

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

In the Matter of Cheryl L. Fabulae,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>Case No. EC-2007-0146</u></b>
	)	
Kansas City Power & Light Company,	)	
	)	
Respondent.	)	

**ORDER DIRECTING FILING**

Issue Date: October 23, 2006

Effective Date: October 23, 2006

On October 6, 2006, Cheryl L. Fabulae filed a formal complaint against Kansas City Power & Light Company ("KCPL"), which was assigned Case No. EC-2007-0146.<sup>1</sup> She amended her formal complaint on October 12, 2006.

In her amended complaint, Ms. Fabulae claims that KCPL terminated her residential electric service at an unspecified time on October 6, 2006 and that pursuant to 4 CSR 240-13.050, she is entitled to restoration of her service pending final resolution of this matter.

Commission Rule 4 CSR 240-13.035 prescribes the conditions under which electric, gas, or water utility service to residential customers such as Ms. Fabulae may be

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<sup>1</sup> Ms. Fabulae filed this formal complaint the day after an informal complaint she had filed against KCPL on July 21, 2006 was resolved against her based upon a review of the information she and KCPL had submitted to the Commission's Department of Consumer Services, which culminated in a determination that "it does not appear that KCPL has billed your account incorrectly." See 4 CSR 240-2.070(3), which provides that a formal complaint may be filed "[i]f a complainant is not satisfied with the outcome of the informal complaint."

discontinued and sets forth the procedures to be followed by utilities and customers regarding such matters. Under 4 CSR 240-13.035(1), service may be discontinued for any of the following reasons:

- (A) Nonpayment of an undisputed delinquent charge;
- (B) Failure to post a required deposit or guarantee;
- (C) Unauthorized interference, diversion or use of the utility service situated or delivered on or about the customer's premises;
- (D) Failure to comply with terms of a settlement agreement;
- (E) Refusal after reasonable notice to permit inspection, maintenance, replacement or meter reading of utility equipment. If the utility has a reasonable belief that health or safety is at risk, notice at the time inspection is attempted is reasonable;
- (F) Misrepresentation of identity in obtaining utility service;
- (G) Violation of any other rules of the utility approved by the commission which adversely affects the safety of the customer or other persons or the integrity of the utility's system; or
- (H) As provided by state or federal law.<sup>2</sup>

Even so, 4 CSR 240-13.035(5) provides that 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” or the utility delivers “a written notice in hand to the customer at least ninety-six (96) hours prior to discontinuance.”<sup>3</sup> In relevant part, 4 CSR 240-13.035(5) also states that a “notice of discontinuance of service shall not be issued as to that portion of a bill which is determined to be an amount in dispute pursuant to sections 4 CSR 240-13.045(5) or (6) that is currently the subject of a dispute pending with the utility or complaint before the commission[.]”

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<sup>2</sup> Ms. Fabulae does not allege that her service was not subject to discontinuation by KCPL for one or more of these reasons.

<sup>3</sup> Ms. Fabulae does not allege that KCPL failed to provide her timely written notice prior to discontinuing her service.

Giving her *pro se* pleadings their broadest possible intendment, Ms. Fabulae appears to be alleging that because some unspecified portion of her past-due electric bill from KCPL was “the subject of a dispute pending with the utility or complaint before the commission” at the time KCPL served her with written notice that her service was going to be discontinued on October 6, 2006, the notice was improper and KCPL should be ordered to restore her service pending final resolution of this matter.

However, the regulation upon which Ms. Fabulae relies (4 CSR 240-13.035(5)) *also* provides that it must first be determined what portion of her past-due electric bill represents “an amount in dispute pursuant to sections 4 CSR 240-13.045(5) or (6).” Commission Rule 4 CSR 240-13.045(5) states: “If a customer disputes a charge, s/he shall pay to the utility an amount equal to that part of the charge not in dispute. The amount not in dispute shall be mutually determined by the parties.”<sup>4</sup> Meanwhile, according to 4 CSR 240-13.045(6), “[i]f 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 or an amount based on usage during a like period under similar conditions which shall represent the amount not in dispute.”

Therefore, Ms. Fabulae and KCPL must first attempt to mutually determine the amount of Ms. Fabulae’s past-due electric bill which is not in dispute. If the parties are able to reach agreement as to this amount, upon payment of that sum to KCPL, Ms. Fabulae will be entitled to restoration of her residential electric service pending final resolution of this matter. If the parties are unable to mutually determine the amount not in dispute, before becoming entitled to restoration of her electric service pending final resolution of this matter

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<sup>4</sup> In determining the amount not in dispute, “[t]he parties shall consider the customer’s prior consumption history, weather variations, the nature of the dispute and any other pertinent factors.” *Id.*

Ms. Fabulae must pay KCPL, at KCPL's option: (1) an amount not to exceed 50% of the total past-due charge; or (2) an amount based on usage during a like period under similar conditions.

**IT IS ORDERED THAT:**

1. Cheryl L. Fabulae and Kansas City Power & Light Company shall promptly attempt to mutually determine the amount of Ms. Fabulae's past-due electric bill which is not in dispute as determined pursuant to 4 CSR 240-13.045(5). If they are able to reach agreement as to this amount, KCPL shall file an appropriate pleading specifying that amount no later than noon on Friday, October 27, 2006. If they are unable to mutually determine the amount of Ms. Fabulae's past-due electric bill which is not in dispute, KCPL shall, no later than noon on Friday, October 27, 2006, file an appropriate pleading specifying the amount not in dispute as determined pursuant to 4 CSR 240-13.045(6).

2. This order shall become effective on October 23, 2006.

**BY THE COMMISSION**



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 23rd day of October, 2006.