

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Susan K. Duffy, Chair
Dwight D. Keen
Andrew J. French

In the Matter of the Complaint Against KCPL) Docket No. 20-KCPE-107-COM
by Kevin and Laura Fitzpatrick)

ORDER

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings and conclusions:

Background

1. On September 4, 2019, Kevin and Laura Fitzpatrick (Complainants) filed a Formal Complaint (Complaint)¹ with the Commission against Kansas City Power & Light Company (Evergy Metro).² Complainants contend they have weekly electric service issues, including power outages, flickering lights, and power surges. Complainants state the service issues are hard on their appliances, they have called Evergy Metro “several times,” and they have paid “several electricians.” Complainants request a determination of who is responsible for the alleged service issues.³

2. On September 17, 2019, the Commission adopted Commission Litigation Staff’s Legal Memorandum, finding the Complaint complied with the procedural requirements in K.A.R. 82-1-220 and established a prima facie case for Commission action.⁴

¹ Formal Complaint of Kevin and Laura Fitzpatrick (Sept. 4, 2019) (The Complaint is written and signed by Laura Fitzpatrick).

² Evergy Metro, Inc. is formerly known as Kansas City Power & Light Company. *See* Docket No. 20-KCPE-122-CCN.

³ *See* Complaint.

⁴ *See* Order Adopting Legal Memorandum (Sept. 17, 2019).

3. On October 18, 2019, Evergy Metro filed a Motion to Dismiss, arguing the Complaint did not meet the requirements of K.A.R. 82-1-220 because Complainants failed to demonstrate the utility violated any provision of law, regulation, or order.⁵ Evergy Metro further asserts that even if Complainants' allegations are assumed to be true, Complainants do not contend Evergy Metro "acted willfully or with gross negligence in a way that caused the alleged damage"⁶ and the Complaint should be dismissed for failure to state a claim.⁷

4. Complainants did not respond to Evergy Metro's Motion to Dismiss.

5. On June 15, 2020, Commission Staff (Staff) filed its Report and Recommendation (R&R). Staff concludes vegetation and weather are the root causes of most of the outages experienced by the Complainants. Staff further concludes the April 17-24, 2019 outage was due to a bad hot leg connector. Staff explains the redbud tree in Complainants' backyard could have moved the service line, causing the hot leg connector to become loose. Staff also expresses some concern that Evergy Metro does not have a reporting mechanism identifying when meters are off for any set amount of time, not due to storm restoration or intentional disconnects. Staff recommends the Commission "direct [Evergy Metro] to review meters that are off longer than 24 hours (excluding intentional meter disconnects and storm restorations) and contact the customer to determine if the meter is actually off or intentionally disconnected."⁸

6. Neither Complainants nor Evergy Metro filed a response to Staff's R&R.

⁵ Motion to Dismiss of Evergy Metro, Inc., ¶¶ 3-7 (Oct. 18, 2019).

⁶ Motion to Dismiss, ¶ 7.

⁷ See Motion to Dismiss, ¶¶ 18-19. The Commission notes that Evergy Metro asserts Complainants request damages from the utility to cover lost food and for Evergy Metro to pay a fine. See *id.* at ¶ 2. This is not the relief sought. Rather, Complainants seek an investigation to determine fault of the alleged service issues. See Order Adopting Legal Memorandum, Attachment B, p. 2 (Sept. 17, 2019).

⁸ R&R, p. 7.

7. On June 19, 2020, Ms. Fitzpatrick sent an e-mail to the Office of General Counsel stating she needed more time to respond to the R&R. Ms. Fitzpatrick was informed that a request for additional time needed to be filed with the Commission.

8. Complainants did not file a request for additional time.

9. On August 6, 2020, the Commission ordered Complainants to file either a response to Staff's R&R or a request for additional time within 7 days from service of the Order. If Complainants elected to file a request for additional time, the Commission ordered Complainants to include a specific date Complainants planned to file a response and to provide an explanation as to why more time is necessary. The Commission informed Complainants that failure to timely file either a response to the R&R or request for additional time would result in a Commission order on the merits of the Complaint.⁹

10. Complainants did not file either a response to the R&R or a request for additional time. Rather, Ms. Fitzpatrick sent the parties and the Office of General Counsel an e-mail on August 12, 2020, stating, that due to the COVID-19 pandemic, Ms. Fitzpatrick has had to care for young and elderly family members. She further stated, "At this point I have no time or energy to devote to digging up all the old records and meeting with our attorney. When things get back to normal I will be in touch."

11. On August 25, 2020, Staff filed a Notice of Filing of Addendum to Staff's Report and Recommendation, attaching the responses to data requests and certain portions of the National Electrical Safety Code and Evergy Kansas Metro's Electrical Service Standards referenced in the R&R.¹⁰

⁹ Order Setting Time to File, ¶¶ 9, A (Aug. 6, 2020).

¹⁰ Notice of Filing of Addendum to Staff's Report and Recommendation (Aug. 25, 2020).

Analysis

I. Legal Standards

12. “The commission is given full power, authority and jurisdiction to supervise and control the electric public utilities...doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.”¹¹ As applied to the regulation of electric public utilities, the Commission’s authority and jurisdiction, “shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of this act are expressly granted to and conferred upon the commission.”¹²

13. K.S.A. 66-101e provides:

Upon a complaint in writing made against any electric public utility governed by this act that any of the rates or rules and regulations of such electric public utility are in any respect unreasonable, unfair, unjust, unjustly discriminatory or unduly preferential, or both, or that any regulation, practice or act whatsoever affecting or relating to any service performed or to be performed by such electric public utility for the public, is in any respect unreasonable, unfair, unjust, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or that any service performed or to be performed by such electric public utility for the public is unreasonably inadequate, inefficient, unduly insufficient or cannot be obtained, the commission may proceed, with or without notice, to make such investigation as it deems necessary.

II. Ms. Fitzpatrick’s August 12, 2020 E-Mail

14. The Commission afforded Complainants an opportunity to respond to Staff’s R&R. The Commission ordered Complainants to timely file either a response to the R&R or a request for additional time.¹³ Complainants did not file a response to the R&R or a request for additional time.

¹¹ K.S.A. 66-101.

¹² K.S.A. 66-101g.

¹³ See Order Setting Time to File.

15. Further, Ms. Fitzpatrick's August 12, 2020 e-mail fails to comply with the Order. An e-mail to the Office of General Counsel is not an official communication with the Commission and such communications are not part of the formal record.¹⁴ Although Ms. Fitzpatrick provided a reason for requesting additional time—the COVID-19 pandemic—she did not provide “a specific date Complainants wish to file a response.” Instead, Ms. Fitzpatrick requests an indefinite extension of time.

16. Due to Complainants' failure to comply with the August 6, 2020 Order, the Commission addresses the merits of the Complaint and issues this final order.

III. Motion to Dismiss for Failure to State a Claim

17. Citing Sections 7.06 and 7.12 of the General Rules and Regulations of its Tariffs, Evergy Metro argues the Complaint should be dismissed for failure to state a claim, because none of the Complainants' allegations constitute a violation of any law, regulation, or tariff.¹⁵ Evergy Metro further states Complainants request the utility pay Complainants' claim for lost food items and pay a penalty.¹⁶ Evergy Metro argues Complainants fail to demonstrate the utility's “conduct caused the damage and was willful or constituted gross negligence.”¹⁷ Evergy Metro also provides a response to the factual allegations and legal analysis supporting its position that the Tariffs are enforceable and applicable to Complainants.

18. “When a motion to dismiss under K.S.A. 60-212(b)(6) raises an issue concerning the legal sufficiency of a claim, the question must be decided from the well-pleaded facts of

¹⁴ K.A.R. 82-1-206; K.A.R. 82-1-204(f).

¹⁵ See Motion to Dismiss, ¶¶ 4-7, 18-19.

¹⁶ See *id.* at ¶ 2.

¹⁷ *Id.* at ¶¶ 11-12.

plaintiff's complaint. Dismissal is justified only when the allegations of the petition clearly demonstrate plaintiff does not have a claim.”¹⁸

19. On September 17, 2019, the Commission found the Complaint met the requirements of K.A.R. 82-1-220 and established a prima facie case for Commission action.¹⁹

20. On the face of the Complaint alone, Complainants established a prima facie case and Evergy Metro's Motion to Dismiss for failure to state a claim is denied. The remainder of Evergy Metro's motion is treated as an Answer to the Complaint.

IV. Formal Complaint

21. Complainants seek an investigation to determine “who is [responsible]” for Complainants' electrical service issues.²⁰

22. Staff performed an independent investigation regarding the cause of Complainants' alleged electrical service issues. Staff's findings are stated in the R&R. The Commission adopts Staff's factual findings that weather and vegetation most likely caused the outages Complainants experienced.

23. The outages experienced by Complainants on January 12, 2019, June 21, 2019, and July 12, 2019, occurred due to weather.²¹

24. Staff believes, and the Commission agrees, the other outages identified in Tables 1 and 2 in the R&R, are due to the vegetation in the area. Complainants live in a vegetation rich area identified in Docket No. 16-KCPE-195-COM (16-195).²² Evergy Metro is in the process of addressing the dense vegetation in the area.²³ Also, Complainants are served by an overhead

¹⁸ *Grindsted Products, Inc. v. Kansas Corp. Com'n*, 262 Kan. 294, Syl. ¶ 1 (1997).

¹⁹ See Order Adopting Legal Memorandum, ¶¶ 4-5.

²⁰ See Complaint; Order Adopting Legal Memorandum, Attachment B, p. 2.

²¹ R&R, p. 5.

²² *Id.*

²³ *Id.* at 7.

service line, which is owned and operated by Evergy Metro. Per Evergy Metro's vegetation management program, the utility trims only vegetation making hard contact with the service line. Evergy Metro will also de-energize a service line to allow the customer to safely remove any of the customer's vegetation that may interfere with the service line.²⁴

25. On April 17, 2019, Complainants experienced a single power outage that lasted for 7 days. Complainants returned from vacation and discovered a partial power outage where two refrigerators and two freezers shut off due to the outage. Complainants reported the outage on April 24, 2019. Complainants are served by an overhead service line, which is owned and operated by Evergy Metro. Evergy Metro dispatched a lineworker to the site, who determined the outage was due to a bad connector at the pole on Complainants' line. The lineworker repaired the loose connection. Staff determined that because the service line runs through a small redbud tree, the branches of the redbud tree likely rubbed the service line, causing the connector to fail on April 17, 2019.²⁵

26. The April 17, 2019 outage was a single customer outage. In Complainants' case, the meter reported one time during the 7-day outage. When only one meter on a transformer reports an outage, like the April 17 outage, Evergy Metro's current policy is to not act on that report until a customer calls in to report the outage. After Evergy Metro completed AMI meter installation, Evergy Metro's policy was to initiate a work ticket to investigate any reported outage. The policy changed because of a software problem that resulted in false reports of meter outages. Evergy Metro's software is supposed to recognize the difference between an intentional disconnect and an unplanned outage. Due to the software problem, Evergy Metro dispatched crews to investigate a meter outage, only to find the meter was back on or intentionally removed. To avoid wasted trips

²⁴ *Id.* at 3, 5.

²⁵ *Id.* at 4-6.

to investigate scheduled outages, Evergy Metro disabled the reporting functionality. Evergy Metro states the IT group is working to resolve the issue and will start sending crews to a single meter reporting an outage when the software is fixed.²⁶

27. Complainants' meter reported the outage on April 17, 2019. Because it was the only meter of six meters connected to the transformer reporting a problem, Evergy Metro did not act and waited for the Complainants to call in to confirm the outage report. Complainants, however, were on vacation at the time of the outage and did not call to report it until April 24, 2019.²⁷

28. The Commission adopts Staff's recommendation regarding outage reporting. Evergy Metro is to investigate outages that last more than 24 hours by contacting the customer and determining whether the meter is actually off or intentionally disconnected. If Evergy Metro does not make contact with the customer within 48 hours after notification of the outage, then Evergy Metro must prepare a work order and investigate the meter report.²⁸

29. The Commission concludes Evergy Metro is not at fault for Complainants' service issues identified in Evergy Metro's Motion to Dismiss and Staff's R&R.

30. The Commission further concludes the Complainants received the relief sought, which was an "investigation to discover who is responsible for their inadequate and inefficient service."²⁹

31. The Commission adopts Staff's conclusion that vegetation and weather are responsible for the service issues Complainants experienced. The April 17-24 outage was due to a bad hot leg connector, which Evergy Metro repaired, and that matter is resolved.

²⁶ *Id.*

²⁷ *Id.* at p. 4.

²⁸ Although Staff's R&R does not address this scenario, the Commission concludes it is necessary to provide guidance to Evergy Metro in the instance when the utility does not make contact with the customer within 24 hours of the outage.

²⁹ Legal Memo, p. 2.

THEREFORE, THE COMMISSION ORDERS:

A. Every Metro is not at fault, and the relief sought has been fulfilled. The Complaint is resolved.

B. Every Metro shall investigate outages that last more than 24 hours by contacting the customer and determining whether the meter is actually off or intentionally disconnected. If Every Metro does not make contact with the customer within 48 hours after notification of the outage, then Every Metro must prepare a work order and investigate the meter report.

C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).³⁰

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Keen, Commissioner; French, Commissioner

Dated: 09/17/2020



Lynn M. Retz
Executive Director

LEL

³⁰ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

20-KCPE-107-COM

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 09/17/2020.

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