

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

Patricia Sue Stinnett,)
 Complainant,)
)
v.)
)
Kansas City Power & Light Company,)
 Respondent.)

Case No. EC-2020-0088

STAFF’S REPLY BRIEF

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STAFF’S BRIEF

Staff submits this Brief to the Commission in response to the Commission’s *Order Setting Time for Exhibit Filing, Objections to Exhibits and Briefs* requiring Staff and Evergy Missouri West to file briefs and addresses the issue of whether the charges at issue were “overcharges” within the meaning of the term as used in 20 CSR 4240-13.025.

Background and Staff’s Investigation

On September 30, 2019, Patricia Sue Stinnett (“Complainant”) filed a formal complaint with the Missouri Public Service Commission against Kansas City Power and Light Company (“Company”).¹ Ms. Stinnett alleges that the Company has incorrectly charged her over an approximately ten-year period for a utility light pole that was destroyed in a fire on April 20, 2009.² After the billing error was discovered, the Company sent Ms. Stinnett a check for \$692.11, the equivalent to five years of charges for one utility light pole.³

Staff’s investigations of formal complaints aim to be as thorough as possible. When investigating a complaint, Staff will review any information contained in the informal

¹ Ms. Stinnett was actually a customer of KCP&L Greater Missouri Operations. As of October 7, 2019, GMO is known as Evergy Missouri West (“Evergy”).
² It is unclear how the Company was notified or who notified the Company that the first light pole had been destroyed in a fire. Tr. Vol. II, p. 38, l. 25—p. 39 l. 2.
³ In this Brief, “pole light” and “private lighting” refer to the same service.

complaint, any information provided by the Complainant, and any information provided by the Company in response to data requests. Staff may also call the Complainant to clarify or follow-up on any information contained in the Complaint. Some Complaints require site visits as part of Staff's investigation, though one was not necessary during this investigation.

While listening to phone calls between the Complainant and the Company, Staff determined that the Complainant called the Company on June 26, 2019 to turn off the electricity at 30391 Holt 150, Maitland, MO.⁴ During this call, the Company representative informed Ms. Stinnett that two pole lights were on her account, not one as Ms. Stinnett has previously thought.⁵ Ms. Stinnett called the Company again on July 18, 2019 to inquire about the status of a refund for the recently discovered overcharge. For unknown reasons, a work order to verify the number of pole lights had not been processed after the June 26 call.⁶ On August 27, 2019, the Company issued Ms. Stinnett a refund check in the amount of \$692.11. This refund for five years of charges is consistent with both Commission rules and the Company's Commission approved tariff.⁷

Private Lighting

At the evidentiary hearing on October 13, 2020, questions arose concerning who was listed on the account and how the Company was informed that a pole light was destroyed by a fire in April, 2009. According to Company witness, Alisha Duarte, prior to

⁴ Ex. 201, *Staff Report*, p. 2. Recordings of phone calls between the Complainant and the Company were provided to Staff in response to Data Request 1.

⁵ *Id.*

⁶ *Id.*

⁷ 20 CSR 4240-13.025(1)(A) In the event of an overcharge, an adjustment shall be made for the entire period that the overcharge can be shown to have existed not to exceed sixty (60) consecutive monthly billing periods...calculated from the date of discovery, inquiry, or actual notification of the utility, whichever comes first. Company tariff, Section 5.04(1)(A) In the event of an overcharge, an adjustment shall be made for the entire period that the overcharge can be shown to have existed not to exceed (60) consecutive billing periods, calculated from the date of discovery, inquiry, or actual notification, whichever was first.

June 26, 2019, Ms. Stinnett was listed as the co-applicant on the account and her husband, now deceased, was listed as the primary customer.⁸ Ms. Stinnett explained that she never noticed the charge for a second light pole on the bill, because she and her husband did not live together and he received and paid the Evergy bills for 30391 Holt 150, Maitland, MO.⁹

Unfortunately, Mr. Stinnett did not notice or make the Company aware that he was being charged for two pole lights when only one pole light was being used. Staff understands Ms. Stinnett's frustration that she has not been reimbursed for the total amount of the overcharge, but Staff also recognizes that a customer has a duty to review their bills and alert their utility provider to any mistakes they discover.

Questions regarding the nature of pole light services and the contracts that govern them also arose at the hearing. In its *Report*, Staff references the informal complaint investigated by the Commissions Consumer Services Department ("CSD").¹⁰ The Staff Report states: "...there was a contractual service agreement entered into for the area lighting and CSD noted that the Missouri Public Service Commission does not have jurisdiction over contractual agreement terms."¹¹ The Company has been unable to locate or determine if such a contract exists.¹² Private Unmetered Lighting Service is covered

⁸ Tr. Vol. II, p. 50, l. 1-5.

⁹ Tr. Vol. II, p. 30, l. 15-18; p. 36, l. 8-12.

¹⁰ Like Staff, CSD uses information provided by both the Complainant and the Company during their investigation.

¹¹ Exhibit 201, *Staff Report*, p. 2. See also, ***May Dep't Stores Co. v. Union Elec. Light & Power Co.***, 341 Mo. 299, 317-18, 107 S.W.2d 41, 49 (Mo. banc 1937). "Since the Public Service Commission is not a court, it can neither enforce, construe, nor annul contracts, but it "deals with public utilities upon the theory of public service, without regard to any contracts." ***Kansas City Power & Light Co. v. Midland Realty Co.***, *supra*. Contract provisions are wholly immaterial where it has authority to act. If it was limited by contracts about matters it is authorized to regulate, the certain result would be inequality between consumers. If all consumers similarly situated are to be treated alike, a contract dealing with one on a different basis from others cannot be recognized. If one consumer by reason of a contract pays less for or gets more service for his money than others, he pays less than it is worth (because the commission is directed to fix just and reasonable rates), and others would have to pay more than their service is worth in order to make up the difference it would cost the utility to give the one consumer special treatment. See ***State ex rel. Empire District Electric Co. v. Public Service Comm.*** (Mo.Sup.) 100 S.W.(2d) 509. See, also, ***Pond's Public Utilities***, vol. 1, ch. 13, ss 270-295."

¹² EFIS, item 38, *Evergy Missouri West's Response to Commission Order Setting Time for Exhibit Filing*. "Evergy Missouri West has searched its records and is unable to locate an area lighting contract executed by either Patricia Sue Stinnett ("Complainant") or her husband.

by the Company's Tariff Sheets No. 33, 33A, and 33B. Sheet No. 33A details the following:

Billing:

The charges for service under this schedule shall appear as a separate item on the Customer's electric service bill.

Term:

The minimum initial term under this rate schedule shall be one year. However, if the private lighting installation requires extension of the Company's service facilities of more than one pole and one span of circuit or the installation by the Company of additional transformer facilities, the Customer shall be required to execute a service agreement with an initial term of three years.

Unexpired Contract Charges:

If the contracting Customer terminates service during the initial term of the agreement, and a succeeding Customer does not assume the same agreement for private lighting service at the same service address, the contracting Customer shall pay to the Company unexpired contract charges equal to the monthly rate times the number of remaining months in the contract period.

Though the exact term "contractual service agreement" is not found in the Company's tariff, logic leads Staff to conclude that the "agreement" referenced above in the quoted tariff language is the "contractual service agreement" mentioned in the informal complaint.

Overcharge

In response to the Commission's inquiry as to whether the issue at hand is an overcharge as used in 20 CSR 4240-13.025 Billing Adjusts, Staff concludes that this complaint does involve an overcharge. This rule contemplates two options that will result in a customer's bill being adjusted: overcharge or undercharge. Ms. Stinnett, and previously Mr. Stinnett were sent bills for services that they were not receiving, and, under Commission rules, an adjustment to the bills shall be made for the previous

sixty (60) months.¹³ While this situation may seem different than that of a customer being billed for more electricity than they used the result is the same: a customer charged for a service not received.

Conclusion

Staff continues to support the conclusion, submitted in its *Staff Report*, that Evergy Missouri West violated no statutes, Commission rules, or Commission-approved company tariffs. However, Staff recommends that the Company add additional review measures for customer accounts to reduce the possibility of overcharging customers when a service is removed or discontinued.

Respectfully submitted,

/s/ Casi Aslin

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¹³ 20 CSR 4240-13(1)(A)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all of the parties of record or their counsel, pursuant to the Service List maintained by the Data Center of the Missouri Public Service Commission, on this 1st day of December, 2020

/s/ Casi Aslin