

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 6<sup>th</sup> day of December, 2007.

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

**ORDER DENYING COMPLAINANT’S MOTION FOR RECONSIDERATION**

Issue Date: December 6, 2007

Effective Date: December 6, 2007

Richard Tolbert filed a formal complaint against Kansas City Power & Light on April 18, 2007. On October 30, 2007, the Commission issued an order dismissing the complaint without prejudice due to Mr. Tolbert’s failure to comply with the Commission’s rules governing pleadings and practice by non-attorneys before the Commission. That order bore an effective date of November 9, 2007. On November 14, 2007, Mr. Tolbert filed a Motion to Reconsider Dismissal. KCPL filed a detailed and extensive response opposing Mr. Tolbert’s motion on November 15, 2007, and Staff filed its response in opposition to the motion on November 20, 2007.

In his motion, Mr. Tolbert alleges, for the first time since he filed his formal complaint more than seven months ago, that he “was a tenant, resident, and co-owner of the Premises.” Based on these new allegations, which directly contradict the public real estate

records of Jackson County<sup>1</sup> and Mr. Tolbert's prior pleadings in this case,<sup>2</sup> Mr. Tolbert requests that he be permitted to amend his complaint to plead these facts "and sign it for himself as a tenant and resident" of the Premises. The Commission will deny Mr. Tolbert's motion for reconsideration as untimely filed.

Commission orders take effect at the very beginning of their effective date.<sup>3</sup> Therefore, the Commission's order of dismissal became effective at 12:00 a.m. on November 9, 2007. Accordingly, for Mr. Tolbert's motion for reconsideration to be timely filed, it must have been filed before then. Under Commission Rule 4 CSR 240-2.080(11), which applies to documents transmitted to the Commission by mail or in person rather than being filed electronically through the Commission's Electronic Filing Information System,<sup>4</sup> "[t]he date of filing shall be the date the pleading or brief is stamped filed by the secretary of the commission." Moreover, the date the document was mailed is unimportant – it is the date the Commission received the document that is critical.<sup>5</sup>

Mr. Tolbert's motion, which states that it was sent to the Commission and counsel for KCPL on November 7, 2007 via regular U.S. mail, was received and stamped filed by the secretary of the Commission on November 14, 2007. Because Mr. Tolbert's motion for reconsideration was not filed until five days after the Commission's order dismissing the

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<sup>1</sup> In its response, KCPL included a copy of publicly-available property records which show that Charlie Willard is the sole owner and sole county taxpayer of the Premises, which are located in Jackson County.

<sup>2</sup> For example, in his Complaint Case Response Form, Mr. Tolbert stated: "Mr. Tolbert was not the tenant of those apts. ADNC was."

<sup>3</sup> *State ex rel. Alton R.R. Co. v. Pub. Serv. Comm'n*, 155 S.W.2d 149, 152-53 (Mo. 1941).

<sup>4</sup> See Order Denying Respondent's Motion for Reconsideration and Application for Rehearing, *Staff v. Suburban Water and Sewer Co.*, Case No. WC-2007-0452 et al. (Sept. 13, 2007).

<sup>5</sup> There is no "mailbox rule" in Commission proceedings. See *Alton*, 155 S.W.2d at 154 (holding that an application for rehearing was not filed "until the motion for a rehearing reached the commission" and rejecting appellant's argument that date of mailing should control). Likewise, it is immaterial that the secretary of the Commission received and filed Mr. Tolbert's motion out of time rather than rejecting it outright. *Id.*

petition became effective, it “was not timely filed and must be denied,”<sup>6</sup> as “the order and decision of the commission became final and conclusive”<sup>7</sup> at 12:00 a.m. on November 9, 2007. In short, since the Commission’s order dismissing Mr. Tolbert’s complaint without prejudice became final and conclusive nearly a week before he filed his motion for reconsideration, there is nothing for the Commission to reconsider.

**IT IS ORDERED THAT:**

1. Richard Tolbert’s Motion to Reconsider Dismissal is denied.
2. This order shall become effective on December 6, 2007.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Appling, and Jarrett, CC., concur  
Clayton, C, dissents

Lane, Regulatory Law Judge

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<sup>6</sup> *Id.* n.4 *supra*.

<sup>7</sup> *Alton*, 155 S.W.2d at 154.