

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Eddie Shepherd,)	
)	
Complainant,)	
)	
vs.)	<u>Case No. EC-2011-0373</u>
)	
KCP&L Greater Missouri Operations)	
Company,)	
)	
Respondent.)	

STAFF REPORT AND RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and for its *Staff Report and Recommendation* to the Missouri Public Service Commission (Commission), respectfully states the following:

1. On May 16, 2011, Mr. Eddie Shepherd (Complainant) filed a *Complaint* with the Commission. The Complainant alleged in part that lighting struck his home in July 2010 and ruined several appliances, and that since the incident, his utility bills have increased.

2. On June 16, 2011, KCP&L Greater Missouri Operations Company (GMO or Company) filed its *Answer and Motion To Dismiss*. The Company stated it was without sufficient knowledge to admit or deny the Complainant's allegations. The Company's filing also asked that the Commission dismiss the *Complaint* for failure to state a claim on which relief may be granted.

3. On June 23, 2011, the Complainant filed a response to the Company's *Answer and Motion To Dismiss* requesting in part that the Commission allow a hearing in this matter.

Whether the Commission Has The Authority To Grant The Relief Requested

4. After reviewing the filings and relevant case and statutory law, it is the opinion of the undersigned that the Commission is, respectfully, without jurisdiction to order the relief requested.

5. Even if the Commission finds that lightning ruined the Complainant's appliances, the Commission lacks statutory authority to award money damages. *See American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo. 1943) ("The commission 'has no power to declare or enforce any principle of law or equity' and as a result it cannot determine damages or award pecuniary relief." (internal citations omitted)).

6. Additionally, the Company's tariff specifies that the Company shall not be liable for damages resulting from certain incidents, unless the Company caused the damages by willful and wanton misconduct. See Sheet R-22, Section 3.01.A. The Staff cannot find that a lightning strike is willful and wanton misconduct by the Company.

Whether the Company Violated any Commission Rule, Order Or Tariff

7. The Commission has the authority to hear the *Complaint* and determine whether the Company has violated any Commission rule, order or tariff. Sections 386.390 and 386.420 RSMo (2000).

8. Regarding the Complainant's allegation of high usage, the Staff reviewed and compared the Complainant's usage records since the July 2010 incident, to the four and one-half (4.5) years immediately preceding the incident. The usage history for both periods are consistent with each other. See Attachment A of the Staff's *Memorandum*.

9. The Staff also reviewed the Company's Certificate of Inspection and Test (Certificate) for the Complainant's meter. The Certificate indicates that the Complainant's meter reads usage with 99.87% accuracy. This is within the allowed limits specified by the Company's tariff. See Sheet R-33, Rule 5.04(C).

Recommendation

10. As the Staff has found neither willful and wanton misconduct by the Company nor meter inaccuracy outside the prescribed tariff limits, the Staff recommends that the Commission deny the relief requested by the Complainant. See Staff's *Memorandum* attached.

WHEREFORE, the Staff submits its *Recommendation* for the Commission's information and consideration and recommends that the Commission deny the relief requested by the Complainant.

Respectfully submitted,

/s/ Jennifer Hernandez

Jennifer Hernandez
Associate Staff Counsel
Missouri Bar No. 59814

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751- 8706 (Telephone)
(573) 751-9285 (Fax)
jennifer.hernandez@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or by electronic mail to all counsel of record on this 30th day of June 2011.

/s/ Jennifer Hernandez