

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE
KAREN HASSELL HERREN
KENDRA A. ERICSON

SLOVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036-3003



TELEPHONE:
(202) 347-7170
FAX:
(202) 347-3619

WRITER'S E-MAIL:
cam@sloverandloftus.com

December 1, 2005

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423

ENTERED
Office of Proceedings
Part of
Public Record

215250

Re: Docket No. 42095, Kansas City Power & Light
Company v. Union Pacific Railroad Company

Dear Secretary Williams:

Enclosed for filing in the referenced proceeding please find an original and ten copies of Complainant Kansas City Power & Light Company's First Motion to Compel Responses to Interrogatories and Discovery Requests in the above proceeding. Three copies of a CD-ROM containing the text of this filing are also included with this filing.

An additional copy of this pleading is enclosed. Please indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

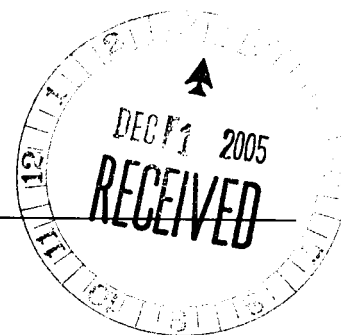
Thank you for your prompt attention to this matter.

Sincerely,

Christopher A. Mills

CAM:jml
Enclosures
cc: Counsel for Defendant

BEFORE THE
SURFACE TRANSPORTATION BOARD



KANSAS CITY POWER & LIGHT
COMPANY

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY

Defendant.

Docket No. 42095

215250

**COMPLAINANT'S FIRST MOTION TO COMPEL
RESPONSES TO INTERROGATORIES AND DISCOVERY REQUESTS**

KANSAS CITY POWER & LIGHT
COMPANY

By: William G. Riggins
General Counsel
Kansas City Power & Light Company
1201 Walnut
Post Office Box 418679
Kansas City, Missouri 64141

ENTERED
Office of Proceedings

DEC - 1 2005

Part of
Public Record

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: December 1, 2005

Kelvin J. Dowd
Christopher A. Mills
Daniel M. Jaffe
Kendra A. Ericson
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Attorneys and Practitioners

DEC 11 2005
RECEIVED

Docket No. 42095

- 3 -

("Responses") to KCPL's First Requests.¹ UP's Responses object outright to two (2) interrogatories and five (5) requests for production of documents ("RFP"), and otherwise include ambiguous commitments to produce documents in response to the remaining requests or offers to negotiate the scope of documents it might produce. UP also presented several general objections applicable to all of KCPL's First Requests. KCPL respectfully requests that the Board grant its motion to compel and that it overrule certain of UP's general objections.

Before turning to the specific objections lodged by UP, KCPL notes that the Board and the ICC repeatedly have held that the records of defendant railroads in cases brought under the Constrained Market Pricing principles are subject to broad discovery. *See, e.g., Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520, 548 (1985), *aff'd sub nom. Consolidated Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987) ("We recognize that shippers may require substantial discovery to litigate a case under CMP, and we are prepared to make that discovery available to them.") The Board's Rules of Practice reinforce this policy, permitting discovery of any matter, not privileged, which is relevant to the subject matter involved in a proceeding. See 49 C.F.R. § 1114.21(a). It is also well-settled that the Board's discovery rules are to be liberally construed. *See, e.g., Finance Docket No. 32821, Bar Ale, Inc., v. California Northern R.R.* (STB served March 15, 1996), at 2.

¹ A complete copy of UP's Responses is included with the electronic version of this filing. The individual objections and responses relevant to this Motion are quoted in pertinent part herein.

KCPL also notes that UP has not yet produced any documents in response to its Requests for Production, and the parties have not yet had an opportunity to meet to discuss UP's responses to individual discovery requests.² Accordingly, KCPL is limiting its First Motion to Compel to matters where UP has stated an unequivocal objection in its Responses. KCPL reserves the right to file one or more additional motions to compel if warranted by UP's actual document production (or lack thereof) in response to individual RFPs.

I.

GENERAL OBJECTIONS

UP's Responses include 17 general objections to KCPL's First Requests. KCPL submits that General Objections 6, 7, 8, and 16 should be overruled. Each objection is discussed below.

General Objection No. 6

UP's General Objection No. 6 states:

UP objects on the grounds of burden and relevance to producing, and in general is not producing, documents or information from prior to 2002. Any production by UP of documents or information in this category shall not be considered a waiver of this objection.

UP's objection should be overruled. A defendant cannot arbitrarily choose from what date forward it will produce documents – especially where older data is

² In this regard, several of UP's responses to individual RFPs state that UP is willing to discuss and negotiate with KCPL concerning what it will produce in response to various RFPs. For example, UP's response to RFP No. 25 states: "Subject to and without waiving its objections, UP will negotiate with KCPL in an attempt to agree upon a scope of request to which UP can reasonably respond."

particularly informative (*i.e.*, construction undertaken in the past on the lines the SARR might replicate) or otherwise required.³ Moreover, KCPL's requests were carefully crafted to capture needed data for appropriate time periods. For example, line-specific maintenance of way inquiries and many other requests asked for data only from 2002 forward.⁴ Requests that necessarily required data from before 2002 were limited to those areas where the data would still be relevant, such as data related to construction projects and land acquisitions/sales. Finally, UP's General Objection No. 6 and the other time-based limitations in its responses to RFP Nos. 23, 24, 58, 59, and 81, as with many others, leave KCPL with no certainty as to what UP actually will produce or what it intends to withhold. Thus, these objections should be overruled.

General Objection No. 7

UP's General Objection No. 7 states:

UP objects on the grounds of burden and relevance to producing documents or information related to non-coal traffic. Any production by UP of information on documents relating to non-coal traffic shall not be considered a waiver of this objection.⁵

³ UP raises additional temporal objections to RFP Nos. 23 (KCPL train data for 2004 and 2005 only), 24 (KCPL service-related crew wage data for 2004 and 2005 only), 58 (locomotive fueling data for 2005 only), 59 (contractor fueling data for 2005 only), and 81 (MOW employee wage rates for 2005 only).

⁴ *See, e.g.*, RFP Nos. 4-11.

⁵ UP's General Objection No. 7 is repeated in its responses to RFP Nos. 34 (car leases), 52 (contracts and pricing documents), 63 (locomotive utilization), and 67 (information on non-coal railcars).

The complainant in a SAC rate case develops the traffic group for the SARR, and the *Coal Rate Guidelines* specify that the complainant is free to group traffic types and quantities to maximize the density and efficiency of the SARR. Indeed, the *Guidelines* state that: "We see no need for any restrictions on the traffic that may potentially be included in a stand-alone group." *Id.* at 544. UP's stated intent to limit its document production exclusively to coal-related data is without support in the law. Moreover, in recent coal rate cases, the Board-approved SARR traffic group has included non-coal traffic.⁶ Thus, the relevance of data concerning such traffic cannot be questioned. The Board therefore should overrule UP's General Objection No. 7 and the similar objections made in UP's responses to RFP Nos. 34, 52, 63 and 67.

General Objection No. 8

In its General Objection No. 8, UP states that it will not perform any special studies in response to KCPL's First Requests, or if it does, it expects to be compensated for them. In particular, the objection states:

UP objects to the discovery requests to the extent that they call for the preparation of compilations, documents, summaries, analyses, or other special studies of any sort not already in existence, and UP by its responses does not, unless otherwise noted, undertake to produce any special studies. If UP does undertake a special study to answer a KCPL request, it expects to be compensated by KCPL. Any production by UP of information or documents in this category shall not be considered a waiver of this objection.

⁶ See *Carolina Power & Light Company v. Norfolk Southern Railway Company*, Docket No. 42072 (Decision served Dec. 23, 2003) at 15; *Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railway Company*, Docket No. 42058 (Decision served Nov. 19, 2003) at 4-5.

KCPL has not asked UP to prepare any special studies. KCPL is seeking actual cost and other data from UP – all of which is standard fare in maximum rate case proceedings – in whatever form it is kept in the ordinary course of business. Nevertheless, KCPL is concerned that this objection might be used by UP as a shield to slow or prevent production of relevant cost and other records in its possession – a practice not countenanced under relevant precedent. *See, e.g., San Antonio, Texas, Acting By and Through its City Public Service Board v. Burlington Northern R.R.*, Docket No. 36180 (Decision issued Nov. 24, 1986) 1986 ICC LEXIS 56, at *8 (“*San Antonio*”); *Annual Volume Rates on Coal – Rawhide Junction, WY to Sergeant Bluff, IA; Iowa Public Service Co. v. Burlington Northern R.R.*, Docket No. 37021 (Decision issued March 11, 1985) 1985 ICC LEXIS 542, at *7-8. (“*Iowa Public Service*”). Therefore, KCPL submits that UP’s objection should be overruled.

General Objection No. 16

UP’s General Objection No. 16 states:

UP objects on the grounds of burden and relevance to the production of documents and information from which, to UP’s, knowledge, complainants have not used in their evidentiary submissions when previously produced in other cases.

This objection strains credulity. UP is not the arbiter of what data a complainant might use in a particular case, and it has no right to decide on its own whether a complainant will or will not use a particular piece of data that it has requested. UP has not even been a party to most of the recent cases adjudicated before the Board. Thus, UP’s “knowledge” about what discovery materials complainants have used in other cases is very limited. Moreover, each rate case, and each SARR, is unique based on the

particular movements involved. Any real objections of this nature are best left to individual discovery requests, but UP did not actually lodge this objection anywhere else in its Responses. This general objection finds no support in the Board's rules, and should be overruled.

Additional Non-Specific Limitation – “Reasonably Available”

Throughout UP's responses to KCPL's individual RFPs, UP limits the scope of documents that it intends to produce by suggesting that it will identify and produce only those documents that are “reasonably available.”⁷ The Board should not permit a party to pick and choose data to collect based upon what is “reasonably available.” Either the data is available or it is not. The fact that some effort may be required to find and produce it is irrelevant given the regulatory compact under which UP exercises its rate-making initiative. To hold otherwise thwarts the purpose of discovery, and would leave both the Board and KCPL to wonder what UP has in its possession, but did not produce.

II.

OBJECTIONS TO INTERROGATORIES

KCPL's Interrogatories were prefaced by a series of Requests for Admission. Requests for Admission Nos. 3 and 4 sought UP's admission that there is no effective intramodal or intermodal competition for the movement of coal to KCPL's

⁷ This limitation is invoked in Interrogatory Nos. 5, 6, 10-14 and RFP Nos. 4-7, 10, 11, 13-18, 20-24, 26-31, 33-35, 39-44, 46-51, 54, 57-66, 68-73, 77, 78, 80-88, 90-114, 116, 117.

Montrose plant. Interrogatory Nos. 3 and 4 asked for additional information if UP denied Requests for Admission Nos. 3 and 4, which it did. In particular, the interrogatories state:

Interrogatory No. 3

If your response to Request for Admission No. 3 was anything other than an unqualified admission, please describe the effective intramodal competition that UP claims exists for the transportation to which the Challenged Rates apply, the annual volume of coal subject to such competition, and why such competition is effective.

Interrogatory No. 4

If your response to Request for Admission No. 4 was anything other than an unqualified admission, please describe the effective intermodal competition that UP claims exists for the transportation to which the Challenged Rates apply, the volume of coal subject to such competition, and why you think such competition is effective.

UP's response was the same in each case:

UP objects to this interrogatory on the grounds that is unduly burdensome and that is premature in that the parties have not completed discovery and their evidentiary submissions in this proceeding.

UP's "premature" objection is unfounded. Information about whether UP considers the traffic to be subject to effective intermodal or intramodal competition is clearly a subject for the discovery phase of the proceeding because KCPL must make a qualitative market dominance presentation in its opening evidence. Moreover, UP alleged the existence of effective intermodal and intramodal competition in its Answer.

KCPL is entitled to discover information from UP that is relevant to UP's stated claims and KCPL's required presentation.⁸

While KCPL would prefer written answers to its interrogatories, it recognizes that UP may, under the Board's rules,⁹ opt to produce responsive documents instead of providing a specific answer. Thus, KCPL requests that the Board compel UP either to answer Interrogatory Nos. 3 and 4, or produce responsive documents containing the requested information.

III.

OBJECTIONS TO REQUESTS FOR PRODUCTION

UP objects entirely to five (5) Requests for Production propounded by KCPL. As demonstrated below, UP's objections are without merit, and the Board should grant KCPL's motion to compel with respect to each Request.

RFP No. 1

KCPL's RFP No. 1 states:

Please produce all documents related to the preparation of Item 4140-C to UP Circular 111, attached as Exhibit B to the Complaint in this case, and all predecessor publications thereto, including but not limited to all documents used and/or relied upon in determining the level of the Challenged Rates.

UP's response to this request states only that:

⁸ UP's burden objection is baseless and unexplained. Moreover, the need for competition-related information easily outweighs any likely burden on UP.

⁹ See 49 C.F.R. § 1114.26(b).

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Given the broad nature of discovery, as noted earlier, it is incumbent on the objecting party to show that its objections are meritorious. However, UP's objections based on burden, vagueness and breadth seem to be nothing but boilerplate objections lodged throughout UP's responses – a practice that is generally frowned upon. *See, e.g., Mead Corp. v. Riverwood Natural Resources Corp.*, 145 F.R.D. 512, 515 (D. Minn. 1992) (“an objection to a discovery request cannot be merely conclusory, and that intoning the ‘overly broad and burdensome’ litany, without more, does not express a valid objection.”) UP does not suggest any particular reason why this request is burdensome. Indeed, given the narrow nature of the request, it legitimately cannot be characterized as vague or overbroad, let alone so burdensome as to be repugnant to the broad discovery rules.

Likewise, UP's relevance objection is unfounded. The foundations of the rate being challenged are at the heart of this case. In other words, the Request goes to the essential subject matter of the case, which puts the request directly in compliance with 49 C.F.R. § 1114.21(a). Consequently, the Board should grant KCPL's motion to compel production of documents responsive to RFP No. 1.

RFP No. 2

KCPL's RFP No. 2 seeks UP's internal studies on the profitability its coal traffic. In particular, RFP No. 2 states:

Please produce all studies and analysis conducted by or for UP from January 1, 2000 to date related to (a) the profitability of UP's coal traffic; and (b) the profitability of coal transportation service provided by UP for the account of KCPL.

UP's response includes its boilerplate objections, and a "management-cost" objection. But UP's response also includes cryptic references to filings it has made in other rate cases regarding profitability. In particular, UP states that:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP specifically objects to the extent that this request seeks documents related to UP's internal costing system on the grounds that its internal costing system is irrelevant in STB rate cases and therefore is not discoverable. See Docket No. 42059, Northern States Power Co. v. Union Pacific R.R., Decision served May 24, 2001, pp. 8-9.; Docket No. 42038, Minnesota Power v. Duluth, Missabe & Iron Range Ry., Decision served July 8, 1999, p. 2; Potomac Electric Power Co. v. CSX Transportation, Inc., 2 S.T.B. 290, 293-94 (1997).

Subject to and without waiving its objections, UP states that its publicly available evidentiary filings in recent rate reasonableness challenges contain potentially responsive analyses. See Docket No. 42058, Arizona Electric Power Cooperative v. The Burlington Northern & Santa Fe Ry. & Union Pacific R.R.; No. 42059, Northern States Power Co. v. Union Pacific R.R.; and Docket No. 42051, Wisconsin Power & Light Co. v. Union Pacific R.R.

UP's boilerplate objections are unfounded for the reasons described above.

In addition, coal traffic profitability data is clearly relevant as defendants in recent coal rate cases have asserted the need to increase the profitability of their coal traffic as affirmative grounds for the approval of challenged rates. *See, e.g., Public Service Company of Colorado d/b/a Xcel Energy v. Burlington Northern and Santa Fe Ry.*, STB

Docket No. 42057 (STB served Jan. 19, 2005) at 6. Indeed, UP's response suggests that UP itself has raised the profitability of coal traffic as an issue in other coal rate cases before the Board – although it is unclear exactly what “publicly available evidentiary filings” in other cases UP is referring to. Nevertheless, UP's own words confirm that such data is relevant.¹⁰

As for UP's management cost objection, contrary to UP's assertions, ICC/STB discovery precedents do not preclude discovery of so-called “management cost” data where, as here, the information is demonstrably relevant. *See, e.g., San Antonio*, (ICC served Dec. 5, 1986) at 7 (directing production of relevant internal management cost documents); *Arizona Electric Power Cooperative, Inc. v. The Atchison, Topeka and Santa Fe Ry.*, ICC Docket No. 37437, 1986 ICC LEXIS 104, at *5-*10 (ICC served Oct. 23, 1986).¹¹

KCPL further submits that actual production of coal profitability data is necessary because UP's suggestion that profitability data is potentially available from the

¹⁰ The requested information is also relevant under the Long-Cannon Amendment standards. These standards were included in the Staggers Act of 1980 and remain in effect today. *See* 49 U.S.C. §10701(d)(2). These standards are also included in the *Coal Rate Guidelines*; *id.* at 540. They are intended to prevent rail carriers from extracting excessive profits on captive coal traffic. UP's internal comparisons of the profitability of its coal traffic with the profitability of the issue KCPL coal traffic are relevant in addressing UP's compliance with the Long-Cannon Amendment directives.

¹¹ *See also Arkansas Power & Light Co. – Petition to Institute Rulemaking Proceeding – Implementation of Long-Cannon Amendment to the Staggers Rail Act*, 365 I.C.C. 983, 997 (1982) (holding that if a Long-Cannon discovery request “is reasonable, the railroads may not generally refuse to provide information about their costs of providing service on the ground that cost information is proprietary”).

public records in other rate cases is illusory. Counsel for KCPL have reviewed the limited public filings in the cases cited by UP, and have not discovered any coal profitability data other than a general concern stated on UP's part that revenue must increase as a condition of reinvestment in its infrastructure.¹² Moreover, even if such data were available in those cases, it is now decidedly out of date given recent actions by UP (and BNSF) to raise their rates for transporting Powder River Basin coal. Therefore, the Board should order UP to produce up-to-date profitability data.

RFP Nos. 37 and 38

RFP Nos. 37 and 38 are interrelated. The Requests are stated below followed by UP's response, which was identical in each case:

RFP No. 37:

Please produce documents sufficient to show the information used by UP for the following items in determining the maintenance and operating costs associated with providing coal unit train transportation services, including the definitions and decoders needed to understand each piece of information and the supporting data used to develop the information (all in a computer-readable format to the extent available):

- a. Roadway maintenance;
- b. Road property investment;
- c. Locomotive investment;
- d. Locomotive maintenance;
- e. Locomotive fuel;
- f. Railcar investment;

¹² The evidentiary filings in the *Wisconsin Power & Light* and *Northern States Power* cases were not public. UP's public evidentiary filings in the *Arizona Electric Power Cooperative* case say nothing about the overall profitability of UP's coal traffic, and evidence concerning the revenues and variable costs for the specific joint BNSF/UP traffic in issue is in no way responsive to RFP No. 2.

- g. Railcar maintenance;
- h. Train and engine crews; and
- i. Clerical expenses.

RFP No. 38:

Please produce all documents related to any determination by UP of its costs of transporting coal from Origins to Destination using any of the information described in Interrogatory No. 8 and/or produced in response to Request for Production No. 3[7] (in a computer-readable format if available) during the period from 2002 to the present.

UP Response:

UP objects to this request on the grounds that is unduly burdensome, is vague, is overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP specifically objects to the extent that this request seeks documents related to UP's internal costing system on the grounds that its internal costing system is irrelevant in STB rate cases and therefore is not discoverable. See Docket No. 42059, Northern States Power Co. v. Union Pacific R.R., Decision served May 24, 2001, pp. 8-9.; Docket No. 42038, Minnesota Power v. Duluth, Missabe & Iron Range Ry., Decision served July 8, 1999, p. 2; Potomac Electric Power Co. v. CSX Transportation, Inc., 2 S.T.B. 290, 293-94 (1997).

UP's boilerplate objections are unpersuasive. Each of the listed cost items is a critical component in calculating variable costs for purposes of determining the jurisdictional threshold rate level. The need for such data outweighs any burden objection that UP might raise – recognizing, of course, that UP did not actually state with specificity any particular burden. Likewise, the request is neither vague nor overbroad, because it seeks cost inputs and decoders for a specific list of cost items rather than a generic request for variable cost-related inputs.

UP's management-cost objection also is unfounded. Request No. 37 seeks the raw data for the listed categories of costs. It does not seek to discover the inner workings of UP's internal costing system, or outputs therefrom. Thus, KCPL's request is not barred by the decisions cited by UP. For example, in *Minnesota Power*, the Board made clear that management-cost inputs, including operating and financial data, are discoverable. *Id.* at 9 ("while we will deny access to DMIR's proprietary costing system and all cost estimates produced by that system, we will require DMIR, to the extent it has not already done so in response to other of the requests, to produce the operating and financial data used in its costing system").

Similarly, Request No. 38 does not seek management cost data. Rather, it seeks movement- and line-specific cost inputs that UP utilizes in determining its cost of service. The Board has repeatedly held that movement- and line-specific cost data are preferable to system-average calculations. See, e.g., *San Antonio*, 1 I.C.C.2d 561, 571 (1986); *Omaha Public Power Dist. v. Burlington Northern R.R.*, 3 I.C.C.2d 123, 148-49 (1986), *aff'd* 3 I.C.C.2d 853 (1987); *FMC Wyoming Corp. and FMC Corp. v. Union Pacific R.R.*, 4 S.T.B. 699, 747 (2000); and *West Texas Utilities Co. v. Burlington Northern R.R.*, 1 S.T.B. 638, 721 (1996). Thus, the Board should grant KCPL's motion to compel with respect to RFP Nos. 37 and 38.

RFP No. 45

RFP No. 45 seeks information about how UP accounts for assets that are retired earlier or later than their expected service life. In particular, the request states:

Please produce, separately for UP's Annual Report
Form R-1 and for any internal asset investment reporting or

recordation system utilized by UP which differs from the Form R-1, documents sufficient to show every instance in which UP assets were retired in advance of their normal, average or expected service life (or the average service life of a group of assets including the particular asset retired), and every instance in which assets were retired at ages exceeding their normal, average or expected service life (or the average service life of a group of assets including the particular asset retired), by STB road property account, during the period from January 1, 2002 to the present. The response to this Request should show all calculations related to these retirements.

UP's response states:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Treatment of early and late asset retirements has been at issue in recent variable cost submissions by parties to rate cases.¹³ Thus, discovery of information concerning the accounting treatment of such retirements is clearly relevant. RFP No. 45 is neither overbroad nor vague, in that the Board has standard road property accounts with which UP is intimately familiar, and the request is targeted at a specific subset of the underlying data that feeds into those accounts. As such, the Board should compel its production.

¹³ See, e.g., *AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company*, Docket No. 41191 (Sub-No. 1), Reply Narrative of BNSF (Public Version) filed May 24, 2004, at p. II-38.

CONCLUSION

For the foregoing reasons, KCPL requests that the Board overrule UP's general objections and compel responses to the specific KCPL Interrogatories and Requests for Production discussed herein.

Respectfully submitted,

KANSAS CITY POWER & LIGHT
COMPANY

By: William G. Riggins
General Counsel
Kansas City Power & Light Company
1201 Walnut
Post Office Box 418679
Kansas City, Missouri 64141

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Kelvin J. Dowd
Christopher A. Mills
Daniel M. Jaffe
Kendra A. Ericson
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036



Dated: December 1, 2005

Attorneys and Practitioners

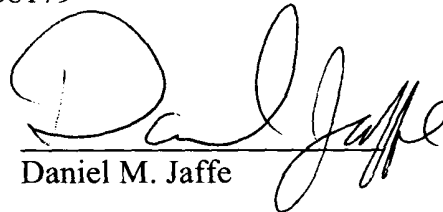
CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December 2005, I served copies of the foregoing First Motion to Compel upon counsel for Defendant by hand, as follows:

Linda J. Morgan
David L. Meyer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

and by Federal Express, as follows:

J. Michael Hemmer
Louise A. Rinn
Gabriel S. Meyer
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179


Daniel M. Jaffe