

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

Richard Tolbert,)	
)	
Complainant,)	
)	
v.)	Case No. EC-2007-0407
)	
Kansas City Power & Light Company,)	
)	
Respondent.)	

**MOTION TO DISMISS, AND ALTERNATIVELY, ANSWER
OF KANSAS CITY POWER & LIGHT COMPANY**

Pursuant to 4 CSR 240-2.070(6) and (8), Kansas City Power & Light Company ("KCPL") hereby respectfully requests that the Missouri Public Service Commission ("Commission") dismiss Richard Tolbert's complaint in this proceeding for lack of standing, or alternatively for failure to comply with the requirements of the Commission's regulations. If the Commission decides not to dismiss Mr. Tolbert's complaint, KCPL provides herein its answer to the complaint. In support thereof, KCPL states as follows:

I. BACKGROUND

1. On or about July 7, 2006, "ADNC Church" initiated electric service at 2315 East 39th Street, Apartment 1W and 2317 East 39th Street, Apartment 1E (collectively, the "Premises") under account numbers 3494371429 and 9950211529, respectively. The Premises are residential apartment units. As of May 14, 2007, ADNC has an unpaid account balance of \$171.44 for electric service at the Premises.

2. On July 11, 2006, the owner and landlord of the Premises contacted KCPL and stated that ADNC Church was misrepresenting the identity of the customers living at the Premises. On January 4, 2007, the owner and landlord of the Premises again contacted KCPL,

repeating his previous allegations and adding that Mr. Tolbert was residing at the Premises without a lease and that the landlord had filed suit against Mr. Tolbert for possession of the Premises.

3. Conducting its due diligence in response to the landlord's allegations, KCPL discovered that ADNC Church is the same entity as the "All Denominational New Church." The All Denominational New Church has an unpaid debt outstanding with KCPL of \$330.46 for service at 2012 Agnes and 4154 Troost, both in Kansas City, Missouri (account numbers 170830302 and 8302132593, respectively). In his communications with KCPL, Mr. Tolbert claims that 2012 Agnes is his permanent address.

4. Also during its due diligence KCPL discovered that Mr. Tolbert has an old and uncollectible debt with KCPL of \$451.59 for service at 7231 Chestnut, Kansas City, Missouri (account number 949035187). Mr. Tolbert terminated service at 7231 Chestnut. The All Denominational New Church subsequently reestablished service at that address.

5. KCPL also discovered that the social security number it had on file for Mr. Tolbert was incorrect. KCPL confirmed that the landlord was suing Mr. Tolbert for possession of the Premises.

6. In light of the questions raised during its due diligence, on January 5, 2007, KCPL posted the Premises for identification. The customer was notified that KCPL would disconnect service if identification was not received by January 10, 2007. KCPL did not disconnect electric service at the Premises until February 28, 2007. KCPL delayed the disconnection date, first in a good faith effort to resolve the matter with Mr. Tolbert, then in response to his informal complaint at the Commission.

7. On January 8, 2007, Mr. Tolbert contacted KCPL in response to the notice posting. Mr. Tolbert stated that the All Denominational New Church had a contract with the landlord to manage the Premises. Mr. Tolbert also stated that the Premises are vacant, but that he resides in the units from time to time. Mr. Tolbert stated that 2012 Agnes, Kansas City, Missouri is his permanent address. KCPL's records indicate that 2012 Agnes has been vacant since June 16, 2004. The last known customer of record at 2012 Agnes is the All Denominational New Church, which left an unpaid account balance of \$205.81.

8. During the January 8 phone conversation, KCPL requested that Mr. Tolbert provide picture identification and a social security card. KCPL explained that it had reason to believe fraudulent name switching was occurring and that KCPL was attempting to confirm whether such actions were taking place. Mr. Tolbert refused to provide any form of identification. KCPL requested that Mr. Tolbert provide a copy of the All Denominational New Church's contract to manage the property. Mr. Tolbert stated that he would mail the contract to KCPL because he did not have a fax machine. KCPL never received the contract.

9. On February 6, 2007, Mr. Tolbert filed an informal complaint at the Commission concerning KCPL's statement that it would disconnect electric service at the Premises for failure to pay and misrepresentation of identification. The Commission Staff investigated Mr. Tolbert's complaint. In a letter dated February 8, 2007, the Commission Staff informed Mr. Tolbert that KCPL "has not violated any rule or regulation of the Missouri Public Service Commission or their filed and approved tariff."¹ The Commission Staff also informed Mr. Tolbert that

In order to resolve this matter, the resident(s) of each apartment must provide the utility with picture ID and a copy of their social security card. In addition, the past-due debts totaling \$442.65 will

¹ A copy of the Commission Staff's letter to Mr. Tolbert is attached as Exhibit 1.

have to be paid in order to initiate service for both apartments. If the requested information is not provided, the service will be disconnected.

10. Mr. Tolbert continued to refuse to provide any identification and failed to pay his past due debt. On February 28, 2007, KCPL disconnected service at the Premises.

11. On April 18, 2007, Mr. Tolbert submitted a formal complaint to the Commission concerning the disconnection of electric service at 2315 East 31st Street and 2317 East 31st Street in Kansas City Missouri. As a point of clarification, according to KCPL's records, the Premises are actually located at 2315 East 39th Street, Apartment 1W and 2317 East 39th Street, Apartment 1E, respectively. Neither Mr. Tolbert, nor the All Denominational New Church, receive electric service at the addresses provided in Mr. Tolbert's complaint.

12. The Commission issued its notice of the complaint on April 20, 2007. Pursuant to that notice, KCPL's answer to Mr. Tolbert's complaint is due May 21, 2007.

II. MOTION TO DISMISS

13. Significantly, Mr. Tolbert is neither the owner of the Premises, nor the customer of record for either of the accounts involving the Premises. Moreover, according to Mr. Tolbert, neither of the Premises are his permanent residence. The customer of record for the Premises is ADNC Church. ADNC Church is the proper complainant concerning electric service at the Premises.

14. It is unclear how ADNC Church is organized, but it is likely organized either as a corporation or as an association. Commission rules govern complaints by either type of organization. If ADNC Church is a corporation, then pursuant to 4 CSR 240-2.080(1), its complaint must be signed by legal counsel. If ADNC Church is an association, then pursuant to 4 CSR 240-2.070(5)(G), its complaint must include a list of ADNC Church's members. Mr.

Tolbert does not have the requisite standing to file the complaint, and if the complaint is deemed to have been filed by ADNC Church, it is materially deficient.

15. For the foregoing reasons, KCPL respectfully requests that the Commission dismiss Mr. Tolbert's complaint.

III. ANSWER

A. KCPL had good cause to disconnect electric service at the Premises.

16. In its entirety, Mr. Tolbert's complaint alleges that "KCP&L disconnected electric service on 2/28/07 without good cause and without proper final notice." Contrary to Mr. Tolbert's unsubstantiated, general allegation, KCPL had ample cause to disconnect electric service at the Premises. Furthermore, it would have been quite easy for Mr. Tolbert to have avoided having the electric service disconnected. He simply needed to provide some form of proof of identification and make a payment toward his unpaid debt.

17. Among the express grounds for disconnecting electric service provided in the Commission's regulations are (i) "Nonpayment of an undisputed delinquent charge" and (ii) "Misrepresentation of identity in obtaining utility service." 4 CSR 240-13.050(1)(A) and (F). In the instant case, both provisions provide independent grounds for disconnecting electric service at the Premises.

18. Mr. Tolbert and ADNC Church—the actual customer at the Premises—have unpaid account balances with KCPL. Mr. Tolbert does not allege otherwise. Moreover, KCPL has good cause to believe that Mr. Tolbert misrepresented his identity to obtain electric service. KCPL received unsolicited information from the owner of the Premises indicating that ADNC Church was misrepresenting the identity of the customers living at the Premises so that KCPL would provide electric service. In the process of investigating that claim, KCPL discovered a

history of apparent name switching between the All Denominational New Church / ADNC Church and Mr. Tolbert at the Premises and other addresses. A search of Mr. Tolbert's credit history supports this conclusion by tracing him to 2012 Agnes, 4154 Troost, and the Premises, during the periods in which the outstanding debts were incurred. KCPL also discovered that the social security number it had on record for Mr. Tolbert was incorrect.

19. KCPL posted the Premises for identification, notifying Mr. Tolbert that KCPL would disconnect electric service at the Premises if he did not provide some form of identification. When Mr. Tolbert contacted KCPL in response to the posting, KCPL informed him that KCPL was attempting to confirm that no fraudulent name switching was occurring on the accounts at the Premises. Mr. Tolbert refused to provide any form of identification. He stated that he would mail a copy of the All Denominational New Church's contract to manage the Premises. That was in January of 2007. To date, KCPL has not received a copy of the agreement. The landlord has stated that no such contract exists.

20. Mr. Tolbert's unpaid account balance and misrepresentation of identity provided two independent grounds for disconnecting his electric service.

B. KCPL followed the notice requirements for disconnection of electric service.

21. Contrary to Mr. Tolbert's unsubstantiated allegations, KCPL satisfied all of the disconnection notice requirements set forth in 4 CSR 240-13.050. On January 5, 2007, KCPL posted the Premises, requesting proof of identification of all current occupants. Mr. Tolbert received that notice. On January 8, 2007, he contacted KCPL in response to it.

22. On January 13, 2007, KCPL posted notice of pending disconnect for failure to provide documentation needed to rebut evidence of Mr. Tolbert's misrepresentation and responsibility for past debt in name of the All Denominational New Church. On January 16,

2007, a KCPL representative again spoke with Mr. Tolbert, explaining KCPL's concern regarding the apparent name switching at the Premises. Mr. Tolbert requested that KCPL send duplicate bills to him at 2315 East 39th Street (one of the Premises). KCPL sent the requested information to Mr. Tolbert and granted him additional time in which to provide identification and make payment toward debt prior to disconnect. Mr. Tolbert refused to provide any form of identification. He also did not he attempt to make any payment arrangements. On February 28, 2007, following the staff's favorable resolution of Mr. Tolbert's informal complaint, KCPL disconnected service.

C. The Commission should deny Mr. Tolbert's requests for relief.

23. In his complaint, Mr. Tolbert requests "restoration of service and damages." The Commission should deny both of Mr. Tolbert's requests for relief. The Commission's regulations expressly entitle KCPL to deny electric service until the customer has remedied the cause for disconnection. In this case, the Commission should not direct KCPL to restore electric service at the Premises until Mr. Tolbert has paid KCPL \$420.22 of outstanding and past debt due and provided sufficient identification to confirm that no further name switching occurs.

24. Mr. Tolbert also requests to recover unspecified "damages." It is beyond the Commission's statutory authority to compel KCPL to compensate Mr. Tolbert for any damages he allegedly incurred as a result of the disconnection of service at the Premises. The Commission should therefore deny Mr. Tolbert's request.

IV. CONCLUSION

For the foregoing reasons, KCPL respectfully requests that the Commission dismiss Mr. Tolbert's complaint in the above-captioned case. Alternatively, KCPL respectfully requests that

the Commission deny Mr. Tolbert the relief he seeks in his complaint for the reasons set forth herein.

Respectfully submitted,

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

Curtis D. Blanc (Mo. Bar No. 58052)
Kansas City Power & Light Company
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Kansas City, Missouri 64106
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**COUNSEL FOR
KANSAS CITY POWER & LIGHT COMPANY**

Dated: May 17, 2007

EXHIBIT 1

Letter from Commission Staff to Mr. Tolbert Concerning His Informal Complaint



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

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Director, Utility Services

WARREN WOOD
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

February 8, 2007

Mr. Richard Tolbert
2315 E. 39th Street – Apt. 1W
Kansas City, MO. 64109

Dear Mr. Tolbert:

This letter is a follow up to the complaint you filed 2/07/07 regarding your Kansas City Power & Light (KCP&L) service issues. The complaint was regarding two addresses: 2317 E. 39th Street, Apt. 1E (account number 9950211529) and 2315 E. 39th Street, Apt. 1W., (account number 3494371429). In your complaint, you stated the Company was threatening to turn off services for failure to pay the past arrears. You further stated that the Church does not owe anything. After my initial review of your complaint matter, I contacted the company to obtain additional information. Following is a summary of my review of the issues involved in your complaint.

There are four outstanding balances from the following addresses in the name of All Denominational New Church:

Address	Dates of Service	Amount Owed
2012 Agnes	4/01/02 – 6/16/04	\$205.81
4154 Troost	4/02/02 – 6/23/04	\$124.65
2315 E. 39 th Street, Apt. 1W	7/07/06 – current	\$96.78
2317 E. 39 th Street, Apt. 1E	7/07/06 – current	\$15.41
Total owed:		\$442.65

On 1/05/07 KCP&L Revenue Protection posted both premises, 2317 E. 39th Street, Apt. 1E. and 2315 E. 39th Street, Apt. 1W. for the identity of the residents. The Company is entitled to know who the customer is and who will be the responsible party to pay for the service.

Attached is Chapter 13 – Service and Billing Practices for Residential Customers of Electric, Gas and Water Utilities. Please note that the Company can discontinue service for misrepresentation of identity; see 4 CSR 240-13.050, Discontinuance of Service, (1) (F).

Mr. Richard Tolbert
February 8, 2007
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Normally, the Company would also request a lease copy; however, Mr. Charlie Willard has advised KCP&L that that he does not have a lease with you.

In order to resolve this matter, the resident(s) of each apartment must provide the utility with a picture ID and a copy of their social security card. In addition, the past-due debts totaling \$442.65 will have to be paid in order to initiate service for both apartments. If the requested information is not provided, the service will be disconnected.

In closing, our investigation has concluded that Kansas City Power & Light has not violated any rule or regulation of the Missouri Public Service Commission or their filed and approved tariff.

This concludes our investigation of your informal complaint. Receipt of this letter serves as your notice of closure into this matter. If you are dissatisfied with the resolution, it is our responsibility to advise you that under Commission rule 4 CSR 240-13.070 (4), you may file a formal complaint.

For your convenience, please contact us within 31 days from the date of this letter to request a formal complaint packet. The formal complaint process is a quasi-judicial process similar to a civil court hearing, whereby all parties are responsible for presenting their facts to the Commission.

I hope that I have been able to address your concerns. Thank you for contacting our office regarding this matter. If I can assist you further in any way, please do not hesitate to contact me at 1-800-392-4211.

Sincerely,

Cecilia Barr
Consumer Specialist II
Missouri Public Service Commission

Attachment: Chapter 13: Services and Billing Practices for Residential Customers of
Electric, Gas and Water

CERTIFICATE OF SERVICE

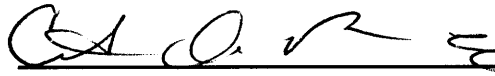
I hereby certify that a copy of the foregoing Application was served either by electronic mail or by first class mail, postage prepaid, on this 17th day of May 2007, upon:

Richard Tolbert
2315 E. 39th Street
Kansas City, Missouri 64109

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