

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 6th  
day of June, 2000.

Maurice Banks,	)	
	)	
Petitioner,	)	
	)	
v.	)	<u>Case No. EC-2000-330</u>
	)	
Kansas City Power & Light Company,	)	
	)	
Respondent.	)	

ORDER DISMISSING CASE

Maurice Banks filed his Complaint against Kansas City Power & Light Company (KCPL) on November 16, 1999, alleging that KCPL had improperly refused to provide electric service to his business in Kansas City, Missouri. The Commission issued its Notice of Complaint on November 30, advising KCPL that it must file an answer within 30 days. On December 30, KCPL moved for an additional 30 days to investigate the matter and formulate an answer; the Commission granted this motion on January 4, 2000. On January 31, KCPL filed its Answer, alleging that its refusal to provide electric service to Complainant Banks was justified in that Mr. Banks seeks service not for his own benefit but on behalf of one Ray Cartwright, who owes over \$30,000 to KCPL for unpaid electric service charges.

On February 9, the Commission set a prehearing conference for February 23 and required that the parties file a joint proposed procedural schedule no later than March 1. On February 23, the prehearing conference was duly convened but Mr. Banks failed to appear. Thereafter, on March 1, KCPL filed its Motion to Establish Procedural Schedule, which motion contained a proposed schedule. The Staff of the Missouri Public Service Commission responded with a Supplement on March 2.

In its motion, KCPL advised the Commission that its counsel had conferred with an attorney in the Kansas City area who intended to represent Complainant. However, that attorney later advised KCPL that she was no longer contemplating the representation of Mr. Banks. These conversations both occurred on February 23 following the prehearing conference. In its supplement, Staff advised the Commission that Mr. Banks had appeared at the Commission's offices in Jefferson City on the afternoon of February 23, "a few hours" after the prehearing conference had concluded and its participants dispersed. Staff's counsel met with Mr. Banks and reviewed the proposed procedural schedule. Staff stated that Mr. Banks indicated that it appeared acceptable to him. However, he also stated that he "would be contacting his counsel."

On March 15, having received no response from Complainant to either KCPL's motion or Staff's supplement, the Commission by Order adopted the proposed procedural schedule. That Schedule required that Complainant file his Direct Testimony on or before March 30. Complainant failed to file his Direct Testimony by that date and, on April 20, KCPL filed its Motion to Dismiss. Thereafter, Mr. Banks attempted to late-file his Direct

Testimony on May 3. Mr. Banks never responded to KCPL's Motion to Dismiss. Likewise, KCPL never filed any motion directed at Mr. Banks' attempt to late-file his Direct Testimony. In the meantime, both KCPL and Mr. Banks ignored the requirements of the procedural schedule. On May 25, the Commission canceled the prehearing conference and evidentiary hearing set for May 30.

KCPL's Motion to Dismiss relies upon Commission Rule 4 CSR 240-2.116(2), which permits dismissal for failure to prosecute where "no action has occurred in the case for ninety (90) days and no party has filed a pleading requesting a continuance beyond that time." However, Mr. Banks' Complaint cannot be dismissed under that rule because there has been no such 90-day period of inactivity.

Rule 4 CSR 240-2.090(5) provides for dismissal for an unexcused failure to appear at a prehearing conference. Complainant failed to appear at the prehearing conference held on February 23, and that failure is unexcused. Rule 4 CSR 240-2.116(3) authorizes dismissal for failure to comply with any Commission order. Mr. Banks has not complied with the procedural schedule in this case, established by the Commission's Order of March 15. For these reasons, the Complaint will be dismissed.

The Commission will dismiss Mr. Banks' Complaint without prejudice. Therefore, Mr. Banks is at liberty to refile his Complaint and bring this matter before the Commission again. If he chooses to do so, Mr. Banks will be required to comply in every respect with the Commission's rules and orders.

**IT IS THEREFORE ORDERED:**

1. That the Complaint filed herein by Maurice Banks on November 16, 1999, is hereby dismissed without prejudice.
2. That this order shall become effective on June 16, 2000.
3. That this case may be closed on June 19, 2000.

**BY THE COMMISSION**



**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

( S E A L )

Lumpe, Ch., Drainer, Murray,  
Schemenauer, and Simmons, CC.,  
concur.

Thompson, Deputy Chief Regulatory Law Judge

**RECEIVED**  
JUN 06 2000

COMMISSIONER OF  
PUBLIC SERVICE COMMISSION