serving the Special Contract Customer. This quantification shall be for the time frame of the Special Contract, or by each year for multi-year contracts. All significant assumptions shall be identified that affect this quantification.
4. Profitability: The Company shall quantify the profitability of the Special Contract as the difference between the revenues generated from the pricing provisions in the Special Contract compared to the Company's long-run incremental costs. All significant assumptions shall be identified that affect this quantification.
5. Revenue Change: The Company shall quantify the change in annual revenues from the Special Contract as the difference between the revenues that would be recovered from the general availability tariff compared to the revenues that alternatively would be recovered from the pricing provisions in the Special Contract. This quantification shall also include a separate adjustment for either the potential increase in sales that may be brought about by the Special Contract, or the potential loss of sales that may occur without the Special Contract. All significant assumptions shall be identified that affect this quantification.

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CONTRACT DOCUMENTATION (continued)

- 6. Other Ratepayer Benefits: The Company shall quantify the benefits that it believes will accrue to other ratepayers from the Special Contract. All significant assumptions shall be identified that affect this quantification.
- 7. Other Economic Benefits to the Area: The Company shall quantify the economic benefits to the state, metropolitan area, and/or local area that the Company projects to be realized as a result of the Special Contract.
- 8. Documentation: The Company shall provide references to each internal policy, procedure and practice that it has developed and used in its negotiation of the Special Contract and make available copies of said policies, procedures and practices.

TAX ADJUSTMENT

Tax Adjustment Schedule TA shall be applicable to all Customer billings under this schedule.

REGULATIONS

Subject to Rules and Regulations filed with the State Regulatory Commission.

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