

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

**PUBLIC COUNSEL’S SUR-REPLY TO KCPL AND GMO
AND MOTION FOR RECONSIDERATION**

COMES NOW the Office of the Public Counsel (“Public Counsel” or “OPC”) and presents its *Sur-reply to KCPL and GMO and Motion for Reconsideration* as follows:

Introduction

1. Kansas City Power & Light Company (“KCPL”) and KCP&L Greater Missouri Operations Company (“GMO”) (collectively both GMO and KCPL will be referred to as “Companies”) request the Missouri Public Service Commission (“Commission”) approve a new version of a proposed script designed to permit the Companies to continue transferring customer information in violation of Commission rule 4 CSR 240-20.015(2)(C) and the Commission’s order in this case.

2. 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” (emphasis added).

3. This plain language prohibits the transfer of “customer information.” The Companies’ latest script fails to ask permission to transfer the customer’s information and instead seeks permission to transfer the telephone call asking “[m]ay I transfer you to Allconnect at this time.”

4. To be clear, seeking permission to transfer customer information is not a “needless redundancy” as the Companies claim (Doc. 130, p. 3). In fact, consent to transfer customer information is the *crux* of the rule. The Companies must receive customer consent if they want to continue transferring customer information – either for a profit, as here, or otherwise. The Companies’ latest iteration of the transfer script continues to purposefully omit informing the customer that his or her information will be transferred to a third-party telemarketing company and therefore fails to comply with the rule and Commission’s order.

5. From start to finish, the Companies’ transfer script is designed to send as many callers to a telemarketing company KCPL and GMO themselves admit, in certain instances, 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). Even the telemarketing company’s witness acknowledged some Allconnect representatives were pushy and rude, requiring corrective action as necessary (Tr. Vol. 4, p. 423).

6. The Companies provide five bullet points explaining their latest draft. An examination of each point illuminates their focus on transferring customers to the telemarketer rather than providing any benefit to customers.

7. First, the Companies state:

Insertion of “Order” in lieu of “Customer” on the first line better aligns language with actions taken by the Customer Service Representative (“CSR”).

(Doc. No. 130, p. 3). Substituting the word “order” for “customer” is a way to mislead the caller about the kind of information the Companies are sending to the third-party company. Of course, the truth remains “order” information *is* “customer information.” Use of the word “order” disguises the intent to divulge customer information and avoid customer questions regarding the privacy of their information. There is no benefit to customers in this point.

8. Second, the Companies state:

Prompt for both order verification and provision of confirmation number on the first line, along with deletion of “This is your electric service confirmation number ____.” from the second line, provides more efficient direction to the CSR and is likely to improve overall call handling.

(Doc. No. 130, p. 3). Here, the Companies tell the Commission their focus is on “call handling.” Thus, the Companies’ intent is to design a script that will maximize the number of calls and customer information transferred to Allconnect in exchange for a fee. To the extent the Companies’ intentions were ambiguous, they are laid bare now. There is no benefit to customers in the Companies’ second point.

9. Third, the Companies state:

Adding “confirm your order for accuracy and” on the fourth line more accurately reflects what the Allconnect agent will do should the call be transferred.

(Doc. No. 130, p. 3). Even though the Commission explained “the confirmation function serves as a marketing hook to discourage utility customers from dropping off the line when their call is transferred to Allconnect,” the Companies reinsert the misleading marketing hook into the script (Doc. No. 119, p. 19). Companies’ representatives should provide a confirmation number as “[t]hey did so for many years ... and are capable of doing so now.” (Doc. No. 119, p. 19). There is no benefit to customers in the Companies’ third point.

10. Fourth, the Companies state:

Deleting “and your order information” from the sixth line eliminates needless redundancy (“and your order information” is also included on the third line) and is likely to improve overall call handling.

(Doc. No. 130, p. 3). As explained above, failure to receive consent to divulge customer information via this transfer is the essence of the Companies’ rule violation. Far from being a “needless redundancy”, a specific reference to customer information is an essential requirement. In this point, the Companies reference “call handling” underscoring the desire to transfer customer calls and information for a fee above all other concerns of the customer. There is no benefit to customers in the Companies’ fourth point.

11. Fifth, the Companies state:

Adding “the call is concluded” on the eighth line and deleting “Mr./Ms. _____, your call is complete. Thank you for Calling KCP&L or GMO.” on the ninth line recognizes both that the Commission’s directives in its Order did not cover the closing of the call and that Commission orders have recognized that the Company has consistently branded itself as “KCP&L”.

(Doc. No. 130, p. 3). The Companies do not want to tell customers the call with the regulated utility is complete. If customers know the call is complete, they may be less willing to have their call and customer information transferred to Allconnect and thus deprive the Companies of the fee. In this fifth point, the Companies inject another form of deception. Without any communication to the parties, the Companies propose to refer to themselves as the singular “KCP&L.” The purported reason is because the Companies have branded themselves as such (Doc. No. 130, p. 3). Importantly, KCPL and GMO are separate companies each with its own customer base. If customers, having been misled about the true name of their electric utility, have questions about the name it may impede the transfer to Allconnect. This is akin to the “call handling” focus; the Companies want to remove any perceived impediment to transferring customer calls and information. There is no rational justification to support the Companies’

proposal to withhold from customers the true name of their electric provider. A better policy would be to refrain from customer confusion. There is no benefit to customers in the Companies' fifth point.

Accounting for Revenues and Expenses

12. It is imprudent to undertake a program without an implementation plan. Yet, this is exactly what the Companies propose to do stating, "this [accounting for revenues and expenses "above the line"] can only be assessed after the fact[.]"(Doc. No. 130, p. 3). When it comes to accounting for the revenues and expenses, the Companies intend to "wing-it." In so doing, the Companies dismiss the Commission's direction.

13. The Companies attempt to justify their non-plan, by asserting "both the Staff and OPC will have ample opportunity to audit the Company's compliance efforts in other cases[.]" *Id.* Such a non-plan shifts the burden of accounting for revenues and expenses away from the companies, where it lies properly, and onto the Staff and OPC. As an economic regulator, the Commission is aware of the importance of accurate and reliable record keeping and should view the Companies' cavalier attitude regarding accounting treatment appropriately.

14. It should be clear to the Commission the Companies have not sought to engage the parties meaningfully in developing a path forward for their Allconnect program. Public Counsel requests the Commission reject the Companies latest transfer script.

Motion for Reconsideration

15. Public Counsel moves the Commission reconsider its decision not to seek penalties against the Companies. Based on the brazen attempt to continue misleading callers into transferring to Allconnect the Commission can reasonably infer the Companies' do not care about their customers' wishes. At a minimum, the law requires the Companies receive customer

consent before transferring the caller's information to Allconnect. This is not an unreasonable or burdensome requirement.

16. The Companies are choosing not to ask for customer consent. Instead, the Companies abuse their positions as monopolies in order to dictate their customers speak with the utilities' chosen telemarketer, ostensibly for the customer's own good. Whether the Companies' motivation is altruistic or not – recall, the Companies' are paid for each transfer – the Companies should never be permitted to mislead their customers.

17. When a company breaches the public trust by illegally divulging customer information to a telemarketing company for financial gain, as here, monetary penalties are appropriate. The Commission should direct its General Counsel to seek penalties against the Companies as authorized under Section 386.570, RSMo.

WHEREFORE Public Counsel submits its *Sur-reply to KCPL and GMO*, asks the Commission reject the Companies' latest proposed transfer script, and moves the Commission direct its General Counsel to seek financial penalties against the Companies.

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 24th day of May 2016:

/s/ Tim Opitz
