

Emma J. McFarlin and Rebecca Shepherd,
Complainants,
v.
Kansas City Power & Light Company,
Respondent.

Issue Date: _____ Effective Date: _____

Procedure

¹ Electronic Filing and Information Service (“EFIS”) No. 1, *Complaint*.

² EFIS No.11, Staff's Preliminary Report.

³ Those facts constitute the parties agreement, or at least good cause, to extend the time for issuing this recommendation. ⁴ CSR 240-2.070(15)(G).

The Commission convened an evidentiary hearing on the complaint's merits on May 17, 2013. Rebecca Shepherd presented her case. Roger Steiner represented KCPL. John Borgmeyer represented Staff.

In the complaint, Emma J. McFarlin and Rebecca Shepherd ("complainants") allege that KCPL:

- Violated service termination procedure, and
- Made false allegations of tampering that interfering with complainants' ability to procure financial assistance.⁵

On July 24, 2012, Complainants added an allegation of:

- Inaccurate metering.⁶

On those grounds, complainants ask that KCPL restore their service, reduce their balance; and produce a letter of apology from KCPL and the Commission.⁷

As to inaccurate metering, KCPL filed a motion for partial summary determination on March 15, 2013,⁸ which the Commission granted by order dated April 25, 2013.⁹ KCPL also filed a motion to terminate service on April 30, 2013, which the Commission took up at the evidentiary hearing. The Commission granted the motion to terminate service by order dated May 17, 2013.¹⁰

⁴ EFIS No.16, *Answer of Kansas City Power & Light Company*.

⁵ EFIS No. 1, *Complaint*.

⁶ EFIS No. 5, letter.

⁷ EFIS No. 1, *Complaint*.

⁸ EFIS No. 27, *Kansas City Power & Light Company's Partial Motion for Summary Disposition*.

⁹ EFIS No. 32, *Order Granting Partial Summary Determination*.

¹⁰ EFIS No. 40, *Order Granting Motion to Terminate Service*.

The reporter filed the transcript of the evidentiary hearing on June 5, 2013.¹¹ KCPL filed its brief on June 7, 2013.¹² Complainants made several post-hearing filings¹³ that do not alter any ruling made before, or in, this report and order. This report and order is subject to an application for rehearing, filed no later than the business day before the effective date of this report and order, and judicial review as set forth in Sections 386.500 to 386.540, RSMo Supp. 2012.

Findings of Fact

1. KCPL supplies electricity at retail to a service territory that includes complainants' residence at 3637 Agnes Avenue, Kansas City, MO 64128.¹⁴

2. Since January 2010, complainants have paid their electric bill only intermittently.¹⁵

3. Between 2011 and 2012, complainants modified their residence to include a lift chair, and began running durable medical equipment,¹⁶ which consumed more electricity and caused their bill to increase.¹⁷

A. Meter

4. The meter at the service address accurately measured complainants' electrical usage within 0.03 percent.¹⁸

¹¹ EFIS No. 50, *Transcript*, volume 2.

¹² EFIS No. 55, *Kansas City Power & Light Company's Brief*.

¹³ EFIS Nos. 41, 44, 45, 47, and 48.

¹⁴ EFIS No. 50, *Transcript*, volume 2, page 32, line 8-12.

¹⁵ EFIS No. 51, *Preliminary Report of the Staff*, page 12.

¹⁶ EFIS No. 50, *Transcript*, volume 2, page 33, line 14-24.

¹⁷ EFIS No. 50, *Transcript*, volume 2, page 33, line 14-24.

¹⁸ EFIS No. 50, *Transcript*, volume 2, page 69, line 9-page 70, line 19.

B. Termination

5. On June 18, 2012, KCPL sent complainants a notice of disconnection for failure to pay.¹⁹ KCPL made telephone calls to complainants on June 25, 2012 to further inform complainants about the pending disconnection.²⁰ The notice stated that the last day to pay was June 28, 2012.²¹ From June 29, 2012, the eleventh day was July 10, 2013.

6. On Tuesday, July 10, 2012, the 24-hour forecast predicted temperatures not rising above ninety-five degrees Fahrenheit, and a heat index not rising above one hundred five degrees Fahrenheit.²²

7. On Tuesday, July 10, 2012, KCPL disconnected complainants.²³

C. Tampering

8. Complainants sought Low Income Home Energy Assistance Program ("LIHEAP") funds through United Services Community Action Agency ("USCAA"). USCAA administers LIHEAP under contract with the State of Missouri, Department of Social Services, Family Support Division. LIHEAP funds are available based in part on income and other resources of the applicant.²⁴

9. On July 11, 2012, USCAA telephoned KCPL about complainants' account.²⁵ KCPL's employee misread the "total amount due" code "TMD" as "tampered."²⁶ KCPL

¹⁹ EFIS No. 50, *Transcript*, volume 2, page 47, line 12-17.

²⁰ EFIS No. 50, *Transcript*, volume 2, page 47, line 12-17.

²¹ EFIS No. 51, Exhibit 1, page 52.

²² EFIS No. 50, *Transcript*, volume 2, page 47, line 9-23.

²³ EFIS No. 50, *Transcript*, volume 2, page 47, line 12-17.

²⁴ EFIS No. 50, *Transcript*, volume 2, page 62, line 21- page 63, line 22; EFIS No. 52, Exhibit 2.

²⁵ EFIS No. 50, *Transcript*, volume 2, page 47, line 24- page 48, line 2.

²⁶ EFIS No. 50, *Transcript*, volume 2, page 47, line 24- page 48, line 2.

immediately telephoned USCAA back to correct that error.²⁷ No tampering charge ever appeared on complainants' bill²⁸ and tampering was never a factor in any decision by USCAA regarding complainants.²⁹

10. By letter dated July 11, 2012,³⁰ USCAA granted the application conditioned on complainant paying part of the unpaid balance.³¹

11. On July 26, 2012, the KCPL and complainants reached a first settlement agreement. The first settlement agreement provided for continued service and a monthly payment.³² KCPL reconnected complainants' service.³³

12. Under the first settlement agreement, complainants made one payment on August 6, 2012.³⁴ Based on the August 6, 2012 payment, complainants received LIHEAP funds on August 29, 2012.³⁵ After August 6, 2012, complainants made no more payments on their bill³⁶ as of May 17, 2013.³⁷

13. On September 21, 2012, the parties reached a second settlement agreement, which provided a monthly payment less than the first settlement agreement, but complainants made no payment under the second settlement agreement.

²⁷ EFIS No. 50, *Transcript*, volume 2, page 52, line 14- page 53, line 8.

²⁸ EFIS No. 50, *Transcript*, volume 2, page 47, line 24- page 48, line 2.

²⁹ EFIS No. 50, *Transcript*, volume 2, page 48, line 3-9.

³⁰ EFIS No. 51, Exhibit 1, page 48.

³¹ EFIS No. 50, *Transcript*, volume 2, page 48, line 3-18.

³² EFIS No. 50, *Transcript*, volume 2, page 20, line 10-14.

³³ EFIS No. 50, *Transcript*, volume 2, page 20, line 10-14.

³⁴ EFIS No. 50, *Transcript*, volume 2, page 20, line 17-19.

³⁵ EFIS No. 50, *Transcript*, volume 2, page 53, line 6-8.

³⁶ EFIS No. 50, *Transcript*, volume 2, page 40, line 22-page 41, line 2.

³⁷ EFIS No. 50, *Transcript*, volume 2, page 20, line 17-19.

14. On January 11, 2013, Ms. Shepherd told KCPL that she was sending a payment but she did not send a payment.

15. By letter dated February 28, 2013, USCAA denied a LIHEAP application from complainants³⁸ because complainants' income was too high.³⁹

16. As of May 17, 2013, complainants had at least \$1,500 in a bank account to pay their bill.⁴⁰

Conclusions of Law

The Commission has authority to hear the complaint.⁴¹ The complaint's allegations bring it within the Commission's procedure for small formal complaints.⁴² Complainants have the burden of proof.⁴³

A. Metering

Complainants charge that KCPL's meter was inaccurate. Meter accuracy and billing adjustments are subject to KCP&L's tariff:

Billing Adjustments:

(a) Where, upon test, the kilowatt-hour meter error is found to be 2% or less, no billing adjustment will be made. [⁴⁴]

³⁸ EFIS No. 52, Exhibit 2.

³⁹ EFIS No. 50, *Transcript*, volume 2, page 62, line 21-page 63, line 22.

⁴⁰ EFIS No. 50, *Transcript*, volume 2, page 44, line 8-24.

⁴¹ Section 386.390.1, RSMo 2000.

⁴² 4 CSR 240-2.070(15).

⁴³ *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Commission*, 116 S.W.3d 680 (Mo. App. 2003).

⁴⁴ KCPL's tariff, *P.S.C. Mo. No. 2*, Sheet 1.24, Rule 6.09.

The test is prescribed at Commission regulation 4 CSR 240-10.030(25). KCPL showed that the meter surpassed the tariff's standard of accuracy under the test. Therefore, the Commission concludes that KCPL committed no violation as to meter accuracy.

B. Termination

Complainants charge that KCPL violated the procedure for terminating service. That procedure appears at Commission regulation 4 CSR 240-13.050. Staff suggests that the relevant provisions are those governing the termination's cause:

(1) Service may be discontinued for any of the following reasons:

(A) Nonpayment of an undisputed delinquent charge [;]

notice:

(5) A utility shall not discontinue residential service pursuant to section (1) unless written notice by first class mail is sent to the customer at least ten (10) days prior to the date of the proposed discontinuance. Service of notice by mail is complete upon mailing [;]

and time:

(3) On the date specified on the notice of discontinuance or within eleven (11) business days after that, and subject to the requirements of these rules, a utility may discontinue service to a residential customer [.]

Complainants have not shown that they disputed any charge before filing the complaint, that notice was inadequate, or that the termination was premature. KCPL showed that it followed that procedure because it showed that it gave the required notice and terminated service on the eleventh day after complainants' time to pay expired. Therefore, the Commission concludes that KCPL did not violate the termination procedure.

Also, at hearing, complainants charged that KCPL violated the hot weather statute:

For purposes of this section, the hot weather rule shall mean the period of time from June first to September thirtieth, in which the discontinuance of . . . electric service to all residential users . . . for nonpayment of bills where . . . electricity is used as the source of cooling or to operate the only cooling equipment at the residence, is prohibited in the following situations:

(1) On any day when the National Weather Service local forecast between 6:00 a.m. and 9:00 p.m. for the following twenty-four hours predicts that the temperature shall rise above ninety-five degrees Fahrenheit or that the heat index shall rise above one hundred five degrees Fahrenheit [.⁴⁵]

The day of disconnection was July 10, but complainants did not show that the day of disconnection was otherwise within that description, and KCPL has shown that it was not. Therefore, the Commission concludes that KCPL did not violate the hot weather statute.

Further, KCPL has shown that the Commission's regulations allow termination: governing disputed payments is 4 CSR 240-13.045(6):

If the parties are unable to mutually determine the amount not in dispute, the customer shall pay to the utility, at the utility's option, an amount not to exceed fifty percent (50%) of the charge in dispute [;]

and 4 CSR 240-13.050(1):

Service may be discontinued for any of the following reasons:

* * *

(D) Failure to comply with terms of a settlement agreement [.]

KCPL showed that complainants did not pay 50 percent of the disputed charges and did not comply with the first and second settlement agreements. Therefore, the Commission concludes that KCPL committed no violation as to service termination.

⁴⁵ Section 393.180, RSMo Supp. 2012.

C. Tampering

Complainants charge that KCPL's mistaken report of tampering increased their bill and interfered with LIHEAP assistance. Complainants have shown that KCPL made a mistaken report of tampering to USCAA but showed no consequences from that error. KCPL showed that it immediately corrected the mistake so that no consequences occurred as to complainants' bill and complainants' application for LIHEAP assistance. The mistaken report of tampering is not grounds for relief.

Ruling

Complainants have not shown any violation, so the Commission will deny all relief requested in the complaint.

THE COMMISSION ORDERS THAT:

1. All relief requested in the complaint is denied.
2. This order shall be effective on ____ .

BY THE COMMISSION

Morris L. Woodruff
Secretary

____, CC., concur.

Jordan, Senior Regulatory Law Judge