

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 7th day of
September, 2006.

Anthony Broughton,)
)
Complainant,)
)
v.)
)
Kansas City Power & Light)
Company,)
)
Respondent.)

Case No. EC-2007-0018

**ORDER DENYING MOTION FOR DETERMINATION ON THE
PLEADINGS**

Issue Date: September 7, 2006

Effective Date: September 7, 2006

On July 7, 2006, Anthony Broughton filed a complaint against Kansas City Power & Light Company. In that complaint, Mr. Broughton alleged that KCPL improperly added charges owed by another person to the bill for his residential account. Mr. Broughton further alleged that this improper transfer of debts was the basis for KCPL disconnecting his electric service.¹

¹ On July 14, 2006, KCPL was ordered to restore to Mr. Broughton's electric service during the pendency of his complaint after failing to timely respond to the Commission's order directing a response to Mr. Broughton's request for service to be restored.

On August 11, 2006, KCPL filed its answer to the complaint along with a Motion for Determination on the Pleadings. KCPL asserts that Mr. Broughton's complaint should be dismissed for the following reasons:

1. KCPL maintains that Mr. Broughton's service was disconnected because of his misrepresentation of who the adult recipients of electric service were at his address, 2200 East 79th Street, Kansas City, Missouri, and that its action to disconnect service was fully authorized under the provisions of its tariff.

2. Commission Rule 4 CSR 240-13.050(1)(F) expressly authorizes KCPL to discontinue electric service for the misrepresentation of identity in obtaining utility service.

3. The only relief that Mr. Broughton requests, to have his electrical service restored, can no longer be granted because Mr. Broughton is believed to have been evicted from the premises and no longer resides at the address of service, 2200 East 79th Street, Kansas City, Missouri.

4. Mr. Broughton failed to demonstrate, by the preponderance of the credible evidence that KCPL violated its tariffs, the Commission's regulations, or any other applicable law when it disconnected his electric service.

Commission Rule 4 CSR 240-2.117(2) authorizes the Commission to determine a contested case on the pleadings in appropriate circumstances:

Determination on the Pleadings-- Except in a case seeking a rate increase or which is subject to an operation of law date, the commission may, on its own motion or on the motion of any party, dispose of all or any part of a case on the pleadings whenever such disposition is not otherwise contrary to law or contrary to the public interest.

This is not a case seeking a rate increase, or a case subject to an operation of law date.

The public interest favors a quick and efficient resolution of matters before the Commission,

and determination of this case on the pleadings is not otherwise contrary to law so long as there is merit to KCPL's motion.

A "determination on the pleadings" is analogous to a motion to dismiss an action in civil practice,² and the gravamen of KCPL's argument for dismissal is that Mr. Broughton's claim is false and that he has failed to state a claim upon which relief can be granted. The standard for review for consideration of a motion to dismiss 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.³

Assuming that the facts alleged in Mr. Broughton's complaint are all true, and granting Mr. Broughton all of the reasonable inferences therefrom, the facts alleged meet the elements of a recognized cause of action.

Mr. Broughton alleges that his service was disconnected on the basis of improper and excessive billing practices. While KCPL asserts that Mr. Broughton's service was disconnected because he misrepresented the identities of the adult recipients of electrical services in his dwelling, and has provided the Commission with copies of several documents in its attempt to establish its position, none of these documents have been

² *Staff of the Public Service Commission of Missouri v. Laclede Gas Company*, 2006 Mo. PSC LEXIS 866, 1-2 (Mo. PSC 2006) (Case No. GC-2006-0318).

³ *Id.* See also *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 463-464 (Mo. Banc 2001).

verified or authenticated. In fact, KCPL's motion is not verified or authenticated by affidavit or by any other means. It is well established legal doctrine that unsworn statements of attorneys, statements in briefs, pleadings, motions, arguments, allegations, or charging documents, as well as articles or exhibits not formally or constructively introduced are not evidence of the facts asserted unless conceded to by the opposing party.⁴ Mr. Broughton has not conceded to KCPL's allegations.

Because there has been no hearing in this case, and no evidence adduced beyond that of the pleadings, KCPL's alternative explanation for the disconnection of Mr. Broughton's service is irrelevant at this stage in the proceedings, except that it establishes that the material facts of the complaint remain in dispute. Likewise, KCPL's assertion that Mr. Broughton has not proven his case beyond a reasonable doubt when there has been no evidentiary hearing or evidence produced beyond the pleadings is also premature.

Mr. Broughton is a pro se complainant, and while his pleadings may be inartfully drafted, implicit in his allegations of improper billing is a request for his bill to be corrected or that he be credited a return, not just that his service be restored. KCPL is simply incorrect, when it states that there is no relief remaining for it to provide to Mr. Broughton.

KCPL has not conclusively established that Mr. Broughton has been evicted from his premises, nor would the issue of improper billing immediately be resolved should it be determined that Mr. Broughton no longer lives at the address where his service was

⁴ *State ex rel. TWA, Inc. v. David*, 158 S.W.3d 232, 236 (Mo. Banc 2005) (Judge White Dissenting), *citing to*, *State ex rel. Dixon v. Damold*, 939 S.W.2d 66, 69 (Mo. App. 1997); *State v. Smith*, 154 S.W.3d 461, 469 (Mo. App. 2005); *Lester v. Sayles*, 850 S.W.2d 858, 864 (Mo. Banc 1993); *State v. Rutter*, 93 S.W.3d 714, 727 (Mo. Banc 2002); *State v. Robinson*, 825 S.W.2d 877, 880 (Mo. App. 1992); *State ex rel. Horn v. Randall*, 275 S.W.2d 758, 763-764 (Mo. App. 1955).

disconnected. Any attempt by Mr. Broughton to re-establish service at an alternative address in KCPL's service area would result in the continuation of the billing dispute. Moreover, KCPL has not indicated that it will not continue to pursue payment of the disputed bill, wherever Mr. Broughton might reside.

IT IS ORDERED THAT:

1. Kansas City Power & Light Company's Motion for Determination on the Pleadings is denied.
2. This order shall become effective on September 7, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

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

Stearley, Regulatory Law Judge