

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day of
November, 2006.

In the Matter of Cheryl L. Fabulae,)	
)	
Complainant,)	
)	
v.)	<u>Case No. EC-2007-0146</u>
)	
Kansas City Power & Light Company,)	
)	
Respondent.)	

**ORDER DENYING STAFF'S MOTION TO RESTORE SERVICE
PENDING DISPOSITION OF COMPLAINT, GRANTING STAFF'S
MOTION FOR EXPEDITED TREATMENT AND RESOLUTION OF
COMPLAINT, AND SETTING COMPLAINT FOR HEARING**

Issue Date: November 16, 2006

Effective Date: November 16, 2006

Syllabus: This order denies Staff's motion for entry of an order directing Kansas City Power & Light Company ("KCPL") to restore residential electric service to Complainant Cheryl L. Fabulae pursuant to section 386.310.1 pending the final disposition of her formal complaint against KCPL. It also grants Staff's motion for expedited treatment and resolution of Ms. Fabulae's complaint and sets the complaint for hearing.

On July 21, 2006,¹ Cheryl L. Fabulae filed an informal complaint against KCPL. An investigation was commenced, and the Missouri Public Service Commission's

¹ Unless otherwise specified, all dates throughout this order refer to the year 2006.

Department of Consumer Services reviewed all the information KCPL submitted regarding Ms. Fabulae's previous and current accounts with KCPL, which was recounted in extensive detail within an eight-page single-spaced letter to her dated August 2.² This review culminated in the denial of her informal complaint, by letter dated October 5, in which the Department stated that it was unable to confirm some of the billing information Ms. Fabulae had provided "since some of the dollar amounts did not match the statements of account or the bill copies provided" and that "it does not appear that KCPL has billed your account incorrectly." Ms. Fabulae was also advised, based on information received from KCPL during the informal investigation, that because tampering with a utility's equipment is a prosecutable offense, KCPL had "every legal right to pursue this issue."³

Unsatisfied with these informal determinations, on October 6, Ms. Fabulae filed the instant formal complaint against KCPL in accordance with 4 CSR 240-2.070(3), which provides that a formal complaint may be filed "[i]f a complainant is not satisfied with the outcome of the informal complaint." On October 10, the Commission notified KCPL of the complaint and allowed it 30 days in which to answer as provided by 4 CSR 240-2.070.

Ms. Fabulae amended her formal complaint on October 12. She then filed a second informal complaint involving similar issues and seeking similar relief, which was consolidated with Case No. EC-2007-0146 by order issued on October 24.

² This letter expressly informed Ms. Fabulae that if she wished to dispute the information submitted by KCPL, she needed to send a written response to the Department. The Department subsequently informed Ms. Fabulae that it never received any such response from her until October 3, at which time she explained that although she did, in fact, send a response by return mail on August 22, the Department must have "failed to receive it."

³ In a pleading filed on November 9, Ms. Fabulae conceded that on at least one occasion she did, in fact, "resort to the reconnection by myself" after her service had been discontinued by KCPL for non-payment.

On October 27, the Staff of the Commission received a fax transmission from Ms. Fabulae which purports to be a letter from A. Thomen Reece, M.D., a physician who has evidently treated Ms. Fabulae for back pain associated with her degenerative disc disease. The letter, which is also dated October 27, urges restoration of Ms. Fabulae's electric service on humanitarian grounds, explaining that she has been diagnosed with a form of cancer known as lymphoma and is subject to recurrent episodes of pneumonia, which had required her to be hospitalized as recently as the week ending October 28. The letter further states that "[i]t is detrimental to her health to not have electricity, which controls her heat, especially this time of year when the nights are very cold."

On the same day (October 27), Staff, by and through the Commission's General Counsel, responded to this development by moving for entry of an order directing KCPL to expeditiously restore electric service to Ms. Fabulae pending the final disposition of her formal complaint. Staff further moved for expedited treatment and resolution of Ms. Fabulae's complaint. In particular, Staff's motion sought a waiver of the Commission's Rules requiring prior notice and a hearing on the ground that the circumstances outlined in the letter demonstrate "a likelihood of an imminent threat of harm to life or property" as described in section 386.310.1, RSMo 2000, thereby authorizing the Commission to enter a peremptory order requiring KCPL to restore Ms. Fabulae's electric service until after a full evidentiary hearing can be conducted and additional findings made.⁴

⁴ Section 386.310.1 authorizes the Commission by order "to require the performance of any . . . act which the health or safety of its . . . customers or the public may demand[.]" Moreover, in any case in which it "determines that the failure to do so would result in the likelihood of imminent threat of serious harm to life or property," the Commission may "waive the requirements for notice and hearing and provide for expeditious issuance of an order . . . provided that the commission shall include in such an order an opportunity for hearing as soon as practicable after the issuance of such order." *Id.*

After giving it careful consideration, the Commission will deny Staff's motion for an order directing KCPL to expeditiously restore electric service to Ms. Fabulae pending the final disposition of her formal complaint. To begin with, as Staff noted in its motion, the letter submitted by Ms. Fabulae is not verified. Therefore, it does not constitute competent evidence upon which the Commission could properly act. Second, even given its broadest possible reading, the letter falls short of demonstrating that peremptory action is warranted on the grounds that the Commission's failure to act "would result in the likelihood of imminent threat of serious harm to life or property," as required by section 386.310.1.

The Commission agrees with Staff that under the circumstances presented by this case, including Ms. Fabulae's alleged medical conditions, the close proximity of the winter heating season, and the fact that a substantial documentary record was developed during investigation of Ms. Fabulae's previously-filed informal complaint,⁵ it is in the interest of the public and the parties for Ms. Fabulae's complaint, which she is prosecuting without the benefit of counsel, to be adjudicated as soon as practicable with a minimum of procedural overhead. Therefore, Staff's motion for expedited treatment and resolution of Ms. Fabulae's complaint is granted and an evidentiary hearing on the merits of the complaint will be scheduled for Monday, November 27, 2006.

IT IS ORDERED THAT:

1. The Staff of the Commission's motion for entry of an order directing Kansas City Power & Light Company to restore residential electric service to Complainant

⁵ As directed by Commission order dated November 1, Staff has already completed its investigation of Ms. Fabulae's formal complaint. On November 8, Staff filed a report which contains most if not all of the documentary materials submitted by the parties in conjunction with the Department's investigation and resolution of Ms. Fabulae's informal complaint of July 21.

Cheryl L. Fabulae pursuant to section 386.310.1 pending the final disposition of her formal complaint is denied.

2. The Staff of the Commission's motion for expedited treatment and resolution of Cheryl L. Fabulae's formal complaint is granted.

3. An evidentiary hearing will take place on Monday, November 27, 2006, beginning at 10:00 a.m. The hearing will be held in Room 305 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, which meets accessibility standards required by the Americans with Disabilities Act. Any party needing additional accommodations to participate in this hearing should call the Missouri Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the hearing.

4. Although the parties are strongly encouraged to attend the hearing in person, any party wishing to participate by telephone may do so by dialing 1-573-522-6043 at the time set for the hearing. The parties are reminded that as the Complainant in this matter, Cheryl L. Fabulae bears the burden of proof to establish the allegations of her formal complaint by a preponderance of the credible admissible evidence adduced during the hearing or otherwise properly before the Commission. Because the hearing is being conducted on an expedited basis, there will not be enough time to allow for the submission of prefiled testimony, and all testimony shall be presented live at the hearing. Likewise, post-hearing briefs will not be permitted. Rather, the parties are directed to present oral arguments at the conclusion of the evidentiary hearing.

5. In lieu of a formal procedural schedule, the parties are directed to promptly meet and confer to exchange witness lists and copies of any documents or exhibits they plan to

rely on or introduce into evidence during the hearing. Furthermore, by no later than 5:00 p.m. on Tuesday, November 21, 2006, each party shall file with the Commission seven copies of all such documents or exhibits, as well as a copy of its witness list.

6. To ensure that she receives it in sufficient time to meet the other deadlines established in this order, the Commission's Data Center is directed to send a copy of this order to Cheryl L. Fabulae at her mailing address of record via overnight courier.

7. This order shall become effective on November 16, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Lane, Regulatory Law Judge