

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

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the Complaint Against Kansas)
City Power & Light Company by Arthur J.) Docket No. 17-KCPE-433-COM
Chartrand.

ORDER ADOPTING STAFF'S MEMORANDUM

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined Legal Staff's Memorandum submitted in this matter and being duly advised in the premises, the Commission makes the following findings and conclusions:

I. BACKGROUND

1. On March 21, 2017, Arthur J. Chartrand (Complainant) filed a Formal Complaint against Kansas City Power & Light Company (KCPL) with the Commission.¹
2. On May 2, 2017, Legal Staff for the Commission reviewed the Formal Complaint and prepared a Memorandum analyzing the Complaint for compliance with Commission regulations.²
3. Legal Staff recommends the Commission find the Formal Complaint satisfies the procedural requirements of K.A.R. 82-1-220, and should be served on KCPL for an Answer.

II. FINDINGS AND CONCLUSIONS

4. The Commission is satisfied jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq.*³ The Commission may investigate Formal Complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.⁴

¹ See Complaint Against Kansas City Power & Light Company by Arthur J. Chartrand filed March 21, 2017 (Attached hereto as Attachment A).

² See Legal Staff's Memorandum, May 2, 2017 (Legal Memorandum) (Attached hereto as Attachment B).

5. The Commission agrees with Legal Staff's analysis and recommendations and finds that Legal Staff's Memorandum dated May 2, 2017, should be adopted and incorporated by reference.

6. The Commission finds the Formal Complaint establishes a *prima facie* case for Commission action and has satisfied the procedural requirements required for the filing of Formal Complaints as detailed in K.A.R. 82-1-220.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) KCPL shall be served a true copy of the Formal Complaint, and KCPL shall either satisfy the matter complained of or file a written answer within 10 days.

(B) Parties have 15 days, plus three 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 K.S.A. 77-542.⁵

(C) 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.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: **MAY 11 2017**

³ Specifically, 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.");

⁴ *See* K.S.A. 66-101d, 101g; K.S.A. 66-1,201, 204, 207.

⁵ K.S.A. 77-537(b); K.S.A. 66-118b; K.S.A. 77-529(a)(1).

Lynn M. Retz

Lynn M. Retz
Secretary to the Commission

SLS

Order Mailed Date

MAY 12 2017

ATTACHMENT “A”

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March 13, 2017

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Mr. Brian Fedotin
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2017.03.21 16:45:06
Kansas Corporation Commission

Re: Electric Utility responsibility for downed power line service to a residence.

Dear Fedotin,

I have filed an oral telephonic complaint via Mr. Steve Boyd of your office. Mr. Boyd was very helpful. This letter makes this a formal complaint and request for a formal inquiry, assistance and ruling.

KCPL has taken the "position" based (reportedly upon its own traditional practice and/or internal tribal law) that it will not repair or replace a downed power line to a residence to the "point of delivery." KCPL will not put this "position in writing. However, this position was stated in numerous phone and in person visits by KCPL agents. Instead, KCPL forces Kansas homeowners to replace KCPL's own delivery conduit at homeowner's expense in violation of filed tariffs in Kansas. This could be a major and illegal cost shift to homewowners without legal or contractual approval.

We are well aware that KCPL will insist that it is not responsible for maintenance or repair of any conduit or "mast" that exists above and pre-delivery of a residential meter. They will cite years of practice, internal procedures, manuals and instructions to staff. It is a carefully memorized defense. What KCPL fails to cite is applicable contract, contract law, statute or regulation. They also ignore tariffs they wrote and filed with the state.

I fully trust that the KCC will zealously investigate and require KCPL to live up to its legal obligations.

For brevity, I assume little need to cite all definitions or file an extended brief with you on all background. Thus far, everyone concurs the issue is the "point of delivery" and that an electric utility is responsible for everything *on their side*, the homeowner on the other. [See Kansas Tariff Rule 6.01.]

We would also cite the following:

Kansas Tariff 1.11 filed in 1997 says the **point of delivery** is:

POINT OF DELIVERY:

The point at which the Company's conductors and/or equipment (other than the Company's meter installation) make electrical connection with the Customer's installation, unless otherwise specified in the Customer's service agreement."

A top linguist and any judge would have a heyday deciphering that line which was likely drafted by KCPL. It sure sounds like "at the meter" to most regular folks.

Mo Tariff 1.10, which *is in an almost identical* rule, but **updated by KCPL in 2015**, states it even more clearly:

POINT OF DELIVERY:

The point at which the Company's conductors and/or equipment (other than the Company's meter installation) make electrical connection with the Customer's installation, unless otherwise specified in the Customer's service agreement.

Normally, for a residential Customer, the point of delivery is at the Company's meter where the Company's service conductors terminate.

One must also note that under KS Tariff Rule 6.09 that a "Customer" may not "inspect, work on, open or otherwise handle the wires, meters or facilities of the Company." Only employees and agents of the Company or *authorized by law* may do so. So, a customer is prohibited from touching anything on KCPL's side of the point of delivery. One can safely assume KCPL or any utility would enforce the same against a Customer if in its economic interest or pursue theft charges.

The theory is that the electricity and responsibility to get it to the customer is that of the utility *until* the electricity is metered and **delivered** for use.

One can easily note every other utilities follow this same rule.

- Water: A Customer is responsible for the entire water line but only after the meter (usually at the middle of the yard; the water company is responsible for meter and delivery to meter).
- Gas: Customer is only responsible for the gas line after the meter, gas company up to and through the meter.)
- Sewer: Customer is responsible for sewer line to the junction box (usually at street). The city is responsible for the junction box on.)
- Cable: Customer is only responsible for inside wiring and even then, *only after*, the cable box.

Why the Kansas Tariff of 1997 is unnecessarily vague is also unclear but it should be construed against KCPL. KCPL must be required to follow the law, regulations and tariffs it drafted and filed. Any other position simply challenges ones reading of the tariff and unnecessarily places a burden on all Kansas homeowners. This is also a "burden" a sophisticated electric utility can easily meet economically much cheaper versus the cost and danger to a homeowner to maintain the same.

We look forward to your findings and action. This certainly affects many Kansas homeowners especially after recent storm activity.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arthur J. Chartrand', with a long horizontal flourish extending to the right.

Arthur J. Chartrand
AJC/pt

cc: Sen Robert Olson, Chair, Kansas Senate Utilities Committee

ATTACHMENT “B”

**MEMORANDUM
LEGAL DIVISION**

TO: Chairman Pat Apple
Commissioner Shari Feist Albrecht
Commissioner Jay Scott Emler

FROM: Stephan Skepnek, Litigation Counsel

DATE: May 2, 2017

SUBJECT: 17-KCPE-433-COM
In the Matter of the Formal Complaint Against Kansas City Power &
Light by Arthur J. Chartrand.

EXECUTIVE SUMMARY:

On March 21, 2017, Arthur J. Chartrand, (“Complainant”) filed a Formal Complaint against Kansas City Power & Light Company (“KCPL”), pursuant to K.A.R. 82-1-220.¹ In his Complaint, Mr. Chartrand alleges that KCPL has violated its Kansas Tariff by refusing to repair or replace a downed power line to a residence to the “point of delivery”.² Legal Staff recommends the Commission accept Mr. Chartrand’s Complaint and serve the Complaint on KCPL for an Answer.

BACKGROUND:

On March 21, 2017, Arthur J. Chartrand filed a Formal Complaint against KCPL, pursuant to K.A.R. 82-1-220. Mr. Chartrand’s Complaint arises from an alleged ambiguity concerning the scope and limits KCPL’s obligations under the current definition for “point of delivery” contained in Kansas Tariff Rules 1.11 and 6.01.³ In his Complaint, Mr. Chartrand seeks relief for damages which he claims were caused by KCPL’s refusal to repair or replace a downed power line to a residence to the “point of delivery” in violation of KCPL’s Commission approved tariff requirements.⁴ Specifically, Mr. Chartrand alleges that KCPL is refusing to “replace KCPL’s own delivery conduit at homeowner’s expense in violation of filed tariffs in Kansas.”⁵ Legal

¹ See Complaint of Arthur J. Chartrand against Kansas City Power & Light Company, filed March 21, 2017 (“Complaint”).

² See Complaint at 1.

³ *Id.* at 2.

⁴ *Id.* at 1.

⁵ *Id.*

Staff recommends the Commission accept Mr. Chartrand's Formal Complaint and serve the Complaint on KCPL for an Answer.

ANALYSIS:

Upon the filing of a Formal Complaint, the Commission must determine "whether or not the allegations, if true, would establish a [prima] facie case for action by the commission and whether or not the formal complaint conforms to [the Commission's] regulations."⁶ If the Commission determines these conditions are satisfied, the Complaint is served on the subject utility for an Answer.

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 law or the regulations or orders of the commission that have been or 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 violations; and
- (3) state the relief sought by the complainant.

Mr. Chartrand cites to specific tariffs which were established by Commission orders and policy pursuant to Kansas statutes and Kansas administrative regulations.⁷ Therefore, the Complaint fully and completely advises the respondent and the Commission as to the provisions of law that have been allegedly violated in compliance with procedural requirement (1). Mr. Chartrand's Complaint also plainly and concisely describes the circumstances giving rise to his Complaint.⁸ Therefore, the Complaint complies with procedural requirement (2) above.

Finally, the Complaint seeks relief for alleged violations of KCPL's electric service tariffs.⁹ Therefore, the Complaint states the relief sought in compliance with procedural requirement (3).

KCPL is subject to Commission jurisdiction.¹⁰ The Commission has been given full power, authority, and jurisdiction to supervise and control the electric public utilities doing business in Kansas.¹¹ The Commission is also charged with ensuring the provision of efficient and sufficient service at just and reasonable rates.¹² Furthermore, the Commission's powers are to be liberally construed, and the Commission is expressly

⁶ See K.A.R. 82-1-220(c).

⁷ See Complaint (attached).

⁸ *Id.*

⁹ *Id.*

¹⁰ See K.S.A. 66-101, K.S.A., 2016 Supp. 66-101b, 2016 Supp. 66-101e, and K.S.A. 2016 Supp. 66-104.

¹¹ K.S.A. 66-101.

¹² K.S.A. 66-101b.

granted all incidental powers necessary to carry into effect the provisions of the public utility statutes.¹³ Finally, the Formal Complaint satisfies the procedural requirements of K.A.R. 82-1-220.¹⁴ Therefore, Staff recommends the Commission find that Mr. Chartrand's allegations present a jurisdictional *prima facie* case for Commission action.

This memorandum makes no recommendation regarding the validity or truthfulness of the Mr. Chartrand's claims. While the Commission may have *jurisdiction* to grant the relief sought by Mr. Chartrand, this memorandum makes no recommendation on the merits of the Complaint.

RECOMMENDATION:

Legal Staff recommends the Commission find:

- The Formal Complaint filed on March 21, 2017, complies with the procedural requirements of K.A.R. 82-1-220;
- The Formal Complaint establishes a *prima facie* case for Commission action; and
- Pursuant to K.A.R. 82-1-220(c), the Formal Complaint should be served upon KCPL for an Answer.

¹³ K.S.A. 66-101g.

¹⁴ K.A.R. 82-1-220.

CERTIFICATE OF SERVICE

17-KCPE-433-COM

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on MAY 11 2017.

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/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

MAY 12 2017