

As
(SD)

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 24th
day of November, 1998.

David L. Biersmith d/b/a Industrial)	
Medical Center,)	
)	
Complainant,)	
)	
v.)	<u>Case No. EC-99-142</u>
)	
Kansas City Power & Light Company,)	
)	
Respondent.)	

ORDER OF DISMISSAL

David Biersmith (Complainant) has filed a formal complaint with the Commission alleging that Kansas City Power & Light Company (KCPL) failed to return a \$3,000 deposit after repeated requests to do so. This is the third formal complaint filed by Complainant in two years seeking monetary reparation against KCPL. Cases EC-97-513 and EC-99-77 were both dismissed by the Commission for lack of jurisdiction.

KCPL filed an answer on November 16, 1998 stating that this matter had already been decided in EC-97-513. KCPL further stated that Complainant had filed suit against them in the Circuit Court of Jackson County on March 18, 1998. This action, too, was dismissed. KCPL asks that the Commission dismiss the instant complaint and further issue an order barring Complainant from filing any subsequent complaints regarding the same matters.

The Commission again states that it is without jurisdiction to order a refund or any other cash award to the Complainant. "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." State ex rel. Laundry, Inc. v. Public Service Commission, 34 S.W.2d 37, 46; Straube v. Bowling Green Gas Co., 227 S.W.2d 666, 668, 18 A.L.R.2d 1335. "The commission has no power to declare or enforce any principle of law or equity [] and as a result it cannot determine damages or award pecuniary relief." American Petroleum Exchange v. Public Service Commission, 172 S.W.2d 952, 954, 955; Board of Public Works of Rolla v. Sho-Me Power Corp., 244 S.W.2d 55, 59; Consumers Public Service Co. v. Public Service Comm., 180 S.W.2d 40; State ex rel. Missouri Pacific R. Co. v. Public Service Commission, 259 S.W. 445. Since the Commission is not a court, it "has neither the power to construe contracts, nor to enforce them." State ex rel. Washington University v. Public Service Commission, 272 S.W. 971, 972. See also May Department Stores Co. v. Union Electric Light & Power Co., 107 S.W.2d 41, 49; Kansas City Light & Power Co. v. Midland Realty Co., 93 S.W.2d 954, 959; State ex rel. Gehrs v. Public Service Commission, 114 S.W.2d 161, 165. It "has no authority to adjudicate and determine individual or personal rights [] because under the Constitution the Legislature has no power or authority to invest such Commission with judicial powers." State ex rel. Rutledge v. Public Service Commission, 289 S.W. 785, 787; State ex rel.


Consumers Public Service Co. v. Public Service Commission, 180 S.W.2d
40, 44.

The Commission is aware that Complainant has continued to file complaints against KCPL that do not belong before the Commission. KCPL has been forced to expend valuable legal resources each time Complainant has filed a complaint; ultimately this expenditure will be borne by Missouri ratepayers. Unfortunately, the Commission is without power to prevent Complainant from exercising his right to file formal complaints before the Commission. The Commission does note that until Complainant lodges a complaint seeking relief within the jurisdiction of the Commission, his complaints will continue to be dismissed.

IT IS THEREFORE ORDERED:

1. That this Complaint is dismissed for reasons set out above.
2. That this order shall become effective on November 24, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer,
Murray and Schemenauer, CC.,
concur.

Gandhi, Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION