

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

In the Matter of the Application of Kansas City)
Power & Light Company for Waiver or) Case No.
Variance of the Certain Provisions of the)
Report and Order in Case No. ER-2007-0291)

**APPLICATION FOR WAIVER OR VARIANCE CONCERNING
CERTAIN ALL-ELECTRIC AND ELECTRIC HEATING CUSTOMERS OF
KANSAS CITY POWER & LIGHT COMPANY**

Pursuant to 4 C.S.R. 240-3.015 and 240-2.060, Kansas City Power & Light Company ("KCPL") hereby respectfully submits to the Missouri Public Service Commission ("Commission") an application ("Application") for waiver or variance of certain provisions of the Commission's Report and Order in Case No. ER-2007-0291 ("2007 Rate Case Order"), concerning the availability of KCPL's general service all-electric tariffs and separately-metered space heating rates ("All-Electric/Space-Heating Rates") to certain customers who were not taking service under those rates as of January 1, 2008, but who committed financial resources prior to that date based on their expectation that those rates would be available.

Good cause exists for such waiver or variance. In support of its Application, KCPL offers as follows:

1. KCPL is a Missouri corporation with its principal office and place of business at 1201 Walnut, Kansas City, Missouri 64106-2124. KCPL is primarily engaged in the business of generating, transmitting, distributing, and selling electric energy in portions of eastern Kansas and western Missouri. KCPL is an electrical corporation and public utility as defined in Mo. Rev. Stat. § 386.020 (2000). KCPL provided its Certificate of Good Standing in Case No. EF-2002-315. It is incorporated herein by reference.

2. KCPL holds Certificates of Convenience and Necessity from the Commission to transact business as an electric public utility in certain areas of the State of Missouri and is principally engaged in the generation, transmission, distribution and sale of electric power and energy. KCPL has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates, which has occurred within three years of the date of this Application, other than those listed in Exhibit A. No annual report or assessment fees are overdue.

3. Pleadings, notices, orders and other correspondence and communications concerning this Application should be addressed to the undersigned counsel and:

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BACKGROUND

4. On December 6, 2007, the Commission issued the 2007 Rate Case Order. In that order, the Commission concluded that

The availability of KCPL's general service all-electric tariffs and separately-metered space heating rates should be restricted to those qualifying customers' commercial and industrial physical locations being served under such all-electric tariffs or separately metered space heating rates as of the date used for the billing determinants used in this case, and such rates should only be available to such customers for so long as they continuously remain on that rate schedule (i.e., the all-electric or separately metered space heating rate schedule they are on as of such date).¹

¹ 2007 Rate Case Order, at p. 82.

5. On December 14, 2007, KCPL submitted an Application for Rehearing and Stay, or in the Alternative, Application for Waiver or Variance from Decision for Specific Customers (“KCPL Motion”), which among other things, requested a waiver or variance from the 2007 Rate Case Order to the extent necessary to “allow KCPL to grandfather any existing KCPL customer who has entered into contracts or purchased heating equipment, in reliance upon the existence of the availability of KCPL’s all-electric and space-heating rates.”² In Staff’s response to the KCPL Motion, it acknowledged “the predicament of building owners or operators who have allegedly made economic decisions based on the continuing availability of KCPL’s general service all-electric and separately-metered space heating rate options.”³ Reasoning that there was insufficient evidence in the record in Case No. ER-2007-0291 concerning KCPL’s request, Staff requested that the Commission reopen the record in order to take additional evidence. On December 21, 2007, the Commission issued an order denying both KCPL’s request for a waiver or variance and Staff’s motion to reopen the record (“Order Denying Motions”).

6. The Commission correctly noted in its Order Denying Motions that “there is no protected property interest in any particular utility rate.”⁴ KCPL understands the Commission’s position, but nonetheless believes that although a customer might not have a “protected property interest,” notions of equity and fairness require certain accommodations for those customers that have pending investments and contractual obligations premised on the availability of the All-Electric/Space-Heating Rates. KCPL also acknowledges Staff’s observation that there was limited evidence in the record in Case No. ER-2007-0291 concerning the impact of the

² *KCPL Motion*, at p. 9.

³ *Staff’s Response*, at pp. 5-6.

⁴ *Order Denying Motions*, at p. 3.

Commission's decision on the individual customers listed in the schedules attached hereto. For these reasons, KCPL submits this application.

APPLICATION FOR WAIVER OR VARIANCE

7. The Commission's determination in the 2007 Rate Case Order that KCPL's All-Electric/Space-Heating Rates should be restricted to those qualifying customers' commercial and industrial physical locations being served under those rates as of January 1, 2008 adversely and unjustly impacts certain KCPL customers who made financial or other commitments prior to that date based on the availability of those rates.

8. KCPL understands and does not contest the Commission's decision to limit the number of customers receiving service under the All-Electric/Space-Heating Rates until such time as KCPL demonstrates that those rates are cost justified. Consequently, rather than an unlimited or open-ended expansion of the availability of these rates, KCPL seeks herein authority to make its All-Electric/Space-Heating Rates available to certain, specified customers that made commitments to all-electric or electric space heating infrastructure prior to the Commission's January 1, 2008 cut-off date.

9. Good cause exists for the waiver or variance requested herein. As the Commission knows, a large number of KCPL's customers are in the process of completing major expansions, new construction, and renovation projects in downtown Kansas City and throughout the Missouri service territory of KCPL. KCPL has identified a number of those customers who did not qualify for service under the All-Electric/Space-Heating Rates as of January 1, 2008, but who nonetheless have made or have committed to make substantial investments based upon the presumed availability of those rates.

10. If KCPL applies the applicable portions of the 2007 Rate Case Order as written, the Commission's decision would suddenly and dramatically alter the economics of millions of dollars worth of investment by those customers. Absent such a waiver or variance, the adverse impact on such customers will be significant, and the public outcry is likely to be great. Although the issue arose in KCPL's 2006 rate case, the portion of the Report and Order concerning that issue did not give customers reasonable notice that KCPL's All-Electric/Space-Heating Rates would be rendered unavailable to them as early as January 1, 2008.

11. The potential injustice to these customers is exacerbated by the high degree of uncertainty surrounding this issue. In the 2007 Rate Case Order, the Commission required KCPL,

not later than its next rate case, to present complete cost of service and/or cost effectiveness studies and analyses of KCPL's [All-Electric/Space-Heating Rates] and, consistent with the findings of such studies and analyses, allow KCPL the opportunity at that time to present its preferred phase-out plan for the remaining commercial and industrial customers served under the [All-Electric/Space-Heating Rates].⁵

Recognizing the unfairness to existing customers of immediately terminating All-Electric/Space-Heating Rates, the Commission appears to contemplate phasing the rates out over time based on the results of the cost-benefit study KCPL must file with its 2008 rate case. The same logic applies here. Certain customers of KCPL have made commitments for all-electric or space-heating infrastructure based on their expectation that the All-Electric/Space-Heating Rates would continue to be available. If the rates are to be eliminated, those customers deserve the same phasing out of the All-Electric/Space-Heating Rates as existing customers.

⁵ 2007 Rate Case Order, at p. 85.

12. Specifically, KCPL has identified four categories of customers that are in various stages of commitment to constructing facilities or modifying existing facilities to qualify for KCPL's All-Electric/Space-Heating Rates. In some instances, the developer is currently the customer of record. KCPL requests that any waiver or variance granted herein be sufficiently broad to permit the first customer of record that takes service after the developer to receive service under the All-Electric/Space-Heating Rates. Pursuant to the 2007 Rate Case Order, any subsequent customer would not be able to continue service under that rate schedule.

13. The first category of customers, listed in Schedule 1(HC), represents twenty-one customers who are currently building or reconfiguring facilities that include all-electric or space-heating infrastructure and for whom KCPL has completed the necessary modifications to its facilities. These customers' made their infrastructure investment decisions some time ago and their projects are nearly complete. Consequently, the 2007 Rate Case Order will have the most adverse and unjust impact on these customers. The projects listed in Schedule 1 represent a large variety of customers from community centers and educational facilities to the ** [REDACTED]

[REDACTED]

[REDACTED] **

14. ** [REDACTED] ** is an existing customer in downtown Kansas City. It is currently receiving electric service under the standard rate. The customer is in the process of replacing existing heating equipment with energy efficient electric heating equipment. As with the other customers for whom KCPL seeks a waiver or variance, the ** [REDACTED] [REDACTED] ** relied upon the availability of the All-Electric/Space-Heating Rates in making its decision to install electrical heating equipment. Absent a waiver or variance, the 2007 Rate Case Order will dramatically alter the economics of that decision.

15. The second category of customers, listed in Schedule 2(HC), represents forty-six customers who are currently constructing or reconfiguring facilities that include all-electric or space-heating infrastructure and for whom KCPL is in the process of either designing or constructing modifications to its facilities. Like the customers in the first category, these customers committed to all-electric or space-heating infrastructure investments some time ago. Consequently, the 2007 Rate Case order will also significantly and adversely impact these customers. Generally, speaking, however, their projects are not as near complete as the projects in the first category. As with Schedule 1, the projects listed in Schedule 2 represent a large variety of customers from community centers and homeless shelters to large commercial projects such as the ** [REDACTED] ** and the renovation of the ** [REDACTED] [REDACTED] **

16. Like the ** [REDACTED] **, the ** [REDACTED] ** provides a good illustrative example. It was designed and is being constructed as an all-electric facility. KCPL understands that the ** [REDACTED] ** has committed to purchase, and in some instances might have already paid for, electric heating equipment and other related all-electric infrastructure at a cost of several million dollars. The decision to purchase that equipment was premised upon the availability of the All-Electric/Space-Heating Rates. However, the ** [REDACTED] ** is not presently served under those rates. As such, the 2007 Rate Case Order prohibits KCPL from offering the All-Electric/Space-Heating Rates. Absent a waiver or variance, the 2007 Rate Case Order will dramatically alter the economics of decisions likely made more than a year ago.

17. The third category of customers, listed in Schedule 3(HC), represents fifty-four customers who are in various preliminary stages of designing or committing to all-electric or

KCPL's All-Electric/Space-Heating Rates in September of 2006. However, the customer continued receiving service pursuant to KCPL's Large General Service Rate. The customer contacted KCPL to request service under its All-Electric/Space-Heating Rates on January 10, 2008. The customer has been a qualifying customer at that physical location for more than a year, but it was not receiving service under the All-Electric/Space-Heating Rates as of January 1, 2008. The customer should not be penalized because it continued to receive power under its past rate schedule.

21. The third general case involves a church located at ** [REDACTED] **. The customer submitted paperwork for service under the All-Electric/Space-Heating Rates in August of 2007. That paperwork was in conjunction with the replacement of the customer's air conditioning and heating equipment. However, the customer did not receive service under the All-Electric/Space-Heating Rates. The church has been a qualifying customer at that physical location since August of 2007, but it was not receiving service under the All-Electric/Space-Heating Rates as of January 1, 2008. Like the previous example, this customer should not be penalized because it continued to receive power under its past rate schedule.

22. Pursuant to 4 C.S.R. 240-2.060(4)(C), KCPL states that no other regulated public utility other than KCPL will be affected by the variance or waiver requested herein.

CONCLUSIONS

KCPL respectfully requests a waiver or variance of the Report and Order to the extent necessary to make KCPL's All-Electric/Space-Heating Rates available to the customers listed in Schedules 1-4, as well as the three specific cases discussed herein. Each of these customers made investment decisions based on the availability of the All-Electric/Space-Heating Rates. It

would be inequitable to change at this late stage such a fundamental underpinning to their investment decisions. As set forth herein, good cause exists for such a waiver or variance.

Respectfully submitted,

/s/ Curtis D. Blanc

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**COUNSEL FOR
KANSAS CITY POWER & LIGHT COMPANY**

Dated: January 21, 2008

**HIGHLY CONFIDENTIAL INFORMATION
DESIGNATED "[REDACTED]"
HAS BEEN REMOVED PURSUANT TO
4 CSR 240-2.135.**

EXHIBIT A

The following is a listing of KCPL's pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of this application:

Zimmerman, Adam v. Kansas City Power & Light Co., MPSC Case No. EC-2008-0195.

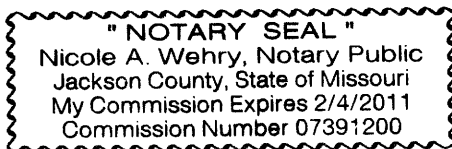
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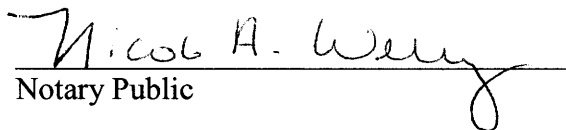
State of Missouri)
) ss
County of Jackson)

I, Tim M. Rush, having been duly sworn upon my oath, state that I am the Director, Regulatory Affairs of Kansas City Power & Light Company ("KCPL"), that I am duly authorized to make this affidavit on behalf of KCPL, and that the matters and things stated in the foregoing application and appendices thereto are true and correct to the best of my information, knowledge and belief.


Tim M. Rush

Subscribed and sworn before me this 21st day of January 2008.




Notary Public

**HIGHLY CONFIDENTIAL INFORMATION
DESIGNATED "[REDACTED]"
HAS BEEN REMOVED PURSUANT TO
4 CSR 240-2.135.**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application was served either by electronic mail or by first class mail, postage prepaid, on this 21st day of January 2008, upon:

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/s/ Curtis D. Blanc
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SCHEDULES 1-4

**THESE DOCUMENTS CONTAIN
HIGHLY CONFIDENTIAL INFORMATION
NOT AVAILABLE TO THE PUBLIC**
