

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 30th day of
October, 2007.

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

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Issue Date: October 30, 2007

Effective Date: November 9, 2007

Richard Tolbert filed a formal complaint against Kansas City Power & Light Company ("KCPL") on April 18, 2007. Mr. Tolbert's one-sentence complaint alleged, *in its entirety*: "KCP&L disconnected electric service on 2/28/07 without good cause and without proper final notice." For relief, he requested restoration of service and an award of monetary damages. On April 20, 2007, the Commission notified KCPL of the complaint and allowed it thirty days in which to answer as provided by Commission Rule 4 CSR 240-2.070(7). The same day, pursuant to 4 CSR 240-2.070(10), the Commission ordered its Staff to commence an investigation of Mr. Tolbert's formal complaint and to file a report concerning the results of its investigation no later than two weeks after KCPL filed its answer to the complaint, which was due no later than May 21, 2007.

KCPL filed its Answer and Motion to Dismiss on May 17, 2007. In those pleadings, among other things, KCPL averred that on or about July 7, 2006, an entity known as “ADNC Church” initiated electric service at 2315 East 39th Street, Apartment 1W and 2317 East 39th Street, Apartment 1E (collectively, “the Premises”), both of which are residential apartment units. According to KCPL’s answer, Mr. Tolbert does not permanently reside at the Premises and is neither the owner of the Premises nor the customer of record for either of the accounts involving the Premises.¹ Furthermore, says KCPL, on July 11, 2006, and January 4, 2007, the owner and landlord of the Premises contacted KCPL and stated that ADNC Church was misrepresenting the identity of the customers living at the Premises.

KCPL’s answer also alleged that it posted the Premises for identification on January 5, 2007. Three days later, says KCPL, Mr. Tolbert contacted KCPL about the notice posted at the Premises, and was told that KCPL was attempting to determine whether fraudulent name switching had occurred or was occurring on the two accounts at the Premises. Mr. Tolbert allegedly refused to provide KCPL any form of personal identification, which had been requested since the social security number KCPL had on file for Mr. Tolbert was not assigned to him.

KCPL further stated that on February 28, 2007, it disconnected electric service at the Premises for several reasons, including ADNC Church’s failure to pay its various past due account balances for electric service at various addresses in metropolitan Kansas City and its misrepresentation of the identity of the person or persons residing at the Premises in

¹ This forms the basis for KCPL’s motion to dismiss Mr. Tolbert’s complaint for lack of standing. KCPL further argues that even if Mr. Tolbert intended to prosecute this action on behalf of ADNC Church (which is the proper complainant concerning electric service at the Premises), the complaint is materially deficient, as it is not signed by a licensed Missouri attorney, as required by 4 CSR 240-2.080(1).

order to obtain electric service at the Premises.² KCPL also alleged that it satisfied all of the notice requirements set forth in 4 CSR 240-13.050 before disconnecting electric service at the Premises, and that it was not until Staff had resolved Mr. Tolbert's informal complaint that his service was disconnected.

On June 4, 2007, after investigating Mr. Tolbert's formal complaint, Staff filed its verified report and recommendation. In addition to confirming most, if not all, of KCPL's allegations, Staff found that ADNC Church, *not* Mr. Tolbert, is the customer of record for the accounts at the Premises. In particular, Staff recommended that the Commission dismiss this case in its entirety as the complaint was not signed by an attorney representing ADNC Church and Staff's investigation revealed no tariff, rule, or statutory violations by KCPL throughout its dealings with ADNC Church or Mr. Tolbert. As to Mr. Tolbert's request for an award of money damages, Staff cited Missouri case law indicating that since the Commission is not a court but an executive branch administrative agency, its adjudicative authority is not plenary and it can neither "enter a money judgment for one party against another" nor "grant monetary relief for compensation for past overcharges or damages."³

On August 15, 2007, the Commission entered an Order Directing Filing setting forth all of the above information in detail and stating:

At this stage of his case, Mr. Tolbert has not stated any facts upon which the Commission could conclude that KCPL violated its approved tariff, applicable Commission rules, or Missouri statutes in disconnecting electric service at the Premises on February 28, 2007. Nor has he stated any facts showing why he has standing to bring this complaint on his own behalf, or why it should not be dismissed for ADNC Church's failure to comply with the Commission's rules governing pleadings. Therefore, the Commission would

² See 4 CSR 240-13.050(1)(A) & (1)(F).

³ *May Dept. Stores Co. v. Union Elec. Light & Power Co.*, 107 S.W.2d 41, 58 (Mo. 1937); see also *Am. Petroleum Exch. v. Pub. Serv. Comm'n*, 172 S.W.2d 952, 955 (Mo. 1943) (Commission has no authority to award pecuniary relief or consequential damages).

like to hear from Mr. Tolbert before ruling on KCPL's Motion to Dismiss his complaint and deciding whether to accept the recommendation of its Staff that it be dismissed.

Accordingly, the order gave Mr. Tolbert until 5:00 p.m. on August 30, 2007 to file an appropriate pleading addressing those concerns by affirmatively alleging facts upon which the Commission could find that he had standing to bring the complaint and that the Commission had jurisdiction to entertain it.⁴

On August 30, 2007 (the last day upon which Mr. Tolbert could timely file the pleading he had been ordered to file fifteen days earlier), the Regulatory Law Judge assigned to this case received a phone call from Mr. Tolbert, during which he requested an additional fifteen days to comply with the Commission's order of August 15, 2007, so he could obtain various documents pertaining to his case. The judge informed Mr. Tolbert that he would need to file an appropriate written pleading formally requesting a fifteen-day extension, or to at least promptly contact the attorney representing KCPL to determine if he had any objections to such an extension. Once he contacted counsel for KCPL, Mr. Tolbert was to call the judge to inform him of the results of that conversation.

As of September 6, 2007, the Regulatory Law Judge had not heard back from Mr. Tolbert, and Mr. Tolbert had not filed a written request for an extension. Therefore, the judge contacted Curtis Blanc, the attorney of record for KCPL, to ascertain whether he had heard from Mr. Tolbert and to determine if KCPL had any objections to Mr. Tolbert's oral request for a fifteen-day extension. Mr. Blanc indicated that although he had not yet spoken with Mr. Tolbert, Mr. Tolbert had left him a brief voice mail message on September

⁴ Attached to the order was a lengthy letter from the Commission further explaining the process and providing other helpful information to Mr. Tolbert. The letter stated, in relevant part: "**You must respond:** If you do not respond to orders that require you to send information, you will lose your case. . . . If you do not return this

5, 2007 in which Mr. Tolbert requested a return phone call on an unspecified topic. Mr. Blanc also represented to the judge that KCPL would not oppose Mr. Tolbert's oral request for an extension of time.

As of September 10, 2007, Mr. Tolbert had not contacted the Regulatory Law Judge as directed, had not filed a formal written request for a fifteen-day extension of time, and had not filed the responsive pleading he was originally ordered to file by no later than 5:00 p.m. on August 30. Nevertheless, under the circumstances, in its Second Order Directing Filing, which was issued on September 12, 2007, the Commission granted Mr. Tolbert the 15-day extension he had orally requested back on August 30, and gave him until 5:00 p.m. on September 14, 2007 to file the specified pleading.⁵

On the afternoon of September 17, 2007, the Regulatory Law Judge received a fax from Mr. Tolbert whose cover sheet was dated September 14.⁶ In this pleading, titled "Complainant Request for More Time to Comply With Order Directing Filing," Mr. Tolbert acknowledged having been notified by the judge of the Commission's September 12 order granting him an extension to September 14, but explained that he needed yet another two weeks "to gather the documentation required to comply with [t]he Order Directing Filing."

In order to facilitate a prompt but informed decision on the issue, on September 20, 2007, the Commission issued an order shortening the time to respond to Mr. Tolbert's

form, we will assume that you do not want to continue with your complaint and [that it] should be dismissed." (Emphasis in original.)

⁵ The Regulatory Law Judge notified Mr. Tolbert of this development by leaving him a voice mail message on the same day the order was issued.

⁶ The reason for the delayed receipt is obvious, since the cover sheet shows that the pleading was faxed to the number for the Commission's Utility Operations Division, not the one for the Commission's Adjudication Division.

pleading⁷ and giving the parties until 5:00 p.m. on Friday, September 21, 2007, to file any such response. None were received, and by order dated September 25, 2007, the Commission granted Mr. Tolbert's request for a second extension of time to respond. That order specified that his pleading was due by no later than 5:00 p.m. on Friday, September 28, 2007 and advised him that no further extensions were likely to be granted absent extraordinary circumstances.⁸

On the morning of Tuesday, October 2, 2007, the Regulatory Law Judge received an 8x11 envelope from Mr. Tolbert containing the Complaint Case Response Form he completed.⁹ On October 3, 2007, the Commission issued an order directing KCPL and Staff to file, by no later than October 12, 2007, appropriate pleadings discussing whether the record, as supplemented by Mr. Tolbert's latest pleading, affirmatively established any jurisdictional basis for the Commission to adjudicate the complaint.¹⁰ In particular, the Commission ordered KCPL and Staff to address whether the complaint filed by Mr. Tolbert

⁷ Under 4 CSR 240-2.080(15), which provides that, unless otherwise ordered by the Commission, "[p]arties shall be allowed not more than ten (10) days from the date of filing in which to respond to any pleading," the parties would normally have had a maximum of ten calendar days to respond to Mr. Tolbert's request for a second extension of time.

⁸ The Regulatory Law Judge notified Mr. Tolbert of these development by speaking with him over the phone on the same day the order was issued.

⁹ The envelope is postmarked September 25, 2007. Why it took a week to be delivered is unknown.

¹⁰ See, e.g., Commission Rule 240-2.070(5)(F) (requiring all formal complaints to contain information showing "[t]he jurisdiction of the commission over the subject matter of the complaint"); *State ex rel. Wilson Chevrolet, Inc. v. Wilson*, 332 S.W.2d 867, 871 (Mo. 1960) (holding that unless the "necessary jurisdictional facts" affirmatively appear on the face of the record of a tribunal of limited powers and jurisdiction, the tribunal's "action or decision in exercising its statutory functions is void").

remained subject to dismissal on one or more of the following grounds, all of which had previously been raised in their pleadings: (1) it still does not contain well-pleaded facts showing why he has standing to bring this complaint; (2) it still fails to comply with the Commission's rules governing pleadings; and (3) it still lacks well-pleaded facts upon which the Commission could conclude that KCPL violated its approved tariff, applicable Commission rules, or Missouri statutes in disconnecting electric service at the Premises on February 28, 2007. On October 12, 2007, KCPL and Staff timely filed their responses, which requested that the complaint be dismissed for one or more of those three reasons. Mr. Tolbert did not file a response within the ten days allowed under the Commission's rules.

Although it could very likely also be dismissed on one or both of the other independent grounds raised by KCPL, the Commission will dismiss the amended complaint for Mr. Tolbert's failure to comply with the Commission's rules governing pleadings. In its Answer and Motion to Dismiss of May 17, 2007, KCPL alleged that because ADNC Church is not a natural person, it must be represented by counsel before the Commission and that an attorney must sign the complaint. There is no dispute that Mr. Tolbert is neither the owner nor a tenant or permanent resident of the Premises; that ADNC Church, not Mr. Tolbert, is the customer of record that paid the bill for the accounts associated with the Premises; and that Mr. Tolbert's complaint is not signed by an attorney. Furthermore, in his Complaint Case Response Form, Mr. Tolbert acknowledges that he did not bring the complaint in his capacity as a natural person, but instead brought it "to represent the church," which he says is an "unincorporated association" consisting of one member (himself).

The Commission's rules make it clear that all pleadings filed with the Commission must be signed by an attorney of record authorized to practice law in Missouri unless the signer of the pleading is a natural person acting solely on his or her own behalf and representing only him or herself.¹¹ Here, however, the complaint is signed only by Mr. Tolbert, who is not an attorney licensed to practice law in Missouri and is not appearing on his own behalf, but instead is representing ADNC Church. Therefore, despite the fact that associations may submit formal complaints against public utilities,¹² the complaint filed by Mr. Tolbert on behalf of ADNC Church is effectively unsigned, making it subject to rejection¹³ or dismissal.¹⁴ As the complaint filed by Mr. Tolbert does not comply with the Commission's rules governing pleadings and practice by non-attorneys before the Commission, it will be dismissed without prejudice.

IT IS ORDERED THAT:

1. Richard Tolbert's April 18, 2007 formal complaint against Kansas City Power & Light Company is dismissed without prejudice.

¹¹ See 4 CSR 240-2.080(1), (2), & (6); 4 CSR 240-2.040(3) & (5). The underlying basis for these rules can be found in Sections 484.010 and 484.020. Section 484.010 defines the practice of law as "the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court of record, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies." Section 484.020 restricts the practice of law and engagement in law business to licensed attorneys.

¹² See 4 CSR 240-2.070(5)(G).

¹³ See 4 CSR 240-2.080(5) & (14).

¹⁴ 4 CSR 240-2.070(6) permits the Commission, on its own motion or the motion of a party, to dismiss a complaint for "failure to comply with any provision of [its] rules or an order of the commission."

2. This order shall become effective on November 9, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

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

Lane, Regulatory Law Judge