

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

Wilbur A. Strawn,)	
)	
Complainant,)	
)	
v.)	Case No. EC-2007-0479
)	
Kansas City Power & Light Company,)	
)	
Respondent.)	

ANSWER OF KANSAS CITY POWER & LIGHT COMPANY

Pursuant to 4 CSR 240-2.070(8), Kansas City Power & Light Company ("KCPL") hereby respectfully submits its answer to the Missouri Public Service Commission ("Commission") in response to Wilbur Strawn's complaint in this proceeding.

In support thereof, KCPL states as follows:

I. BACKGROUND

1. Mr. Strawn is the owner of 4332 Cleveland Avenue, Kansas City, Missouri, 64130 ("4332 Cleveland"), the residence giving rise to this complaint.¹ Mr. Strawn rents 4332 Cleveland to tenants. Most recently, Mr. Strawn rented 4332 Cleveland to Dorothy Smith. Ms. Smith initiated service at 4332 Cleveland on November 2, 2006. Ms. Smith subsequently moved and closed her account with KCPL on January 3, 2007. At the time Ms. Smith closed her account, the meter read 26,966. There was no debt outstanding on Ms. Smith's account when she discontinued service at 4332 Cleveland.

¹ In his complaint, Mr. Strawn also references past allegations concerning his electric service at 3307 East 20th Terrace and 3301 East 20th Terrace, both in Kansas City, Missouri. However, his request for relief only pertains to 4332 Cleveland. Consequently, KCPL is limiting its answer to the allegations Mr. Strawn raises concerning electric service at that address. KCPL reserves the right to answer Mr. Strawn's allegations concerning electric service at 3307 East 20th Terrace and 3301 East 20th Terrace should he pursue remedies related to service at those addresses.

2. On February 27, 2007, a KCPL field representative discovered that electric power was being consumed at 4332 Cleveland. KCPL disconnected service at the meter. At the time service was disconnected, the meter read 29,293.² No tampering-related charges were applied.

3. On March 27, 2007, Mr. Strawn contacted KCPL to report that people were trespassing at 4332 Cleveland and that the trespassers appeared to have reconnected electric service. The following day, a KCPL field representative investigated and confirmed that service had been reconnected. KCPL again disconnected service at the meter. KCPL also installed a theft prevention locking device on the meter and scheduled for service to be disconnected at the pole. At the time service was disconnected, the meter read 29,780. KCPL assessed a tampering charge of \$150 and a \$15 fee for a meter locking device.

4. On April 3, 2007, a KCPL field representative discovered that the locking device KCPL placed on the meter was broken and that service had been reconnected. KCPL also discovered that the meter's usage reading had been tampered with because the meter read 29,739, which was less than the prior reading. KCPL removed the meter and sealed the meter can. KCPL assessed a second tampering charge of \$150 and an additional charge of \$100 for damage to the meter and locking device. On April 13, 2007, KCPL disconnected service at 4332 Cleveland at the pole, removing the service line from the weatherhead.

5. On April 20, 2007, Mr. Strawn called the police to report trespassers at 4332 Cleveland. The police reports are attached to Mr. Strawn's complaint. Based on the complaint, this appears to be the first and only time Mr. Strawn reported trespassers to the police.

6. On May 9, 2007, Mr. Strawn requested that KCPL reestablish service at 4332 Cleveland. Mr. Strawn acknowledged that service had been illegally reconnected at 4332

² KCPL has not sought to recover the cost of the electric power consumed at 4332 Cleveland from Mr. Strawn because he did not receive substantial use and benefit from that usage.

Cleveland on multiple occasions. The KCPL customer care representative advised Mr. Strawn that to reestablish service he would need to pay tampering-related charges of \$415, as well as a deposit of \$250.

7. On May 9, 2007, Mr. Strawn lodged an informal complaint with the Commission. He alleged that KCPL was attempting to require him to pay the unpaid account balance of a former tenant at 4332 Cleveland.³

8. On June 11, 2007, Mr. Strawn submitted a formal complaint to the Commission, initiating the above-captioned proceeding. Mr. Strawn alleges that he should not be held responsible for the tampering-related charges at 4332 Cleveland because he did not tamper with KCPL's facilities, trespassers on his property did.⁴

9. The Commission issued its notice of the complaint on June 12, 2007. Pursuant to that notice, KCPL's answer to Mr. Strawn's complaint is due July 12, 2007.

II. ANSWER

A. Mr. Strawn is responsible for the tampering-related charges at 4332 Cleveland.

10. Mr. Strawn admits that someone tampered with KCPL's facilities at 4332 Cleveland. He states in his complaint that "illegal trespassers hooked up the service again." He also states that "This problem with illegals (or homeless) people occurred approximately three times at [4332 Cleveland]." Mr. Strawn admits that tampering occurred at his property, but he

³ To resolve any potential confusion, KCPL did not seek to require Mr. Strawn to pay the unpaid account balance of a prior tenant. As previously noted, Mr. Strawn's most recent tenant, Ms. Smith, paid her account in full at the time the account was closed.

⁴ It is not clear from the complaint, but Mr. Strawn appears to also request that the Commission direct KCPL to compensate Mr. Strawn for repairs made by his electrician at 3307 East 20th Terrace and 3301 East 20th Terrace. Such relief is beyond the Commission's authority to grant. *May Department Stores Co. v. Union Electric Light & Power Co.*, 107 S.W.2d 41, 58 (1937) ("The Public Service Commission has full authority to investigate complaints about rates or service and can make orders to remedy the situation in the future, but it cannot grant monetary relief for compensation for past overcharges or damages.").

asserts that he is not responsible for the tampering-related charges because he did not tamper with KCPL's facilities, trespassers on his property did.

11. As the owner of 4332 Cleveland, Mr. Strawn has an affirmative duty to protect the facilities of KCPL that are located on his property. Section 4.09 of the General Rules and Regulations of KCPL's tariffs provides:

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 persons authorized by law to inspect, work on, open or otherwise handle the wires, meters or other facilities of the Company.

Mr. Strawn owns 4332 Cleveland. No tenant lived there at the time the tampering occurred. As the property owner, Mr. Strawn is responsible for ensuring that no one tampers with the facilities of KCPL that are located on his property.

12. This outcome is not only dictated by KCPL's tariffs but also makes the most sense from a policy perspective. The question at hand is who appropriately has the duty of care to ensure that trespassers do not damage KCPL's property when that property is located at a private residence? As the owner of the premises, Mr. Strawn is in the best position to enforce his property rights against trespassers. KCPL does not have the duty, the ability, or the authority to restrict or control access to 4332 Cleveland. Only Mr. Strawn has the legal right to restrict access to his property.

13. KCPL diligently monitored unauthorized usage at 4332 Cleveland and responded appropriately. It was KCPL, not Mr. Strawn, who first noticed unauthorized usage at 4332 Cleveland. On February 27, 2007, a KCPL field representative discovered that electric power was being consumed at 4332 Cleveland. KCPL disconnected service at the meter. When Mr. Strawn informed KCPL on March 28, 2007, that trespassers had again reconnected service,

KCPL returned the next day to re-disconnect service, install a theft prevention locking device on the meter, and schedule for service to be disconnected at the pole. It was KCPL, not Mr. Strawn, who discovered subsequent unauthorized usage on April 3, 2007. KCPL removed the meter and sealed the can. On April, 13, 2007, KCPL disconnected service at the pole. KCPL took all the necessary and prudent steps to prevent unauthorized usage at 4332 Cleveland, escalating its response appropriately to the continued tampering and reconnections.

14. Mr. Strawn complains of his inability to prevent trespassers from entering his property and tampering with KCPL's facilities. However, according to his own complaint, Mr. Strawn did not contact the police until April 20, 2007—two months after the trespassers first entered his property and reconnected electric service. In addition, by April 20, 2007, the trespassers had reconnected service three times, and KCPL had already disconnected service at the pole.

15. Mr. Strawn had an affirmative duty to prevent trespassers from entering his property and damaging KCPL's equipment. Moreover, as the property owner, Mr. Strawn is the only party with the legal right to restrict access to 4332 Cleveland. By his own admission, Mr. Strawn did not contact the police until after all the damage to KCPL's facilities giving rise to his complaint had already occurred.

16. The tampering-related charges assessed against Mr. Strawn by KCPL are proper.

Section 4.09 of the General Rules and Regulations of KCPL's tariffs states that

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.

It was either careless or neglectful of Mr. Strawn to permit trespassers to reside at 4332 Cleveland and tamper with KCPL's facilities. Mr. Strawn did not contact the police until two months after trespassers entered his property and reconnected electric service. By that time, the trespassers had reconnected service three times and damaged KCPL's facilities. Under these circumstances, KCPL is authorized to require Mr. Strawn to pay the cost of any necessary repairs or replacements of the damaged KCPL facilities.

17. Moreover, Section 4.10 of the General Rules and Regulations of KCPL's tariffs provides that when tampering occurs, "the Customer shall be required to bear all costs incurred by the Company for such protective equipment as, in the judgment of the Company, may be necessary." Section 8.05 provides that the minimum reconnection charge after tampering is \$150. Section 8.05 further provides that "Excessive damage to Company property will result in additional charges." In sum, Mr. Strawn is properly responsible for the tampering-related charges and the amount of those charges is consistent with the terms of KCPL's tariffs.

B. It is appropriate for KCPL to require a deposit for service at 4332 Cleveland.

18. Section 4.10 of the General Rules and Regulations of KCPL's tariffs provides that when tampering has occurred, KCPL may require a "cash deposit or indemnity bond or other credit arrangement before electric service is restored." KCPL is not requiring the deposit to punish Mr. Strawn for the wrong doing of others, as he suggests. A deposit under these facts is not only permitted by KCPL's tariffs, but is also the most rational and prudent course of action.

19. Mr. Strawn acknowledges in his complaint that he has difficulty keeping trespassers out of 4332 Cleveland. The current situation could foreseeably reoccur. Trespassers could be back in 4332 Cleveland damaging KCPL's property either before Mr. Strawn finds a tenant for the premises or after his next tenant leaves. The potential for the reoccurrence of

tampering at a particular address is precisely why Section 4.10 permits KCPL to require a deposit after tampering occurs.

C. The Commission should deny Mr. Strawn's unspecified request for "other restitution."

20. In his complaint, Mr. Strawn requests that the Commission "require KCPL to make other restitutions as seen fit by the MPSC" It is beyond the Commission's statutory authority to compel KCPL to provide such "other restitution."⁵ The Commission must therefore deny Mr. Strawn's request for such relief.

III. CONCLUSION

21. Mr. Strawn has not met his burden to demonstrate that KCPL violated its tariffs, Commission regulations, or any other applicable law. It was proper for KCPL to require Mr. Strawn to pay \$415 in tampering-related charges, as well as a \$250 deposit, prior to reestablishing service at 4332 Cleveland. Mr. Strawn admits that someone tampered with KCPL's facilities at 4332 Cleveland. As the property owner, Mr. Strawn had a duty to protect the facilities of KCPL that are located on his property. Mr. Strawn was either careless or neglectful in not preventing trespassers from entering 4332 Cleveland and tampering with KCPL's facilities. Under those circumstances, it is appropriate for KCPL to require Mr. Strawn to pay \$415 in tampering-related charges, as well as a \$250 deposit, prior to reestablishing service at 4332 Cleveland.

For the foregoing reasons, KCPL respectfully requests that the Commission deny Mr. Strawn the relief he seeks in his complaint.

⁵ *May Department Stores Co. v. Union Electric Light & Power Co.*, 107 S.W.2d 41, 58 (1937).

Respectfully submitted,



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Dated: July 12, 2007

CERTIFICATE OF SERVICE


I hereby certify that a copy of the foregoing Answer was served either by electronic mail or by first class mail, postage prepaid, on this 12th day of July 2007, upon:

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