

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 28th day of  
July, 2005.

Christian R. Atlakson,

Complainant,

v.

Kansas City Power & Light,

Respondent.

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**Case No. EC-2005-0420**

**ORDER DENYING MOTION TO DISMISS**

Issue Date: July 28, 2005

Effective Date: August 3, 2005

Christian R. Atlakson, a customer of Kansas City Power & Light (KCPL), filed a complaint against that company on May 16, 2005. KCPL filed a timely motion to dismiss, or alternatively an answer to that complaint on June 17, arguing that Atlakson's complaint fails to state a claim upon which relief may be granted.

The standard for review for consideration of a motion to dismiss for failure to state a claim has been clearly established by Missouri's courts as follows:

A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.<sup>1</sup>

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<sup>1</sup> Eastwood v. North Central Missouri Drug Task Force, 15 S.W.3d 65, 67 (Mo. App. W.D. 2000).

By that standard, the Commission must consider KCPL's motion to dismiss based on the facts alleged in Atlakson's complaint.

In his complaint, Atlakson alleges that he had initially contacted KCPL to ask them to remove a tree limb that was hanging on the service line. He also informed KCPL that its pole supporting the service line was leaning toward the Atlakson home at an "unsettling angle." Because of the resulting slack, the service line was hanging only about six feet above the deck, creating a situation where the line could be touched by a person standing on Atlakson's deck. The complaint alleges that KCPL pulled some of the slack out of the line but did not correct the leaning pole. As a result, the service line is allegedly still too close to the surface of the deck.

Atlakson alleges that KCPL then sent him a notification letter indicating that it intended to shut off the electric service to his home because of the unsafe condition of the service line to his home, and because the structure of his deck obstructs access to the electric meter. Atlakson alleges that KCPL threatened to shut off the power to harass him for complaining about the tree limb on his service line. He argues that that the remaining slack in the service line is caused by the leaning pole which he contends is not his responsibility. He also argues that the structure of the deck has not changed for many years, and that it was in its current position and condition when he bought his house.

In its answer, KCPL alleges that the height of the service line should be corrected by installation of a higher masthead on the customer's home, which it alleges is the sole responsibility of the customer. KCPL also alleges that its tariffs and the Commission's rules allow it to shut off electric service to a customer whose electric service line, or electric meter, is in an unsafe condition.

The Staff of the Commission has conducted an investigation of the complaint and on June 29 filed a report supporting KCPL's position and advising the Commission to dismiss Atlakson's complaint.

For purposes of ruling on a motion to dismiss for failure to state a claim, the Commission must accept the allegations made in the complaint as true. The complaint alleges that the safety problems with the service line result from the condition of KCPL's pole, which is outside the complainant's control. If that fact is accepted as true, then Atlakson has successfully stated a claim that can only be resolved through the hearing process.


KCPL and Staff contend that Atlakson's allegations are untrue, but the Commission can only weigh the credibility of those allegations after it hears the evidence and arguments of the parties at a hearing. On that basis, KCPL's motion to dismiss will be denied.

The hearing in this matter is scheduled for August 3. As a result, this order will be made effective on that date rather than the customary ten-day effective date.

**IT IS THEREFORE ORDERED:**

1. That Kansas City Power & Light Company's Motion to Dismiss is denied.
2. That this order shall become effective on August 3, 2005.

**BY THE COMMISSION**

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

Colleen M. Dale  
Secretary

( S E A L )

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

Woodruff, Senior Regulatory Law Judge