

Emma J. McFarlin

and

Rebecca Shepherd,

## Complainants,

V.

Kansas City Power & Light,

Respondent.

**File No. EC-2013-0024**

**STAFF'S RESPONSE  
TO KANSAS CITY POWER & LIGHT COMPANY'S  
MOTION FOR PARTIAL SUMMARY DISPOSITION**

**COMES NOW** the Staff (“Staff”) of the Missouri Public Service Commission and  
for its response to Kansas City Power & Light Company’s (KCPL or Company) *Motion  
for Partial Summary Disposition* hereby respectfully states:

1. Staff recommends the Commission grant KCPL's motion for partial summary disposition and thereby dispose of any dispute in this case related to allegations of inaccurate metering.
2. In addition, Staff recommends the parties in this case proceed with the settlement conference scheduled for April 24, 2013.

## Background

3. The Complaint in this case, filed on July 20, 2012, does not explicitly allege that the meter is faulty. Instead, the Complaint alleged that KCPL falsely accused Complainants of tampering with the meter at their residence and, as a result, “hindered and deterred” Complainants’ ability to pay their utility bill or receive financial

assistance to help pay the outstanding balance.<sup>1</sup> However, Staff's Preliminary Report<sup>2</sup> explained that while KCPL erroneously informed the United Services Community Action Agency (USCAA) about possible tampering with Complainants' meter, the Company rectified the situation.<sup>3</sup>

4. Then, on July 24, 2013, Complainants filed additional documentation stating: "With regards to this case we note that the amounts are disputed we enter evidence of faulty meter readings that may have led to excessive billing." The document included copies of two electric bills bearing Complainants' address and the handwritten statement "Note: Disparity in Kilo watt usage."

5. On March 15, 2013, KCPL filed its *Motion for Partial Summary Disposition* in order to resolve any dispute related to allegations of faulty meter readings. On March 21, the Commission ordered KCPL to supplement its motion with additional evidence to support the meter test documents included in the motion. On March 28, KCPL filed its supplementary evidence as ordered by the Commission. Also on March 28, the Commission ordered that any response to KCPL's *Motion for Partial Summary Determination* be filed no later than April 17, 2013.

#### **Staff's Response to KCPL's Statement of Uncontroverted Material Facts**

6. Staff agrees with KCPL's statement that Rule 6.09(a) (Sheet 1.24) of KCPL's tariff provides for refunds for meter errors if the error is greater than two

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<sup>1</sup> Complaint, filed July 20, 2012.

<sup>2</sup> EFIS No. 11, filed July 25, 2012.

<sup>3</sup> Staff's report found that Complainants were not able to receive assistance from USCAA because the amount of assistance would not have been sufficient to restore service without a large co-payment from Complainants, and not because of KCPL's erroneous information about possible tampering. The amount KCPL is currently requesting Complainants to pay does not include any tampering fees or deposit.

percent. Staff agrees the tariff states that no billing adjustment will be made if the kilowatt-hour meter error is found to be two percent or less.

7. Staff has reviewed the meter test submitted by KCPL, and Staff agrees that the meter test and affidavit of Paul M. Wilson<sup>4</sup> establish that the meter at Complainants' address was tested according to Commission Rule 4 CSR 240-10.030, and that the meter at Complainants' address is 100.03 percent accurate.

#### **Staff's Response to KCPL's Memorandum of Law**

8. Commission Rule 4 CSR 240-2.117(1)(E) provides that the Commission may grant a motion for full or partial summary determination of a complaint case, and thereby resolve some or all of the case without a hearing, when the Commission finds that 1) the case file shows no genuine issue as to any material fact, 2) the moving party is entitled to relief as a matter of law, and 3) granting the motion is in the public interest.<sup>5</sup>

9. If the Commission grants a motion for summary determination, but does not dispose of the entire case, it shall hold an evidentiary hearing to resolve the remaining issues. Those facts found in the order granting partial summary determination shall be established for the purposes of the hearing.<sup>6</sup>

10. The movant bears the burden to prove that summary determination is proper. When the movant introduces facts showing a right to judgment as a matter of

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<sup>4</sup> Filed on March 28 in response to the Commission's order.

<sup>5</sup> Because Missouri Supreme Court Rule 74.04 pertaining to summary judgment is similar to the Commission's rule for summary determination, the Commission will look to court decisions on summary judgment for guidance in deciding a motion for summary determination. *Johnson v. Mo. Bd. Of Nursing Adm'rs*, 130 S.W.3d 619, 626 (Mo. App. W.D. 2004). See also EC-2011-0373, *Recommended Order Granting Summary Determination and Final Decision*, filed April 6, 2012, fn. 9.

<sup>6</sup> 4 CSR 240-2.117(1)(F).

law, the burden then shifts to the non-movant, who must respond with counter-evidence that raises a genuine dispute as to any material fact.<sup>7</sup>

11. Facts set forth by affidavit or otherwise in support of a party's motion are taken as true unless contradicted by the non-moving party's response to the summary judgment motion.<sup>8</sup> The non-movant should receive the benefit of all reasonable inferences from the record.<sup>9</sup> A "genuine issue" exists "where the record contains competent materials that evidence two plausible, but contradictory, accounts of the essential facts." A genuine issue is "a dispute that is real, not merely argumentative, imaginary or frivolous."<sup>10</sup>

12. Commission Rule 4 CSR 240-10.030(27) states: "Any electric service meter tested on complaint or for any other reason after having been in service may be considered as having been recording within allowable limits of accuracy at any possible load if it is found to register within three percent (3%) of correct registration when tested in accordance with the provisions of section (25)."

13. KCPL timely filed its *Motion for Partial Summary Disposition* more than 60 days before the hearing scheduled in this case, as required by 4 CSR 240-2.117(1)(A).

14. There are no competent materials in the record that evidence a contradictory account of the essential facts of meter accuracy. KCPL's evidence shows that Complainants' meter is accurate. On the other hand, Complainants' July 24 filing merely alleges that faulty meter readings "may have led to excessive billing." Complainants' notes pointing to differences in kilowatt hours per day, as compared to

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<sup>7</sup> *ITT Comm. Fin. Corp. v. Mid-Am Marine Supply Corp.*, 854 S.W.2d 371, 380-82 (Mo. banc 1993).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

previous months and years, are not sufficient evidence of a faulty meter to create a genuine issue of fact on the issue, in light of the meter test and affidavit proffered by KCPL.

15. Therefore, there is no genuine issue of material fact as to the accuracy of Complainants' meter, and on this issue KCPL is entitled to relief as a matter of law. KCPL's evidence establishes that the meter is accurate and that a billing adjustment is not appropriate pursuant to the Commission's rules and the Company's tariff. A hearing on the accuracy of Complainants' meter would waste resources, and therefore summary determination of this issue is in the public interest.

**WHEREFORE**, Staff recommends the Commission issue an order granting KCPL's *Motion for Partial Summary Disposition* as to the issue of the accuracy of Complainants' meter. Staff also recommends the Commission order the parties to proceed with the scheduled settlement conference on April 24, 2013.

Respectfully Submitted,

**STAFF OF THE MISSOURI  
PUBLIC SERVICE COMMISSION**

/s/ John D. Borgmeyer

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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 17<sup>th</sup> day of April, 2013.

**/s/ John D. Borgmeyer**