

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

Gene Edward Dudley,)
Complainant,)
v.) **File No. EC-2018-0103**
Kansas City Power & Light Company,)
Respondent.)

NOTICE OF RECOMMENDED REPORT AND ORDER

Issue Date: June 15, 2018

The regulatory law judge is issuing the recommended report and order attached. The recommended report and order is subject to comments from any affected party filed within ten days of the date on which the recommended report and order issues.¹



BY THE COMMISSION

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

John T. Clark, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 15th day of June, 2018.

¹ 4 CSR 240-2.070(15)(H).

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Gene Edward Dudley,)	
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v.)	File No. EC-2018-0103
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Kansas City Power & Light Company,)	
)	
Respondent.)	

RECOMMENDED REPORT AND ORDER

I. Procedural History

On October 23, 2017, Gene Dudley filed a formal complaint against Kansas City Power & Light Company (“KCPL”). After notice was issued, KCPL filed its *Answer and Motion to Dismiss of Kansas City Power and Light Company*, on November 22, 2017. The Staff of the Missouri Public Service Commission (Staff) was directed to investigate and respond, and on December 28, 2017, Staff filed a report noting it found no violations of tariff or law by KCPL. No responses to the *Staff Report* were received.

On February 23, 2018, the Commission issued an order setting a procedural schedule. Mr. Dudley submitted direct testimony and KCPL filed rebuttal testimony; no surrebuttal testimony or stipulation of undisputed facts was received.

An evidentiary hearing was held on June 1, 2018, at the Commission’s Kansas City office in Suite 201 of the Fletcher Daniels State Office Building, 615 E. 13th Street; the case was submitted for the Commission’s decision on that date.² During the evidentiary hearing

² Commission Rule 4 CSR 240-2.150(1).

the Commission admitted the testimony of two witnesses and received three exhibits into evidence. Maria Lopez, Customer Relations Advisor, testified for KPCL; and Robin Kliethermes, Rate & Tariff Examination Manager, testified for the Commission's Staff. Mr. Dudley did not appear at the hearing, though he emailed direct testimony to the other parties, which was filed on his behalf.

Background

Gene Dudley filed a complaint against KCPL alleging an amount at issue in excess of \$2000. He also alleged that billing addresses were incorrect, and bills were not delivered to the address where he resided. Mr. Dudley also states in his complaint that the debt was outside a ten year statute of limitations. KCPL filed an answer stating that Mr. Dudley accrued \$3,285.54 in debt from service at four prior addresses from February 2010 through August 2015. The Commission's Staff submitted a report declaring the Company had not violated any applicable statutes, Commission Rules, or Commission-approved company tariffs related to the complaint. Staff concluded Mr. Dudley was responsible for \$3,746.56 in bill balances for past addresses and service provided.

II. Findings of Fact

1. Kansas City Power & Light Company is a utility regulated by this Commission.
2. Mr. Dudley received electrical service at Brighton Ave, from February 4, 2010, until disconnection on April 15, 2015.³
3. Mr. Dudley received electrical service at Paseo Blvd., from November 14, 2013, until disconnection on March 30, 2015.⁴

³ KCPL Ex. 200, page 2.

⁴ KCPL Ex. 200, page 2.

4. Mr. Dudley received electrical service at Garfield Ave, from September 22, 2014, until disconnection on April 28, 2015.⁵

5. Mr. Dudley received electrical service at Wheeling, from April 16, 2014, until disconnection on August 31, 2015.⁶

6. At all of the above enumerated addresses electrical service was started by Mr. Dudley and listed in his name.⁷

7. No reason was provided why Mr. Dudley had several different addresses during the same time period.

8. An illegal reconnect was found at the Paseo Blvd. address on June 2, 2015, tampering fees were assessed at \$295 and unbilled usage was estimated at \$179.08.⁸

9. An illegal reconnect was found at the Garfield Ave. address on May 12, 2015, tampering fees were assessed at \$250.⁹

10. Balances totaling \$3,285.54 were transferred to Mr. Dudley's service account at Wheeling.¹⁰

11. On March 21, 2016, Mr. Dudley requested service at Agnes Ave. and was advised that past due amounts were to be paid before service could be established.¹¹

12. On March 21, 2016, Mr. Dudley made an informal complaint to the Commission disputing past due balances from previous addresses.¹²

⁵ KCPL Ex. 200, page 2.

⁶ KCPL Ex. 200, page 2.

⁷ KCPL Ex. 200, page 2.

⁸ KCPL Ex. 200, page 3.

⁹ KCPL Ex. 200, page 3.

¹⁰ KCPL Ex. 200, page 3.

¹¹ KCPL Ex. 200, page 3.

¹² KCPL Ex. 200, page 3.

13. Service at the Agnes Ave. address was in the name of Mr. Dudley's brother with an outstanding debt of \$463.99. Water service at the Agnes address at the time was in Mr. Dudley's name.¹³ Mr. Dudley received substantial use and benefit of electrical service at Agnes Ave.

14. On November 3, 2017, Mr. Dudley again requested service at the Agnes Ave. address. Mr. Dudley was offered service under the Cold Weather plan with an \$800 initial payment and payments of \$306 per month.¹⁴

15. On November 6, 2017, an \$800 grant¹⁵ was placed on Mr. Dudley's account and service was connected at the Agnes Ave. address in Mr. Dudley's name under the Cold Weather Rule.¹⁶

16. Other than the initial \$800 grant only three payments have been made for the Agnes Ave. address. On December 13, 2017, a payment of \$800 was made; on March 19, 2018, a payment for \$425 was made; and on April 2, 2018, a payment of \$250.07 was made.¹⁷

17. KCPL transferred balances from other customers to Mr. Dudley's account at the Garfield Ave. address; those balances were accrued after Mr. Dudley's service was disconnected for non-payment. Those amounts were removed from Mr. Dudley's balance after a discussion between KCPL and the Commission's Staff on December 21, 2017.¹⁸

¹³ KCPL Ex. 200, page 3.

¹⁴ KCPL Ex. 200, page 4.

¹⁵ The type of grant is unknown, although KCPL Ex. 200, page 4, indicated Mr. Dudley stated he was seeking an agency grant.

¹⁶ KCPL Ex. 200, page 4.

¹⁷ KCPL Ex. 200, page 4.

¹⁸ Staff Ex. 100, page 2.

18. Staff's investigation concluded that KCPL did not violate its tariff.¹⁹ Staff determined Mr. Dudley is responsible for the following balances:

- a. Brighton Ave.- \$226.38
- b. Paseo Blvd. - \$2075.76
- c. Garfield Ave. - \$833.73
- d. Wheeling - \$146.70
- e. Agnes Ave. - \$463.99 (this amount is not currently disputed by Mr. Dudley)²⁰

III. Conclusions of Law

A. KCPL is a public utility as defined by Section 386.020(43), RSMo. Furthermore, KCPL is an electrical corporation as defined by Section 386.020(15), RSMo. Therefore, KCPL is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

B. Section 386.390 states that a person may file a complaint against a utility, regulated by this Commission, setting forth violation(s) of any law, rule or order of the Commission. Therefore, the Commission has jurisdiction over this complaint.

C. KCPL's applicable tariff rules state:

3.04 PRIOR INDEBTEDNESS OF CUSTOMER: If, at the time of application, a Customer or any member of the Customer's household is indebted to the Company for that same class of electric service previously supplied at the same or any other premises, and the Customer received substantial use and benefit of the previous electric service, the Company shall not be required to commence supplying electric service to the Customer, or if commenced the Company may terminate such service until payment of the indebtedness has been made.

4.09 PROTECTION OF COMPANY'S PROPERTY: The Customer at all times shall protect the property of the Company on the premises of the Customer and shall permit no person other than the employees and agents of the Company and other person authorized by law to inspect, work on,

¹⁹ Staff Ex. 100, page 3.

²⁰ Staff Ex. 100, page 2, 4.

open or otherwise handle the wires, meters or other facilities of the Company. In case of loss or damage to the property of the Company on account of any carelessness, neglect or misuse by the Customer, any member of his family, or his agents, servants or employees, the Customer shall, at the request of the Company, pay to the Company the cost of any necessary repairs or replacements of such facilities or the value of such facilities.

4.10 TAMPERING WITH COMPANY FACILITIES: The Company may discontinue service to a Customer and remove its facilities from the Customer's premises, without notice, in case evidence is found that any portion of the Company's facilities has been tampered with in such manner that the Customer may have received unmetered service or unauthorized use. In such event the Company may require the Customer to pay for such amount of electric service as the Company may estimate, from available information, to have been used [but] not registered by the Company's meter and to increase the amount of his cash deposit or indemnity bond or other credit arrangement before electric service is restored; and, in addition thereto, the Customer shall be required to bear all associated costs incurred by Company, including, but not limited to, estimated labor charges, investigation and prosecution costs, material charges, and such protective equipment as, in the judgment of the Company, may be necessary.

8.05 RECONNECTION CHARGE: If electric service is disconnected for violation of any provision of the Customer's service agreement, the following applicable reconnection charge shall be assessed to the customer by the Company to cover its cost of disconnecting and reconnecting the Company facilities before electric service will be resumed. Also, reference General Rules and Regulations 3.14 for the terms and conditions of reconnection of electric service.

Reconnection charge at meter: \$25

Reconnection charge at pole: \$50

Minimum reconnection charge after tampering: \$150

(Excessive damage of Company property will result in additional charges.)

D. The burden of showing that a regulated utility has violated a law, rule or order of the Commission is with the Mr. Dudley.²¹

²¹ In cases where a "Mr. Dudley alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions,"...the burden of proof at hearing rests with the Mr. Dudley." *State* (continued on next page ...)

IV. Decision

After applying the facts to its conclusions of law, the Commission has reached the following decision.

The complaint against KCPL is not easily determinable from either Mr. Dudley's complaint or Mr. Dudley's submitted direct testimony. Due to Mr. Dudley not appearing at the evidentiary hearing, clarification of the exact nature of the complaint was not possible. The complaint alleges KCPL violated a statute, tariff, Commission regulation or order, as follows:

“tariff violation: No proof that [Complainant] SSI or documentation that [Complainant] requested. Regulation Violations – incorrect billing addresses where services rendered. KCP&L onerous behavior due to [Complainant] repeated demands led KCP&L assumed harder stance toward [Complainant]. Lived on Brighton but utility bills not delivered to Brighton Ave[.] address. Wheeling address was a business location that electrical services was not entirely installed – premises not occupied.”²²

Due to the complaint stating that the amount at issue is over \$2,000, it appears Mr. Dudley is challenging the validity of the past due balances assessed at prior addresses where Mr. Dudley had received electrical service, and having bills sent to the wrong address.

Mr. Dudley at no point in either his complaint or submitted direct testimony denied establishing service at any of the addresses for which KCPL has assessed an overdue balance. At no point in his complaint or direct testimony does Mr. Dudley address the illegal reconnect at two of the addresses where he received electrical service. Mr. Dudley

ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n, 116 S.W.3d 680, 693 (Mo. App. 2003).
²² EFIS No. 1 (October 23, 2017).

shoulders the burden of showing that KCPL violated a statute, tariff, Commission regulation or Commission order. Mr. Dudley has presented no evidence of any violation beyond stating bills were not delivered to the Brighton Ave. address, and estimating an amount in dispute. Therefore, the only questions before the Commission is whether KCPL violated a statute, tariff, Commission regulation, or Commission order by transferring balances from Mr. Dudley's prior service addresses, or by charging Mr. Dudley fees for the illegal reconnects or service usage resulting therefrom.

Evidence presented by KCPL shows that the unpaid balances at Brighton Ave., Paseo Blvd., Garfield Ave., and Wheeling were all established in Mr. Dudley's name. KCPL tariff rule 3.04 states in part, that if at the time of application the customer has debt to the company from prior electrical service at the same or any other premises, and the customer received substantial use and benefit of the previous electrical service, the company does not need to start service for the customer until the prior debt is paid. Here Mr. Dudley applied for service at the Agnes Ave. address on March 21, 2016, and was informed that the past due amounts needed to be paid before service could be established. At the time electrical service at the Agnes Ave. address was in Mr. Dudley's brother's name, but water service at Agnes Ave. was in Mr. Dudley's name. On November 3, 2017, Mr. Dudley again called for service at the Agnes address and was offered service under the Cold Weather plan with an \$800 initial payment and subsequent payments of \$307 per month toward the outstanding debt (Mr. Dudley was originally quoted \$306 per month). An \$800 initial payment was made and three subsequent payments were made, this is at minimum, an acknowledgement by Mr. Dudley that the outstanding debt was his. Service being established in his name without him disputing having started service indicates he received substantial use and benefit from

that service. Therefore, KCPL violated no law or tariff provision in assessing prior unpaid balances to Mr. Dudley.

Illegal reconnects were discovered at the Paseo Blvd. address and at the Garfield Ave. address within a short period after Mr. Dudley's service at those addresses was discontinued. KCPL tariff rule 4.09 requires a customer to protect company property, and tariff rule 4.10 states that a customer bears all costs associated with tampering with the company's facilities, including estimations of electrical service used. Staff's report indicates KCPL's estimation of services used as a result of the illegal disconnect is reasonable. Also, KCPL tariff rule 8.05 states that the minimum reconnection charge after a tampering is \$150 with additional charges based upon excessive damage to company property. Based upon the submitted evidence the charges assessed to Mr. Dudley for the illegal reconnects did not violate a law, rule or order of the Commission.

Mr. Dudley's complaint states that the debts occurred beyond a ten year statute of limitations. The only questions before the Commission are whether KCPL violated a law, rule or order of the Commission. Any claims regarding statute of limitations fall outside of the Commission's jurisdiction.

Finally, Mr. Dudley's complaint alleges that bills were not sent to the Brighton Ave. address. However, neither Mr. Dudley's complaint nor submitted testimony point to a Commission rule, order, or tariff provision supporting a violation by KCPL. It is to the benefit of KCPL that bills reach customers as that is KCPL's best way of collecting payment. If Mr. Dudley was not receiving bills but was receiving the use and benefit electrical service he signed up for, he should have informed KCPL he was not receiving bills.

Mr. Dudley's complaint challenged the lawfulness of his outstanding balance; it is his burden to show that the company has committed a violation. Because he has not done so, his complaint fails and the Commission must rule in favor of KCPL.

THE COMMISSION ORDERS THAT:

1. Gene Dudley's complaint is denied.
2. Kansas City Power & Light Company may proceed, consistent with the law and the Commission's rules, with the Gene Dudley's account as it sees fit.
3. This order shall become effective on _____, 2018.
4. This case shall be closed on _____, 2018.

BY THE COMMISSION

Morris L. Woodruff
Secretary