

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Richard Tolbert,)	
)	
Complainant,)	
)	
v.)	<u>Case No. EC-2007-0407</u>
)	
Kansas City Power & Light Company,)	
)	
Respondent.)	

ORDER GRANTING REQUEST FOR SECOND EXTENSION OF TIME TO
FILE RESPONSE

Issue Date: September 25, 2007

Effective Date: September 25, 2007

Richard Tolbert filed a formal complaint against Kansas City Power & Light Company ("KCPL") on April 18, 2007. Mr. Tolbert's one-sentence complaint alleged, in its entirety: "KCP&L disconnected electric service on 2/28/07 without good cause and without proper final notice." For relief, he requested restoration of service and an award of monetary damages. On April 20, 2007, the Commission notified KCPL of the complaint and allowed it thirty days in which to answer as provided by 4 CSR 240-2.070(7). The same day, pursuant to 4 CSR 240-2.070(10), the Commission ordered its Staff to commence an investigation of Mr. Tolbert's formal complaint and to file a report concerning the results of its investigation no later than two weeks after KCPL filed its answer to the complaint, which was due no later than May 21, 2007.

KCPL filed its Answer and Motion to Dismiss on May 17, 2007. In those pleadings, among other things, KCPL averred that on or about July 7, 2006, an entity known as “ADNC Church” initiated electric service at 2315 East 39th Street, Apartment 1W and 2317 East 39th Street, Apartment 1E (collectively, “the Premises”), both of which are residential apartment units. According to KCPL, Mr. Tolbert does not permanently reside at the Premises and is neither the owner of the Premises nor the customer of record for either of the accounts involving the Premises.¹ Furthermore, says KCPL, on July 11, 2006 and January 4, 2007, the owner and landlord of the Premises contacted KCPL and stated that ADNC Church was misrepresenting the identity of the customers living at the Premises.

KCPL’s answer also alleged that it posted the Premises for identification on January 5, 2007. Three days later, says KCPL, Mr. Tolbert contacted KCPL about the notice posted at the Premises, and was told that KCPL was attempting to determine whether fraudulent name switching had occurred or was occurring on the two accounts at the Premises. Although he claimed that ADNC Church had a contract with the landlord to manage the Premises, Mr. Tolbert allegedly refused to provide KCPL any form of identification and quickly reneged on his promise to promptly mail a copy of the supposed management contract to KCPL.²

KCPL further stated that on February 28, 2007, it disconnected electric service at the Premises for several reasons, including ADNC Church’s failure to pay its various past due account balances for electric service at various addresses in metropolitan Kansas City and

¹ This forms the basis for KCPL’s motion to dismiss Mr. Tolbert’s complaint for lack of standing. KCPL further argues that even if Mr. Tolbert intended to prosecute this action on behalf of ADNC Church (which is the proper complainant concerning electric service at the Premises), the complaint is materially deficient, as it is not signed by a licensed Missouri attorney, as required by Commission Rule 4 CSR 240-2.080(1).

² According to KCPL, the landlord has stated that no such contract exists. In fact, KCPL claims that the landlord also informed KCPL that Mr. Tolbert was occupying the Premises without a lease and that the landlord had filed suit against him for possession of the Premises.

its misrepresentation of the identity of the person or persons residing at the Premises in order to obtain electric service at the Premises.³ KCPL also alleged that it satisfied all of the notice requirements set forth in Commission Rule 4 CSR 240-13.050 before disconnecting electric service at the Premises, and that it was not until Staff had resolved Mr. Tolbert's informal complaint against KCPL against him that service was disconnected.

On June 4, 2007, after investigating Mr. Tolbert's formal complaint, Staff filed its verified report and recommendation. In addition to confirming most, if not all, of KCPL's allegations, Staff found that ADNC Church, which is the customer of record for the accounts at the Premises, is a Missouri non-profit corporation which was incorporated by Mr. Tolbert in September 2000 as the All Denominational New Church. In particular, Staff recommended that the Commission dismiss this case in its entirety as the complaint was not signed by an attorney representing ADNC Church and Staff's investigation revealed no tariff, rule, or statutory violations by KCPL throughout its dealings with ADNC Church and Mr. Tolbert. As to Mr. Tolbert's request for an award of money damages, Staff cited Missouri case law indicating that since the Commission is not a court but an executive branch administrative agency, its adjudicative authority is not plenary and it can neither "enter a money judgment for one party against another" nor "grant monetary relief for compensation for past overcharges or damages."⁴

On August 15, 2007, the Commission entered an Order Directing Filing setting forth all of the above information in detail and stating:

³ See Commission Rules 4 CSR 240-13.050(1)(A) & (1)(F).

⁴ *May Dept. Stores Co. v. Union Elec. Light & Power Co.*, 107 S.W.2d 41, 58 (Mo. 1937); see also *State ex rel. Laundry, Inc. v. Pub. Serv. Comm'n*, 34 S.W.2d 37, 46 (Mo. 1931) (holding that since the Commission is an administrative body, not a court, it "has no power . . . to promulgate an order requiring a pecuniary reparation or refund"); *Am. Petroleum Exch. v. Pub. Serv. Comm'n*, 172 S.W.2d 952, 955 (Mo. 1943) (Commission has no authority to award pecuniary relief or consequential damages).

At this stage of his case, Mr. Tolbert has not stated any facts upon which the Commission could conclude that KCPL violated its approved tariff, applicable Commission rules, or Missouri statutes in disconnecting electric service at the Premises on February 28, 2007. Nor has he stated any facts showing why he has standing to bring this complaint on his own behalf, or why it should not be dismissed for ADNC Church's failure to comply with the Commission's rules governing pleadings. Therefore, the Commission would like to hear from Mr. Tolbert before ruling on KCPL's Motion to Dismiss his complaint and deciding whether to accept the recommendation of its Staff that it be dismissed.

Accordingly, the Commission's August 15, 2007 order gave Mr. Tolbert fifteen days (*i.e.*, until 5:00 p.m. on August 30, 2007) to file an appropriate pleading which addressed those concerns by affirmatively alleging facts upon which the Commission could find that he had standing to bring the complaint and that the Commission had jurisdiction to entertain it.⁵

On August 30, 2007 (the last day for Mr. Tolbert to timely file the pleading he had been ordered to file fifteen days earlier), the Regulatory Law Judge received a phone call from Mr. Tolbert, during which he requested an additional fifteen days to comply with the Commission's order of August 15, 2007 in order to obtain and collect various documents pertaining to his case. The judge informed Mr. Tolbert that he would need to file an appropriate written pleading formally requesting a fifteen-day extension, or to at least promptly contact the attorney representing KCPL to determine if he had any objections to such an extension, after which Mr. Tolbert was to call the judge to inform him of the results of that conversation.

As of September 6, 2007, the Regulatory Law Judge had not heard back from Mr. Tolbert, who had also not filed a written request for an extension. Therefore, the judge

⁵ Attached to the order was a lengthy letter from the Commission further explaining the process and providing other helpful information to Mr. Tolbert. The letter stated, in relevant part: "**You must respond:** If you do not respond to orders that require you to send information, you will lose your case. . . . If you do not return this form, we will assume that you do not want to continue with your complaint and [that it] should be dismissed." (Emphasis in original.)

contacted Curtis Blanc, the attorney of record for KCPL, to ascertain whether he had heard from Mr. Tolbert and to determine if KCPL had any objections to Mr. Tolbert's oral request for a fifteen-day extension. Mr. Blanc indicated that although he had not yet spoken with Mr. Tolbert, Mr. Tolbert had previously left him a voice mail message in which Mr. Tolbert requested a return phone call. Mr. Blanc also represented to the judge that KCPL would not oppose Mr. Tolbert's oral request for an extension of time.

As of September 10, 2007, Mr. Tolbert had not contacted the Regulatory Law Judge as directed, had not filed a formal written request for a fifteen-day extension of time, and had not filed the responsive pleading he was originally ordered to file by no later than 5:00 p.m. on August 30. Nevertheless, in its Second Order Directing Filing, which was issued on September 12, 2007, the Commission granted Mr. Tolbert the fifteen-day extension he had orally requested on August 30, and gave him until 5:00 p.m. on September 14, 2007 to file the specified pleading.⁶ On the afternoon of September 17, 2007, the Regulatory Law Judge received a fax from Mr. Tolbert whose cover sheet is dated September 14.⁷ In this pleading, titled "Complainant Request for More Time to Comply With Order Directing Filing," Mr. Tolbert acknowledged having been notified by the judge of the Commission's September 12 order granting him an extension to September 14, but explained that he needed yet another two weeks "to gather the documentation required to comply with [t]he Order Directing Filing."

⁶ The Regulatory Law Judge notified Mr. Tolbert of this development by leaving him a voice mail message on the same day the order was issued.

⁷ The reason for the delayed receipt is obvious, since the cover sheet shows that the pleading was faxed to the number for the Commission's Utility Operations Division, not the one for the Commission's Adjudication Division.

Under the Commission's rules, the parties would normally have a maximum of ten calendar days to respond to Mr. Tolbert's request for a second extension of time.⁸ However, in order to facilitate a prompt but informed decision on the issue, on September 20, 2007, the Commission issued an order shortening that time and giving the parties until 5:00 p.m. on Friday, September 21, 2007, to file any such response. None were received.

As mentioned in the Commission's September 20 Order Shortening Time to Respond, Commission Rule 4 CSR 240-2.050(3)(A) governs Mr. Tolbert's latest request for an extension of time. In relevant part, it provides that "[w]hen an act is required . . . to be done by order or rule of the commission, the commission, *at its discretion*," may "[o]rder the period enlarged before the expiration of the period originally prescribed or as extended by a previous order."⁹ Therefore, the issue before the Commission is whether, under the circumstances present here, the Commission should exercise its discretion to extend the due date for Mr. Tolbert's pleading to September 28, 2007.

The Commission is mindful that Mr. Tolbert has had since mid-August to comply with the Commission's order, that he has already been granted one fifteen-day extension, and that what he has been ordered to do is not particularly demanding, even for a *pro se* complainant. Nevertheless, since his written request for an additional two-week extension is authorized under 4 CSR 240-2.050(3)(A) and none of the other parties to this case expressed any opposition to it when given a clear opportunity to do so, the Commission will exercise its discretion to grant it. Even so, the Commission advises Mr. Tolbert that any

⁸ Commission Rule 4 CSR 240-2.080(15) provides that, unless otherwise ordered by the Commission, "[p]arties shall be allowed not more than ten (10) days from the date of filing in which to respond to any pleading."

⁹ Cf. Commission Rule 4 CSR 240-2.050(3)(B) (which provides that when an act is required to be done by order of the Commission, the Commission may, at its discretion, permit the act to be done after the expiration of the specified period where the failure to act was the result of excusable neglect).

further extensions are unlikely to be granted absent extraordinary circumstances.

IT IS ORDERED THAT:

1. Richard Tolbert's Request for More Time to Comply With Order Directing Filing is granted. Mr. Tolbert shall file a pleading, by not later than 5:00 p.m. on Friday, September 28, 2007, which addresses the statements contained in Kansas City Power & Light Company's Answer and Motion to Dismiss and Staff's report in this matter and sets forth the legal or factual reasons why he agrees or disagrees with those statements.

2. This order shall become effective on September 25, 2007.

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)

Benjamin H. Lane, Regulatory Law
Judge, by delegation of authority
under Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 25th day of September, 2007.