

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

In the Matter of Cheryl L. Fabulae,)	
)	
Complainant,)	
)	
v.)	Case No. EC-2007-0146
)	
Kansas City Power & Light Company,)	
)	
Respondent.)	

**MOTION TO DISMISS WITH PREJUDICE,
OR ALTERNATIVELY, FOR A DETERMINATION ON THE PLEADINGS**

Pursuant to 4 CSR 240-2.116(3) and 4 CSR 240-2.117(2), Kansas City Power & Light Company ("KCPL") hereby respectfully requests that the Missouri Public Service Commission ("Commission") dismiss with prejudice Ms. Fabulae's various formal and informal complaints in this proceeding, or alternatively, that the Commission make a determination based on the pleadings. In support thereof, KCPL states as follows:

1. By its order issued January 18, 2007, the Commission scheduled an evidentiary hearing in this matter for February 9, 2007. The Commission offered the parties to the proceeding three alternative ways to make an appearance and participate in the hearing: (i) a call-in number; (ii) use of the Commission's Kansas City offices; and (iii) appearing in person before the Commission in Room 310 at the Commission's offices in Jefferson City.

2. Judge Lane convened the February 9 hearing at the appointed time of 9:00 a.m. Appearances were entered by counsel for the Commission's Staff and KCPL. Ms. Fabulae did not appear at the hearing either by phone, videoconference or in person. Staff and KCPL both moved at the conclusion of the hearing for the dismissal of Ms. Fabulae's complaint. This written motion is to clarify that at least with respect to KCPL, its motion is for dismissal *with prejudice*.

3. This is the second scheduled evidentiary hearing in which Ms. Fabulae did not appear or otherwise participate. The Commission originally scheduled the evidentiary hearing for this matter for

November 27, 2006. As with the hearing on February 9, 2007, counsel for Staff and KCPL entered their respective appearances, but Ms. Fabulae did not participate.

4. 4 CSR 240-2.116(3) provides that a party “may be dismissed from a case for failure to comply with any order issued by the commission, including failure to appear at any scheduled proceeding such as a public hearing, prehearing conference, hearing, or mediation session.” Ms. Fabulae’s failure to appear at two evidentiary hearings clearly justifies dismissing her complaint pursuant to 4 CSR 240-2.116(3).

5. Good cause exists to dismiss Ms. Fabulae’s complaint with prejudice. KCPL and the Commission have expended considerable resources on two evidentiary hearings at which Ms. Fabulae did not appear. She gave no prior notice in either instance of her inability or unwillingness to appear. Moreover, the Commission made every effort to accommodate Ms. Fabulae in the scheduling of the second evidentiary hearing. In addition to providing three alternative means for participation, as described above, the Commission also delayed the February 9 hearing to accommodate Ms. Fabulae’s apparent need for additional time.

6. Moreover, it appears that Ms. Fabulae does not intend to pursue further action before the Commission. As she states in her December 14, 2006 Response to Order Directing Filing, “[Ms. Fabulae] wish[es] to finalize this matter with the commission as soon as possible so [she] may pursue other legal options which [she] ha[s] been encouraged to pursue.” Considering the foregoing, good cause exists to dismiss Ms. Fabulae’s complaint with prejudice.

7. If the Commission determines that dismissing Ms. Fabulae’s complaint with prejudice is not appropriate at this time, KCPL respectfully requests that the Commission make a determination in this case based on the pleadings pursuant to 4 CSR 240-2.117(2). Good cause exists not to schedule another evidentiary hearing. As noted above, KCPL and the Commission have expended considerable resources on two evidentiary hearings in which Ms. Fabulae did not participate despite the Commission’s special

accommodations. Moreover, there are no material factual issues that must be decided for the Commission to make its determination.

For the foregoing reasons, KCPL respectfully requests that the Commission dismiss with prejudice all of Ms. Fabulae's claims before the Commission in the above-captioned case. Alternatively, if the Commission decides not to dismiss Ms. Fabulae's complaint with prejudice, KCPL respectfully requests that the Commission make its determination on the pleadings in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C.D. Blanc', written over a horizontal line.

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**COUNSEL FOR
KANSAS CITY POWER & LIGHT COMPANY**

Dated: February 9, 2007

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application was served either by electronic mail or by first class mail, postage prepaid, on this 9th day of February 2007, upon:

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