SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Amendment No. 2 to

SCHEDULE 14D-9

Solicitation/Recommendation Statement Pursuant to
Section 14(d)(4) of the Securities Exchange Act of 1934

KANSAS CITY POWER & LIGHT COMPANY
(Name of Subject Company)

KANSAS CITY POWER & LIGHT COMPANY
(Name of Person Filing Statement)

Common Stock, no par value
(Title of Class of Securities)

485134100
(CUSIP Number of Class of Securities)

Jeanie Sell Latz, Esq.
Senior Vice President-Corporate Services
Kansas City Power & Light Company
1201 Walnut
Kansas City, Missouri 64106-2124
(816) 556-2200
(Name, address and telephone number of person authorized
to receive notice and communications on behalf
of the person filing statement)

Copy to:

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This statement amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 of Kansas City Power & Light Company, a Missouri corporation ("KCPL"), filed with the Securities and Exchange Commission (the "Commission") on July 9, 1996, as amended, (the "Schedule 14D-9"), with respect to the exchange offer made by Western Resources, Inc., a Kansas corporation ("Western Resources"), to exchange Western Resources common stock, par value $5.00 per share, for all of the outstanding shares of KCPL common stock, no par value ("KCPL Common Stock"), on the terms and conditions set forth in the prospectus of Western Resources dated July 3, 1996 and the related Letter of Transmittal.

Capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Schedule 14D-9.

Item 8. Additional Information to be Furnished.

On July 9, 1996, the District Court issued an order granting KCPL's motion to stay the order to produce documents pending disposition of a petition for writ of mandamus, and suspending all discovery until the United States Court of Appeals for the Eighth Circuit (the "Eighth Circuit") rules on KCPL's petition for a writ of mandamus. Also on July 9, 1996, KCPL filed its petition for a writ of mandamus with the Eighth Circuit, along with a motion to expedite the disposition of such petition.

Item 9. Material to be Filed as Exhibits.

The following Exhibits are filed herewith:

Exhibit 40. Order regarding Motion for Stay Pending Disposition of a Petition for Writ of Mandamus and Suspension of Discovery (dated July 9, 1996, C.A. No. 96-552-CV-W-5, U.S. District Court for the Western District of Missouri, Western Division).

Exhibit 41. Excerpt from script for KCPL employee information hotline bulletin.

Exhibit 42. Excerpt from script for KCPL employee information hotline bulletin.

Exhibit 43. Petition for Writ of Mandamus filed by KCPL on July 9, 1996, in the U.S. Court of Appeals for the Eighth Circuit.

Exhibit 44. Petitioner's Motion for Expedited Disposition of Petition for Writ of Mandamus filed by KCPL on July 9, 1996, in the U.S. Court of Appeals for the Eighth Circuit.

SIGNATURE

After reasonable inquiry and to the best of her knowledge and belief, the undersigned certifies that the information set forth in this Statement is true, complete and correct.

KANSAS CITY POWER & LIGHT COMPANY

By: /s/Jeanie Sell Latz
Jeanie Sell Latz
Senior Vice President-Corporate Services

Dated: July 10, 1996

EXHIBIT INDEX

Exhibit 40

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

KANSAS CITY POWER & LIGHT COMPANY,)
Plaintiff,)

vs.) No. 96-0552-CV-W-5

WESTERN RESOURCES, INC. and ROBERT T. RIVES,)
Defendants.)

ORDER

Pursuant to the July 9, 1996 teleconference,

It is hereby

ORDERED that plaintiff's Motion For Stay Pending Disposition of a Petition for Writ of Mandamus is granted. It is further

ORDERED that all discovery shall be suspended until the United States Court of Appeals for the Eighth Circuit rules on plaintiff's Petition for Writ of Mandamus.

/s/Scott O. Wright
SCOTT O. WRIGHT
Senior United States District Judge

July 09, 1996

Exhibit 41

[Excerpt from KCPL employee Hotline information bulletin]

Thanks for calling the Hotline for Tuesday, July 9.

Kansas City Power & Light Company announced, in response to Western Resources, Inc. formally commencing its unsolicited exchange offer, that the Company's Board of Directors will review the exchange offer shortly.

KCPL stated that shareholders need not take any action at this time with respect to Western's exchange offer and requested that shareholders await the recommendation of the KCPL Board.

A complete copy of the news release is in the Merger Update icon in the CorpInfo group of Windows.

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Exhibit 42

[Excerpt from KCPL employee Hotline information bulletin]

Thanks for calling the Hotline for Wednesday, July 10.

The members of the board of directors of Kansas City Power & Light Company, by a unanimous vote of those directors present, recommended that KCPL shareholders reject Western Resources, Inc.'s hostile exchange offer. At the same time, the KCPL Board reaffirmed its decision to merge with UtiliCorp United Inc. to form Maxim Energies, Inc.

In rejecting Western's unsolicited hostile offer, the KCPL Board reviewed KCPL's long-term strategic plan and the benefits of a merger with UtiliCorp, and determined that Western's offer is not in the best interests of KCPL, its shareholders, customers, employees and other constituencies.

"There are many reasons why we think that Western is an unattractive partner. Of paramount concern is our belief that Western's hostile offer is based on a number of faulty assumptions that raise serious questions as to Western's financial prospects and its ability to sustain dividends at its promised dividend rate," said Drue Jennings, chairman, president and chief executive officer of KCPL. Mr. Jennings cited the following:

- Western faces significant rate reductions which KCPL believes will imperil its ability to sustain promised dividends.

- KCPL believes that reductions in merger-related savings realized and/or retained will further hamper Western's ability to make its promised dividend payments.

- KCPL believes that Western will be under pressure to reduce rates for its KGE customers, and any reduction to Western's revenue base would further threaten Western's ability to makes its promised dividend payments.

- A KCPL/Western combination would concentrate risk in a single asset and a single geographic market. A combined KCPL/Western entity would own 94% of the Wolf Creek nuclear plan, concentrating a significant amount of capital and risk in a single asset.

- The KCPL Board questions Western's commitment to KCPL employees. Western has stated that no layoffs would result from its proposal, but Western's filings with the Kansas Corporation Commission state that 531 employee positions will be eliminated and assume that all resulting savings will be available by January 1, 1998. The KCPL Board does not believe that Western can reduce 531 positions in such a short time without laying off KCPL employees.

- Western's hostile offer is conditioned on its transaction being accounted for as a "pooling of interests," and KCPL does not believe that such accounting treatment will be available.

The KCPL Board also reaffirmed its support for a merger with UtiliCorp to form Maxim Energies, Inc. The KCPL Board believes that Maxim will be a customer-focused, low-cost energy supplier with diversified assets and the financial resources to grow and thrive in the electric utility industry which is on the verge of deregulation. The KCPL Board believes that Maxim will allow KCPL shareholders improved opportunities for long-term earnings and dividend growth which are superior to that offered by Western's hostile offer.

A shareholder vote to consider the UtiliCorp transaction has been scheduled for Wednesday, August 7, 1996.

A complete copy of this news release is available in the Merger Update icon in the CorpInfo group of Windows, as well as

in Merger Central.

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Exhibit 43

IN THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 96-_____

IN RE KANSAS CITY POWER
& LIGHT CO.

Petitioner

PETITION FOR WRIT OF MANDAMUS

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SUMMARY

In the course of litigation arising from a hostile corporate takeover attempt, the District Court for the Western District of Missouri, The Honorable Scott O. Wright, Senior District Judge, has ordered Petitioner to turn over attorney-client privileged materials (including minutes of conversations between Petitioner's Board of Directors and its counsel regarding the takeover) to its opposing parties, including the counsel for the company making the hostile takeover bid. Petitioner Kansas City Power & Light Co. ("KCPL") hereby petitions the Court pursuant to 28 U.S.C. 1651 and Federal Rule of Appellate Procedure 21 for a Writ of Mandamus to the District Court, directing the District Court to vacate its oral ruling of July 3, 1996 ordering KCPL to produce these attorney-client privileged documents. The grounds for this petition are set forth herein.

KCPL requests oral argument, with 20 minutes necessary to present its argument, because of the important issues of first impression raised by the order of the District Court, including the application of Garner v. Wolfinbarger, 430 F.2d 1093 (5th Cir. 1970), cert. denied, 401 U.S. 974, 28 L. Ed. 2d 323, 91 S. Ct. 1191 (1971), in the State of Missouri.

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PRELIMINARY STATEMENT

The district court has made a fundamental error in concluding that KCPL's privileged communications with its counsel must be divulged to two adverse shareholders, one of whom is represented by counsel for the company making the hostile takeover bid at issue in this litigation. In an oral ruling made without the benefit of an evidentiary record or briefing of the important legal issues implicated, the District Court ruled that KCPL must produce in discovery documents reflecting confidential attorney-client communications concerning the hostile takeover and KCPL's own merger plans. This is an unprecedented virtual eradication of the corporate privilege at a time when its application is crucial to KCPL's board's ability to protect corporate constituencies from a threat to corporate policy and effectiveness.

In so ruling, the District Court overlooked the United States Supreme Court's recognition in Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343 (1985), that it is the directors and management of a corporation that are empowered to control the assertion or waiver of the corporation's attorney-client privilege, as well as Missouri law (i) placing the management of a corporation's property and business in the hands of its board of directors and (ii) favoring the expansive application of the attorney-client privilege. Thus, this Petition implicates not only the corporate attorney-client privilege, but also the issues of corporate governance inextricably intertwined with it.

Petitioner respectfully urges this Court to issue a Writ of Mandamus directing that the District Court's order requiring disclosure of KCPL's attorney-client communications be vacated. Alternatively, KCPL respectfully requests that this Court direct that counsel for Western Resources be barred from any access to such communications.

The District Court has jurisdiction over the case below pursuant to 28 U.S.C. Section 1332. This Court has jurisdiction to entertain this petition pursuant to 28 U.S.C. Section 1651.

STATEMENT OF ISSUES

1. Whether KCPL has satisfied the requirements for review of

its petition for writ of mandamus by this Court. See Pfizer Inc. v. Lord, 456 F.2d 545 (8th Cir. 1972); In re Bieter Co., 16 F.3d 929 (8th Cir. 1994), reh'g, en banc, denied U.S. App. LEXIS 8898 (8th Cir. April 25, 1994).

2. Whether KCPL is entitled to the issuance of a writ of mandamus because of clear abuse of discretion or clear legal error by the District Court which would result in irremediable harm. See In re Bieter, supra (8th Cir. 1994).

3. Whether the District Court clearly abused its discretion by ordering the production of attorney-client privileged documents without the submission of record evidence or briefing. See In re Remington Arms Co., Inc., 952 F.2d 1029 (8th Cir. 1991).

4. Whether the District Court committed clear legal error by adopting Garner v. Wolfinbarger, supra, in a case governed by Missouri law. State ex rel. Great American Ins. Co. v. Smith, 574 S.W.2d 379 (Mo. banc 1978); Milroy v. Hanson, 875 F. Supp. 646 (D. Neb. 1995), appeal after remand, 902 F. Supp. 1029, rev'd, vacated sub nom., In re Milroy, 1996 U.S. App. LEXIS 13018 (8th Cir. February 22, 1996).

5. Whether the District Court committed clear legal error in ordering the production of attorney-client privileged documents to shareholders who had not made a shareholder demand prior to bringing suit against the corporation. See Wolgin v. Simon, 722 F.2d 389 (8th Cir. 1983); Ohio-Sealy Mattress Mfg. Co. v. Kaplan, 90 F.R.D. 21 (N.D. Ill. 1980), cert. denied, 459 U.S. 943 (1982).

6. Whether the District Court abused its discretion by ordering the production of attorney-client privileged documents to counsel for hostile takeover bidder. See Torchmark Corp. v. Bixby, 708 F. Supp. 1070 (W.D. Mo. 1988); Blair v. Armontrout, 916 F.2d 1310, 1333 (8th Cir. 1991), cert. denied, 502 U.S. 825 (1991); State of Arkansas v. Dean Food Products Co. Inc., 605 F.2d 380 (8th Cir. 1979), overruled in part, 612 F.2d 377 (8th Cir. 1980).

STATEMENT OF THE CASE

The Parties

For the sake of clarity, the designation of the parties in the District Court shall be used below.

1. Plaintiff KCPL is a Missouri corporation whose headquarters and principal place of business are located in Kansas City, Missouri. (KCPL Complaint ("KCPL Complt.") paragraph 6, attached hereto as Exhibit "A"; Answer of Defendant Western Resources, Inc. and Robert L. Rives ("WR&R Ans.") paragraph 6, attached hereto as Exhibit "B"; Answer and Counterclaim in Intervention, Counterclaim ("Intrv. Ans. & Cntrclm., Cntrclm."); paragraph 2 attached hereto as Exhibit "C.") KCPL is a public utility which provides electricity to over 430,000 customers in western Missouri and eastern Kansas. (KCPL Cmplt. paragraph 6; WR&R Ans. 6; Intrv. Ans. & Cntrclm., Cntrclm. paragraph 7.) Each of KCPL's directors have been named as counterclaim defendants in this action. (Intrv. Ans & Cntrclm., Cntrclm. paragraph 3.)

2. Defendant Western Resources ("Western") is a Kansas corporation whose headquarters and principal place of business are located in Topeka, Kansas. (KCPL Cmplt. paragraph 7; WR&R Ans. paragraph 7; Intrv. Ans & Cntrclm., Cntrclm. paragraph 8.) Western Resources is engaged principally in the production and distribution of electricity and the sale of natural gas. (KCPL Cmplt. paragraph 7; WR&R Ans. paragraph 7; Intrv. Ans & Cntrclm., Cntrclm. paragraph 8.)

3. Defendant Robert L. Rives ("Rives") purports to be a holder of KCPL common stock and has acted on Western's behalf in demanding a list of KCPL shareholders for use in soliciting proxies for Western. (KCPL Cmplt. paragraph 8; WR&R Ans. paragraph 8.) Western and Rives share the same attorneys in this action -- Sullivan & Cromwell of New York, New York and Stinson, Mag & Fizzell of Kansas City, Missouri. (WR&R Ans. at 9.)

4. Intervenor Jack R. Manson (hereafter referred to as "Manson" or "Intervenor") is a shareholder of KCPL. (Intrv. Ans. & Cntrclm., Cntrclm. paragraph 1; Plaintiff's and Counterclaim Defendants' Reply to Intervenor's Counterclaim ("Reply to Intrv."), attached hereto as Exhibit "D," paragraph 1.) Manson seeks to represent a class consisting of KCPL shareholders in challenging the Revised Merger Agreement and the conduct of KCPL's board.

(Intrv. Ans. & Cntrclm., Cntrclm. paragraphs 32-42.)

The Original Merger Agreement

5. On January 19, 1996, KCPL entered into a merger agreement (the "Original Merger Agreement") with UtiliCorp, an energy company headquartered in Kansas City. (KCPL Cmplt. paragraph 9; WR&R Ans. paragraph 9; Intrv. Ans. & Cntrclm., Ans. paragraph 5.) Under the Original Merger Agreement, both KCPL and UtiliCorp would have been merged into a new corporation ("Newco"). (KCPL Cmplt. paragraph 10; WR&R Ans. paragraph 10; Intrv. Ans. & Cntrclm., Ans. paragraph 5.) Each share of KCPL stock would have been converted into one Newco share, and each share of UtiliCorp stock would have been converted into 1.096 Newco shares, representing an effective exchange ratio of 1.096 KCPL shares for 1 UtiliCorp share. (KCPL Cmplt. paragraph 10; WR&R Ans. paragraph 10; Intrv. Ans. & Cntrclm., Ans. paragraph 5.) The original transaction would have required the approval of two-thirds of the outstanding KCPL shares. (KCPL Cmplt. paragraph 12; WR&R Ans. paragraph 12; Intrv. Ans. & Cntrclm., Ans. paragraph 7.) The shareholder vote on the Original Merger Agreement was scheduled to occur at KCPL's May 22, 1996 annual meeting. (KCPL Cmplt. paragraph 12; WR&R Ans. paragraph 12; Intrv. Ans. & Cntrclm., Ans. paragraph 7.)

Western Resources' Hostile Takeover Proposal

6. On April 14, 1996 Western sent to Mr. Drue Jennings, KCPL's Chairman and CEO, a letter proposing a merger in which each KCPL shareholder would purportedly receive $28 worth of Western common stock for each KCPL share. (KCPL Cmplt. paragraph 13; WR&R Ans. paragraph 13; Intrv. Ans. Cntrclm., Ans. paragraph 8.) Shortly after delivery of the letter, Western publicly announced its delivery and released the letter to the Dow Jones News Service and certain other media outlets. (KCPL Cmplt. paragraph 14; WR&R Ans. paragraph 14; Intrv. Ans. & Cntrclm., Ans. paragraph 9.)

KCPL's Board Rejects Western Resources' Proposal As Not In The Best Interests Of Its Shareholders

7. On April 22, 1996 KCPL issued a press release announcing that its board of directors had unanimously rejected the merger proposal received from Western as not in the best interests of KCPL shareholders. (KCPL Cmplt. paragraph 15; WR&R Ans. paragraph 15; Intrv. Ans. & Cntrclm., Ans. paragraph 10.) The press release noted that the KCPL board had also reaffirmed its support for KCPL's strategic combination with UtiliCorp. (KCPL Cmplt. paragraph 15; WR&R Ans. paragraph 15; Intrv. Ans. & Cntrclm., Ans. paragraph 10.)

Western Resources Announces Its
Intention To Commence An Exchange Offer

8. Shortly after KCPL announced its board's decision on April 22, 1996 Western filed preliminary proxy materials with the SEC to solicit KCPL shareholders to vote against approval of the Original Merger Agreement at the May 22 annual meeting. (KCPL Cmplt. paragraph 16; WR&R Ans. paragraph 16; Intrv. Ans. & Cntrclm., Ans. paragraph 11.) At the same time, Western publicly announced its intention to commence an exchange offer for KCPL stock in which KCPL share holders would purportedly receive $28 per KCPL share. (KCPL Cmplt. paragraph 16; WR&R Ans. paragraphs 13, 14, 16; Intrv. Ans. & Cntrclm., Ans. paragraph 11.)

KCPL and UtiliCorp Determine to Improve the Terms
of Their Strategic Combination to KCPL Shareholders
Shareholders and Adopt the Revised Merger Agreement

9. KCPL contends that by May 20, 1996 -- two days prior to the scheduled vote of KCPL's shareholders -- KCPL turned over to the inspectors of election proxies representing a majority of KCPL's outstanding shares voting in favor of the strategic combination of KCPL and UtiliCorp. (Plaintiff's Reply to the Counterclaim of Western, Inc. and Robert L. Rives and Counterclaim of Kansas City Power & Light Co. (Reply to WR&R and KCPL Cntrclm.), attached hereto as Exhibit "E," Cntrclm. paragraph 24.) However, Western had apparently succeeded in assembling a minority coalition of financial institutions and takeover arbitrage speculators sufficient to block approval by an absolute 2/3 of KCPL's outstanding shares, as required by Missouri statute for the transaction structure contemplated by the Original Merger Agreement. (Reply to WR&R and KCPL Cntrclm., Cntrclm. paragraph 24.)

10. On May 20, 1996 KCPL and UtiliCorp entered into an Amended and Restated Agreement and Plan of Merger ("Revised Merger Agreement") (attached hereto as Exhibit "F," art. II.), and withdrew the approval of the original merger from consideration at the May 22 annual meeting. (KCPL Cmplt. paragraph 17; WR&R Ans. paragraph 17; Intrv. Ans. & Cntrclm., Ans. paragraph 12.) The Revised Merger Agreement will be considered at a special meeting of shareholders on August 7, 1996. (KCPL Notice of Special Meeting of Shareholders, attached hereto as Exhibit "G.") The transaction contemplated by the Revised Merger Agreement will have the same ultimate effect as the transaction contemplated by the Original Merger Agreement -- the strategic combination of the

businesses of KCPL and UtiliCorp. (KCPL Cmplt. paragraph 18; WR&R Ans. 4 paragraph 18.) However, it contemplates an exchange ratio of 1 KCPL share for 1 UtiliCorp share -- a 9.6% improvement for KCPL shareholders. KCPL contends that the new transactional structure requires that the issuance of additional shares by KCPL be approved by a majority of a quorum of KCPL voting shares, rather than the 2/3 supermajority required for approval of the merger under the Original Merger Agreement. (KCPL Cmplt., paragraph 21.)

The Litigation

11. This action was commenced by KCPL on May 20, 1996 in anticipation that Western (and/or Rives) would commence litigation challenging the new transactional structure contemplated by the Revised Merger Agreement, and, particularly, the change in the required level of KCPL shareholder approval. (KCPL Cmplt. paragraph 21.) Thus, KCPL sought declaratory judgments that the Revised Merger Agreement was valid under Missouri law and that KCPL's directors had not breached their fiduciary duties by adopting it. Id.

12. On May 24, Intervenor filed a motion to intervene as a representative of a class consisting of similarly situated KCPL shareholders and sought leave to answer and file counterclaims that, inter alia, would challenge the legality of the Revised Merger Agreement and the conduct of KCPL's directors in adopting it. On June 7, Manson's motion to intervene was granted. (Order of Court, attached hereto as Exhibit "H.") Also on June 7, Western and Rives filed similar counterclaims.

13. Thereafter, in a telephone conference, Judge Wright scheduled a hearing for July 25 on two issues -- whether the Revised Merger Agreement is legally valid under Missouri law and whether KCPL's directors breached their fiduciary duties in adopting it. On June 28 KCPL responded to its opponents' requests for document production, delivering non-privileged, responsive documents to counsel for Western and Rives and for the Intervenor. (See Transmittal Letter dated June 28, 1996, attached hereto as Exhibit "I.") On July 2, KCPL provided to opponents' counsel a privilege log identifying and describing the documents withheld from discovery, and stating the basis for KCPL's assertions of privilege and immunity. (KCPL Privilege Log, attached hereto as Exhibit "J.")

14. The privilege log listed twelve items. The first eight

are memoranda prepared by Skadden, Arps, counsel for KCPL, and provided to various officers and directors of KCPL. These memoranda contain legal advice communicated by Skadden, Arps to KCPL regarding the KCPL/UtiliCorp transaction (4 items) or the Western proposal (4 items). Items 9 through 11 list redactions of portions of KCPL board minutes reflecting legal advice from counsel. Item number 12 lists a redaction from handwritten notes created by Drue Jennings, KCPL's chairman and CEO, reflecting communications with counsel for KCPL./1

The Challenged Ruling Of The District Court

15. On July 3 during a teleconference between the parties and Judge Wright, counsel for Intervenor objected to KCPL's assertions of attorney-client privilege, arguing that since Intervenor is a shareholder of KCPL, and since the shareholders of KCPL are its owners, KCPL's directors could not keep from KCPL's shareholders the contents of KCPL's confidential communications with its attorneys. Counsel for Intervenor asked that KCPL be ordered to produce its privileged documents for discovery.

16. Counsel for KCPL responded that (i) Intervenor was attempting to invoke Garner v. Wolfinbarger, 430 F.2d 1093 (5th Cir. 1970), in which the Fifth Circuit created a limited exception to the attorney-client privilege in shareholder litigation; (ii) Garner had not been adopted in the Eighth Circuit and had in fact been rejected by one District Court in the Circuit; and (iii) that even if Garner were to be applied, the Intervenors had not even attempted to show "good cause," as Garner requires.

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1/If the Court wishes, KCPL will make the disputed documents available for in camera review.

17. The District Court summarily ordered production of KCPL's privileged documents to the Intervenor. KCPL sought clarification that it was not being ordered to produce documents to counsel for Western and Rives. The District Court initially ruled that Western was not entitled to the privileged documents, thus tacitly acknowledging that the privilege had been properly asserted. However, counsel for Western and Rives pointed out that they represent not only Western, but also Rives, who is a shareholder of KCPL. The District Court then modified its ruling, ordering that KCPL's privileged documents be produced to counsel for Western and Rives, but that counsel was prohibited from showing the privileged materials to any Western personnel.

18. On July 5, 1996 KCPL filed a motion in the District Court to stay its order compelling discovery pending review in this Court. The briefing in that motion included an explanation of why the District Court's order was erroneous as a matter of law. On July 9, 1996, the District Court entered an Order not only staying his order compelling discovery of the documents KCPL claims are protected by the attorney-client privilege but staying all discovery pending a decision by this Court. The District Court further threatened to postpone the hearing scheduled for July 25, 1996 and enjoin the shareholders meeting set for August 7, 1996. A copy of the District Court's Order of July 9 is attached hereto as Exhibit "K."

ARGUMENT

I. THE COURT'S REVIEW OF THIS PETITION IS APPROPRIATE.

Under the "All Writs Act," 28 U.S.C. 1651, this Court possesses discretionary authority to issue a writ of mandamus. Iowa Beef Processors, Inc. v. Bagley, 601 F.2d 949, 953 (8th Cir.), cert. denied, 441 U.S. 907 (1979). This Court has recognized that "mandamus is available as a means of immediate appellate review" when "a claim of attorney-client privilege has been raised in and rejected by a district court." Diversified Indus., Inc. v. Meredith, 572 F.2d 596, 599 (8th Cir. 1977) See In re Bieter Co., 16 F.3d 931. As this Court stated in Pfizer Inc. v. Lord, 456 F.2d 545, 547-48 (8th Cir. 1972):

> [B]ecause maintenance of the attorney-client privilege up to its proper limits has substantial importance to the administration of justice, and because an appeal after disclosure of the privileged communication is

> an inadequate remedy, the extraordinary remedy of mandamus is appropriate.

(quoting Harper & Row Publishing Co. v. Decker, 423 F.2d 487, 492 (7th Cir. 1970), aff'd by an equally divided court, 400 U.S. 348 (1971).)/2

2/ Other circuits have agreed. See Rhone-Poulenc Rorer, Inc. v. Home Indemn. Co., 32 F.3d 851, 861 (3d Cir. 1994) (writ issued to vacate order requiring insured corporations to produce privileged documents containing evaluations of their

Regarding entertaining a petition for a writ of mandamus and issuing the writ, this Court has found the following factors "at a minimum, instructive:"

> (1) The party seeking the writ has no other adequate means, such as direct appeal, to attain the relief desire. (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal . . . . (3) The district court's order is clearly erroneous as a matter of law. (4) The district court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules. (5) The district court's order raises new and important problems, or issues of law of first impression.

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potential liability to their insurers); Haines v. Liggett Group Inc., 975 F.2d 81, 89 (3d Cir. 1992) (granting writ to vacate order requiring production of attorney-client communications and work product created by defense counsel in response to tobacco litigation, and removing district judge who lacked impartiality); Chase Manhattan Bank, N.A. v. Turner & Newall, PLC, 964 F.2d 159, 163 (2d Cir. 1992) (granting mandamus to vacate order which required defendant to produce privileged documents to plaintiffs' counsel on attorneys' eyes only basis for determination by counsel as to whether documents were privileged); In re Burlington Northern, Inc., 822 F.2d 518, 523 (5th Cir. 1987), cert. denied, 484 U.S. 1007 (1988) (writ issued to vacate order compelling railroads to turn over work product documents to pipeline company alleging antitrust violations); Admiral Ins. Co. v. United States, 881 F.2d 1486, 1491 (9th Cir. 1989) (issuing writ to vacate order compelling production of privileged statements made by former corporate officers to corporate counsel during course of internal investigation).

In re Bieter Co., 16 F.3d at 932 (quoting Bauman v. United States Dist. Court, 557 F.2d 650, 654-55 (9th Cir. 1977)). Entertaining petitions for writ of mandamus and issuing the writs is largely discretionary; a writ may issue even though not all of the Bauman factors are satisfied. In re Bieter Co., 16 F.3d at 932. In this case, the Court's exercise of discretion should be heavily influenced in favor of granting the requested writ because all of the Bauman factors are satisfied.

Because this Petition seeks review of an order compelling discovery of allegedly privileged materials, the first two Bauman factors are satisfied./3 In re Bieter Co., 16 F.3d at 932. As explained below in Part II, the District Court's order is clearly erroneous as a matter of law and a clear abuse of discretion, satisfying the third Bauman factor. Although not a

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3/ Mandamus is the only avenue through which immediate appellate review may be had because orders to compelling the production of documents are not appealable. Iowa Beef Processors, 601 F.2d at 953; see Borden v. Sylk, 410 F.2d 843, 845 (3d Cir. 1969) (orders compelling discovery not final orders under 28 U.S.C. 1291, and do not qualify as collateral orders subject to appeal); see also In re Von Bulow, 828 F.2d 94, 98 (2d Cir. 1987) (even if party adjudges to be in contempt for disobedience to discovery order, it has no immediate right to appeal). In addition, under the law of this Circuit, a discovery order is not appropriate for certification under 28 U.S.C. 1292(b). White v. Nix, 43 F.3d 374, 377 (8th Cir. 1994) (discovery orders will never involve controlling questions of law).

mandatory factor, the fourth Bauman factor is satisfied. The District Court has several times in the past issued oral decisions compelling the production of privileged or non-discoverable materials without providing an opportunity for a full hearing or briefing of the issues, as it has done in this case. See In re Remington Arms Co., Inc., 952 F.2d 1029 (8th Cir. 1991); In re Shalala, 996 F.2d 962 (8th Cir. 1993). Finally, the present petition raises an important issue of first impression _ the applicability in Missouri, and in this Circuit of the exception to the attorney-client privilege created by the Fifth Circuit in Garner v. Wolfinbarger, 430 F.2d 1093 (5th Cir. 1970), cert. denied, 401 U.S. 974 (1971).

Thus, the instant petition warrants "full-blown review," In re Bieter Co., 16 F.3d at 932, if it is not granted summarily.

II. THE COURT SHOULD ISSUE A WRIT OF MANDAMUS VACATING THE ORDER OF THE DISTRICT COURT.

In In re Bieter Co., supra, this Court held that a writ of mandamus will issue to prevent irremediable harm threatened by "clear legal error" or "clear abuse of discretion," the third Bauman factor. 16 F.3d at 932-33; In re Remington Arms Co., F.2d at 1031. The District Court's July 3 order constitutes both legal error and an abuse of discretion, and should be vacated.

A. The District Court Abused Its Discretion In Ordering The Production Of Attorney-Client Privileged Documents Without Any Record Or Briefing By The Parties.

The District Court's action here is strikingly similar to that vacated by this Court by writ of mandamus in In re Remington Arms Co., supra. In Remington Arms, the District Court summarily and without briefing ordered a corporation to produce documents which the corporation claimed contained trade secrets.

> The district court ordered production of the documents in question following a brief teleconference without affording Remington the opportunity to demonstrate that the documents contain trade secrets and that disclosure would be harmful.

952 F.2d at 1032. This Court concluded that, in so doing, the District Court had "clearly abused its discretion."

Just so here. The authority relied upon by the District Court, Garner v. Wolfinbarger -- even if it were

applicable in Missouri, which it is not -- requires the discovering shareholder to sustain a burden of demonstrating "good cause" for discovery of attorney-client privileged communications. 430 F.2d at 1104. The Garner court identified nine factors that should be considered by a court in determining whether the discovering shareholder has demonstrated "good cause." Id. Many of these factors simply cannot be demonstrated by a shareholder or evaluated by a court without the submission of record evidence. For instance, under Garner, the court is to consider: "the number of shareholders and the percentage of stock they represent; the bona fides of the shareholders; the nature of the shareholders' claim and whether it is obviously colorable; the apparent necessity or desirability of the shareholders having the information and the availability of it from other sources . . . ." Id.

Neither the Intervenor nor Rives submitted evidence regarding any of these factors _ thus, they could not possibly have borne their burden of demonstrating "good cause." Id.; see also In re Remington Arms, 952 F.2d at 1030-32. The District Court determined to adopt Garner as the law of Missouri and apply its nine-factor balancing test not merely without evidence, but also without giving KCPL the opportunity to brief the legal questions involved. See In re Shalala, supra (case made more confusing because privilege issues were decided without briefs). These stunning procedural deficiencies are an abuse of discretion sufficient to warrant mandamus relief. In re Remington Arms, 952 F.2d at 1032.

B. The District Court Erred As A Matter Of Law In Adopting Garner v. Wolfinbarger.

Even had the District Court issued the July 3 order on a proper record after briefing, mandamus would be justified because of the District Court's clear error of law in adopting and applying Garner.

It is well settled that corporations, like individuals, enjoy the protections of the attorney-client privilege. Upjohn Co. v. United States, 449 U.S. 383 (1981); Diversified Indus. v. Meredith, supra. It is also well settled that the directors and officers of a corporation -- not its shareholders -- control the exercise of the privilege. Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343, 349 (1985). See also R.S.Mo. 351.310

(property and business of a corporation controlled and managed by board of directors).

Despite these settled principles, the District Court adopted Garner, and held that it is inappropriate for KCPL to assert an attorney-client privilege to prevent the Intervenor, as a shareholder of KCPL, from having access to communications between the directors and officers of KCPL and its counsel. In Garner, the Fifth Circuit adopted a balancing test permitting disclosure of otherwise privileged matter if a shareholder plaintiff satisfies a burden of showing "good cause for production" in an action charging that corporate fiduciaries acting inimically to stockholder interests. 430 F.2d at 1104.

The Garner exception is not the law of Missouri, whose law governs here. See Fed.R.Evid. 501 (where state law provides the rule of decision, state law governs privilege); In re Federal Skywalk Cases, 95 F.R.D. 477 (W.D. Mo. 1982) ("[t]he state law of Missouri guides this Court in determining what substantive rule should apply with respect to the definitions of privileged documents"). No Missouri court has indicated that the Garner exception would be adopted by the Missouri Supreme Court. On the contrary, the Missouri Supreme Court has rejected the narrow attorney-client privilege advocated by Dean Wigmore -- whose analysis formed the foundation of the Fifth Circuit's opinion in Garner. State ex rel. Great American Ins. Co. v. Smith, 574 S.W.2d 379, 382-83 (Mo. banc 1978) ("the Wigmore approach does not provide enough protection for the confidentiality of attorney-client communications to accomplish the objective for which the privilege was created and now exists"). See Garner, 430 F.2d at 1100-01 (adopting Wigmore's balancing test). See also State ex rel. Syntex Agri-Business, Inc. v. Adolf, 700 S.W.2d 886, 888 (Mo. App. 1985) (Missouri Supreme Court has adopted a "very broad concept of attorney-client privilege"). Having already rejected the theoretical underpinnings of Garner, there is no reason to believe that the Missouri Supreme Court would adopt Garner itself.

Nor is the Garner exception the law in this circuit. Recently, in Milroy v. Hanson, supra, the court expressly declined to follow Garner in an action brought by a minority stockholder seeking discovery of communications between corporate counsel and the board of directors. The court explained:

> . . . Garner has not been adopted by the

> United States Court of Appeals for the Eighth Circuit. In fact, "Garner's continued vitality is suspect . . . even in federal courts." Many commentators believe "Garner was wrong and the attorney-client privilege in shareholder cases should apply just as it does in other litigation."

875 F. Supp. at 651 (citations omitted).

The court in Milroy noted that two opinions of the United States Supreme Court decided after Garner -- Upjohn Co. v. United States, 449 U.S. 383 (1981) and Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343 (1985) -- cast doubt on Garner's viability:

> In my opinion, Garner, adopted as it was prior to the Supreme Court's opinions in Upjohn and Weintraub, is problematic because (a) it is in effect a lower-court-created exception to the general rule announced by the Supreme Court in Upjohn and Weintraub that a corporation has the right to assert an attorney-client privilege, and (b) the Garner opinion does not focus on the critical issue of "management," as the Supreme Court did in Weintraub, and the relevant substantive law of corporations for purposes of determining who may assert, waive, or otherwise frustrate the attorney-client privilege for a solvent corporation.

875 F. Supp. at 651.

Indeed, the fundamental premise of Garner, the use of a balancing test to determine the existence of a privilege, has now been explicitly disapproved by the United States Supreme Court. In the recent case Jaffee v. Redmond, 64 U.S.L.W. 4490 (1996), the Court reversed a lower court which had applied a balancing component in the psychotherapist-patient privilege akin to Garner's balancing test. The Court held that permitting a judicial balancing test to determine whether a privilege would apply was insufficiently predictable to serve the important purposes of the privilege. "An uncertain privilege, or one which purports to be certain but results in widely varying applications by the courts, is little better than no privilege at all." Id. (quoting Upjohn, 449 U.S. at 393). Similarly here, if KCPL's directors had thought that their confidential communications with legal counsel might, at the discretion of the District Court, be subject to discovery by attorneys for a hostile bidder, they would have had a strong incentive not to consult with counsel at all -- hardly a desirable result for the company. Id.; Weintraub, 471 U.S. at 348 (attorney-client privilege encourages observance of the law and aids the administration of justice by promoting full and frank communications between attorneys and their clients).

C. The District Court Erred As A Matter Of Law In Implicitly Finding That The Intervenor And Rives Had Demonstrated "Good Cause" Under Garner Despite Their Failure To Make Shareholder Demand And Lack Of Significant Stockholdings.

Even had the Intervenor and Rives attempted to offer evidence in satisfaction of the Garner test, they could not have succeeded. First of all, the Intervenor and Rives failed to carry their burden of demonstrating that their claims are "obviously colorable." Weil v. Investment/Indicators, Research & Management, 647 F.2d 18 (9th Cir. 1981) (Garner not applied where plaintiff had not alleged a well-documented series of allegations showing substantial harm to shareholders); John Gergacz, The Attorney-Corporate Client Privilege, 6-32 (2d ed. 1990) ("Gergacz"). In fact, given Missouri's clear shareholder demand requirement, the Intervenor's and Rives' claims are obviously not colorable. See Wolgin v. Simon, 722 F.2d 389 (8th Cir. 1983); Goodwin v. Goodwin, 583 S.W.2d 559, 560-61 (Mo. App. 1979); McLeese v. J.C. Nichols Co., 842 S.W.2d 115, 119 (Mo. App. 1992); Saigh v. Busch, 396 S.W.2d 9, 16 (Mo. App. 1965), cert. denied, 384 U.S. 942 (1966). A shareholder of a Missouri corporation is not entitled to prosecute litigation -- much less take discovery of the corporation's attorney-client privileged documents -- prior to exhausting all remedies and reasonable efforts within the corporation, including a demand upon the shareholders as a group to institute the requested litigation. Id. Moreover, in Ward v. Succession of Freeman, 854 F.2d 780, 786 (5th Cir. 1988), cert denied, 490 U.S. 1065 (1989), the Fifth Circuit applied greater scrutiny and refused to apply Garner in a case, similar to this case, in which the shareholder demanding privileged documents was bringing a claim for individual damages rather than a derivative action. Thus, irrespective of whether Rives' and the Intervenor's claims are individual claims or derivative claims, Garner cannot be satisfied under these circumstances.

Additionally, the Intervenor and Rives hold a very small percentage of KCPL's stock. In such circumstances, federal courts have refused to apply the Garner exception, because the shareholder seeking discovery cannot be relied upon to represent the interest of the corporation. See Ohio-Sealy Mattress Mfg. Co. v. Kaplan, 90 F.R.D. 21, 31-32 (N.D. Ill. 1980) (plaintiffs holding fewer than 1% of corporation's shares had not demonstrated good cause under Garner); see also Ward, 854 F.2d at

786 (ownership of less than 4% of the stock). Even the Garner court recognized that "nonparty stockholders" may be injured by impinging on the privilege because "[t]he corporation is vulnerable to suit by shareholders whose interests or intention may be inconsistent with those of other shareholders . . . ." Garner, 430 F.2d at 1101 n.17. The potential disparity of interests between a minority shareholder and the corporation is exacerbated here, where Missouri statute contemplates that the KCPL board will consider the interests of corporate constituencies other than the shareholders. R.S.Mo. 351.347. In determining how to manage attorney-client privileged communications in the present context, the Intervenor and Rives can hardly be relied upon to consider the interests of "employees, suppliers, customers and . . . communities," as the KCPL board has done. Id.

Here, again, even if the District Court had ruled on a record after briefing, its ruling would be clearly erroneous as a matter of law.

D. The District Court Abused Its Discretion In Ordering The Production Of Attorney-Client Privileged Documents To Counsel For Western Resources, A Non-Stockholder.

The unreasonableness of the District Court's order is made crystal clear when it is considered that the privileged information will be divulged to Western either directly or in the course of further discovery or trial. Even if the Intervenor were entitled to discovery of privileged communications under Garner, Western and its conduit, Rives, would not be. As the District Court recognized, Western is not a shareholder of KCPL and is not entitled to discovery under the Garner exception. Although a shareholder, Rives is not entitled to access to KCPL's privileged communications, even under Garner, because he is not acting on behalf of the KCPL shareholders, but rather is acting on behalf of Western.

Western's proxy statement discloses that Rives is a retired Executive Vice President of Western who will solicit proxies on its behalf. Rives has also demanded a copy of KCPL's stockholder list in order to facilitate Western's proxy solicitation. Through Rives, Western now hopes to gain access to privileged communications of KCPL, its clear adversary. No authority exists to support such a result.

Rives holds just 500 shares of KCPL stock. As explained above, such small holdings do not create the kind of unity of interest with the corporation necessary to trigger the Garner exception. See Ohio-Sealy, 90 F.R.D. at 31-32. Additionally, as Western's pawn, Rives' personal interests are plainly inimical to those of the KCPL stockholders as a whole. In such circumstances, federal courts, including the court that decided Garner, have not hesitated to reject an application of the Garner exception. See Ward v. Succession of Freeman, 854 F.2d at 786; Weil v. Investment/Indicators, Research & Management, 647 F.2d at 23 ("Garner's holding and policy rationale simply do not apply" where shareholder sought personal benefit apart from the corporation); Milroy, 875 F. Supp. at 651 (Garner "has no applicability where the plaintiff stockholders asserts claims primarily to benefit himself"); Ohio-Sealy, 90 F.R.D. at 31-32 (Garner did not apply where information sought could be used to the corporation's detriment); Gergacz at 6-28-29 (Garner requires the discovering party to "demonstrate that it has a major stake in the fiduciary relationship that Garner balances against the policies of the attorney-corporate client privilege").

Finally, if they were permitted access to KCPL's attorney-client communications, counsel for Western and Rives -- Sullivan & Cromwell and Stinson Mag & Fizzell -- would face an impermissible conflict of interest. The basis of the District Court's ruling that counsel for Western and Rives be given access to KCPL's privileged materials was that Rives is a shareholder of KCPL and therefore is an "owner" of KCPL. Thus, based upon one aspect of the rationale of Garner, the District Court reasoned that there exists a unity of interest between Rives and KCPL. At the same time, Rives' co-client, Western, has its own interests here -- to prevent the KCPL/UtiliCorp strategic combination, and to complete a hostile takeover of KCPL. See, e.g., Torchmark Corp. v. Bixby, 708 F. Supp. 1070, 1076-78 (W.D. Mo. 1988) (recognizing fundamental divergence of interests between takeover bidder and target company shareholders). Western's interests are directly adverse to those of KCPL, its shareholders, employees, suppliers, customers and communities, as determined by KCPL's board pursuant to authority specifically granted under Missouri law. R.S.Mo. 351.347.

With respect to KCPL's attorney-client privilege, the

interests of Western and Rives must be viewed as adverse and an impermissible conflict of interest arises. See Missouri Rules of Professional Conduct, Rule 1.7. The effect of the District Court's July 3 ruling essentially permits Rives to act on KCPL's behalf with respect to its attorney-client privilege. Thus, Sullivan & Cromwell and Stinson, Mag represent (1) Rives, whose theoretical "unity of interest" with KCPL purportedly renders KCPL's privilege inapplicable to him and (2) Western, a stranger to the corporation which seeks to frustrate KCPL's strategic goal of combining with Utilicorp and which is prosecuting litigation against KCPL concerning the very subject matter of the privileged communications at issue. Rule 1.7 specifically forbids such a direct conflict absent consent -- and to hold that Rives, Western's agent, could validly consent to the eradication of KCPL's attorney-client privilege vis-a-vis Western would indeed be a perverse result.

The suggestion by the District Court that the conflict could be eliminated by requiring counsel not to share KCPL's attorney-client communications with Western personnel is unwork able. Counsel for Western and Rives would be faced with an irreconcilable conflict between its obligation to Rives under Rule 1.8(b) (forbidding use of information relating to representation to client's disadvantage) and its obligation to zealously represent Western. Actual receipt by Western's counsel of KCPL's attorney-client communications would require disqualification because there is no practical way, when the same individual lawyers represent both Western and Rives, to isolate KCPL's attorney-client communications so that knowledge of them is only used for Rives' benefit. Cf. State of Arkansas v. Dean Food Products Co. Inc., supra (applying Model Code, Court held "confidential disclosures, actual or presumed, necessitate disqualification of the attorney when he represents an adverse interest in a related matter"), overruled on other grounds, In re Multi-Piece Rim Products Liability Litigation, 612 F.2d 377 (8th Cir. 1980).

CONCLUSION

For all of the foregoing reasons, KCPL respectfully requests that the Court issue a writ of mandamus to the District Court vacating the order of the District Court rendered July 3, 1996.

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Exhibit 44

IN THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

IN RE KANSAS CITY POWER & LIGHT CO.,	)	
	)	No. _____
Petitioner.	)	

PETITIONER'S MOTION FOR EXPEDITED DISPOSITION OF PETITION FOR WRIT OF MANDAMUS

Kansas City Power & Light Company ("KCPL"), through its attorneys, hereby moves the Court for an order expediting proceedings on KCPL's Petition for Writ of Mandamus ("KCPL's Petition").

1. As set forth in KCPL's Petition for Writ of Mandamus, filed herewith, in the course of litigation arising from a hostile corporate takeover attempt, the District Court for the Western District of Missouri, The Honorable Scott O. Wright, Senior District Judge, has ordered Petitioner to turn over attorney-client privileged materials (including minutes of conversations between Petitioner's Board of Directors and its counsel regarding the takeover) to its opposing parties, including the counsel for the company making the hostile takeover bid. Petitioner KCPL has today petitioned the Court pursuant to 28 U.S.C. Section 1651 and Federal Rule of Appellate Procedure 21 for a Writ of Mandamus to the District Court, directing the District Court to vacate its oral ruling of July 3, 1996 ordering KCPL to produce these attorney-client privileged documents.

2. On July 5, 1996, KCPL presented to the District Court a motion to stay the challenged order pending disposition of KCPL's Petition. The briefing in that motion included an explanation of why the District Court's order was erroneous as a matter of law. On July 9, 1996, the District Court entered an Order not only staying his order compelling discovery of documents KCPL claims are protected by the attorney-client privilege but staying all discovery pending a decision by this Court. The District Court further threatened to postpone the hearing scheduled for July 25, 1996 and enjoin the KCPL shareholders Special Meeting set for August 7, 1996. At that Special Meeting, KCPL's shareholders will vote upon whether to approve the issuance of KCPL shares to facilitate a strategic business combination with UtiliCorp United

Inc. Western Resources, Inc., an opposing party in the proceedings before the District Court, launched a hostile bid for KCPL in order to prevent the KCPL/UtiliCorp combination.

3. An order enjoining KCPL from holding its August 7 Special Meeting as scheduled would be error because KCPL's opponents cannot demonstrate that they will face irreparable harm in the event the KCPL vote occurs prior to adjudication of the issues currently scheduled for hearing on July 25. Thus, KCPL faces the likely need to prosecute an expedited appeal of such an injunctive order.

4. Expedited emergency treatment of KCPL's Petition for Writ of Mandamus could obviate the need for such an expedited appeal and would hopefully permit the July 25 hearing to proceed as scheduled by the District Court.

5. Accordingly, KCPL requests relief, in the form of the attached Order fixing a shortened time for response to KCPL's Petition and expediting the disposition of KCPL's Petition.

DATED: July 9, 1996

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IN THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

IN RE KANSAS CITY POWER & LIGHT CO.,	)	
	)	No. _____
Petitioner.	)	

ORDER OF COURT

This _____ day of July, 1996, upon consideration of Kansas City Power & Light Company's Motion for Expedited Disposition of Petition for Writ of Mandamus, and for good cause shown, it is hereby

ORDERED that responses to Kansas City Power & Light Company's Petition for Writ of Mandamus shall be filed on or before July 11, 1996;

IT IS FURTHER ORDERED that argument and proceedings on Kansas City Power & Light Company's Petition for Writ of Mandamus shall be expedited.

IT IS SO ORDERED.

_____

Date: _____