

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

Before Commissioners: Shari Feist Albrecht, Chair
Jay Scott Emler
Dwight D. Keen

In the Matter of the Complaint Against Kansas)
City Power & Light Company by Richard Ecord) Docket No. 19-KCPE-092-COM
of Church of Christ in Ottawa, Kansas.)

ORDER DISMISSING FORMAL COMPLAINT WITH LEAVE TO AMEND

This matter comes before the State Corporation Commission of the State of Kansas (“Commission”). Having examined Litigation 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. In August 2018, the Church of Christ (“Complainant”) filed a Formal Complaint against Kansas City Power & Light Company (KCP&L) with the Commission.¹ The Formal Complaint alleges KCP&L’s assessment of a facilities charge to the Complainant is inappropriate.²

2. On November 8, 2018, Litigation Staff for the Commission prepared a Memorandum analyzing the Formal Complaint for compliance with Commission regulations.³

3. Litigation Staff reviewed the Formal Complaint’s underlying facts and allegations. While making no recommendation regarding the validity or truthfulness of the Complainant’s claims, Litigation Staff determined the Complainant has not satisfied the procedural requirements of the Commission’s rules of practice and procedure.⁴

¹ See Complaint Against Kansas City Power & Light (Aug. 28, 2018) (Formal Complaint).

² See *id.*

³ See Memorandum Dated November 8, 2018 (Staff Memo).

⁴ See *id.* pp. 1-2.

4. The Formal Complaint does not cite to any provision of law, tariff, regulation, Commission order or statute KCP&L is alleged to have violated or be in violation of.⁵ Legal Staff noted the Complainant's most recent billing statement attached to its Formal Complaint indicates the Complainant takes service from KCP&L under the "2SGSE" rate schedule.⁶ KCP&L's rate schedule 2SGSE permits a facilities charge.⁷ In essence, KCP&L's Commission-approved tariff permits the charge.⁸ The Complainant has not alleged this charge is unjust or unreasonable.

5. Though the Complainant provides a narrative of the circumstances giving rise to the filing of the Formal Complaint, it is not possible to ascertain if the factual statement is sufficient to determine what, if any, law, tariff, regulation, Commission order or statute has been violated.⁹ However, the Complainant has identified the relief it is seeking.¹⁰

6. Litigation Staff recommends the Commission find the Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220. Litigation Staff further recommends the Commission grant the Complainant thirty (30) days to correct the procedural deficiencies identified therein. Litigation Staff further recommends that if the Complainant fails to amend its Formal Complaint within thirty (30) days the Formal Complaint should be dismissed without prejudice.

⁵ See Staff Memo p. 2.

⁶ See Formal Complaint p. 6.

⁷ See KCP&L Small General Service (Schedule SGS), sheet 2 of 6 (last approved June 21, 2017).

⁸ Rates fixed by the Commission are *prima facie* reasonable unless/until changed or modified by the Commission or the Courts. See *Sw. Bell Tel. Co. v. State Corp. Comm'n of Kansas*, 4 Kan. App. 2d 44, 47, 602 P.2d 131, 135 (1979) (citing K.S.A. 66-115).

⁹ See Staff Memo p. 2.

¹⁰ See Formal Complaint p. 3.

II. FINDINGS AND CONCLUSIONS

7. The Commission finds and concludes jurisdiction to conduct the requested investigation exists pursuant to K.S.A. 66-101 *et seq.*¹¹ The Commission may investigate Formal Complaints regarding rates, rules, regulations, or practices of gas and electric public utilities.¹²

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

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

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Complainant shall have thirty (30) days from the date of this Order to file an Amended Formal Complaint addressing the procedural deficiencies identified above. If the Complainant does not amend its Formal Complaint within thirty (30) days, the Formal Complaint shall be dismissed without prejudice.

B. 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).¹³

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.

¹¹ 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.”); *See also* K.S.A. 66-1,205(a).

¹² *See* K.S.A. 66-101d, -101g; K.S.A. 66-1,201, -204, -207.

¹³ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 11/27/2018



Lynn M. Retz
Secretary to the Commission

REV/CAB/tm

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MEMORANDUM LEGAL DIVISION

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Dwight D. Keen

FROM: Cole Bailey, Litigation Counsel
Taylor Meeks, Law Clerk

DATE: November 8, 2018

SUBJECT: Docket No. 19-KCPE-092-COM
In the Matter of the Complaint Against Kansas City Power & Light
Company by Richard Ecord of Church of Christ in Ottawa, Kansas.

EXECUTIVE SUMMARY:

Church of Christ ("Complainant") has filed a Formal Complaint¹ against Kansas City Power & Light Company (KCP&L). The Formal Complaint does not satisfy the procedural requirements of the State Corporation Commission of the State of Kansas' ("Commission's") rules of practice and procedure. Legal Staff recommends the Commission deny the Formal Complaint, and grant the Complainant an opportunity to amend its Formal Complaint.

BACKGROUND & ANALYSIS:

On August 28, 2018, the Complainant filed a Formal Complaint against KCP&L, stating the facilities charge was inappropriate.² Upon the filing of a formal complaint, the Commission must determine whether the allegations, if true, would establish a *prima facie* case for action by the Commission and whether the Formal Complaint conforms to the Commission's regulations.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 law or the regulations or orders of the commission that

¹ Complaint Against Kansas City Power & Light (Aug. 28, 2018) (Formal Complaint).

² See *id.*

³ See K.A.R. 82-1-220(c).

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.

A review of the Formal Complaint shows the Complainant has not satisfied these procedural requirements. The Complainant does not cite to any provision of law, tariff, regulation, Commission order or statute, and thus does not comply with procedural requirement (1). Legal Staff notes the Complainant's most recent billing statement attached to its Formal Complaint indicates the Complainant takes service from KCP&L under the "2SGSE" rate schedule.⁴ KCP&L's rate schedule 2SGSE permits a facilities charge.⁵ KCP&L's Commission-approved tariff permits the charge.⁶ The Complainant has not alleged this charge is unjust or unreasonable. Additionally, because the Complainant does not cite to any specific tariff, regulation, or statute violated by KCP&L it is not possible to determine if the factual statement is sufficient to meet procedural requirement (2).

The Complainant states that it would like to be reimbursed for the facilities charge.⁷ As far as this request is concerned, the Complainant has stated relief sought in accordance with procedural requirement (3).

Due to the Complainant's failure to meet the procedural requirements, a determination of *prima facie* is not possible at this time. No recommendation regarding the validity or truthfulness of the Complainant's claims is made, nor should they in any way be assumed or concluded with the filing of this memorandum. The only recommendations made within this memorandum are the Commission should find: the Formal Complaint does not satisfy the procedural requirements of K.A.R. 82-1-220, and a determination of *prima facie* is not yet possible. K.A.R. 82-1-220(c) allows a Complainant to amend its Formal Complaint if it fails to meet the procedural requirements or allege sufficient facts for a *prima facie* determination.

RECOMMENDATION:

Legal 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 its Formal Complaint. Finally, if the Complainant fails to correct the procedural deficiencies discussed herein Legal Staff

⁴ See Formal Complaint p. 6.

⁵ See KCP&L Small General Service (Schedule SGS), sheet 2 of 6 (last approved June 21, 2017).

⁶ Rates fixed by the Commission are *prima facie* reasonable unless/until changed or modified by the Commission or the Courts. See *Sw. Bell Tel. Co. v. State Corp. Comm'n of Kansas*, 4 Kan. App. 2d 44, 47, 602 P.2d 131, 135 (1979) (citing K.S.A. 66-115).

⁷ See Formal Complaint p. 3.

recommends that the Formal Complaint be dismissed without prejudice and the docket be closed.

CERTIFICATE OF SERVICE

19-KCPE-092-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 and electronic service on 11/27/2018.

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/S/ DeeAnn Shupe

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