

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

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

**MEMORANDUM IN SUPPORT OF KCP&L GREATER MISSOURI OPERATIONS
COMPANY’S MOTION FOR SUMMARY DISPOSITION**

Pursuant to 4 CSR 240-2.117(2), KCP&L Greater Missouri Operations Company (“GMO” or “Company”) respectfully moves the Missouri Public Service Commission (“Commission”) to grant summary disposition in favor of GMO with respect to the Complaint filed by Complainant. In support thereof, GMO states as follows:

I. INTRODUCTION

Mr. Fallon’s Complaint was filed on July 5, 2011 and seeks adjustments to several bills due to Complainant’s belief that the bills do not accurately reflect electricity usage for a house that he alleged was vacant. Because adjustments to customer bills are addressed in a tariff approved by the Commission and the Company has followed the provisions of the tariff, the Commission should find that no adjustment to the Complainant’s bills is required to be made by GMO. Accordingly, summary disposition must be granted in GMO’s favor.

II. STATEMENT OF UNCONTROVERTED MATERIAL FACTS

1. Rule 5.04(A) and (C) (Sheets R-32 and R-33) of GMO’s tariffs provides for refunds for meter errors if the error is greater than 3%. The tariff states:

5.04 Billing Adjustments

- A. For all billing errors, Company will determine from all related and available information the probable period during which this condition existed and shall make billing adjustments for the estimated period involved as follows:

- C. Where, upon test, a meter error is found to be three percent (3%) or less, no billing adjustment will be made.

See Exhibit 1.

2. Complainant's meter was tested on January 19, 2011 and July 25, 2011. The tests were performed pursuant to Commission standards and demonstrated that the meter was 100.06% and 100.54% accurate respectively. See Exhibit 2, Affidavit of Corey Paczosa.

III. STANDARD OF REVIEW

A defendant establishes a right to summary disposition by (1) offering facts that negate one or more essential elements of the plaintiff's claim, or (2) showing that the plaintiff will be unable to produce sufficient evidence to establish one or more essential elements of the plaintiff's claim.¹

The movant has the burden to prove summary disposition is proper.² When the movant introduces facts showing a right to judgment as matter of law, the burden then shifts to the non-movant, who must respond with countervailing evidence showing that there is genuine dispute as to one or more of the movant's material facts.³

Moreover, the public interest clearly favors the quick and efficient resolution of this matter by summary determination without an evidentiary hearing.⁴ Since there is no genuine

¹ *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W. 2d 371, 381 (Mo.banc 1993). See also *Hoffman v. Union Elec. Co.*, 176 S.W.3d 706, 707 (Mo.banc 2005).

² See *ITT*, *id.*, 854 S.W. 2d at 378.

³ *Id.* at 381.

⁴ See, e.g., Determination on the Pleadings, *The Staff of the Missouri Public Service Commission v. Taney County Utilities Corporation*, Case No. WC-2004-0342 (Oct. 19, 2004).

issue as to any material fact the time and cost to hold a hearing would be contrary to the public interest.”

IV. ARGUMENT

The basis of Mr. Fallon’s complaint is that he believes he could not have used the amount of electricity registered by his meter since he alleges his house was vacant. Disputes regarding a customer’s usage amounts are governed by GMO’s tariffs (Rule 5.04(C) (Sheet R-33)) which provide that unless the error is greater than 3% no billing adjustment will be made. Since the meter in question demonstrated a meter accuracy of essentially 100%, a billing adjustment is not appropriate. There is no basis under the Company’s tariffs for the Commission to grant the relief requested by Complainant. Complainant’s belief that because he had moved he used less electricity than was registered on the meters does not establish that his meter was not accurate nor does it provide the basis for a claim for a billing adjustment under GMO’s tariffs.

WHEREFORE, GMO respectfully requests that the Commission enter an Order granting summary disposition in its favor with respect to Complainant’s complaint.

Respectfully submitted,

/s/ Roger W. Steiner

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Company

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 29th day of September, 2011.

/s/ Roger W. Steiner

Attorney for KCP&L Greater Missouri Operations
Company