BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

PUBLIC COUNSEL'S REPLY BRIEF

COMES NOW the Office of the Public Counsel ("Public Counsel" or "OPC") and presents its reply brief as follows:

Introduction

Great Plains Energy Services Incorporated ("GPES") entered into a contract with a telemarketing company ("Allconnect"). Through this contract, GPES committed its affiliated regulated utilities, Kansas City Power & Light Company ("KCPL") and KCP&L Greater Missouri Operations Company ("GMO") (collectively the "Companies") to transfer customer telephone calls and customer-specific information to Allconnect.

The interaction occurs as follows: a customer, or potential customer, calls the regulated utility to set up service at a location. Then, prior to giving the customer the service confirmation number, the Companies' representative tells the caller they will be transferred to Allconnect who will provide the customer with the confirmation number. Once the call is transferred, the Allconnect telemarketer takes the customer's information and then begins to make a sales pitch

for their services. Sometimes the customer receives the confirmation number. Other times, the caller has to ask for the service confirmation number before receiving it (Ex. 2, p. 13). At times, even when the customer aks for the confirmation number, Allconnect does not provide it. In those cases, the customer must call KCPL to receive the confirmation number.

The Companies transfer these telephone calls and customer-specific information without the Commission's approval or the customer's consent. The Companies admit that, when customers had the choice to be transferred to Allconnect in the past, so few customers chose to be transferred that the Companies ended the program (Tr. Vol. 4, pp. 449-450). However, the Companies attempt to portray customer choice as a negative. In their brief, the Companies state "when a more explicit customer consent to transfer to Allconnect was included in the process, a much smaller percentage of customers were given the opportunity to learn about the one-stop shopping option for home services provided by Allconnect." (KCPL/GMO Br., p. 26). The Commission should disregard this argument. In reality, the only negative arising from giving customers an honest choice is that the non-regulated operations of KCPL and GMO would not receive the fee for every transferred phone call. The Companies' own witness Mr. Charles Caisley discussed giving customers a choice to be transferred as shown in the pertinent testimony below:

> I mean, another way of putting that is the customer is always right. So yes, if the customer made the determination after an exchange with a customer service representative that they didn't have the time or for whatever reason they didn't want to be transferred, I would say that that is a valid [sic] and they're the best position to do that.

(Tr. Vol. 4, p. 451). Yet, the Companies insist on continuing to transfer customer telephone calls and personal information without asking for consent. In fact, the Companies are so determined to continue treating customers this way they now ask for a variance from 4 CSR 240-20.015(2)(C) if the Commission finds that they violated the rule.

The Companies assert the Staff and Public Counsel are asking the Commission to "micro-manage" the Companies (KCPL/GMO Br., p. 1). Public Counsel and the Staff request only that the Commission enforce the law and protect the customers from utility over-reach. Enforcing the law is not "micro-managing." The Commission should enforce the statutes, rules, and regulations pertaining to the provision of electric utility services and require the Companies to cease from these misrepresentations.

The Companies have violated § 393.190.1

In their initial brief, the Companies argue § 393.190.1 does not apply and, therefore, the Companies do not need to seek Commission approval prior to transferring the customer information. Essentially, the Companies contend they should be allowed to reveal customer information to unaffiliated companies on the premise that 1) the customer information is not a part of the "works or system," and 2) if it is, there may be "practical problems for every public utility dealing with routine customer matters." (KCPL/GMO Br., p. 17).

Contrary to these assertions, the Companies have violated § 393.190.1. 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). The customer information is a part of the Companies' "works or system." The Commission has said "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*. 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 (Ex. 4, p. 16). The customer information provided to Allconnect is necessary for KCPL and GMO to provide service to their customers and therefore must be a part of a utility's works or system (Ex. 3, p. 32; Ex. 4, p. 20).

There is no Commission order permitting the Companies to sell, assign, lease, or transfer any part of their works or system related to their relationship with Allconnect. Even without permission, the Companies transfer telephone calls and send customer information to Allconnect. That is undisputed. In exchange for receiving these calls and the ability to use the customer information, Allconnect pays a fee for each call received. Because the Companies have transferred the calls and sold, assigned, leased, or transferred customer information without prior Commission approval, KCPL and GMO have violated § 393.190.1.

The Companies' argue, if they are required to seek Commission approval whenever they want to provide customer information to any third-parties, it would "raise a host of practical

problems for every public utility dealing with routine customer matters." (KCPL/GMO Br., p. 17). First, this complaint does not charge any other utility besides the Companies at issue with violating the law. This complaint is related to the transfer of KCPL and GMO customer telephone calls only where customer information is provided to a telemarketer, for a fee, without either Commission approval or customer consent. Second, as it relates to any putative problems that may arise from the Commission enforcing the law, the statute already provides an uncomplicated and elegant solution. The utilities should ask for Commission approval explaining why the company is seeking to release customer information to affiliated or unaffiliated companies with enough detail to allow the Commission to make a determination whether or not the company's request is in the public interest. Even if seeking Commission approval to release customer information were burdensome – which it is not – the law *requires* it. *See* Mo. Rev. Stat. § 393.190.1.

The Companies have violated 4 CSR 240-20.015(2)(C)

The Companies dispute they have violated CSR 240-20.015(2)(C) on the premise (1) no affiliate transaction is occurring and (2) the rule, if applicable, subjects the Companies to disparate regulatory treatment. They argue it would be unreasonable to require specific customer consent to provide customer information to unaffiliated third parties (KCPL/GMO Br., p. 20). The companies are incorrect under this regulation.

In pertinent part, Commission Rule 4 CSR 240-20.015(2)(C) provides "[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 4 CSR 240-20.015(2)(C).

First, the plain language of the rule requires customer consent. There is no restriction limiting the protection of customer information to affiliate transactions. As there is no other regulation or case law expanding on this point, it is obvious the Companies are not permitted to release customer information to third parties without Commission authorization. The Companies' argument that it must release customer information to third parties in support of regulated operations is also not supported by the record. If a regulated entity truly needed to release specific customer information for regulated purposes, it should seek a Commission order authorizing it to so do in furtherance of a request in the limited circumstances when the utility cannot receive customer consent. Customer-specific information is important and should be safeguarded.

Second, even if this customer protection only applied in the context of affiliate transactions, this relationship *is* an affiliate transaction. Great Plains Energy Services ("GPES"), an affiliate of the Companies, entered into the Allconnect Direct Transfer Service Agreement on behalf of itself, KCPL and GMO. The contract between GPES and Allconnect governs KCPL and GMO's interactions with Allconnect and commits the regulated utilities to provide the services to Allconnect (Ex. 6, p. 7). As the Staff points out, the Companies cannot avoid the rule by referring to GPES as a "contracting vehicle." (Staff Br., p. 17). The participation of GPES in the contract makes this an affiliate transaction as defined by the regulation.

Even if GPES were not involved in the contract, the affiliate transaction rules still apply in the context of 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). 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. 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 (Ex. 6, p. 28) The Companies admit the revenue is booked below the line (Tr. Vol. 2, p. 253). Because the Allconnect agreement results in a transaction between the regulated and unregulated utility operations, the affiliate transaction rule applies.

Application of this rule does not subject the Companies to disparate regulatory treatment. To Public Counsel's knowledge, no other utility is releasing specific customer information to a telemarketer in exchange for a fee booked to non-regulated operational accounts. If other Missouri utilities were so doing, the appropriate response would be to enforce the rule against them as well and not to ignore the rule as the Companies suggest. The relevant regulation requires Companies receive customer consent prior to transferring customer information to affiliated or unaffiliated entities – in this case a telemarketer – and is an eminently reasonable customer protection. Because they chose not to do so, the Companies violated the customer information protections of Commission Rule 4 CSR 240-20.015(2)(C).

The Companies have violated 4 CSR 240-13.040(2)(A)

The Companies deny violating Commission Rule 4 CSR 240-13.040(2)(A) and state "KCP&L and GMO have qualified personnel available and prepared to receive and respond to all

customer inquiries, service requests, safety concerns and complaints related to regulated service at all times during normal business hours." (KCPL/GMO Br., p. 21). The Companies also assert calls from regulated customers related to Allconnect "may be handled by either KCP&L personnel, Allconnect personnel or both." *Id*. Lastly, the companies conclude the Commission has no authority to tell them how to manage their business as long as the companies are following the Commission's regulations (KCPL/GMO Br., p. 22). However, the Companies' actions *do* violate the Commission's rules.

In pertinent part, the rule provides "[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."

As it relates to the charges in this complaint, the Companies defer their service quality obligations to Allconnect. The companies' witness, Ms. Jean Trueit, explained that "[w]hen a customer calls the Company about a poor experience related to Allconnect, … personnel collect pertinent information to review and determine the nature of the complaint." (Ex. 104, p. 6). Ms. Trueit then described 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. When the KCPL or GMO customer calls the utility, he or she is transferred without consent to Allconnect. If the caller has a complaint about Allconnect, the Companies do not solve the problem, but refer the caller back to Allconnect, potentially subjecting the caller to continued problems.

Allconnect's service personnel are not "qualified personnel" as required by Commission Rule 4 CSR 240-13.040(2)(A). The Companies' customer service representatives are evaluated

on how well they provide utility services to customers (Ex. 3, p. 19). Allconnect agents, however, have a different incentive (Ex. 2, p. 31). Rather than ensuring the best outcome for the customer, Allconnect representatives are evaluated by their opportunities to "increase conversions." *Id*.

The Companies' themselves admit, 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." (Ex. 100, p. 9). Allconnect's witness Dwight Scruggs also acknowledged some Allconnect representatives could be pushy and rude, and subject to disciplinary action, including escalation back to the utility (Tr. Vol. 4, p. 423). Allconnect representatives are not an adequate substitute for utility customer service representatives. For the reasons explained above, the Companies violate Commission Rule 4 CSR 240-13.040(2)(A) by deferring their service quality obligations to Allconnect.

The Commission should direct its general counsel to seek monetary penalties

Public Counsel agrees with Staff the Commission should direct its general counsel to seek monetary penalties against KCPL and GMO. Monetary penalties may be assessed when a utility violates the law. 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 a finding that a sufficient number of offenses have occurred to justify monetary penalties in excess of the revenues recorded by Companies' non-regulated operations resulting from the GPES/Allconnect contract (Ex. 104, p. 6; Ex. 2, p. 15; Tr. Vol. 3, p. 25). At the very least, the Commission should seek monetary penalties against the Companies for the amounts received by each company's non-regulated operations.

Conclusion

KCPL's and GMO's parent company, GPES, has committed its affiliated regulated utilities to transfer customer phone calls and customer specific information to Allconnect. These customers *never* needed to be transferred to a third-party telemarketer, were never *asked* if they wanted to be transferred to a third-party telemarketer, and were sent back to the telemarketer in the event a customer had a complaint about said telemarketer. This Commission exists to protect customers. When a utility violates the law by subjecting customers to this treatment, the Commission should act. For the reasons explained above, and for the reasons explained in Public Counsel's initial post-hearing brief, the Commission should find that KCPL and GMO have violated the statute and Commission rules charged in Staff's Complaint.

WHEREFORE Public Counsel submits its reply brief.

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 25th day of February 2016:

/s/ Tim Opitz