

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

Christian R. Atlakson,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>Case No. EC-2005-0420</u>
	)	
Kansas City Power & Light Company,	)	
	)	
Respondent.	)	

**MOTION TO DISMISS, OR ALTERNATIVELY,
ANSWER OF KANSAS CITY POWER & LIGHT COMPANY**

COMES NOW Kansas City Power & Light Company ("KCPL"), by and through its attorney, and makes the following Motion to Dismiss, or alternately, Answer to the above-entitled Complaint.

INTRODUCTION

The following introduction presents an overview of the facts giving rise to this Complaint, as well as providing a response to the factual allegations set forth in the Complaint.

KCPL provides electric service to a premise at 1809 N. Ponca Dr., Independence, Missouri. The account for this premise is in the name of Christian R. Atlakson ("Complainant"). On August 22, 2003, KCPL first received notice of the low electric service line at Complainant's residence. A KCPL representative visited the site and explained to the resident at Complainant's residence that the customer needed to install a masthead to raise the electric service line because a deck attached to the rear of the residence had been constructed which created the low electric service line clearance above the deck. The meter location was immediately above the deck. Since that time, KCPL has made multiple attempts to contact the Complainant and warn him of the dangerous condition created by the low electric service line and meter location and request repairs be made by the Complainant.

Some of the correspondence was attached to the Complaint. As of today neither the low electrical service line nor the low meter have been repaired by the Complainant.

MOTION TO DISMISS

Pursuant to 4 CSR 240-2.070(6), KCPL respectfully requests that the Commission dismiss the Complaint for failure to state a claim on which relief may be granted. Assuming *arguendo* that all of the claims and allegations in the Complaint are true, Complainant is not entitled to the relief he requests. Even assuming that Complainant's claims are accurate; KCPL was authorized pursuant to its tariff to contact the Complainant and inform him of KCPL's right to disconnect service at his premises for the unsafe and dangerous condition created by the low electric service line and meter location.

In sum, Complainant fails to state a claim on which relief may be granted because KCPL's actions concerning Complainant, even as described by the Complainant, were entirely justified and appropriate under the provisions of KCPL's tariff. Consequently, KCPL respectfully requests that the Commission dismiss this Complaint.

ANSWER TO COMPLAINT

In the event that the Commission denies KCPL's motion to dismiss the Complaint, KCPL offers the following Answer thereto:

1. Except as admitted herein, KCPL denies each and every allegation, averment and statement in the Complaint and the attachments thereto.
2. KCPL admits that Christian R. Atlakson resides at 1809 N. Ponca Dr., Independence, Missouri.
3. In paragraph 1, KCPL admits the allegation made.
4. In paragraph 2, KCPL admits sending Complainant a letter in September 2003.
5. In paragraph 2, KCPL admits that it tightened the electrical service at the Complainant's premises to reduce the sag.

6. In paragraph 2, KCPL admits sending Complainant a letter in March 2005.
7. In paragraph 2 and 3, KCPL admits receiving an e-mail from Complainant on March 22, 2005.

AFFIRMATIVE DEFENSE

1. The instant controversy falls well within the ambit of KCPL's tariffs, which have been filed with and approved by the Public Service Commission of the State of Missouri (the "Commission"). A tariff that has been approved by the Commission becomes Missouri law, and has the same force and effect as a statute enacted by the Missouri legislature. *Bauer v. Southwestern Bell Tel. Co.*, 958 S.W. 2d 568, 570 (Mo.App. 1998); *Allstates Transworld Vanlines, Inc. v. Southwestern Bell Tel. Co.*, 937 S.W.2d 314, 317 (Mo.App. 1996).

2. As further set forth in KCPL's General Rules and Regulations Applying to Electric Service, Rule 4.04,

The customer's installation must conform with all the applicable laws, the requirements of all governmental authorities having jurisdiction, the provisions of the National Electrical Code and the National Electrical Safety Code, and all rules, regulations, standards and reasonable requirements of the Company. *See Exhibit A.*

3. As set forth in KCPL's General Rules and Regulations Applying to Electric Service, Rule 4.05,

The company may refuse to supply electric service or may suspend electric service to a customer, without notice, if the customer's installation is in an unsafe or dangerous condition. *See Exhibit A.*

4. KCPL has estimated the electric service line at 1809 N. Ponca Dr. to be about six to eight feet above the deck constructed and attached to the rear of the house. *See Exhibit B.* The National Electrical Code (NEC) Article 230.24(B)(1) requires the clearance between the deck and the electric service line to be 10 feet. Pursuant to Rule 4.04, the customer's installation (masthead) and therefore electric service line does not conform to the NEC requirements. Further, pursuant to Rule 4.05, KCPL may inform the customer that it may suspend electric service for this unsafe and dangerous condition.

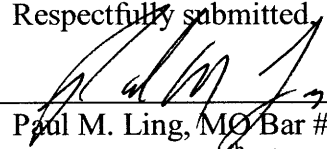
5. KCPL has estimated the electric meter at 1809 N. Ponca Dr. to be about six to twelve inches above the deck constructed and attached to the rear of the house. *See Exhibit B.* KCPL standards require meters to be installed at approximately eye level. This prevents accidental contact with the meter and the electric service line above it. Pursuant to Rule 4.04, the customer's installation (meter location) does not conform to KCPL's standards and reasonable requirements. Further, pursuant to Rule 4.05 KCPL, may inform the customer that it may suspend electric service for this unsafe and dangerous condition.
6. KCPL has contacted the Complainant on numerous occasions since KCPL first received notice of this unsafe and dangerous condition. The most recent contact was on June 9, 2005 to resolve this matter. Unfortunately, the Complainant has been unwilling to make the necessary modification to his installation to resolve this matter.

WHEREFORE, KCPL prays that the Commission:

1. dismiss the Complaint for failure to state a claim on which relief may be granted, or alternatively;
2. deny each and every claim for relief requested by Complainant and dismiss his Complaint; and
3. provide such other and further relief to KCPL as the Commission may deem just.

Respectfully submitted,

By: _____


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ATTORNEY FOR
KANSAS CITY POWER & LIGHT COMPANY

CERTIFICATE OF SERVICE

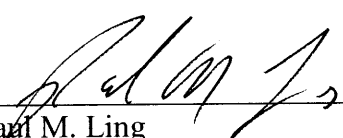
I hereby certify that a copy of the foregoing response was served via first class mail, postage prepaid, on this 17th day of June 2005, upon:

Christian R. Atlakson
1809 N. Ponca Dr.
Independence, MO 64058

Dana K. Joyce
PO Box 360
200 Madison St., Suite 800
Jefferson City, MO 65102

Lewis R. Mills, Jr.
PO Box 7800
200 Madison St., Suite 640
Jefferson City, MO 65102

By: _____


Paul M. Ling

ATTORNEY FOR
KANSAS CITY POWER & LIGHT COMPANY

KANSAS CITY POWER & LIGHT COMPANY

Name of Issuing Corporation or Municipality

For Rate Areas No. 1 and No. 3

Community, Town or City

**GENERAL RULES AND REGULATIONS
APPLYING TO ELECTRIC SERVICE**

(continued)

4. TAKING ELECTRIC SERVICE

(continued)

4.02 PROTECTION EQUIPMENT: Any Customer desiring protection against interruptions, phase failure, phase reversal, voltage variations or other temporary irregularities in electric service shall, at his own expense, furnish on such Customer's installation such protective equipment for such purpose.

4.03 CUSTOMER RESPONSIBILITY: The Customer shall be responsible for determining in advance, through application to the Company, the class or classes of electric service which will be designated by the Company and made available to the Customer and the applicable conditions of such electric service. The Customer shall be responsible for determining whether the Customer's installation, and all portions thereof, are and will be suitable for operation at the voltage, phase and other characteristics of the class of service to be supplied by the Company. Replacement of service conductors for a residential Customer due solely to an increase in On-Peak Load will be done at the expense of the Customer.

4.04 STANDARDS AND APPROVALS: The Customer's installation must conform with all applicable laws, the requirements of all governmental authorities having jurisdiction, the provisions of the National Electrical Code and the National Electrical Safety Code, and all rules, regulations, standards and reasonable requirements of the Company. All required approvals of the Customer's installation must be obtained by the Customer before the Company shall be obligated to commence or continue supplying electric service to the Customer.

4.05 DANGEROUS OR DISTURBING USES: The Customer shall use the electric service supplied by the Company with due regard to the effect of such use on the Company's electric service to its other Customer and on the facilities and equipment of the Company. The Company may refuse to supply electric service or may suspend electric service to a Customer, without notice, if the Customer's installation is in an unsafe or dangerous condition or is so designated or operated as to disturb the electric service supplied by the Company to other Customers. Welding machines, large hoists and x-ray machines, primary capacitors, electric furnaces, equipment with excessive starting currents or intermittent or rapidly fluctuating load characteristics which adversely affect load regulation, and any experimental or unusual electric devices are expressly designated as disturbing uses and shall not be connected to the Customer's installation, except upon such prior special arrangements as may be made with the Company. If the Customer's installation of any such equipment requires the installation of separate or additional transformer capacity, the Company shall, upon request of the Customer,

DATE RECEIVED **ELECTRIC AUTHORITY** June 1978
month day year

DATE EFFECTIVE July 12 1978
month day year

ORDER NO 930

ISSUED BY **I. C. Rasmussen**
name of officer

Vice President
title

1330 Baltimore, Kansas City, Mo.
address

EXHIBIT A



EXHIBIT B
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EXHIBIT B

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