

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

ORDER DIRECTING FILING

Issue Date: August 15, 2007

Effective Date: August 15, 2007

Richard Tolbert filed a formal complaint against Kansas City Power & Light Company (“KCPL”) on April 18, 2007. In its entirety, Mr. Tolbert’s complaint alleges: “KCP&L disconnected electric service on 2/28/07 without good cause and without proper final notice.” For relief, he requests 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 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, 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 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. Although he claimed that ADNC Church had a contract with the landlord to manage the Premises, Mr. Tolbert allegedly refused to provide KCPL any form of identification and quickly reneged on his promise to mail a copy of the supposed management contract to KCPL within a few days.²

KCPL further states that on February 28, 2007, it disconnected electric service at the Premises for several reasons, including ADNC Church’s failure to pay its past due account balances and its misrepresentation of the identity of the person or persons residing at the Premises in order to obtain electric service at the Premises. KCPL also alleges that it satisfied all of the notice requirements set forth in Commission Rule 4 CSR 240-13.050 before disconnecting electric service at the Premises.

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 Commission Rule 4 CSR 240-2.080(1).

² According to KCPL, the landlord has stated that no such contract exists. In fact, KCPL claims that the landlord also informed KCPL that Mr. Tolbert was occupying the Premises without a lease and that the landlord had filed suit against him for possession of the Premises.

On June 4, 2007, after investigating Mr. Tolbert's 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, which is the customer of record for the accounts at the Premises, is a Missouri non-profit corporation which was incorporated by Mr. Tolbert in September 2000 as the All Denominational New Church. In particular, Staff recommended that the Commission dismiss this case as Mr. Tolbert's complaint was not signed by an attorney and Staff's investigation revealed no tariff, rule, or statutory violations by KCPL throughout its dealings with ADNC Church and 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 neither "enter a money judgment for one party against another" nor "grant monetary relief for compensation for past overcharges or damages."³

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 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, Mr. Tolbert will be given fifteen days from the date of this order to file a

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).

pleading which addresses the statements contained in KCPL's answer and Staff's report in this matter and sets forth the legal or factual reasons why he agrees or disagrees .with those statements. (Attached to this order is a letter further explaining this process and providing other helpful information.)

IT IS ORDERED THAT:

1. Richard Tolbert shall file a pleading, by not later than 5:00 p.m. on Thursday, August 30, 2007, which addresses the statements contained in Kansas City Power & Light Company's Answer and Motion to Dismiss and Staff's report in this matter and sets forth the legal or factual reasons why he agrees or disagrees with those statements.

2. This order shall become effective on August 15, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Benjamin H. Lane, Regulatory Law
Judge, by delegation of authority
under Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 15th day of August, 2007.