

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

Rebecca J. Schmidt,)
)
 Complainant,)
)
 v.)
)
 KCP&L Greater Missouri Operations)
 Company,)
)
 Respondent.)

File No. EC-2010-0244

**ANSWER AND MOTION TO DISMISS OF KCP&L GREATER MISSOURI
OPERATIONS COMPANY**

Pursuant to 4 CSR 240-2.070 (6) and (8), KCP&L Greater Missouri Operations Company (“Company” or “GMO”)¹ hereby submits its answer and its Motion to Dismiss to the Missouri Public Service Commission (“Commission”) in response to Rebecca J. Schmidt’s complaint in this proceeding.

In support, GMO states as follows:

BACKGROUND

1. Ms. Schmidt resides at 1209 N. Lyne, Raymore, Missouri (the “Property”). According to Ms. Schmidt’s complaint, Michael Allen Smith is the owner of the Property. According to GMO’s records, Mr. Smith and Ms. Schmidt are both responsible for paying for electric service at the Property². Under Section 1. F of GMO’s tariff a ‘customer’ is defined as a

¹ While the complaint filed in this matter designates Kansas City Power & Light Co. as the Respondent, the complainant is, in fact, a customer of KCP&L Greater Missouri Operations Company. In order not to unduly delay this matter, GMO enters its appearance and answer and suggests that the case caption be amended accordingly.

² GMO’s bills for electric service to the Property are sent to Michael Smith at the above address. See attached Exhibit A (HC), which is a copy of a screenshot from GMO’s customer information database and shows that Ms. Schmidt and Mr. Smith are both financially responsible for the account.

person that is responsible for payment for service except one denoted as a guarantor. Both Ms. Schmidt and Mr. Smith are customers of record on the same account.

2. Ms. Schmidt filed a complaint with the Commission initiating the above captioned proceeding. Ms. Schmidt alleges that she should not be responsible for tampering charges at the Property because she did not tamper with GMO's facilities. In her complaint, Ms. Schmidt admits that Mr. Smith tampered with the GMO facilities. Ms. Schmidt also asks that electricity be restored to the Property.

3. The Commission issued its notice of complaint on February 26, 2010. Pursuant to that notice, GMO's answer is due March 31, 2010.

4. GMO contacted Ms. Schmidt on March 4, 2010 and was able to work out a resolution of the matter so that service could be restored and the complaint dismissed. However, Ms. Schmidt has never paid the agreed upon amount for resolution. GMO has attempted to contact Ms. Schmidt several times and on March 26, Ms. Schmidt indicated that she was still planning on paying the agreed upon amount .

ANSWER

5. Except as expressly admitted in this Answer, GMO denies each and every other allegation contained in the Complaint.

6. GMO has acted in accordance with its tariffs and the Missouri Code of State Regulations.

7. The tampering-related charges assessed against Ms. Schmidt's and Mr. Smith's account are appropriate. Both Mr. Smith and Ms. Schmidt are "customers" as defined in GMO's tariff and both are responsible for the charges to the account. Section 4.02 of the General Rules and Regulations of GMO's tariffs provides that when tampering occurs, GMO may discontinue service, may require the customer to pay for estimated electric energy usage and may increase

the deposit in an amount determined by the Company before service is restored. In addition, section 4.02 requires that the customer bear all associated costs incurred by GMO including estimated labor charges, investigation and prosecution costs, material charges and protective equipment. Section 2.04 of GMO's tariff also provides that GMO may require a security deposit when the customer has in an unauthorized manner interfered with or diverted the service.

8. In her complaint, Ms. Schmidt appears to request that the Commission require GMO to make restitution for damages to her home (broken water pipes and frozen hot water heater). It is beyond the Commission's statutory authority to compel GMO to provide such "other restitution." The Commission must therefore deny Ms. Schmidt's request for such relief.

AFFIRMATIVE DEFENSES

9. Ms. Schmidt's complaint fails to state a claim upon which relief can be granted.

MOTION TO DISMISS

10. 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."³ In other words, the Commission should ask, assuming the allegations are true, whether the complainant would have a right to the relief she seeks. Under this standard, Ms. Schmidt's complaint must fail. Even if each fact Ms. Schmidt alleges were accurate, she is not entitled to the relief she seeks. Ms. Schmidt admits that the primary person on the account (Mr. Smith) tampered with GMO's facilities. Ms. Schmidt is properly responsible for the tampering-related charges because Mr. Smith is a GMO customer on the same account as Ms. Schmidt. Both Mr. Smith and Ms.

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

Schmidt are financially responsible for charges to the account. The amount of the tampering-related charges is also consistent with GMO's tariffs.

WHEREFORE, having fully answered and set forth its affirmative defenses, Respondent GMO prays the Commission dismiss the complaint with prejudice and grant such other relief as the Commission deems reasonable and just.

Respectfully submitted,

/s/ Roger W. Steiner

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**Attorneys for Kansas City Power & Light
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Dated: March 31, 2010

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 31st day of March, 2010.

/s/ Roger W. Steiner

Attorney for Kansas City Power & Light Greater Missouri
Operations Company