

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 29th day of
July, 2009.

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	<u>File No. EC-2009-0430</u>
)	
KCP&L Greater Missouri Operations Company and Kansas City Power & Light Company)	
)	
)	
Respondents.)	

**ORDER DENYING MOTION FOR JUDGMENT ON THE PLEADINGS AND
SETTING PREHEARING CONFERENCE**

Issue Date: July 29, 2009

Effective Date: July 29, 2009

On May 29, 2009, the Staff of the Commission filed a complaint against KCP&L Greater Missouri Operations Company (KCPL-GMO) and Kansas City Power & Light Company (KCPL). Staff's complaint alleges that KCPL-GMO, which is a sister corporation to KCPL, has been unlawfully using the name Kansas City Power & Light in its dealings with its customers and the public. KCPL and KCPL-GMO filed their answer on June 26. That answer was accompanied by a motion asking the Commission to deny Staff's complaint on the pleadings, as allowed by Commission rule 4 CSR 240-2.117(2). Staff responded to KCPL and KCPL-GMO's motion by filing suggestions in opposition on July 16.

KCPL and KCPL-GMO's motion for determination on the pleadings is quite short. After a long narrative answer in which the companies set forth the facts as they see it, they claim that the only issue before the Commission is the legal question of whether KCPL-GMO's use of the brand name KCP&L is lawful. Since they contend that usage is lawful, they ask the Commission to summarily rule in their favor.

Commission rule 4 CSR 240-2.117(2) gives the Commission authority to resolve 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." The rule does not, however, provide any additional guidance on when such disposition on the pleadings would be appropriate.

Staff's response treats KCPL and KCPL-GMO's motion as a motion to dismiss for failure to state a claim upon which relief can be granted. The standard for consideration of a motion to dismiss for failure to state a claim upon which relief can be granted has been 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.¹

If the motion for determination on the pleadings is to be measured by that standard, Staff's complaint is sufficient to survive a motion to dismiss. The facts alleged in Staff's complaint, if accepted as true, are sufficient to justify Staff's complaint. On that basis, the Commission must deny KCPL and KCPL-GMO's motion for determination on the pleadings. However, it is not clear that KCPL and KCPL-GMO intend their motion for determination on the pleadings to be analogous to a motion to dismiss for failure to state a cause of action.

Instead, it appears to be an attempted motion for summary determination under Commission rule 4 CSR 240-2.117(1).

KCPL and KCPL-GMO's answer offers a narrative of the facts surrounding KCPL-GMO's use of what it contends is the brand name KCP&L. The motion for determination on the pleadings then argues that those facts, which the companies contend are undisputed, show that the Commission should summarily rule against Staff's complaint. That is essentially a motion for summary determination. However, if KCPL and KCPL-GMO intended to file a motion for summary determination, the motion they actually filed does not meet the procedural requirements of Commission rule 4 CSR 240-2.117(1). Most significantly, if KCPL and KCPL-GMO intended to file a motion for summary determination, their failure to denominate it as such deprived Staff of an opportunity to respond to such a motion in the time and manner allowed by that rule.

The Commission will not presume that KCPL and KCPL-GMO intended to file a motion for summary determination when they filed their motion for determination on the pleadings. However, if the companies do choose to file a proper motion for summary determination, the Commission will allow Staff and other parties a full opportunity to respond to that motion in the manner established in the Commission's regulation.

In the meantime, the Commission will schedule a prehearing conference at which the parties shall discuss the procedure to be followed in resolving Staff's complaint.

THE COMMISSION ORDERS THAT:

1. The Motion for Determination on the Pleadings filed by Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company is denied.

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

2. A prehearing conference is scheduled for August 11, 2009, at 10:00 a.m., at the Commission's office at the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, Room 305. This building meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this conference, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the conference.

3. This order shall become effective immediately upon issuance.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'S. Reed', is positioned above the printed name of the Secretary.

Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett,
and Gunn, CC., concur.

Woodruff, Deputy Chief Regulatory Law Judge