

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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|------------------------------------|---|-----------------------|
| Brent Fallon, |) | |
| Complainant, |) | |
| |) | |
| v. |) | File No. EC-2012-0007 |
| |) | |
| Kansas City Power & Light Company, |) | |
| |) | |
| Respondent. |) | |

ORDER DENYING MOTION TO DISMISS

Issue Date: September 7, 2011

Effective Date: September 7, 2011

The Missouri Public Service Commission is denying the motion to dismiss for failure to state a claim (“motion”)¹ because Kansas City Power & Light Company (“KCP&L”) relies on matters outside the complaint.

The statutes require any complaint to set forth conduct in violation of a statute, tariff, or Commission regulation or order.² In the motion, KCP&L quotes case law setting forth the standard for failure to state a claim:

“[T]he 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

Further reading of GMO’s cited paragraph shows the following:

“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

¹ Filed by Kansas City Power & Light Company with its answer on August 4, 2011.

² Section 386.390.1, RSMo 2000.

³ *Richardson v. Richardson*, 218 S.W.3d 426, 428 (Mo. banc 2007) (citation omitted).

attempt is made to weigh any facts alleged as to whether they are credible or persuasive.” [4]

But KCP&L does not make its argument under that standard.

Instead of showing whether the complaint states a claim by relying “solely” on the complaint’s allegations, KCP&L seeks a decision on the merits. The Commission:

. . . may not grant a motion to dismiss for failure to state a claim based on a conclusion that the plaintiff is not entitled to relief on the merits of that claim. [5]

Also, KCP&L relies on matters outside the complaint: two meter test reports, a supporting affidavit, a chart and a graph related to billing. Even if the Commission treated the motion to dismiss as a motion for summary determination, the graph and chart would not support a decision on the merits because they are neither part of the complaint nor authenticated by affidavit.⁶ Therefore, the Commission will deny the motion.

THE COMMISSION ORDERS THAT:

1. The motion to dismiss is denied.
2. This order is effective immediately upon issuance.

BY THE COMMISSION

(S E A L)



Steven C. Reed
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 7th day of September, 2011.

⁴ *Id.* (citations omitted).

⁵ *Chochorowski v. Home Depot U.S.A., Inc.*, 295 S.W.3d 194, 198 (Mo. App. E.D. 2009).

⁶ 4 CSR 240-2.117(1).