

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

In the Matter of the Application of Kansas City	)	
Power & Light Company for Approval to Make	)	
Certain Changes in Its Charges for Electric	)	Case No. ER-2006-0314
Service to Begin the Implementation of Its	)	
Regulatory Plan.	)	

**INITIAL POSTHEARING BRIEF AND RESPONSE TO STIPULATION  
AND AGREEMENT OF TRIGEN-KANSAS CITY ENERGY CORPORATION**

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## **INITIAL POSTHEARING BRIEF AND RESPONSE TO STIPULATION AND AGREEMENT**

COMES NOW Trigen-Kansas City Energy Corporation (“Trigen”), by and through the undersigned counsel, and submits this Initial Posthearing Brief and Response to Stipulation and Agreement on the issues set forth below pursuant to the procedural schedule established herein.

### **APPLICABLE LAW**

As the rate case applicant herein, KCPL has the burden of proof to show that its proposed tariffs are just and reasonable, *including* the reasonableness of its rate design. *See, e.g., State ex rel. Monsanto Company v. Public Service Commission*, 716 S.W.2d 791 (Mo. 1986)<sup>1</sup>; *In the Matter of the Tariff Filing of The Empire District Electric Company to Implement a General Rate Increase for Retail Electric Service Provided to Customers in its Missouri Service Area*, Case No. ER-2004-0570, Report and Order issued March 10, 2005; Section 393.150 RSMo. It is also well-established that the Commission’s decisions must be based upon competent and substantial evidence upon the record, and therefore may not be arbitrary. *Friendship Village of South County v. Public Service Commission*, 907 S.W.2d 339 (Mo. App. 1995); Mo. Const. Art. V, § 18 (1945).

The Commission has previously recognized that “the Commission's obligation in a general rate case is to consider ‘all relevant factors’ in setting just and reasonable rates,

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<sup>1</sup> “Laclede filed the tariffs here in question using the existing rate design. In the suspension order and notice of proceedings dated January 18, 1983, the Commission noted that the Company bore the burden of proof before the Commission and ordered the Company ‘to provide evidence and argument sufficient for the Commission to determine . . . the reasonableness of the Company’s rate design.’” *Id.* at 795.

not merely those that the parties have included in their pleadings. The Commission is also mandated to ensure that utility facilities are safe and adequate and **that charges are just and reasonable**, not in excess of those permitted by law or Commission order, **and not discriminatory or preferential.**” *In the Matter of the Application of Union Electric Company, Doing Business as AmerenUE, for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company, Doing Business as AmerenCIPS, and, in Connection Therewith, Certain Other Related Transactions*, 2004 Mo. PSC LEXIS 348, Case No. EO-2004-0108, Order Dated March 16, 2004 (emphasis added). Section 393.130 RSMo requires that a utility’s charges be “just and reasonable”, and Section 393.140 RSMo authorizes the Commission to determine “just and reasonable” charges. Section 393.130.2 and .3 RSMo also provide that:

2. No . . . electrical corporation . . . shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for . . . electricity . . . or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

3. No . . . electrical corporation . . . shall make or grant any undue or unreasonable preference or advantage to any person, corporation or

locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

In interpreting and applying these statutes (and their predecessor statutes) the courts have stated that “[i]n charges for service or in rate-making, reasonable classification may be adopted . . . However, laws designed to enforce equality of service and charges and prevent unjust discrimination, as the Missouri act, require the same charge for doing a like and contemporaneous service (e.g., supplying water<sup>2</sup>) under the same or substantially similar circumstances or conditions.” *State ex rel. The Laundry, Inc. v. Public Service Commission*, 327 Mo. 93, 109; 34 S.W.2d 37, 44 (1931).

Furthermore, this principle “forbids any difference in charge which is not based upon difference of service and even when based upon difference of service must have some reasonable relation to the amount of difference, and cannot be so great as to produce unjust discrimination.” *Id.* at 110; 45. “[T]he reasonableness of the basis of the classification must appear” and competent and substantial record evidence must exist to support the classification as reasonable. *State ex rel. Marco Sales, Inc. v. Public Service Commission*, 685 S.W.2d 216, 221 (Mo. App. 1984).

Finally, in an opinion filed just last December, the court stated that, based on Section 393.130, “the Commission lacks statutory authority to approve discriminatory rates, and its approval of the rates herein, requir[ing] Joplin ratepayers to pay significantly more than the actual cost of service in that district for the express purpose of subsidizing the services provided in other Company districts that were only paying for

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<sup>2</sup> Or, in the present case, supplying electricity.

the actual cost of service arguable exceeded its authority.” *State of Missouri ex rel. City of Joplin v. Public Service Commission*, 186 S.W.3d 290, 296 (Mo. App. 2005).

## **ISSUES**

*I. In this case, should the qualification provision of the existing general service all-electric rate schedules be expanded as proposed by KCPL, and the all-electric winter energy rate increased an additional 5%, to make rate discounts available to existing and future customers who are not all-electric customers?*

In this case, KCPL is proposing to expand, or broaden, the availability of its discounted all-electric rates to customers who are not all-electric customers while increasing the all-electric winter energy rate by an additional 5%<sup>3</sup>. (Ex. 21, Rush Direct, page 8). KCPL’s proposal would broaden the availability of its current discounted, low load factor energy rates to customers that are now served under KCPL’s standard general service tariff rates.

As set forth above, any difference in charges must be based upon some difference in the service provided by the Company and must have some reasonable relation to the amount of difference, and cannot be so great as to produce unjust discrimination; the reasonableness of the basis of the classification must appear and competent and substantial record evidence must exist to support the classification as reasonable. This is accomplished by proof of the cost to the Company of serving customers under the various rates. However, despite proposing to expand the availability of its discounted all-electric rates to customers who are not all-electric, KCPL has failed to produce any cost of service, incremental or marginal cost analyses, or any other underlying studies, to support

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<sup>3</sup> To do this, KCPL proposes to rename the “all electric” tariff in each of the three general service categories as a “space heating tariff”. (Ex. 701, Herz Direct, page 10).

its proposal; Mr. Rush of KCPL admitted this at the hearing. (Tr. 1028). In fact, KCPL has failed to produce any support for the substantial winter discount *currently* offered<sup>4</sup> to its all-electric (low load factor) C&I customers, *much less* support of its proposed expansion of that discount beyond all-electric customers. (Ex. 701, Herz Direct, page 12; Ex. 702, Herz Surrebuttal page 2). In its response to Trigen’s data request 11, KCPL admitted that “Within the context of the rate case, the Company did not perform any incremental or marginal cost studies related to serving our all-electric, electric space heating customers.” (Ex. 701, Herz Direct, page 12; See also Tr. 1031). Although KCPL filed a class cost of service study in this case, its all-electric tariff customers (as well as its separately metered space heating customers) were rolled-in with the standard tariff customers within each general service category and accordingly the cost of service study results shown are for the entire general service category<sup>5</sup>; therefore, KCPL has no support for its proposed winter discounts. (Ex. 701, Herz Direct, pp. 28-29).

Furthermore, KCPL has not conducted any analyses of, nor does it appear to possess information as to, the impact its proposal will have on customers, billing determinants or revenues, or for that matter, how many customers would be affected by its proposal. (Ex. 701, Herz Direct, page 11; Ex. 702, Herz Surrebuttal, page 2). In response to Trigen’s data request 7, KCPL stated that “Potential customer shifts that would result from the requested change in availability of this rate has not been measured. As a result, billing determinates are not available to project the associated revenue impact.” (Ex. 701, Herz Direct, page 11). Mr. Rush also admitted this at the hearing.

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<sup>4</sup> The discounts currently offered will be further addressed under the following issue.

<sup>5</sup> Mr. Rush of KCPL admitted this at the hearing. (Tr. 1029-1030).

(Tr. 1025-1026). Therefore, KCPL has admitted that the impact of its proposed change on revenues is neither known nor measurable at this time.

KCPL appears to recognize the importance of having cost support for changes such as those it proposes. In her rebuttal testimony, KCPL witness Liechti stated that “the underpinning of any material rate design recommendation would be a CCOS [class cost of service] study” because a “CCOS study yields important information beyond each classes’ individual contribution to return. It also provides an indication of costs attributable to customer, energy and demand components. These are the cornerstones of rate design.” (Ex. 39, Liechti Rebuttal, page 4). KCPL has even admitted that, by broadening the availability of the all-electric rate, load characteristics will change for the overall class. (Ex. 703). However, KCPL has completely failed to adhere to the testimony of Ms. Liechti with regard to its proposal to expand the availability of its discounted all-electric rates to customers who are not all-electric customers. It has failed in its burden of proof and its proposal to expand, or broaden, the availability of its discounted all-electric rates to customers who are not all-electric customers should be rejected by the Commission.

While it is true that KCPL proposed to increase the general service all-electric winter energy rate 5% more than the increase to the winter energy rate in its standard general service tariff in connection with its proposed expansion of the all-electric discount to customers who are not all-electric customers, like its proposal to broaden the availability of the discount, KCPL has failed to produce any cost support for this 5% differential increase<sup>6</sup>. Had KCPL performed the necessary cost studies related to serving

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<sup>6</sup> The point being made here is that this 5% differential increase does not constitute evidentiary support for, save or otherwise justify KCPL’s proposal to expand the availability of the all-electric discount to



these customers, the result may have supported a differential increase significantly greater than 5%. (Ex. 701, Herz Direct, page 12). As noted above, KCPL indicated that it has not performed any cost analysis of its proposal, and KCPL does not know, nor apparently can it measure, the customer impact or revenue impact of its proposed change to broaden the availability of the discounted all-electric general service tariff rates. (Ex. 701, Herz Direct, page 13). Simply put, KCPL has provided no factual basis or foundation to conclude that a mere 5% differential increase will recover the full costs of providing winter electric service from the cost-causers under its proposal. (*Id.*).

In addition to the fact, as shown in the preceding paragraphs, that KCPL has failed to prove that its proposal to expand the qualification provision of its existing general service all-electric rate schedules to make rate discounts available to existing and future customers who are not all-electric customers is just and reasonable and non-discriminatory, there are other reasons to reject KCPL's proposal. Simply stated, KCPL's *current* discounted all-electric general service tariff rates *and* KCPL's tariff provisions for separately metered space heating rate discounts suffer from the following substantial flaws<sup>7</sup>:

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customers who are not all-electric. Although the Stipulation and Agreement Regarding Class Cost-of-Service and Rate Design Issues filed herein by Staff on November 9, 2006 (which is addressed below), provides that general service space heating and all-electric winter rates will be increased by 5 percentage points more than each class' general application rates, this provision of the Stipulation *will only come into play if* the Commission decides to not eliminate these rates, and does not provide support for the continuation of these rates. Likewise, in the unlikely event that the Commission erroneously decides to approve KCPL's proposal to expand the availability of the all-electric discount to customers who are not all-electric, this rate would be increased by 5 percentage points more than the corresponding general application rate. In other words, it is not the 5% differential increase to which Trigen objects; it is the expansion or broadening of the tariff itself.

<sup>7</sup> Each of these will be addressed in more detail under the following issue.

- KCPL's discounted rates are unreasonable and unfairly discriminate between C&I customers, some of which may be competing with each other, by charging different amounts for identical usage under similar circumstances;
- The discounted rates send price signals that favor low load factor, high demand use for selective end use customers, which directly conflicts with the price signals sent other C&I customers in the same general service class;
- If certain C&I space heating equipment is desirable in KCPL's system, KCPL has other, more appropriate, approved programs by which it provides assistance and evaluation, and funding in the form of rebates that are targeted directly toward such equipment;
- Discounted rates for selective, behind-the-meter use create additional and unnecessary burdens and cost to administer, monitor and police which, as a practical matter, are not possible to fully implement or maintain; and
- The discounted rates seem to be a matter of simply continuing past practice, and it has not been shown by KCPL that such discounted rates are beneficial or needed for competitive reasons and may in fact have the potential to adversely impact competition. (Ex. 701, Herz Direct, pp. 4-5).

All of the foregoing flaws in the current discounted rates will be discussed in detail under issue II below. However, given these flaws in the current discounted rates, it should be obvious that the availability of KCPL's discounted all-electric rates should not be expanded, or broadened, to customers who are not all-electric customers.

Finally, it should also be noted that Staff has testified that KCPL's proposed tariff language regarding broadening the availability of the all-electric rates "is too vague."

(Ex. 129, Pyatte Rebuttal, page 18). However, Staff did not offer alternative tariff language to correct the vagueness. Therefore, no record evidence exists to fix the vagueness problem identified by Staff, and KCPL's proposal must be rejected by the Commission.

Therefore, for all of the reasons set forth above under this issue, in response to the question posed by this issue – should the qualification provision of the existing general service all-electric rate schedules be expanded as proposed by KCPL, and the all-electric winter energy rate increased an additional 5%, to make rate discounts available to existing and future customers who are not all-electric customers – Trigen emphatically answers “No,” the qualification provision of the existing general service all-electric rate schedules **should not be expanded** as proposed by KCPL to make rate discounts available to existing and future customers who are not all-electric customers. And, while an additional 5% increase may be a step in the right direction, KCPL has failed to show that such differential increase should not be significantly greater than 5% to avoid an effective subsidy of those customers receiving the discount rates<sup>8</sup>.

*II. Should the existing general service all-electric rate schedules and the separately metered space heating provisions of KCPL's standard general service tariffs be (1) eliminated; or (2) restricted to existing customers only until there is a comprehensive class cost of service study and/or cost-effectiveness study which analyzes and supports such tariffs and provisions as well as KCPL's Affordability, Energy Efficiency and Demand Response programs?*

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<sup>8</sup> See Footnote 6 above. If the KCPL proposal to expand availability of the tariff is approved, so should the 5% differential increase as provided in the Stipulation discussed below.

Trigen submits that, based on the competent and substantial evidence presented in this case, KCPL's general service all-electric discount rates and KCPL's separately metered space heating discount rates should be eliminated. If, however, the Commission decides not to eliminate these discount rates, these rates should at least be restricted to qualifying C&I customers currently being served under such discounted rates until there is a comprehensive class cost of service study and/or cost-effectiveness study which analyzes and supports such discount rate tariffs and discount rate provisions as well as KCPL's Affordability, Energy Efficiency and Demand Response programs.

As explained by Mr. Herz:

KCP&L has three general service categories applicable to commercial and industrial customers: small, medium and large. Within each of these three general service categories, KCP&L has two general service tariffs – one which I'll refer to as the standard general service tariff, the other is an "all electric" general service tariff.<sup>9</sup> The standard and all electric tariffs within each of the three general service categories have the same rate structure . . . and the same energy rates during the four summer months . . . but different energy rates for the winter season . . . Within each of the three general service categories, the all electric tariffs have substantially lower winter season energy rates . . . (Ex. 701, Herz Direct, page 7)

Furthermore, "In each of the small, medium and large standard general service tariffs, there is a special rate provision for separately metered space heating. Like the discounted all electric tariff rates, the separately metered space heating provision provides for a substantially lower winter season energy rate." (Ex. 701, Herz Direct, page 13). As discussed herein, and in the testimony of Mr. Herz, the general service all-electric discount rate tariffs and the separately metered space heating discount rate provisions are

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<sup>9</sup> The reference to standard general service tariffs in Mr. Herz' testimony includes the Small General Service Schedule SGS Sheet No. 9, Medium General Service Schedule MGS Sheet No. 10, and Large General Service Schedule LGS Sheet No. 11. The reference to all electric general service tariffs in Mr. Herz' testimony includes the Small General Service All Electric Schedule SGA Sheet No. 17, Medium General Service All Electric Schedule MGA Sheet No. 18, and Large General Service All Electric Schedule LGA Sheet No. 19. (Ex. 701, Herz Direct, page 7, footnote 1).

sometimes collectively referred to as “discounted rates for space heating” or “discounted rates related to commercial and industrial [C&I] space heating”.

As set forth above, any difference in charges must be based upon some difference in the service provided by the Company and must have some reasonable relation to the amount of difference, and cannot be so great as to produce unjust discrimination; the reasonableness of the basis of the classification must appear and competent and substantial record evidence must exist to support the classification as reasonable. This is accomplished by proof of the cost to the Company of serving customers under the various rates.

As mentioned above, and as admitted by Mr. Rush of KCPL (Tr. 1029-1030), although KCPL filed a class cost of service study in this case, its all-electric tariff customers and its separately metered space heating customers were rolled-in with the standard tariff customers within each general service category and therefore the cost of service study results shown are for the entire general service category or categories; KCPL has no cost of service support for either its existing general service all-electric rate discount or its existing separately metered space heating discount. (Ex. 701, Herz Direct, pp. 28-29). In fact, KCPL has provided no documentation that its discounted rates related to C&I space heating exceed the incremental cost of providing the service. (Ex. 701, Herz Direct, pp. 27-28). Furthermore, in its response to Trigen’s data request 11, KCPL admitted that “Within the context of the rate case, the Company did not perform any incremental or marginal cost studies related to serving our all-electric, electric space heating customers.” (Ex. 701, Herz Direct, page 12). At the hearing, Mr. Rush of KCPL admitted that KCPL did not file any incremental or marginal cost studies related to

serving its existing all-electric or electric space heating customers in this case. (Tr. 1031). It appears that the current general service electric heat rate discounts are not even based on KCPL's last cost of service case in 1996, but rather simply "maintained the price differentials between customers with electric heating that were in place prior to" KCPL's 1996 cost of service case. (Ex. 22, Rush Rebuttal, page 4). It is therefore not even clear that the rate differentials in place prior to 1996 were cost-based. (Ex. 702, Herz Surrebuttal, page 6). No evidence has been produced by KCPL to show that they were.

In addition to suffering from an absence of cost support, KCPL's discounted all-electric general service tariff rates and KCPL's tariff provisions for separately metered space heating rate discounts suffer from several substantial flaws which were listed under the preceding issue; these flaws will now be addressed in more detail.

KCPL's discounted rates are unreasonable and unfairly discriminate between C&I customers, some of which may be competing with each other, by charging different amounts for identical usage under similar circumstances. (Ex. 701, Herz Direct, page 4). During the winter season<sup>10</sup>, C&I customers served under KCPL's all-electric general service tariffs pay approximately 23% less for their *entire* electricity usage than such customers would pay under KCPL's standard general service tariff (Ex. 701, Herz Direct, pp. 8-9); C&I customers served under KCPL's separately metered space heating provision pay approximately 54% less for such separately metered electricity usage than they would pay under KCPL's standard general service tariff rate (Ex. 701, Herz Direct, pp. 14-15). Standard tariff customers wind up paying more for their winter service to subsidize these discounts. (Ex. 701, Herz Direct, page 15). It should also be noted that,

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<sup>10</sup> "Winter" is defined in KCPL's tariffs as 8 months of the year. (Tr. 1029).

even in the absence of the discounted rates for space heating, KCPL's standard general service rate design already has substantially lower rates in the winter than in the summer. (Ex. 701, Herz Direct, page 21; Ex. 702, Herz Surrebuttal, pp. 8-12).

It should be reiterated that the law requires that any difference in charges must be based upon some difference in the service provided by the Company and must have some reasonable relation to the amount of difference, and cannot be so great as to produce unjust discrimination; the reasonableness of the basis of the classification must appear and competent and substantial record evidence must exist to support the classification as reasonable<sup>11</sup>. Although there are reasonable and appropriate distinctions between customers which should be recognized in the design of a utility's rates (such as those which recognize cost responsibility differences among types and sizes of customers, and distinctions between low load factor and high load factor C&I customers), customers benefiting from KCPL's discounted rates for space heating receive preferential treatment to the detriment of the ineligible customers, *even though* such other customers may have similar characteristics and be served under similar circumstances. (Ex. 701, Herz Direct, page 17). General service tariff customers, often competitors that have identical monthly usage characteristics, should have the same electric bill and not be discriminated against depending on what the electricity may or may not be used for on the customer's side of the meter or whether or not a portion of the usage is submetered. (Ex. 701, Herz Direct, page 16). KCPL's current practice of charging different rates to similar general service customers for substantially the same service rendered under similar circumstances should be eliminated (*Id.*), and is in violation of Section 393.130 RSMo which provides that:

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<sup>11</sup> See the "Applicable Law" section of this brief, above.

2. No . . . electrical corporation . . . shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for . . . electricity . . . or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

3. No . . . electrical corporation . . . shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Continuation of these rate discounts would result in C&I customers that utilize the same electric service from KCPL under similar circumstances paying significantly different winter energy rates solely on the basis of the end-use of the electricity; discriminates to the benefit of C&I customers that add winter load to KCPL's system; and discriminates in favor of the C&I customer installing space heating equipment. (Ex. 702, Herz Surrebuttal, pp. 12-13).

The discounted rates send price signals that favor low load factor, high demand use for selective end use customers, which directly conflicts with the price signals sent



other C&I customers in the same general service class. (Ex. 701, Herz Direct, page 4).

As the Commission is aware, low load factor customers are typically not viewed as being as attractive or desirable as high load factor customers (Mr. Herz discusses the reasons for this at pages 18-19 of his Direct Testimony, Ex. 701). Even the Missouri Supreme Court has previously recognized that low load factor customers are not as profitable to the utility. *R. P. Smith v. Public Service Commission*, 351 S.W.2d 768 (Mo. 1961).

Accordingly, KCPL's tariffs generally recognize the concept of load factor differentiation (Ex. 701, Herz Direct, page 19); however, KCPL's discounted rates for space heating – both KCPL's discounted all-electric general service tariff rates and KCPL's tariff provisions for separately metered space heating rate discounts – actually favor low load factor customers<sup>12</sup>. (Ex. 701, Herz Direct, pp. 8-9, 14-15, 24-25, Schedule JAH-2). Such rates are contrary to the typical cost of service study that recognizes the efficiencies inherent in serving high load factor customers, are unreasonable and unsupported by any study or analysis, and simply do not make sense. (Ex. 701, Herz Direct, page 20).

Despite KCPL's claim that a benefit it realizes from the discount rates is that “space heating increases KCP&L's winter season loads while improving [KCP&L's] overall system utilization or load factor,” space heating is not increasing the load factor of KCPL's system. (Ex. 701, Herz Direct, page 24). As testified by Mr. Herz:

Using billing information provided by KCP&L, I calculated the load factor of the customers on the winter discount rates. As previously discussed, the load factors of the small and medium general service all electric [customers] are approximately equal to the standard tariff rate load factors. The load factors of the customers served under the separately metered space heating discounted rate are lower than the load factors of standard tariff rate customers. Based on this information, I do not believe that the offering of discounted space heating rates, particularly rates that

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<sup>12</sup> Although KCPL has indicated that space heating increases its load factor, this is not accurate. (Ex. 701, Herz Direct, pp. 24-25).

provide the largest discount on a customer's low load factor usage, has the intended effect of improving KCP&L's system load factor.

(Ex. 701, Herz Direct, pp. 24-25). Given that KCPL's standard general service rate design already has substantially lower rates in the winter than in the summer (Ex. 701, Herz Direct, pp. 17-22; Ex. 702, Herz Surrebuttal, pp. 9-12 and Schedules JAH-5 and JAH-6), KCPL's 1996 class cost of service and rate design case effectively eliminated the need for continuing space heating related rate discounts. (Ex. 702, Herz Surrebuttal, page 8).

*In State ex rel. Marco Sales, Inc. v. Public Service Commission*, 685 S.W.2d 216 (Mo. App. 1984), in which the court struck down a tariff filed by Laclede Gas Company to impose a surcharge on gas customers using electric heat pumps, although unnecessary from a dispositional standpoint the court noted that the alleged justification for grouping gas customers with electric heat pumps into a separate rate class raised the "specter of whether competent and substantial evidence existed to support the classification as reasonable" and not in violation of Section 393.130 RSMo; the court went on to note that "the evidence relied upon by Laclede and the Commission to fill the role of 'competent and substantial evidence' treads dangerously close to, if not in, the quicksands of speculation, conjecture and surmise." *Id.* at 221. In that case, the Laclede tariff was arguably designed to encourage gas use and discourage other forms of heating; in the present case, KCPL's tariffs are designed to encourage electric use and discourage other forms of heating. KCPL's alleged justification fails to constitute competent and substantial evidence and likewise amounts to nothing but speculation, conjecture and surmise.

If certain C&I space heating equipment is desirable in KCPL's system, KCPL has other, more appropriate, approved programs by which it provides assistance and evaluation, and funding in the form of rebates that are targeted directly toward such equipment. (Ex. 701, Herz Direct, page 4). Since KCPL's space heating related discounts do not appear to be achieving their supposed benefits of increasing the efficiency of KCPL's electric system and improving load factor by increasing winter season loads, it should be obvious that KCPL is using the wrong approach. As testified by Mr. Herz:

Instead of offering increasing winter rate discounts to selected low load factor customers, KCP&L should be targeting its efforts on its Affordability, Energy Efficiency and Demand Response programs. . . These programs provide rebates to the customer to promote energy efficiency that will benefit the participating customer and hopefully not be detrimental to other ratepayers. These programs require that the measure to be implemented by a customer is economically viable or it cannot be implemented. These programs are a better approach to marketing specific end uses than are discount rates. Discriminating rate treatment is not appropriate, as two customers with the exact same usage, regardless of end use, should be treated the same. If building space heating load is a reasonable objective for KCP&L, it should be achieved through programs specifically designed to examine the relative costs and benefits of such an undertaking, not with additional discounts embedded in the . . . tariff. (Ex. 701, Herz Direct, pp. 21-22).

These programs, which were approved in KCPL's regulatory plan case, include technical assistance from KCPL to the customer as well as rebates for the installation of space heating equipment. (Ex. 702, Herz Surrebuttal, page 13). In the regulatory plan case, the stipulation and agreement stated that the "current estimated cost associated with Demand Response, Efficiency and Affordability Programs for the five (5) year period is \$52.8 million split between Missouri (\$29 million) and Kansas (\$23.8 million) as detailed on Appendix C. The initially budgeted expenditures for the five (5) year period for Missouri

shall be \$13.8 million for Demand Response Programs, \$2.5 million for Affordability Programs, and \$12.7 million for Efficiency Programs.” (Ex. 143, page 46). Surely, this amount of money was not meant to be wasted, but was meant to be spent with a purpose. If space heating is deemed to be important, it should be encouraged through specifically designed programs such as these rather than through rate discrimination.

Discounted rates for selective, behind-the-meter use create additional and unnecessary burdens and cost to administer, monitor and police which, as a practical matter, are not possible to fully implement or maintain. (Ex. 701, Herz Direct, page 4). In order to apply discounted rates for selective end use, KCPL’s tariffs require it to have an administrative process that involves gathering information about the C&I customer’s space heating system and periodic reporting on the usage of these customers. (Ex. 701, Herz Direct, page 22). Although KCPL indicates it has the capability to monitor usage under these rate schedules, it is not clear that KCPL has a process under which it would remove a customer from a discounted rate if the customer no longer meets the requirements. (Ex. 701, Herz Direct, page 23). In fact, KCPL indicated in response to a data request that “Only in the event that a customer would contact KCP&L and inform us of a significant change in the size and design of equipment would KCP&L have cause to revisit the availability of an all electric tariff for a customer.” (Ex. 701, Herz Direct, page 23; KCPL response to Trigen data request number 25). This is inadequate, because if a customer no longer meets the requirements of the discounted rate, that customer’s use is no different from a customer not receiving the discount. Not only is the continued qualification of some customers for the discounted rate somewhat questionable, but it

does not appear that the energy usage of these customers is increasing the efficiency of KCPL's system. (*See*, Ex. 701, Herz Direct, pp. 24-26).

The discounted rates seem to be a matter of simply continuing past practice, and it has not been shown by KCPL that such discounted rates are beneficial or needed for competitive reasons and may, in fact, adversely impact competition (Ex. 701, Herz Direct, pp. 4-5, 16-17) or even have the potential to amount to an unfair competitive practice on the part of KCPL. KCPL's current rate design has a significant differential between the standard general service tariff summer energy rates and the winter energy rates. (Ex. 702, Herz Surrebuttal, pp. 10-11, Schedules JAH-5 and JAH-6). Therefore, the availability of low cost generation in the winter months (referred to by KCPL witness Mr. Rush) is already recognized in the standard general service tariff rate design, which KCPL claims to be the result of a lengthy CCOS and rate design case in 1996. (Ex. 702, Herz Surrebuttal, page 11). However, it appears that the all-electric rate discounts and the separately metered space heating discounts were not derived in a similar manner and are not even based on the results of KCPL's last cost of service case in 1996; rather, these preferential rates simply "maintained the price differentials between customers with electric heating that were in place prior to" KCPL's 1996 cost of service case. (Ex. 22, Rush Rebuttal, page 4). It is therefore not even clear that the rate differentials in place prior to 1996 were cost-based. No evidence has been produced to show that the pre-1996 rate differentials were cost based. (Ex. 702, Herz Surrebuttal, page 6). KCPL has presented no testimony or analyses demonstrating that the discounted rates related to space heating are needed, either by KCPL or its C&I customers, for competitive reasons. (Ex. 701, Herz Direct, page 26). However, if selective price cuts or tariff discounts are

allowed, such as KCPL's space heating related discounts, that are specifically directed at the customer base of an alternative energy supplier, the Commission should proceed with extreme caution so as not to undermine or encourage the elimination of such competition. (*Id.* at 26-27).

For all of the reasons discussed above, the Commission should eliminate all of KCPL's general service space heating related rate discounts – *i.e.*, KCPL's existing all-electric general service tariffs should be terminated *and* the separately metered space heating provisions should be eliminated from KCPL's standard general service tariffs. (Ex. 701, Herz Direct, page 5; Ex. 702, Herz Surrebuttal, page 13). However, in the event that the Commission does not eliminate all of KCPL's general service space heating related rate discounts at this time, the availability of such discounted rates should at least be restricted to those qualifying C&I customers currently being served under such all-electric tariffs or separately metered space heating tariff provisions until a comprehensive class cost of service study and rate design investigation and/or a cost-effectiveness study which analyzes and supports such tariffs and provisions as well as KCPL's Affordability, Energy Efficiency and Demand Response programs (as referenced in the rebuttal testimony of Staff witness Pyatte, Ex. 129 at page 17) has been completed, reviewed and presented for the Commission's consideration. (Ex. 701, Herz Direct, pp. 5-6; Ex. 702, Herz Surrebuttal, pp. 6-7, 13). In that event, KCPL should be ordered to present such a study as soon as possible and to implement a phase out plan for the remaining C&I customers served under the all-electric general service tariffs and the separately metered space heating tariff provisions. (Ex. 701, Herz Direct, page 6). In addition, KCPL should be required to investigate and determine whether the C&I

customers currently served under the all-electric general service tariffs and the separately metered space heating tariff provisions meet the eligibility requirements for those discounted rates; to remove those customers which the investigation determines are no longer eligible for such discounts; and to monitor and police the eligibility requirements of those customers receiving the discount rates until the discount rates are phased out. (*Id.* at 5-6).

**Response to Stipulation and Agreement Regarding Class Cost-of-Service and Rate Design Issues.**

On November 9, 2006, Staff filed, on behalf of several parties<sup>13</sup> to this case, a Stipulation and Agreement Regarding Class Cost-of-Service and Rate Design Issues (the “Stipulation”). The Stipulation stated that “The Signatories have reached an agreement (“Agreement”) that resolves among them, **with the exception of those issues listed under the subheading “Availability of General Service Space-Heating Rate Discounts,”** all of the Rate Design/Cost-of-Service issues listed under the heading “Class Cost-of-Service and Rate Design,” in the List of Issues.” (emphasis added) The issues excepted from the Stipulation are those issues addressed above in this brief.

Furthermore, Appendix A to the Stipulation states that the “general service space heating and all-electric issues (broadening availability, restricting availability to existing customers or totally eliminating the rate schedules) will be litigated.” Again, these are the issues addressed above in this brief. Therefore, the Stipulation does not affect the issues addressed in this brief, nor should it affect in any way the Commission’s deliberations on these issues. Although Appendix A provides that general service space heating and all-electric winter rates will be increased by 5 percentage points more than

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<sup>13</sup> Trigen was not a signatory party to the Stipulation.

each class' general application rates, this provision of the Stipulation *will only come into play if* the Commission decides to not eliminate these rates, and does not provide support for the continuation of these rates; if it did, Appendix A would not further provide that the "general service space heating and all-electric issues (broadening availability, restricting availability to existing customers or totally eliminating the rate schedules) will be litigated." For the reasons discussed in detail above, Trigen continues to believe that – and the weight of the evidence supports the position that – these rates should be eliminated. Because the Stipulation does not affect the issues addressed in this brief but, rather, specifically excepts these issues from resolution under the Stipulation and also specifically provides that the issues will be litigated (which they were), and since the Stipulation should not in any way affect the Commission's deliberations on these issues, Trigen does not oppose the Stipulation.

## **CONCLUSION**

For all of the foregoing reasons, Trigen-Kansas City Energy Corporation respectfully requests that the Commission adopt its position as set forth above on each of the issues set forth herein.

Respectfully submitted,

**/s/ Jeffrey A. Keevil**

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing was sent to counsel for parties of record by depositing same in the U.S. Mail, first class postage prepaid, by hand-delivery, or by electronic mail transmission, this 17th day of November, 2006.

**/s/ Jeffrey A. Keevil**

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