

**Summary of SC90693, *State ex rel. Kansas City Power & Light Co. v. The Honorable Gerald D. McBeth*, consolidated with
SC90694, *State ex rel. Lisa Pope, in her official capacity as Platte County Assessor v. The Honorable Gerald D. McBeth***

Writ proceeding originating in Platte County

Argued and submitted May 4, 2010; opinion issued Sept. 21, 2010

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A trial court overruled a county assessor's and electric utility's motions to dismiss a lawsuit over the tax assessment of two of the utility's power plants. In a 7-0 decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri makes permanent its writs prohibiting the trial court from proceeding in the case, holding the trial court should have granted the motions to dismiss. The plaintiffs had no standing (a legally sufficient stake in the case) to seek review of the assessor's alleged underassessment or to compel the assessor to perform a required duty under the law (because there were no such duties violated here), but they did have standing to seek a declaratory judgment as to the assessor's duties under utility taxation statutes. The assessor had discretion to exercise independent judgment in valuing and assessing the electrical power plants under the utility taxation statutes and properly determined that one of the plants here was "distributable" and not "local" even though it temporarily was offline. The plaintiffs have no further available legal remedy.

Attorneys: KCPL was represented by Todd P. Graves and Edward D. Greim of Graves Bartle Marcus & Garrett PC in Kansas City, (816) 256-4144; James W. Farley of the Law Office of James W. Farley in Platte City, (816) 858-5080; and William G. Riggins and Heather Humphrey of the Kansas City Power & Light Co. in Kansas City, (816) 556-2335. The assessor was represented by John R. Shank and Ryan J. Springer of Gunn, Shank & Stover PC in Kansas City, (816) 454-5600. The school district and taxpayers were represented by Edward D. Robertson Jr., Mary D. Winter and Anthony L. DeWitt of Bartimus, Frickleton, Robertson & Gorny PC in Jefferson City, (573) 659-4454; and Gary L. Myers of the Law Offices of Gary L. Myers in St. Joseph, (816) 284-9962.

Facts: In 2006, Kansas City Power & Light Co. began an environmental retrofit of its coal-fired electricity-generating plant, Iatan I, and began construction of a second plant, Iatan II, both in Platte County. Due to the retrofit, Iatan I was offline from the fall of 2008 until the spring of 2009. Iatan II is projected to be in service in the fall of 2010. The West Platte R-2 school district and two Platte County taxpayers (collectively plaintiffs) sued the Platte County assessor over her property tax assessment of the two power plants. They sought a declaratory judgment as to the assessor's duties under the laws pertinent to the tax assessment and a writ of mandamus compelling the assessor to comply with applicable law. KCPL intervened, and the assessor and KCPL filed motions to dismiss, arguing the plaintiffs lacked standing to challenge the valuation of another's property. The trial court overruled both motions. The assessor and KCPL seek this Court's writ prohibiting the trial court from proceeding in the case.

WRITS MADE PERMANENT.

Court en banc holds: (1) To the extent the plaintiffs seek to challenge past assessments, they lack standing to do so. A third party is not permitted to challenge another's property tax assessment. But to the extent they seek a declaration of their rights and the assessor's duties under the utility taxation statutes, the plaintiffs do have standing. Under Missouri law, school districts threatened with imminent unlawful deprivation of their funding have standing to seek declaratory judgment regarding a statutory interpretation that would lead to the deprivation. The district here also has an interest in the methodology the assessor uses for future utility property assessments, particularly in relation to the assessment of local property, which is subject to the local school district tax levy. The taxpayers also have an interest, though attenuated, due to their status as taxpayers in the school district and the fact that the assessor's alleged failure to comply with utility taxation statutes, if true, would cost the district future tax revenue.

(2) The plaintiffs do not have standing to bring a mandamus action to mandate that the assessor value and assess the KCPL property in a particular manner. Standing in a mandamus action depends on the duty sought to be enforced – standing is likely if it is a simple, definite ministerial duty imposed by law (a duty of a clerical nature the officer must perform without regard to the official's judgment or opinion), but standing is not likely available if the duty imposed is discretionary (in which the official must exercise reason in determining how or whether an action should be done or a course pursued). Here, the assessor derives a property tax assessment from the report the public utility files pursuant to section 151.110, RSMo 2000. The assessor then must assess the property at a given percentage of its "true value in money." Although "true value in money" is not defined in the statutes, Missouri case law defines it as an estimate of the fair market value on the valuation date. The methods used and factors considered by the assessor in determining a property's "true value" change depending on the circumstances of the valuation and are likely to vary from those used by the utility company. The utility's report of its costs aids the assessor in determining the appropriate valuation but does not dictate the "true value in money." Based on the language of the governing statutes and regulations, an assessor exercises discretion when valuing property and is not under a ministerial duty to value property according to a company's reported costs.

(3) The assessor did not have a ministerial duty to assess the Iatan I power plant, which temporarily was offline, as "local property." Missouri statutes governing taxation of utilities classify property as local or distributable for purposes of taxation. "Local property" is assessed by the county and is taxed on the individual levy of a school district, while "distributable property" is assessed by the state tax commission and is taxed according to the average rates of all school districts in the county. For taxation of an electric company, section 153.034, RSMo 2000, defines "distributable property" as all real or tangible personal property "used directly" in generating and distributing power, while it defines "local property" as all real or tangible personal property "not used directly" in generating and distributing power. The definition of "distributable property" expressly excludes property held for purposes other than generating and distributing electricity. The dispositive factor for determining whether property should be assessed as "local" or "distributable" is the purpose for which the property at issue is held, not its operational status on the relevant date for valuation in a given year. A coal-fired plant such as Iatan I is the type of property held for the purpose of generating and distributing electrical power and, therefore, is "distributable property" regardless of whether it was offline temporarily for an environmental retrofit.