

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

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|------------------------|---|-----------------------|
| Brent Fallon, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | File No. EC-2012-0007 |
| |) | |
| KCP&L Greater Missouri |) | |
| Operations Company, |) | |
| |) | |
| Respondent. |) | |

**ANSWER AND MOTION TO DISMISS OF
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

Pursuant to 4 CSR 240-2.070(6) and (14), KCP&L Greater Missouri Operations Company (“Company” or “GMO”)¹ hereby submits its answer and its Motion to Dismiss to the Missouri Public Service Commission (“Commission”) in response to Brent Fallon’s complaint in this proceeding.

In support, GMO states as follows:

BACKGROUND

1. On August 28, 2007 GMO began providing electric service to Mr. Brent Fallon at his residence (the “Property”). According to paragraph 1 of the complaint, Mr. Fallon vacated the Property on November 8, 2010.

2. On December 20, 2010, Mr. Fallon communicated with GMO stating he thought his bill was too high for a vacant home. Mr. Fallon filed a complaint with the Commission on July 5, 2011 initiating the above-captioned proceeding.

¹ While the complaint filed in this matter designates Kansas City Power & Light as the Respondent, the complainant is, in fact, a customer of KCP&L Greater Missouri Operations Company.

3. GMO has conducted two meter tests verifying that the meter is working correctly. Both meter tests indicated that the meter was working properly and within the parameters of the Company's tariffs.

4. On February 9, 2011, the Company conducted an inspection of the outside of the home to insure energy was not being diverted elsewhere due to the home being vacant. There was no evidence of diversion.

5. On May 2, 2011, a physical walk through of Mr. Fallon's home was performed to identify possible sources for energy consumption. The Company determined the existence of two furnaces/air conditioning fans (115 volts, 9.3 amps, with a one horse power rating each), a refrigerator/freezer running, a bar refrigerator running, as well as outdoor lighting on a timer. Mr. Fallon states in paragraph 1 of his complaint that these fans were turned off on March 27, 2011.

6. A spreadsheet detailing the energy usage at the Property is attached Exhibit A (HC). Exhibit A shows that the usage has decreased since the furnace/air conditioning fans were turned off in March of 2011. Exhibit A shows that usage has also declined since the house became vacant.

ANSWER

7. GMO admits the allegations in paragraph 1 of the complaint.

8. GMO admits that customer and representatives of the company exchanged emails and that the meter at the premises was tested. GMO denies all other allegations contained in paragraph 2 and 3 of the complaint.

9. Except as expressly admitted in this Answer, GMO denies the allegations contained in the Complaint. Additionally, GMO reserves the right to supplement this pleading to add additional defenses and claims in connection with this complaint.

10. GMO has acted in accordance with its tariffs and the Missouri Code of State Regulations.

AFFIRMATIVE DEFENSES

11. Mr. Fallon's complaint fails to state a claim upon which relief can be granted.

MOTION TO DISMISS

12. The Commission's rules provide that "The commission, on its own motion or on the motion of a party, may after notice dismiss a complaint for failure to state a claim on which relief may be granted." 4 CSR 240-2.070(6). When evaluating such a motion "the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case."² In other words, the Commission should ask, assuming the allegations are true, whether the complainant would have a right to the relief he seeks. Under this standard, Mr. Fallon's complaint must fail. Even if each fact Mr. Fallon alleges were accurate, he is not entitled to the relief he seeks.

13. The meter that Complainant alleges was reading inaccurately was tested by GMO on two occasions. The January 19, 2011 test found that the meter was 100.06% accurate. The July 25, 2011 test found that the meter was 100.54% accurate. Both of these test results are attached as Exhibit B. Exhibit C is Affidavit from the Company

² *Richardson v. Richardson*, 218 S.W. 3d. 426, 428 (Mo. 2007).

attesting that the tests were performed correctly and pursuant to Commission standards. Under Rule 5.04(C) (Sheet R-33) of GMO's tariffs, refunds for meter errors are only made if the error is greater than 3%. Since the meter demonstrated a meter accuracy of essentially 100%, no refund is due to Complainant. Thus, there is no basis under the Company's tariffs or the Commission's rules for the Commission to grant relief requested by Complainant. Because the meter has tested accurate within the Company's tariffs, there is no factual question that the consumption occurred and was billed accurately. Therefore, Mr. Fallon's complaint must be dismissed.

WHEREFORE, having fully answered and set forth its affirmative defenses, Respondent GMO prays the Commission dismiss the complaint with prejudice and grant such other relief as the Commission deems reasonable and just.

Respectfully submitted,

/s/ Roger W. Steiner

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Attorney for KCP&L Greater Missouri Operations
Company

Dated: August 4, 2011

Certificate of Service

I hereby certify that a true and correct copy of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all parties of record on this 4th day of August, 2011.

/s/ Roger W. Steiner

Attorney for KCP&L Greater Missouri Operations Company