

11/20

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

|                                      |   |                          |
|--------------------------------------|---|--------------------------|
| David L. Biersmith d/b/a             | ) |                          |
| Industrial Medical Center,           | ) |                          |
|                                      | ) |                          |
| Complainant,                         | ) |                          |
|                                      | ) | <u>Case No. EC-99-77</u> |
| v.                                   | ) |                          |
|                                      | ) |                          |
| Kansas City Power and Light Company, | ) |                          |
|                                      | ) |                          |
| Respondent.                          | ) |                          |

ORDER DISMISSING COMPLAINT

David L. Biersmith d/b/a Industrial Medical Center (complainant) filed a formal complaint with the Missouri Public Service Commission on August 21, 1998 against Kansas City Power & Light Company (KCPL). The complaint, although ambiguous, appears to allege that due to negligence on the part of KCPL, complainant's electrical equipment was damaged by a power surge and requests that the Commission award him \$15,000 in damages. On September 30, 1998, KCPL filed with the Commission a Motion to Dismiss or in the Alternative Motion to Make More Definite and Certain.

KCPL's motion asserts correctly that the Commission is without jurisdiction to award damages to the complainant. The Missouri Supreme Court in State ex rel. Laundry, Inc. v. Public Service Comm'n, 34 S.W.2d 37, 46 (Mo. 1931), addressed the question of whether monetary relief can be sought from the Commission.

"The pecuniary relief so prayed by complainants calls for the exercise of a judicial function, by the entry of a judgment or order for the recovery of money,

which function is exclusively exercisable only by the judicial branch or department of our state government. The Public Service Commission is an administrative body only, and not a court, and hence the Commission has no power to exercise or perform a judicial function, or to promulgate an order requiring a pecuniary reparation or refund."

See also State ex rel. Barvick, v. Public Service Comm'n, 606 S.W.2d 474 (Mo. App. 1980).

**IT IS THEREFORE ORDERED:**

1. That, because the Commission is without jurisdiction to award the relief sought by the complainant, the Motion to Dismiss made by Kansas City Power & Light Company is granted and the formal complaint filed by David L. Biersmith d/b/a Industrial Medical Center is hereby dismissed.

2. That this order shall become effective on December 1, 1998.

**BY THE COMMISSION**



**Dale H. Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Anji Gandhi, Regulatory Law Judge,  
by delegation of authority  
Pursuant to 4 CSR 240-2.120(1)  
(November 30, 1995) and  
Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 20th day of November, 1998.

**RECEIVED**  
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**COMMISSION COUNSEL**  
**PUBLIC SERVICE COMMISSION**