

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

Eddie Shepherd,

Complainant,

v.

KCP&L Greater Missouri Operations
Company,

Respondent.

File No. EC-2011-0373

**ANSWER AND MOTION TO DISMISS OF
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

Pursuant to 4 CSR 240-2.070(6) and (14), KCP&L Greater Missouri Operations Company (“Company” or “GMO”)¹ hereby submits its answer and its Motion to Dismiss to the Missouri Public Service Commission (“Commission”) in response to Eddie Shepherd’s complaint in this proceeding.

In support, GMO states as follows:

BACKGROUND

1. On April 27, 2007 GMO began providing electric service to Mr. Eddie Shepherd at his current residence, 8675 County Road 392, St. Joseph, Missouri 64505 (the “Property”) the location at issue in his complaint.

2. Mr. Shepherd filed a complaint with the Commission on May 16, 2011 initiating the above-captioned proceeding. According to Mr. Shepherd’s complaint, he believes the meter on the Property has been registering more electricity than his consumption following a lightning

¹ While the complaint filed in this matter designates Kansas City Power & Light as the Respondent, the complainant is, in fact, a customer of KCP&L Greater Missouri Operations Company.

strike in July, 2010 and is requesting relief from high bills allegedly brought on by a faulty meter.

3. According to GMO's records, Mr. Shepherd contacted the Company on March 9, 2011 requesting that his meter be checked. The Company performed an inspection on March 10, 2011 and found the meter was testing accurately and usage was in-line with GMO's overall customer base. However, there were visual signs of a lightning strike and the meter was exchanged at this time.

4. Company has thoroughly investigated the monthly usage at the Property from May, 2007 through May, 2011 (actual reads no estimates) and find the usage to be fairly consistent. See Attachment A attached hereto.

5. The Commission Staff has also investigated the Shepherd complaint. Staff closed its informal complaint on May 4, 2011 and advised Complainant that the Company's billing was justified.

6. The Commission issued its Notice of Contested Case and Orders for Small Formal Complaint on May 17, 2011. Pursuant to that Notice, GMO's answer is due June 16, 2011.

ANSWER

7. GMO admits the allegations in paragraph 1 of the complaint.

8. GMO is without sufficient knowledge to admit or deny the allegations in sentence 1, sentence 2, sentence 3, sentence 4, and sentence 5 of paragraph 2 of the complaint and therefore denies same.

9. Regarding the allegations in sentence 6 of paragraph 2 of the complaint, GMO admits that it checked Complainant's meter in response to a March 9, 2011 request by Mr. Shepherd.

10. GMO denies the allegations in sentence 7 of paragraph 2.

11. GMO admits that Complainant requested on March 9, 2011 that the meter be tested as alleged in paragraph 3 of the complaint. GMO denies all other allegations in paragraph 3 of the complaint.

12. GMO denies all allegations that may be contained in the page of the complaint with the heading "In the United States District Court for the Western District of Missouri St. Joseph Division"

13. Except as expressly admitted in this Answer, GMO denies each and every other allegation contained in the Complaint. Additionally, GMO reserves the right to supplement this pleading to add additional defenses and claims in connection with this complaint.

14. GMO has acted in accordance with its tariffs and the Missouri Code of State Regulations.

15. In his complaint, Mr. Shepherd appears to request that the Commission require GMO to make restitution for damages to his appliances (furnace, hot water heater, air conditioner and cook stove). It is beyond the Commission's statutory authority to compel GMO to provide such "other restitution." The Commission must therefore deny Mr. Shepherd's request for such relief.

AFFIRMATIVE DEFENSES

16. Mr. Shepherd's complaint fails to state a claim upon which relief can be granted.

MOTION TO DISMISS

17. The Commission's rules provide that "The commission, on its own motion or on the motion of a party, may after notice dismiss a complaint for failure to state a claim on which relief may be granted." 4 CSR 240-2.070(6). When evaluating such a motion "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.”² In other words, the Commission should ask, assuming the allegations are true, whether the complainant would have a right to the relief he seeks. Under this standard, Mr. Shepherd’s complaint must fail. Even if each fact Mr. Shepherd alleges were accurate, he is not entitled to the relief he seeks. The meter that Complainant alleges was struck by lightning in July 2010 was tested by GMO and found to be 99.87% accurate as shown on Attachment B. Under Rule 5.04(C) (Sheet R-33) of GMO’s tariffs, refunds for meter errors are only made if the error is greater than 3%. Since the amount of error was less than 3%, no refund is due to Complainant. Thus, there is no basis under the Company’s tariffs or the Commission’s rules for the Commission to grant “relief from high bills brought on by a faulty meter” as requested by the Complainant. GMO has already done all it is required to do under the Commission’s regulations and the Company’s tariffs. In addition, the Commission lacks the jurisdictional authority to grant Mr. Shepherd the relief he seeks regarding his appliances.

WHEREFORE, having fully answered and set forth its affirmative defenses, Respondent GMO prays the Commission dismiss the complaint with prejudice and grant such other relief as the Commission deems reasonable and just.

² *Richardson v. Richardson*, 218 S.W. 3d. 426, 428 (Mo. 2007).

Respectfully submitted,

/s/ Roger W. Steiner

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Attorney for KCP&L Greater Missouri Operations Company

Dated: June 16, 2011

Certificate of Service

I hereby certify that a true and correct copy of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all parties of record on this 16th day of June, 2011.

/s/ Roger W. Steiner

Attorney for KCP&L Greater Missouri Operations Company

ATTACHMENT A

Shepherd, Eddie Mack					
Monthly Usage					
	2007	2008	2009	2010	2011
January		4569	4467	4764	4925
February		4520	2057	4604	4780
March		3709	2612	3450	2545
April		1975	1335	874	1436
May	810	825	527	764	872
June	832	587	616	1917	
July	1881	856	1015	1856	
August	1761	1272	1206	1614	
September	863	820	722	986	
October	1387	1625	1786	1146	
November	3087	2734	2336	3387	
December	4251	4940	3963	4299	

Attachment A

CERTIFICATE OF INSPECTION AND TEST

S/S ☐ E/M ☒ Repairs: Before ☐ After ☐ In-Test ☐ Out-Test ☐

KCP&L
KCP&L

ACCOUNT# **EDDIE MACK SHEPHERD** BILLING ID # **2675 CO. RD. 372**

CUSTOMER **SA 40172 754** ADDRESS **OUTSIDE NORTH ON PILE 57770**

METER # **SA 40172 754** LOCATION **OUTSIDE NORTH ON PILE 57770** READING **57770** DEMAND PK.

DIAL CONST. (K) **1** TEST CONST. (K) **1** REG. RATIO **1** CT. RATIO **1** P.T. RATIO **1**

PRIMARY AMPS - A. **1** B. **1** C. **1** P.T. RATIO **1** PULSE VALUE **1**

1: PHASE ANGLE-A-ABN **1** B-BN **1** C-CBN **1** A-CBN **1** A-ACN **1** C-AB **1**

2: PHASE ANGLE-A-ABN **1** B-BN **1** C-CBN **1** A-CBN **1** A-ACN **1** C-AB **1**

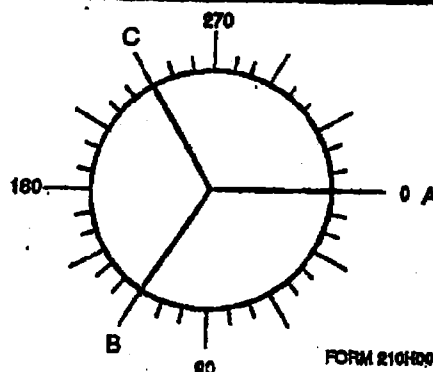
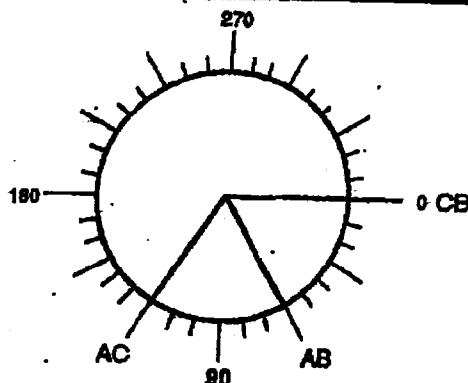
DISK C (PK) **1** X SHAFT RATIO **1** X REG. RATIO **1** +DIAL C **1** =10KW

METER REV. **1** X 3600 X Kh **1** +SEC. **1** +1000= **1** KWD

Kh **1** +P/R **1** -K **1** Wh **1** ACTUAL TEST DEMAND PEAK= **1** KWD

PULSES **1** X Int. In hr. **1** X K **1** +1,000 = **1** KWD

% LOAD	MTR REVS	% CORR	WATTS AS FOUND		VARs / COMP AS LEFT		INSTANTANEOUS WATTS:
			STD REVS	ACC	STD REVS	ACC	
100	10			79893			INSTANTANEOUS VARs:
10	2			99.718			CT LOCATION:
50	5			100.206			IN <input type="checkbox"/> OUT <input type="checkbox"/> CT CUSTOMER LOAD L1 WATTS
AVERAGE ACCURACY							A2R X ABCN X COS =
CHECKED BY: 7182 DATE: 3-10-11							B2R X ABCN X COS =
LOCKING DEVICE: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> LAN ID:							C2R X ABCN X COS =
FUSED POTENTIAL CUST. PULSES 2W <input type="checkbox"/> 3W <input type="checkbox"/>							IN <input type="checkbox"/> OUT <input type="checkbox"/> CT CUSTOMER LOAD L2 WATTS/VARS
YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>							A2R X ABCN X COS SIN =
ROT. PWD <input type="checkbox"/> REV <input type="checkbox"/> K ₉ VALUE							B2R X ABCN X COS SIN =
TIME OFF: TIME ON:							C2R X ABCN X COS SIN =
KW LOAD: TOTAL X DIAL C: (TP) = +1000= KW							
METER REV. X 3600 X DISK C. +SEC. +1000= KW							
VARs LOAD: TOTAL X DIAL C. = +1000= KVAR							
METER REV. X 3600 X DISK C. +SEC. +1000= KVAR							
REMARKS HIGH BILL TEST							



FORM 2104298 (Rev. 0806)