

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Susan K. Duffy

In the Matter of the Complaint Against)
KCP&L by Stuart Auld) Docket No. 20-KCPE-158-COM

ORDER DISMISSING FORMAL COMPLAINT WITH LEAVE TO AMEND

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined the pleadings submitted and being duly advised on the matter, the Commission finds as follows:

I. BACKGROUND

1. On September 23, 2019, Stuart Auld (Complainant) filed a Formal Complaint against Kansas City Power & Light (“KCP&L”) with the Commission.¹ In the Formal Complaint, Mr. Auld expressed his dissatisfaction with KCP&L’s collection of deposits from customers.²

2. On October 9, 2019, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations.³

3. Litigation Staff reviewed underlying facts and allegations complained of in the Formal Complaint. Litigation Staff makes no recommendation regarding the validity or truthfulness of the Complainant’s claims, but rather analyzes the Formal Complaint to determine if it meets the requirements contained in K.A.R. 82-1-220.

4. Litigation Staff concludes that the Complainant has not met the procedural requirements of the Commission’s rules of practice and procedure. Litigation Staff noted

¹ Complaint Against KCP&L by Stuart Auld (Sep. 23, 2019) (Formal Complaint).

² *Id.*

³ Litigation Staff’s Memorandum (Oct. 9, 2019) (Legal Memorandum).

deficiencies in Mr. Auld's Formal Complaint. First, the Complainant does not advise the Commission on a statute or regulation or order of the Commission that he believes has been violated by KCP&L. Second, because the Complainant failed to state a statute or regulation or order of the Commission, it is not possible to determine if the factual statement given is sufficient to set forth the violation concisely and in plain language. Third, the Complainant does not state the relief sought.

5. Litigation Staff recommends the Commission find that the Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220. Litigation Staff further recommends the Formal Complaint be dismissed with leave to amend the deficiencies discussed above.

II. FINDINGS AND CONCLUSIONS

6. K.S.A. 66-101 *et seq.*⁴ grants the Commission jurisdiction to investigate formal complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.⁵

7. Litigation Staff's Memorandum dated October 9, 2019, attached hereto, is hereby adopted and incorporated by reference.

8. The Commission finds the Complainant has not satisfied the procedural requirements necessary for the filing of Formal Complaints as detailed in K.A.R. 82-1-220.

9. The Commission finds the Complainant shall be granted thirty (30) days to amend his Formal Complaint to correct the deficiencies identified above.

⁴ The Commission is granted broad authority to review formal complaints. *See* K.S.A. 66-101e ("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.").

⁵ *See* K.S.A. 66-101d, 101g; K.S.A 66-1,201, 204, 207.

IT IS, THEREFORE, ORDERED BY THE COMMISSION THAT:

A. The Formal Complaint filed by Stuart Auld is dismissed with leave to amend pursuant to K.A.R. 82-1-220(c).

B. The Complainant shall have thirty (30) days from the date of this order to file an Amended Formal Complaint that addresses the procedural deficiencies identified. Should the Complainant fail to amend his Formal Complaint within thirty (30) days, the Formal Complaint shall be dismissed without prejudice.

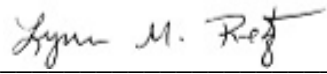
C. Parties have fifteen (15) days, plus three (3) days if service is by mail, from the date of service of this order to petition the Commission for reconsideration or request a hearing, as provided in 77-542.⁶

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 10/15/2019



Lynn M. Retz
Executive Director

CRM

⁶ See also K.S.A. 77-537(b); K.S.A. 66-118b; K.S.A. 77-529(a)(1).

STATE OF KANSAS



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SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

MEMORANDUM LEGAL DIVISION

To: Chair Dwight D. Keen
Commissioner Shari Feist Albrecht
Commissioner Susan K. Duffy

From: Carly Masenthin, Litigation Counsel

Date: October 9, 2019

Re: Docket No. 20-KCPE-158-COM
In the Matter of the Complaint Against KCP&L by Stuart Auld

EXECUTIVE SUMMARY:

Stuart Auld (Complainant) filed a Formal Complaint against Kansas City Power & Light (“KCP&L”).¹ The State Corporation Commission of the State of Kansas (Commission) follows designated regulations as a matter of practice and procedure to determine if a Formal Complaint is actionable. This Formal Complaint does not satisfy the procedural requirements set forth in K.A.R. 82-1-220(b). Legal Staff recommends the Commission reject this Formal Complaint and provide the Complainant with leave to amend the deficiencies found in his Formal Complaint.

BACKGROUND & ANALYSIS:

On September 23, 2018, Complainant filed a Formal Complaint against KCP&L, stating that KCP&L “should not be allowed to engage in price gauging in any way...nor require...deposits.”² Complainant’s main issue with KCP&L is the fact that they have required him to put down a deposit.³

K.A.R. 82-1-220(b) requires Formal Complaints to satisfy three procedural requirements:

- (1) Fully and completely advise each Respondent and the Commission as to the provisions of the law or the regulations or orders of the Commission that have been or

¹ Formal Complaint Against KCP&L by Stuart Auld (Sep. 23, 2019) (Formal Complaint).

² *Id.* at 1.

³ *Id.* at 1. *See also* Attachment A.

are being violated by the acts or omissions complained of, or that will be violated by a continuance of acts or omissions;

(2) Set forth concisely and in plain language the facts claimed by the Complainant to constitute the violation(s); and

(3) State the relief sought by the Complainant.

Litigation Staff reviewed the Formal Complaint and found it procedurally deficient. The Complainant did not cite to any statutes or regulations or orders of the Commission; therefore, it is not possible to determine if the factual statement is sufficient to meet procedural requirement (2). The Formal Complaint does not list the relief sought, so the third procedural requirement was not met. Due to the Complainant's failure to meet the procedural requirements, a determination of whether the claim is actionable is not possible at this time.

No recommendation regarding the validity or truthfulness of the Complainant's claim is made, nor should any such recommendations be assumed or concluded with the filing of this memorandum. The only recommendations made here are that the Commission should find: 1) the Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220; and 2) a determination of whether a *prima facie* action exists is not yet possible. K.A.R. 82-1-220(c) allows a Complainant to amend his Formal Complaint if it fails to meet the procedural requirements or allege sufficient facts for a *prima facie* determination.

RECOMMENDATION:

Litigation Staff recommends the Commission find the Formal Complaint does not satisfy the procedural requirements of the Commission's rules of practice and procedure. Likewise, Legal Staff recommends the Commission deny the Formal Complaint, and grant the Complainant thirty (30) days from such denial to amend his Formal Complaint. Finally, if the Complainant fails to correct the procedural deficiencies discussed herein, Legal Staff recommends that the Formal Complaint be dismissed without prejudice and the docket be closed.

CERTIFICATE OF SERVICE

20-KCPE-158-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 10/15/2019

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/S/ DeeAnn Shupe

DeeAnn Shupe