

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.)	

THIRD ORDER DIRECTING FILING

Issue Date: October 3, 2007

Effective Date: October 3, 2007

Richard Tolbert filed a formal complaint against Kansas City Power & Light Company ("KCPL") on April 18, 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

On June 4, 2007, after investigating Mr. Tolbert's formal complaint, Staff filed its verified report and recommendation. Staff recommended that the Commission dismiss this

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).

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 and Mr. Tolbert.

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 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.

The Commission's August 15, 2007 order gave Mr. Tolbert fifteen days (*i.e.*, until 5:00 p.m. on August 30, 2007) to file an appropriate pleading which addressed 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.

After receiving two extensions of time, Mr. Tolbert was ultimately directed to file such a pleading by no later than 5:00 p.m. on September 28, 2007 and was also advised that no further extensions were likely to be granted absent extraordinary circumstances.² On the morning of October 2, 2007, the Regulatory Law Judge received an 8x11 envelope from Mr. Tolbert containing the Complaint Case Response Form he completed.³

The Commission would like to hear from both KCPL and Staff regarding whether the record, as recently supplemented by Mr. Tolbert's latest pleading, now affirmatively

² The Regulatory Law Judge notified Mr. Tolbert of these developments by speaking with him over the phone on September 25, 2007, the same day the order was issued.

³ The envelope is postmarked September 25, 2007. Why it took a week to be delivered is unknown.

establishes any jurisdictional basis for the Commission to adjudicate the complaint in its current form.⁴ In particular, the Commission would like KCPL and Staff to address whether Mr. Tolbert's complaint remains subject to dismissal on one or more of the following grounds, all of which have previously been raised in their pleadings: (1) it still does not contain well-pleaded facts showing why he has standing to bring this complaint on his own behalf; (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. In order to facilitate a prompt but informed decision on these issues, KCPL and Staff will be given until 5:00 p.m. on Friday, October 12, 2007, to file their responses.

IT IS ORDERED THAT:

1. Staff and Kansas City Power & Light Company shall file appropriate pleadings addressing the issues set forth in the body of this order by no later than 5:00 p.m. on October 12, 2007.
2. This order shall become effective on October 3, 2007.

⁴ 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").

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 3rd day of October, 2007.