

**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 Variance       )  
of Certain Provisions of the Report and Order       )       Case No. EE-2008-0238  
in Case No. ER-2007-0291.                               )

**MISSOURI GAS ENERGY’S**  
**MOTION TO DISMISS, OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY**  
**DETERMINATION, AND SUGGESTIONS IN SUPPORT**

COMES NOW Missouri Gas Energy (“MGE”), an operating division of Southern Union Company (“Southern Union”), by counsel, and pursuant to the Order Establishing Procedural Schedule issued by the Missouri Public Service Commission (the “Commission”) on April 8, 2008, hereby moves for an order dismissing the application filed herein by Kansas City Power & Light Company (“KCPL”). In support of this Motion, MGE respectfully states to the Commission as follows:

1. MGE is a division of Southern Union Company which is duly incorporated under the laws of the State of Delaware and conducts business in Missouri under the fictitious name of Missouri Gas Energy. MGE currently conducts business as a “gas corporation” and provides natural gas service to approximately 500,000 customers in the Missouri counties of Andrew, Barry, Barton, Bates, Buchanan, Carroll, Cass, Cedar, Christian, Clay, Clinton, Dade, Dekalb, Greene, Henry, Howard, Jackson, Jasper, Johnson, Lafayette, Lawrence, McDonald, Moniteau, Pettis, Platte, Ray, Saline, Stone, and Vernon.

2. The Commission’s Rules contemplate the filing of applications regarding “variances or waivers from commission rules and tariff provisions, as well as those statutory provisions which may be waived.” Rule 4 CSR 240-2.060(4). Notably, however, on January 23, 2008, KCPL filed with the Commission an application for waiver or variance from **certain**

**provisions of the Report and Order issued in KCPL's last rate case**, Case No. ER-2007-0291, with regard to KCPL's customers and KCPL's general service all-electric tariffs and separately-metered space heating rates. Whether KCPL's application is characterized as a request for waiver/variance from a Commission order or as a request for waiver/variance from tariff provisions, the application should be dismissed.

3. MGE was a party to Case No. ER-2007-0291 and was primarily interested in the rates and tariff provisions which were determined to be just and reasonable in said case but which are now at issue herein. With its Report and Order issued December 6, 2007, effective December 16, 2007, the Commission found as follows:

Regardless of what the stipulation in EO-2005-0329 does, or does not, say, the Commission was not a party to it, and is not bound by it. . . . Waiting until anywhere from 2009 to 2012 to address the rate disparities that the separately-metered space heating and all-electric tariff customers pay compared to the general service tariff customers is waiting too long.

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. . . the competent and substantial evidence supports the positions of Staff and Trigen, and finds the issue in favor of Staff and Trigen. The Commission is persuaded by Trigen's argument that last year's Report and Order that limited these discounts to existing customers could exacerbate, rather than ameliorate, the actual or potential problems the discounts cause by allowing even more KCPL customers to migrate to those discounts. In a future rate case, the Commission might be willing to consider eliminating the discounts altogether. Allowing even more customers to use those discounts flies in the face of a possible move, supported by Staff, towards eliminating them completely.

Further, in its Order Regarding Motions for Rehearing and Request for Clarification, dated December 21, 2007, the Commission held as follows:

The Commission intended to adopt Trigen's alternative, and to limit those discounted rates to customers being served under such rates as of January 1, 2008. This will allow KCPL to keep the almost 200 customers who signed up for the discounted rates in 2007 on those 2 discounted rates, while ending those discounts as of an alternative date suggested by Trigen.

These findings are final and conclusive and may not be collaterally attacked in this proceeding. RSMo. §386.550 (“In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.”).

4. Generally, MGE is opposed to the Commission allowing KCPL to continue providing service under rates which are discriminatory. More specifically, MGE asserts that it is unreasonable and unlawful for KCPL to be granted the requested waivers or variances, because, since the Report and Order was issued in Case No. ER-2007-0291, there has been no change in facts or circumstances which would warrant the issuance of said waivers or variances.<sup>1</sup> The above-referenced findings regarding the discounted rates are final and conclusive and binding upon KCPL and its customers.

WHEREFORE, for the reasons stated herein, MGE respectfully requests that the Commission issue an order dismissing KCPL’s application. MGE requests such other and further relief as the Commission deems just and proper under the circumstances.

Respectfully submitted,

/s/ Diana C. Carter  
Diana C. Carter MBE #50527  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 E. Capitol Avenue  
P. O. Box 456  
Jefferson City, MO 65102  
Phone: (573) 635-7166  
Fax: (573) 634-7431  
DCarter@brydonlaw.com

ATTORNEYS FOR MISSOURI GAS ENERGY

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<sup>1</sup> It should be noted, however, that MGE does not object to the discounted rate being made available to those KCPL customers which both qualified for and applied for the rate prior to January 1, 2008, but, because of an administrative or clerical error on the part of KCPL, were not placed on said rate before January 1, 2008.

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was hand-delivered, mailed by U.S. mail, or electronically transmitted on this 18<sup>th</sup> day of April, 2008, to all parties of record.

\_\_\_\_\_/s/ Diana C. Carter\_\_\_\_\_