

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

Emma J. McFarlin and Rebecca J. Shepherd,)	
)	
Complainants,)	
)	
v.)	File No. EC-2013-0024
)	
Kansas City Power & Light Company,)	
)	
Respondent.)	

**MEMORANDUM IN SUPPORT OF KANSAS CITY POWER & LIGHT COMPANY'S
MOTION FOR PARTIAL SUMMARY DISPOSITION**

Pursuant to 4 CSR 240-2.117, Kansas City Power & Light Company ("KCP&L" or "Company") respectfully moves the Missouri Public Service Commission ("Commission") to grant partial summary disposition in favor of KCP&L with respect to the Complaint filed by Emma J. McFarlin and Rebecca J. Shepherd ("Complainants"). In support thereof, KCP&L states as follows:

I. INTRODUCTION

1. Complainants filed a Complaint with the Commission on July 20, 2012 initiating the above-captioned proceeding. Although not entirely clear based on the allegations stated in the complaint, Complainants believe the meter on the 3637 Agnes Avenue, Kansas City, MO 64128 ("Property") had been registering more electricity than the Complainants' actual consumption and is requesting relief from high bills allegedly brought on by a faulty meter. *See* Request for Mediation and Resolution filed July 24, 2012. 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 Complainants'

bills is required to be made by KCP&L. Accordingly, partial summary disposition must be granted in KCP&L's favor.

II. STATEMENT OF UNCONTROVERTED MATERIAL FACTS

2. Rule 6.09(a) (Sheet 1.24) of KCP&L's tariffs provide for refunds for meter errors if the error is greater than 2%. The tariff states:

6.09 Billing Adjustments:

- (a) Where, upon test, the kilowatt-hour meter error is found to be 2% or less, no billing adjustment will be made.

See Exhibit 1.

3. Complainants meter was tested on February 20, 2013. The meter test demonstrated that the meter was 100.03% accurate. These tests were performed pursuant to Commission standards and demonstrated that the meter was accurate. *See Exhibit 2, Affidavit of Corey Paczosa.*

III. STANDARD OF REVIEW

4. A defendant establishes a right to summary disposition by (1) offering facts that negate one or more essential elements of 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

5. 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

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.

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

IV. ARGUMENT

7. Part of the basis for Complainants' Complaint is that they believe the meter on the Property did register more electricity than consumed. Disputes regarding a customer's usage amounts are governed by KCP&L's tariffs (Rule 6.09(a) (Sheet 1.24)) which provides that unless the error is greater than 2% no billing adjustment will be made. Since the meter demonstrated a meter accuracy of 100.03%, a billing adjustment is not appropriate. There is no basis under the Company's tariffs for the Commission to grant the relief requested.

WHEREFORE, KCP&L respectfully requests the Commission enter an Order granting partial summary disposition in its favor with respect to Complainants' Complaint.

Respectfully submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MBN 39586
Corporate Counsel
Kansas City Power & Light Company
1200 Main – 16th Floor
Kansas City, Missouri 64105
Phone: (816) 556-2314
Fax: (816) 556-2787
E-mail: roger.steiner@kcpl.com

Attorney for Kansas City Power & Light Company

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

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 counsel of record on this 15th day of March, 2013.

/s/ Roger W. Steiner

Roger W. Steiner

FORM NO. 13

P. S. C. MO. No. 2Fifth { ~~Original~~ } SHEET No. 1.24
RevisedCancelling P. S. C. MO. No. 2Fourth { ~~Original~~ } SHEET No. 1.24
Revised

KANSAS CITY POWER & LIGHT COMPANY

Name of Issuing Corporation or Municipality

For... Rate Area No. 1 Urban Area &
Community, Town or CityRate Area No. 3 Suburban AreaGENERAL RULES AND REGULATIONS
APPLYING TO ELECTRIC SERVICERECEIVED
(Continued)6. METERING (continued)

OCT - 7 1994

6.09 BILLING ADJUSTMENTS:

MO. PUBLIC SERVICE COMM.

- (a) Where, upon test, the kilowatt-hour meter error is found to be 2% or less, no billing adjustment will be made.
- (b) Except as provided in (c), (d), (e), (g), (h), and (i) of this Rule, where upon test, the kilowatt-hour meter error is found to be in excess of 2%, a billing adjustment shall be made to compensate the Customer for a "fast" meter. The Company will determine from all related and available information the probable period during which such condition existed and shall make billing adjustments for the period estimated to be involved, provided that no such billing adjustment shall be made prior to the beginning of the sixtieth billing period immediately preceding the billing period in which a fast meter was found to have existed. No compensation for a "slow" meter will be sought from the Customer.
- (c) Any bill based upon defective demand metering equipment, incorrect registrations of demand due to improper demand meter connections, the application of improper demand constants, or, any other circumstance resulting in billing error, shall be subject to adjustment for the entire period during which such condition existed, in the event the Customer was overcharged, not to exceed sixty consecutive billing periods, calculated from date of discovery, inquiry or actual notification to Company. In the event the Customer was undercharged, no billing adjustment shall be made prior to the beginning of the twelfth billing period immediately preceding the billing period in which such condition was found to have existed.
- (d) When a non-registering meter is found or incorrect meter readings are recorded, the Company shall determine from all related and available information the facts and probable period during which such condition existed and make billing adjustments for the period involved, provided that no such billing adjustment will be made applicable prior to the beginning of the twelfth billing period immediately preceding the billing period in which such condition is found to have existed.

FILED

NOV 16 1994

MISSOURI
Public Service Commission

KCPL Form 661H002 (Rev 6/94)

DATE OF ISSUE October 7, 1994 DATE EFFECTIVE November 16, 1994
month day year month day yearISSUED BY S. W. Cattron Vice President 1201 Walnut, Kansas City, Mo.
name of officer title address

EXHIBIT 1

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

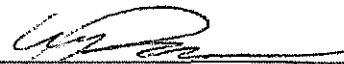
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AFFIDAVIT

The undersigned, Corey Paczosa, states under oath as follows:

1. I am employed by Kansas City Power & Light Company, as Manager of Measurement Technology.
2. I have reviewed the attached meter test performed on February 19, 2013 for meter 1284810714731G and found the test to be complete and accurate.
3. The above meter test was performed according to the Missouri Public Service Commission rules.

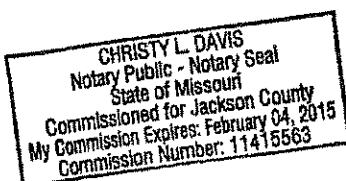
FURTHER AFFIANT SAITH NOT.




Corey Paczosa

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

Subscribed and sworn before me, a Notary Public, on this 6th day of March, 2013.





Notary Public

02/20/2013 13:42 2453625

MEASUREMENT TECH
KANSAS CITY POWER & LIGHT

PAGE 02/02

FIELD INVEST. - Meter Test
Service Address: [REDACTED]Customer Name : MCFARLIN, EMMA JEAN
Ordered By : CUSTOMER RELATIONS
Issued By : SAS7489
Rate : IRS1AAcct: [REDACTED]
Bill cycle: 10
BFT: No
Area: Manchester
Cycle/Route: 07 / 280DInstructions
Test meter - formal complaint

Date Taken: 02/14/2013 /

TELEPHONE

Primary [REDACTED]

Work [REDACTED]

Premise [REDACTED]

Elec Addr: M1628330

ALERT : [REDACTED]

Utility : Electric
Location: OS

SOCKET	Meter	Use	Amps	Phase	Wire	Purch
VOLTS	Volts					Year
120/240	120/240	GEN		1	3	2001

Callnet @ 8:27AM

54814

CURRENT Meter Number	Seal	Const	UOM	Dials	Last Readings	Current Readings
1284810714731G	3	1.0	KW	5.2		54814
		1.0	KWH	5.0	54212.0	

New Meter Info	Meter Number	Seal	Const	UOM	Dials	Readings
				KWH		
				KW		

Equipment
2x3.75 sec
6.96K
AF HL-143.7570 = 100.04
LH-28.7997 = 100.01
AA - 100.03%

Investigation Report Ran Load check good Voltage. Ran as Found
No Creep on meter. Ran 15min meter good
AS 1/2 Load 1Re = 30.78 A/c

FEB 19 2013

Talked To Mrs.
Investigated By 9540
Date 2-19-13

Service Order # 1083053496

EXHIBIT 2