

PUBLIC SERVICE COMMISSION
P O BOX 360
JEFFERSON CITY MO 65102

MO 419-1183 (12-91)

FILED

SEP 19 2006

MISSOURI PUBLIC
Service Commission

Anthony Broughton
2200 East 79th Street
Kansas City, MO 64132

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**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

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

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

Stearley, Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

**I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 7th day of Sept. 2006.**



**Colleen M. Dale
Secretary**

MISSOURI PUBLIC SERVICE COMMISSION

September 07, 2006

Case No. EC-2007-0018

General Counsel's Office
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, MO 65102

Lewis R. Mills, Jr.
P.O. Box 2230
200 Madison Street, Suite 650
Jefferson City, MO 65102

Anthony Broughton
Anthony Broughton
2200 East 79th Street
Kansas City, MO 64132

Kansas City Power & Light Company
Curtis Blanc
1201 Walnut, 20th Floor
Kansas City, MO 64106

Enclosed find a certified copy of an ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', with a stylized, cursive script.

***Colleen M. Dale
Secretary***

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Anthony Broughton,)	
)	
Complainant,)	
)	
v.)	<u>Case No. EC-2007-0018</u>
)	
Kansas City Power & Light)	
Company,)	
)	
Respondent.)	

**ORDER ESTABLISHING A PROTECTIVE ORDER AND ESTABLISHING
TIME FOR A RESPONSE**

Issue Date: September 7, 2006

Effective Date: September 7, 2006

Anthony Broughton filed a complaint against Kansas City Power & Light Company ("KCPL") on July 7, 2006. In that complaint, Mr. Broughton alleged that KCPL improperly added charges owed by another person to the bill for his residential account. On August 11, 2006, KCPL filed its answer to the complaint along with a Motion for Determination on the Pleadings. The Commission denied KCPL's motion.

The Commission directed the Staff of the Missouri Public Service Commission to conduct a formal investigation and file a report before further considering the complaint. On September 6, 2006, the Staff filed its verified report recommending that Mr. Broughton's complaint be dismissed. The Staff states that it believes that KCPL's disconnection of service to Mr. Broughton was in compliance with Commission rule 4 CSR 240-13.050(1)(F).

The Staff filed its Report in compliance with Commission Rule 4 CSR 240-2.070(10), which provides:

The commission may order, at any time after the filing of a complaint, an investigation by its staff as to the cause of the complaint. The staff shall file a report of its findings with the commission and all parties to the complaint case. The investigative report shall not be made public unless released in accordance with sections 386.480, 392.210(2) or 393.140(3), RSMo, or during the course of the hearing involving the complaint.

Consequently, Staff states that its Report is a non-public document and that it is filing its report as a "Highly Confidential" document.

Commission Rule 4 CSR 240-2.085(2) provides, in pertinent part:

Pleadings, testimony, or briefs shall not contain highly confidential or proprietary information unless a protective order has been issued by the commission;

Although Staff has not filed a motion for a protective order, the Commission finds that there is a need to protect confidential information, and the filing of Staff's Report as Highly Confidential is reasonable. The Commission has previously recognized the need to protect confidential information, and protective orders have helped minimize disputes in past cases. Therefore, the Commission concludes that a protective order should be issued.

Mr. Broughton shall be directed to respond to Staff's report no later than October 5, 2006. Mr. Broughton is also advised that failure to respond by that date will be a failure for him to have taken any action in his case for 90 days after the initial filing of his complaint. Commission Rule 4 CSR 240-2.116(2) states: "Cases may be dismissed for lack of prosecution if no action has occurred in the case for ninety (90) days and no party has filed a pleading requesting a continuance beyond that time." Should Mr. Broughton fail to respond as directed, the Commission may dismiss his complaint for failure to prosecute.

IT IS ORDERED THAT:

1. A protective order is issued in this matter, and the protective order attached to this order as Attachment A is adopted.
2. Anthony Broughton shall file a response to the Staff of the Missouri Public Service Commission's report no later than October 5, 2006.
3. This order shall become effective on September 7, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Harold Stearley, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 7th day of September, 2006.

PROTECTIVE ORDER

- A. The following definitions shall apply to information which a party claims should not be made public.

HIGHLY CONFIDENTIAL: Information concerning (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration in contract negotiations.

PROPRIETARY: Information concerning trade secrets, as well as confidential or private technical, financial and business information.

- B. During the course of discovery a party may designate information as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated information") and shall make such designated information available to the party seeking discovery, if such information is not objectionable on any other ground, under the restrictions set out in paragraphs C and D. The party designating the information as HIGHLY CONFIDENTIAL or PROPRIETARY shall provide to counsel for the requesting party, at the time the designation is made, the ground or grounds for the designation. The requesting party may then file a motion challenging the designation. The party designating the information confidential shall have five days after the filing of the challenge to file a response. No other filings are authorized.

- C. Materials or information designated as HIGHLY CONFIDENTIAL may, at the option of the furnishing party, be made available only on the furnishing party's premises and may be reviewed only by attorneys or outside experts who have been retained for the purpose of this case, unless good cause can be shown for disclosure of the information off premises and the designated information is delivered to the custody of the requesting party's attorney. Outside expert witnesses shall not be employees, officers or directors of any of the parties in this proceeding. No copies of such material or information shall be made and only limited notes may be taken, and such notes shall be treated as the HIGHLY CONFIDENTIAL information from which notes were taken.
- D. Disclosure of PROPRIETARY information shall be made only to attorneys, and to such employees who are working as consultants to such attorney or intend to file testimony in these proceedings, or to persons designated by a party as outside experts. Employees to whom such disclosure is to be made must be identified to the other party by name, title and job classification prior to disclosure. Information designated as PROPRIETARY shall be served on the attorney(s) for the requesting party. On premises inspection shall not be required for PROPRIETARY information, except in the case of voluminous documents (see paragraph K). Any employees of the party who wish to review such PROPRIETARY materials shall first read this order and certify in writing that (s)he has reviewed same and consented to its terms. The acknowledgment so executed shall contain the signatory's full name, permanent address, title or position, date signed, and an affirmation that the signer is acting on

behalf of his/her employer. Such acknowledgment shall be delivered to counsel for the party furnishing the information or documents before disclosure is made.

- E. Attorneys, in house experts or outside experts who have been provided access to material or information designated HIGHLY CONFIDENTIAL or PROPRIETARY shall be subject to the nondisclosure requirements set forth in paragraphs C or D, whichever is applicable, and S.
- F. When a party has been allowed to intervene in a case, the attorney(s) for that party will be allowed to view all highly confidential, proprietary, and public versions of data requests and responses submitted to the Commission's Electronic Filing and Information System (EFIS). If a party is allowed only limited intervention, that party's attorney(s) will be allowed to view only public information in EFIS.
- G. A party to a case, acting through a company representative, may elect to designate a person as its Data Request Contact in its company information within EFIS. A person so designated as a Data Request Contact will be allowed to view all highly confidential, proprietary, and public versions of EFIS data requests, and related responses, submitted to or by that company. Persons designated as a Data Request Contact must have a valid EFIS log-in.
- H. If material or information to be disclosed in response to a data request contains material or information concerning another party which the other party has indicated is confidential, the furnishing party shall notify the other party of the intent to disclose the information. The other party may then choose to designate the material or information as HIGHLY CONFIDENTIAL or PROPRIETARY under the provisions of this Protective Order.

- I. Any party may use material or information designated as HIGHLY CONFIDENTIAL or PROPRIETARY in prefiled or oral testimony at hearing provided that the same level of confidentiality assigned by the furnishing party is maintained, unless otherwise classified by the Commission. In filing testimony all parties shall designate as HIGHLY CONFIDENTIAL or PROPRIETARY only those portions of their testimony which contain information so designated by the furnishing party. If any party plans to use information and testimony which has been obtained outside this proceeding, it must ascertain from the furnishing party if any of such information is claimed to be HIGHLY CONFIDENTIAL or PROPRIETARY prior to filing.
- J. A party may designate prefiled or live testimony, or portions thereof, submitted in this case as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated testimony"). Prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY shall be filed under seal and served upon all attorneys of record. Only those portions of the prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY shall be filed under seal, and shall be marked in a manner which clearly indicates which materials are considered HIGHLY CONFIDENTIAL and which are considered PROPRIETARY.
- K. Within five days of the filing of designated testimony, the party asserting the claim shall file with the Commission the specific ground or grounds for each claim. Such filing shall show the nature of the information sought to be protected and specifically state the alleged harm of disclosure. Such filing shall be filed under seal only if it contains either PROPRIETARY or HIGHLY CONFIDENTIAL information and shall be served upon all attorneys of record.

- L. Attorneys upon whom prefiled testimony designated HIGHLY CONFIDENTIAL or PROPRIETARY has been served shall make such testimony available only to those persons authorized to review such testimony under the restrictions in Paragraphs C or D, whichever is applicable.
- M. If a response to a discovery request requires the duplication of voluminous material or material not easily copied because of its binding or size, the furnishing party may require the voluminous material be reviewed on its own premises. Voluminous material shall mean a single document, book or paper which consists of more than 150 pages.
- N. Attorneys of record in this case shall require that the in house or outside expert read this Protective Order and certify in a written nondisclosure agreement that the person has reviewed the Protective Order and consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, permanent address, employer and the name of the party with whom the signatory is associated. Such agreement shall be filed with the Commission. Attached hereto as Appendix "A" and incorporated by reference herein is a form for use in complying with the terms of this paragraph.
- O. In the event a witness discloses the contents of designated prefiled testimony in his or her own prefiled testimony, such testimony shall also be designated in the same manner as the designated prefiled testimony and handled in accordance with this order.
- P. Unless good cause is shown, challenges to the confidential nature of prefiled designated testimony shall be filed with the Commission no later than ten days after

the grounds supporting the designations are filed or at the hearing, whichever occurs first. The party making the designation shall have five days to respond to the challenge or may respond at the hearing, whichever occurs first.

- Q. The Commission or Regulatory Law Judge may rule on the challenge to the designations prior to the hearing, or at the hearings.
- R. In the event no party challenges prefiled designated testimony, or in the event the Commission or its Regulatory Law Judge rules that testimony was properly designated, then such testimony shall be received into evidence, subject to any other objections being made and ruled upon, and kept under seal.
- S. In addition, all live testimony, including cross examination and oral argument which reveals the content of prefiled designated testimony or which is otherwise held to be confidential, including any argument as to whether certain testimony is properly designated, shall be made only after the hearing room is cleared of all persons besides the Commission, its Regulatory Law Judges, court reporters, attorneys of record and witnesses to whom the designated information is available pursuant to the terms of this Protective Order. The transcript of such live testimony or oral argument shall be kept under seal and copies shall only be provided to the Commission, its Regulatory Law Judges, and attorneys of record. Such attorneys shall not disclose the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order. Persons who have access to the designated information under the terms of this Protective Order shall treat the contents of such transcript as any other designated information under the terms of this Protective Order.

- T. References to designated testimony, whether prefiled or live and transcribed, in any pleadings before the Commission, shall be by citation only and not by quotation. Subject to the jurisdiction of any reviewing court, references to designated testimony in pleadings or oral arguments made to such reviewing court shall also be by citation only.
- U. All persons who are afforded access to information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall keep the information secure and in accordance with the purposes and intent of this order.
- V. Subject to the jurisdiction of any reviewing court, designated testimony constituting part of the record before the Commission shall be delivered to any reviewing court under seal upon service of the appropriate writ of review.
- W. The Commission may modify this order on motion of a party or on its own motion upon reasonable notice to the parties and opportunity for hearing.
- X. Within 90 days after the completion of this proceeding, including judicial review thereof, all designated information, testimony, exhibits, transcripts or briefs in the possession of any party other than Staff or the Public Counsel shall be returned to the party claiming a confidential interest in such information and any notes pertaining to such information shall be destroyed.
- Y. The provisions of paragraph C, D, J and L of this Protective Order do not apply to Staff or Public Counsel. Staff and Public Counsel are subject to the nondisclosure provisions of Section 386.480, RSMo 2000. Staff and Public Counsel shall provide a

list of the names of their employees who will have access to the designated information.

- Z. Outside experts of Staff or Public Counsel who have been contracted to be witnesses in this proceeding shall have access to designated information and testimony on the same basis as Staff and Public Counsel except the outside expert shall read this order and sign the nondisclosure agreement attached as Appendix "A" hereto.
- AA. Outside experts of Staff and Public Counsel who have not been contracted to be witnesses in this proceeding are subject to the provisions of this Protective Order.
- BB. Prefiled testimony and exhibits, whether filed or offered at the hearing, shall be prepared in the manner described in Appendix "B".

APPENDIX "A"

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

NONDISCLOSURE AGREEMENT

I, _____, have been
presented a copy of this Protective Order issued in Case No. _____ on the
_____ day of _____, 2_____.

I have requested review of the confidential information produced in Case
No. _____ on behalf of _____
_____.

I hereby certify that I have read the above-mentioned Protective Order and agree to
abide by its terms and conditions.

Dated this _____ day of _____, 2_____.

Signature and Title

Employer

Party

Address

Telephone

1. If prefiled testimony contains parts which are classified as Proprietary or Highly Confidential, it shall be filed with the Commission's Secretary/Chief Regulatory Law Judge's Office as follows:
 - A. One public version of prefiled testimony with the Proprietary or Highly Confidential portions obliterated or removed shall be filed. The Proprietary pages shall be stamped "P" and the Proprietary information indicated by one asterisk before and after the information, *Proprietary information removed*. The Highly Confidential pages shall be stamped "HC" with the Highly Confidential information indicated by underlining and by two asterisks before and after the Highly Confidential information, **Highly Confidential information removed**. The designated information shall be removed with space remaining so that the lineation and pagination of the public version remains the same as the Highly Confidential and Proprietary versions.
 - B. One complete version of prefiled testimony shall be filed under seal. The Proprietary pages shall be stamped "P" and the Proprietary information indicated by one asterisk before and after the information, *Proprietary*. The Highly Confidential pages shall be stamped "HC" with the Highly Confidential information indicated by underlining and by two asterisks before and after the Highly Confidential information, **Highly Confidential**.

Any deviations from this format must be approved by the Regulatory Law Judge.

2. One copy of each version of exhibits which have been previously filed, whether testimony or other, shall be provided at the hearing with the information separated as described in 1.A and 1.B above with each copy of the Proprietary and Highly

Confidential portions placed into separate envelopes to be marked as Exhibit __P and Exhibit __HC. If the exhibit has not been previously filed with the Commission, then, at the hearing, the filing party must provide seven copies of each version to the Commission, plus an additional copy of each version to all counsel.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

**I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 7th day of Sept. 2006.**



**Colleen M. Dale
Secretary**

MISSOURI PUBLIC SERVICE COMMISSION

September 07, 2006

Case No. EC-2007-0018

General Counsel's Office
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, MO 65102

Lewis R. Mills, Jr.
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1201 Walnut, 20th Floor
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Enclosed find a certified copy of an ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary