

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

Eddie Shepherd,)	
)	
Complainant,)	
)	
v.)	File No. EC-2011-0373
)	
KCP&L Greater Missouri Operations)	
Company,)	
)	
Respondent.)	

**KCP&L GREATER MISSOURI OPERATIONS COMPANY’S REQUEST FOR
CLARIFICATION AND RENEWED MOTION TO DISMISS**

KCP&L Greater Missouri Operations Company (“Company” or “GMO”) hereby requests clarification of the Commission’s July 13, 2011 Order Granting Dismissal in part for Failure to State a Claim. The Company also requests that the Commission consider its renewed Motion to Dismiss.

In support, GMO states as follows:

1. GMO seeks clarification of the sections of the July 13, 2011 Order that are entitled: “2.Meter Accuracy” and “3.Overbilling”. These two issues are related. If a meter tests within a certain degree of accuracy then under GMO’s tariffs there can be no valid claim of overbilling or that the usage did not occur. 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%.

2. At page 5 of its Order, the Commission states that “at least as to months after March 10, 2011, the complaint states a violation as to meter accuracy.” GMO interprets this statement to mean that the Commission has found that Mr. Shepherd has failed to state a claim for meter accuracy for the time before March 10, 2011. This would mean that meter

no. sa40172754 was found by the Commission to be accurate and under Rule 5.04(C) of GMO's tariffs, Mr. Shepherd is not entitled to a refund. The results of the test on this meter are not controverted by any party. The Complainant, Staff and GMO have all submitted or made reference to the "Certificate of Inspection and Test" dated March 10, 2011 in their filings with the Commission. This Certificate shows that the meter no. sa40172754 tested 99.87% accurate.

3. If GMO's understanding of the Commission's determination regarding meter no. sa40172754 is correct, then GMO seeks clarification of how Mr. Shepherd has stated a valid overbilling complaint for the time period before March 10, 2011. The Commission states after the chart at page 6 of the Order that "for all but two months, the complaint alleges higher readings despite significantly lower use, which states a claim for overbillings" But since GMO understands that the Commission has found that meter no. sa40172754 to be accurate and that Complainant is not entitled to a refund under GMO's tariffs for the period of time before March 10, 2011, then it follows that there can be no action based on Mr. Shepherd's allegation of a discrepancy between usage and the meter readings. Because the meter has been found to be accurate by the Commission, Mr. Shepherd's claim that he consumed less electricity than recorded by the meter is not valid and does not state a claim for which relief can be granted.

4. Based on its understanding of the Commission's July 13 Order set forth above, GMO is renewing its Motion to Dismiss. GMO has also had the new meter no. LG78224124 tested and that meter was found to be 100.1% accurate. See Exhibit A attached hereto. GMO has included this new information in its Motion to Dismiss below.

MOTION TO DISMISS

5. 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."¹ 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. Shepherd's complaint must fail. Even if each fact Mr. Shepherd alleges were accurate, he is not entitled to the relief he seeks.

6. The meter that Complainant alleges was struck by lightning in July 2010 and the replacement meter installed on March 10, 2011, was tested by GMO and found to be 99.87% and 100.1% accurate respectively as shown on Exhibit A. Exhibit B is an affidavit from a Company representative attesting that the tests were performed correctly and pursuant to Commission rules. 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 tested effectively 100% accurate, 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 from high bills brought on by a faulty meter" as requested by the Complainant.

¹ *Richardson v. Richardson*, 218 S.W. 3d. 426, 428 (Mo. 2007).

WHEREFORE, Respondent GMO requests that the Commission clarify its July 13, 2011 Order and grant the renewed motion to dismiss.

Respectfully submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MO #39586
Kansas City Power & Light Company
1200 Main Street, 16th Floor
Kansas City, MO 64105
Telephone: (816) 556-2314
Facsimile: (816) 556-2787
Email: Roger.Steiner@kcpl.com

Attorney for KCP&L Greater Missouri Operations Company

Dated: August 9, 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 9th day of August, 2011.

/s/ Roger W. Steiner

Attorney for KCP&L Greater Missouri Operations Company