

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
January 30, 2001**

CASE NO: EM-2000-753

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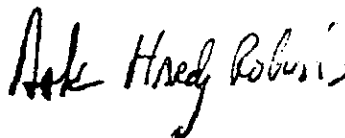
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 30th
day of January, 2001.

In the Matter of the Application of)
Kansas City Power & Light Company for an)
Order Authorizing the Transfer of Certain)
Electrical Generation Assets Used to)
Provide Electric Service to Customers in)
Missouri and Other Relief Associated with)
Kansas City Power & Light Company's Plan)
To Restructure Itself into a Holding)
Company, Competitive Generation Company,)
Regulated Utility Company and Unregulated)
Subsidiary)

Case No. EM-2000-753

ORDER REGARDING MOTION TO COMPEL

On December 22, 2000, the Office of the Public Counsel (Public Counsel) filed a motion asking the Commission to compel Kansas City Power & Light Company (KCPL) to answer certain data requests. Public Counsel's motion indicates that counsel for Public Counsel has complied with the requirements of 4 CSR 240-2.090(8) by conferring with counsel for KCPL concerning this discovery dispute and that a conference regarding this dispute has been conducted with the presiding officer and counsel for Public Counsel and KCPL. Public Counsel indicates that it has been unable to reach a resolution of the dispute and asks the Commission to order KCPL to produce all documents within the scope of the disputed data requests. KCPL filed its response to Public Counsel's motion on January 2, 2001, and Public Counsel filed a reply to KCPL's response on January 16.

Public Counsel presented data requests numbers 516, 520, 526 and 533 to KCPL on October 5, 2000. Those data requests ask that KCPL produce copies of broad categories of internal documents relating to KCPL's plans

to restructure itself. Commission rule 4 CSR 240-2.090(2) provides in part that:

The party to whom data requests are presented shall answer the requests within twenty (20) days after receipt unless otherwise agreed by the parties to the data requests. If the recipient objects to data requests or is unable to answer within twenty (20) days, the recipient shall serve all of the objections or reasons for its inability to answer in writing upon the requesting party within ten (10) days after receipt of the data requests unless otherwise ordered by the Commission.

KCPL did not object in writing to any of the submitted data requests within the ten days permitted by the regulation. Indeed, in its response, KCPL insists that it has never objected to the requested data requests and states that it has provided Public Counsel with all requested documents except those that are protected by attorney-client privilege or work product doctrine. KCPL has provided Public Counsel with a "privilege log" that lists the date, author, recipients and subject of twenty-five documents that KCPL asserts are protected from disclosure. Apparently it is these documents that are the subject of the discovery dispute.

Public Counsel does not assert any reason why these particular documents are not subject to protection from disclosure. Instead, Public Counsel argues that KCPL waived any objection to the disclosure of all of these documents when it failed to make a timely written objection to their disclosure within the ten days allowed by the Commission's regulation. Public Counsel's argument is not persuasive.

4 CSR 240-2.090(2) requires the recipient of a data request to make written objection to such data request within ten days after receiving the data request. The purpose of this requirement is to ensure that the discovery process proceeds promptly. Ten days is generally a sufficient amount of time to allow a party to examine and consider the data request and to formulate any appropriate objection to the data request. If a party

believes that ten days is not enough time to make an objection it may request that the Commission grant it additional time to file its objections. The Commission does not wish to make any change in that ten-day requirement. However, in this case, KCPL does not object to the data requests. Instead it indicates that certain documents that would otherwise be turned over to Public Counsel in response to the data requests are protected from disclosure by either the attorney-client privilege or as attorney work product.

A party must comply with 4 CSR 240-2.090(2) by making a timely objection to a data request. Thus, for example, if a data request is vague, overly broad or unduly burdensome, or if, on its face, a data request calls for the production of documents that would be protected by the attorney-client or work product privilege, then the responding party must make its written objection to the data request within ten days as required by the rule. However, the requirement that such written objection be filed within ten days does not, and cannot, apply to privilege claims relating to specific documents to be disclosed under otherwise unobjectionable data requests. The Commission holds that claims of privilege relating to the disclosure of specific documents need not be asserted within ten days of service of a data request. Public Counsel's Motion to Compel will be denied.¹

In its January 16 reply to KCPL's response, Public Counsel requests, if the Commission denies the relief sought in its motion to compel, that the Commission establish a special procedure to determine the merits of KCPL's claim of privilege for specified documents that it has refused to

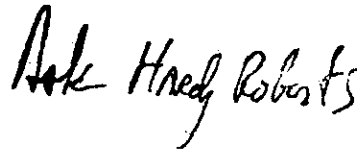
¹ The Commission is able to rule on Public Counsel's motion without reference to KCPL's argument regarding a alleged October 16 agreement between itself and Public Counsel. The Commission makes no finding regarding that issue.

produce in response to Public Counsel's data requests. The relief sought by Public Counsel in its January 16th reply is very different from the relief it sought in its motion to compel. KCPL has not had an opportunity to respond to that request and consideration of the requested relief in this order would only create confusion. Consequently, the Commission will make no finding on the appropriateness of any special procedure to review the particular documents for which KCPL claims a privilege. If Public Counsel wishes to further pursue such relief it may file an appropriate motion requesting such relief.

IT IS THEREFORE ORDERED:

1. That the Motion to Compel, filed by the Office of the Public Counsel on December 22, 2000, is denied.
2. That this order shall become effective on February 9, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Woodruff, Senior Regulatory Law Judge

ALJ/Sec'y: Woodruff/Boye

Date Circulated 1-25 CASE NO. EM-2000-753

108 p 3
Lumpke, Chair

and
Draher, Vice Chair

me
Murray, Commissioner

RS
Schwenauer, Commissioner

RS
Simmonds, Commissioner

1-30
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 30th day of Jan. 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

