

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 12th day of
November, 2015.

Staff of the Missouri Public Service
Commission

Complainant,

v.

Kansas City Power & Light Company

And

KCP&L Greater Missouri Operations
Company

Respondents.

File No. EC-2015-0309

ORDER DENYING STAFF'S MOTION FOR SUMMARY DETERMINATION

Issue Date: November 12, 2015

Effective Date: November 12, 2015

The Staff of the Commission has brought a complaint against Kansas City Power & Light Company (KCP&L) and KCP&L Greater Missouri Operations Company (GMO), alleging that KCP&L and GMO have improperly shared customer information with Allconnect, a company that markets additional services to KCP&L and GMO customers who are attempting to obtain electric service at a new location. KCP&L and GMO have answered that complaint and it is currently set for evidentiary hearing beginning on January 19, 2016. Staff has prefiled its direct testimony, but KCP&L and GMO's rebuttal testimony is not due until November 19, 2015.

On October 6, 2015, Staff filed a motion for summary determination alleging that it is entitled to a Commission decision finding that there are no material facts in dispute and that the undisputed facts establish the violations alleged in Staff's complaint. By rule, the Respondents and other parties are allowed 30 days to respond to Staff's motion for summary determination. KCP&L and GMO filed a timely response on November 5.

Commission Rule 4 CSR 240-2.117(1)(E) allows the Commission to grant a motion for summary determination if:

the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest.

KCP&L and GMO disagree with Staff's allegation that there are no contested material facts, and in their response describe fourteen factual allegations in Staff's motion for summary determination that they dispute.

Only one contested material factual issue is needed to defeat Staff's motion for summary determination, and the Commission need not address each of the alleged fourteen disputed facts. It is enough to provide one example to establish that there is at least one material factual issue in dispute. This is established by reviewing paragraph 13 of Staff's motion, which alleges that the transfer of calls to Allconnect is inconvenient for KCP&L and GMO's customers, and then sets forth several facts described in Staff's testimony demonstrating the inconvenience to those customers. KCP&L and GMO specifically deny that transferring the calls to Allconnect is an inconvenience to its customers. The question of whether transferring the calls to Allconnect is an inconvenience to customers is a material fact because the decision of whether to seek penalties is a question for the Commission's discretion. Staff has asked the Commission to

authorize its General Counsel to proceed to circuit court to seek penalties against KCP&L and GMO and, since it lists this as a material fact in its motion for summary determination, Staff apparently believes the fact of inconvenience to customers is one that will influence the Commission to seek those penalties. Once KCP&L and GMO have had an opportunity to present testimony to rebut Staff's testimony, and to challenge Staff's testimony through cross-examination at the hearing, the Commission will be in a position to make a factual determination of whether the transfer of calls to Allconnect is inconvenient for the utilities' customers. But, the Commission cannot make that factual determination at this time, based only on the testimony presented by Staff.

A motion for summary determination is appropriate only if a party can demonstrate that there is no genuine issue as to any material fact. Staff has not made that demonstration in this case. Therefore, the Commission will deny Staff's Motion for Summary Determination.

Because it finds that there are contested material facts and that summary determination must be denied on that basis, the Commission will not reach the additional question of whether the facts alleged by Staff would entitle Staff to the relief it seeks as a matter of law.

THE COMMISSION ORDERS THAT:

1. Staff's Motion for Summary Determination is denied.

2. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur.

Woodruff, Chief Regulatory Law Judge