

**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 March, 2007.

ORDER GRANTING MOTION TO DISMISS COMPLAINT

Issue Date: March 29, 2007

Effective Date: March 29, 2007

On November 9, 2006, Erika Bush filed a complaint with the Missouri Public Service Commission against Kansas City Power & Light Company (“KCPL”). KCPL timely filed its answer to the complaint on December 12, 2006, and the Commission’s Staff timely filed its Investigation Report on January 23, 2007.

Ms. Bush alleged that KCPL had denied her service based upon a debt of \$687.71, and that KCPL refused to allow her to make payment arrangements. Ms. Bush sought to have her credit rating restored to the rating it was before her debt was applied by KCPL, she wanted a verbal and written apology from KCPL, and she also requested compensation for extra costs she incurred on her cell phone and for "mental-physical-emotional fallout."

In its Answer KCPL stated that, although not clear from her formal complaint, Ms. Bush's dispute with KCPL arises from alleged identify theft and her inability to demonstrate where she resided during the time in which the billed amounts at issue were incurred. KCPL further indicated that it had reached an agreement with Ms. Bush whereby Ms. Bush would, over time, pay her entire unpaid account balance to KCPL. KCPL also formally apologized to Ms. Bush in its Answer, stating, "KCPL regrets that Ms. Bush was dissatisfied with the manner in which KCPL handled her account and hereby apologizes."

In its Investigation Report Staff correctly concluded that restoration of Ms. Bush's credit rating and restitution and/or damage claims are beyond the scope of the Commission's authority. Staff also notes that KCPL did provide a written apology to Ms. Bush in its Answer to her complaint.

Based upon its investigation of Ms. Bush's account information and status, Staff concluded that: 1) Ms. Bush received appropriate billing adjustments to her account¹; 2) it does not appear that KCPL has violated any Commission rule, and 3) it does not appear that KCPL violated its approved tariff for the bills rendered. Specifically, Staff found that KCPL had credited Ms. Bush's account the amounts related to the allegedly identity theft. Staff indicated that after the "identity theft" credit, Ms. Bush's was responsible for the remaining balance on her account, or \$355.51. According to Staff, on December 26, 2006, Ms. Bush and KCPL agreed to a payment arrangement. Staff also advised the Commission that as of January 23, 2007, that two payment arrangements made between KCPL and Ms. Bush have been defaulted on by Ms. Bush when she failed to meet the terms

¹ KCPL credited Ms. Bush's account for the amount allegedly incurred by an individual that falsely claimed to be Ms. Bush.

agreed to on December 26, 2006. Staff further recommended that the Commission dismiss Ms. Bush's complaint.

A prehearing conference was set in this matter for February 22, 2007. In the order setting the prehearing conference the parties were advised that, pursuant to Commission Rule 4 CSR 240-2.090, "Failure to appear at a prehearing conference without previously having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown." The parties were advised that they could appear by telephone and provided with a toll-free phone number.

The prehearing conference was held as scheduled on February 22. Staff and KCPL entered their appearance at the prehearing conference. Ms. Bush did not appear in person or by phone. Ms. Bush had not requested a continuance. Since Ms. Bush failed to appear at the prehearing conference without previously having secured a continuance, her complaint against KCPL became subject to dismissal unless she showed good cause for her absence.²

On February 23, 2007, KCPL filed a Motion to Dismiss with Prejudice, based upon Ms. Bush's failure to appear at the prehearing. In further support of its motion, KCPL notes that in its Investigation Report Staff recommended that the Commission dismiss Ms. Bush's complaint. On February 28, 2007, Staff filed a pleading concurring with KCPL's Motion to Dismiss with Prejudice, and requested that the Commission issue an order directing Ms. Bush to show cause why her complaint should not be dismissed.

² See 4 CSR 240-2.110(2)(B) ("Failure to appear at a hearing without previously having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown.")

On March 1, 2007, the Commission issued an order directing Ms. Bush to file a pleading with the Commission showing cause why her complaint should not be dismissed. Ms. Bush was advised that her response should explain to the Commission why she was unable to appear for the prehearing conference. Ms. Bush was advised that failure to provide a good reason for failing to attend the prehearing conference could result in her complaint being dismissed. The deadline for Ms. Bush's response was March 15, 2007. Ms. Bush failed to respond to the Commission's March 1st order. The Commission has received no notices of returned mail.

As previously noted, Commission Rule 4 CSR 240-2.090 states: "Failure to appear at a prehearing conference without previously having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown." Commission Rule 4 CSR 240-2.116(3) provides that any party may be dismissed from a case for failure to comply with a Commission order.

Ms. Bush failed to appear at the scheduled prehearing conference. She did not request a continuance. Ms. Bush also failed to comply with the Commission's March 1, 2007 show cause order. KCPL and Staff have both lodged motions to dismiss this action for failure to appear and for violation of Commission Rules.

The Commission finds that Ms. Bush's complaint should be dismissed.

IT IS ORDERED THAT:

1. Erika J. Bush's complaint against Kansas City Power & Light Company filed on November 9, 2006, case number EC-2007-0186, is dismissed without prejudice.

2. This order shall become effective on March 29, 2007.
3. This case may be closed on March 30, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

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

Voss, Regulatory Law Judge