

Emma J. McFarlin and Rebecca Shepherd,

Complainants,

V.

Kansas City Power & Light Company,

Respondent.

File No. EC-2013-0024

ORDER GRANTING PARTIAL SUMMARY DETERMINATION

Issue Date: April 25, 2013

Effective Date: April 25, 2013

The Missouri Public Service Commission grants Kansas City Power & Light Company's ("KCP&L") motion for partial summary determination¹ ("motion") as to allegations of meter accuracy. KCPL has shown that it committed no violation of statute, tariff, or Commission order or regulation charged ("violation") related to meter accuracy. The settlement conference will proceed as scheduled on remaining matters.

A. The Complaint

On July 20, 2012, Emma J. McFarlin and Rebecca Shepherd (“complainants”) filed the complaint against KCP&L seeking restoration of service and raising billing and other issues.² The Commission has authority to hear the complaint.³ The complaint’s allegations bring it within the Commission’s procedure for small formal complaints.⁴ On July 24, 2012,

¹ Filed in the Commission's Electronic Filing and Information as item number ("EFIS No.") 27, *Kansas City Power & Light Company's Motion for Partial Summary Disposition and Memorandum in Support*.

² EFIS No. 1, *Complaint*.

³ Section 386.390.1, RSMo 2000.

⁴ 4 CSR 240-2.070(15).

Complainants added an allegation of inaccurate metering.⁵ The parties reached an agreement regarding restoration of service and have continued discussions regarding billing.

B. The Motion

On March 15, 2013, KCP&L filed the motion with a supporting affidavit and memorandum.⁶ On March 28, 2013, KCP&L filed a supplemental affidavit.⁷ Any response to the motion was due on April 17, 2013.⁸ On that date, Staff filed a response⁹ in support of granting the motion and convening the settlement conference scheduled for April 24, 2013, on remaining matters. Complainants filed no response to the motion.

The Commission's regulations provide that the Commission may decide the merits of any part of a complaint without hearing when (i) doing so is in the public interest, (ii) admissible evidence supports the facts determinative of a claim or defense ("material facts") and (iii) no counter-evidence raises a genuine dispute as to any material fact.¹⁰ The regulation states:

The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of

⁵ EFIS No. 5, letter *Request for Mediation and Resolution*.

⁶ EFIS No. 27, *Kansas City Power & Light Company's Motion for Partial Summary Disposition and Memorandum in Support*.

⁷ EFIS No. 29, *Kansas City Power & Light Company's Response to Commission Order Regarding Motion for Summary Determination*.

⁸ EFIS No. 30, *Order Setting Date to File Response to Motion for Summary Determination*.

⁹ EFIS No. 31, *Staff's Response to Kansas City Power & Light Company's Motion for Partial Summary Disposition*.

¹⁰ *ITT Comm. Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 380-82 (Mo. banc 1993). That case discusses Missouri Supreme Court Rule 74.04. That rule is similar to the Commission's regulation. Therefore, case law interpreting the rule is helpful in understanding the regulation. *Johnson v. Mo. Bd. of Nursing Home Admin'rs*, 130 S.W.3d 626 (Mo. App. W.D. 2004).

law as to . . . any part of the case, and the commission determines that it is in the public interest. [¹¹]

The material facts depend on (i) the claim or defense on which the motion stands and (ii) the burden of proof. The burden of proof on any complaint is with the complainant¹² to show that a public utility has committed a violation.¹³

Therefore, KCP&L prevails on the motion if the public interest supports summary determination and if KCP&L establishes facts that: (i) establish the elements of an affirmative defense to the violation or (ii) show that complainant will be unable to prove some element of a violation even after discovery, or (iii) negate any one element of the violation charged,¹⁴ without genuine dispute. A dispute is genuine if it "is real, not merely argumentative, imaginary or frivolous."¹⁵

The standards in KCP&L's tariff and the Commission's regulations describe the facts material to determining meter accuracy. To establish that Complainant's meter meets those standards, KCP&L's supplemental affidavit describes a test of the meter and cites an attached test record. That record appears to be of the type that a utility usually makes when conducting a meter test, so it is admissible into evidence.¹⁶ Nothing contrary to that evidence appears in the record, so the following facts are subject to no genuine dispute ("undisputed").

¹¹ 4 CSR 240-2.117(1)(E) (emphasis added).

¹² *State ex rel. Tel-Central of Jefferson City, Inc. v. Public Serv. Comm'n of Missouri*, 806 S.W.2d 432, 435 (Mo. App., W.D. 1991).

¹³ Section 386.390.1, RSMo 2000.

¹⁴ *ITT Comm. Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 380-82 (Mo. banc 1993).

¹⁵ *Id.*

¹⁶ Section 536.070(10), RSMo 2000.

C. Findings of Fact

1. KCP&L supplies electricity at retail to a service territory that includes Complainants' address Missouri ("the service address").
2. From June 8, 2012 through July 10, 2012, ("the period") the meter at the service address measured the Complainants' electrical usage.
3. The meter was accurate within 0.03 percent.

D. Conclusions of Law

KCP&L alleges compliance with the requirements of meter accuracy and billing adjustments in the Commission's regulation and KCP&L's tariff¹⁷ states that no billing adjustment is due for any meter error of 2.00 percent or less. The test protocol is at Commission regulation 4 CSR 240-10.030(25). Under that protocol, according to KCPL's supplemental affidavit, the meter far surpassed the tariff's standard of accuracy. Those facts are undisputed, bar a billing adjustment, and entitle KCP&L to a favorable decision on meter accuracy. That decision is also in the public interest, because it gives effect to the Commission's determination on efficient facilities and substantial justice between patrons and public utilities, as set forth in regulation and tariff.

E. Ruling

Therefore, the Commission will enter summary determination in KCP&L's favor as to meter accuracy.

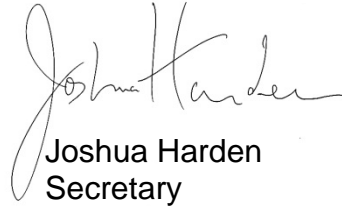
THE COMMISSION ORDERS THAT:

1. *Kansas City Power & Light Company's Motion for Partial Summary Disposition* is granted.

¹⁷ KCP&L's tariff *P.S.C. Mo. No. 2, General Rules and Regulations Applying to Electric Service*, Fifth Sheet 1.24, Rule 6.09(a), eff. Nov. 16, 1994.

2. This order is effective immediately upon issuance.

BY THE COMMISSION



Joshua Harden
Secretary

Daniel Jordan, Senior Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 25th day of April, 2013.