

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 Service to Implement its Regulatory)
Plan.)

Case No. ER-2007-0291

**KANSAS CITY POWER & LIGHT COMPANY'S
APPLICATION FOR REHEARING AND STAY, OR IN THE ALTERNATIVE,
APPLICATION FOR WAIVER OR VARIANCE
FROM DECISION FOR SPECIFIC CUSTOMERS**

COMES NOW Kansas City Power & Light Company ("KCPL" or "Company") and, pursuant to Section 386.500, RSMo.,¹ 4 CSR 240-2.160 and 4 CSR 240-2.060(4), respectfully applies for rehearing of the Commission's *Report and Order* in the above-captioned proceeding which was issued December 6, 2007 ("*Report and Order*") regarding the resolution of Issues 13a, 13b and 13c, and requests a stay of the Report and Order regarding resolution of Issue 13c, which pertains to the continued availability of KCPL's General Service All-Electric and Space-Heating rates. Alternatively, the Commission should grant KCPL a waiver or variance from the decision related to Issue 13c, and allow KCPL to grandfather any existing KCPL customer who has entered into contracts or purchased heating equipment or committed to make such decisions, in reliance upon the existence of the availability of KCPL's all-electric and space-heating rates, as more fully described below.

¹ Statutory references are the Missouri Revised Statutes (2000), unless otherwise noted.

Legal Principles That Govern Applications For Rehearing

1. Commission decisions must be lawful (*i.e.*, the Commission must have statutory authority to do what it did) and must be reasonable. *State ex rel. Atmos Energy Corp. v. Public Service Commission*, 103 S.W.3d 753, 759 (Mo. Banc 2003); *State ex rel. Alma Telephone Company v. Public Service Commission*, 40 S.W.3d 381 387 (Mo.App. W.D. 2001). The decision is reasonable only if it is supported by competent and substantial evidence on the whole record. *Alma*, 40 S.W.3d at 387. Moreover, the decision must not be arbitrary, capricious or unreasonable. Section 536.140(2)(6), RSMo.

2. Under Missouri law, the absence of adequate findings of fact and conclusions of law also renders a Commission order unlawful. *Friendship Village v. Public Service Commission*, 907 S.W.2d 339, 344 (Mo.App.W.D.1995). Section 386.420, RSMo. requires that the findings of fact must not be completely conclusory. *State ex rel. Laclede Gas Company v. Public Service Commission*, 103 S.W.3d 813, 816 (Mo.App.W.D. 2003). Section 536.090, RSMo. supplements Section 386.420, and requires that the Commission's findings provide insight into how controlling issues should be resolved. *Id.* The findings of fact must be sufficiently definite and certain so that a reviewing court can review the decision intelligently to ascertain if the facts afford a reasonable basis for the decision without resorting to the evidence. *Id.*

3. A review of the evidentiary record in this case and applicable law demonstrates that certain issues decided by the Commission in its *Report and Order* fail to comply with the above-referenced principles in certain respects and that therefore, rehearing should be granted as to certain issues. Those issues are outlined below.

Issues on Which Rehearing is Sought

A. Issue 13a and 13b—Increases to KCPL's general service all-electric tariffs and separately-metered space-heating tariffs

4. Trigen-Kansas City Energy Corp. ("Trigen") and Staff requested that the Commission increase the separately-metered space-heating rates by 10% on a revenue-neutral basis. However, Trigen and Staff presented no competent and substantial evidence to justify their position that the existing rate structure should be dramatically changed. KCPL, on the other hand, opposed increasing these rates by more than the system-average increase approved in the case, and supported continuation of the Commission-approved rate structure that has existed since 1996.

At page 79 the Order stated:

Decision

KCPL's general service all-electric tariff rates and separately metered space heating rates should be increased more (i.e., by a greater percentage) than KCPL's corresponding standard general application rates by rates by 10% on a revenue neutral basis, prior to any shifts in class responsibility. Also, any approved reduction in revenue responsibility for the Medium General Service Class should not be applied to the separately metered space heating rates. KCPL's first block of the all-electric rate's winter energy blocks should be increased by 10%. KCPL's second block of the all-electric rate's winter energy blocks should be increased by 5%.

Also, at page 80, the same Decision appears.

5. This decision is unlawful and unreasonable because there is no competent and substantial evidence to support this decision. The Commission's order on this issue is merely based upon Staff witness James Watkin's "opinion" that there is "no justification for continuing the non-residential, all-electric and separately-metered space-heating rates." Trigen and Staff produced no cost of service study or other competent and substantial evidence to support this "opinion."

6. In fact, the Commission recognized that it needed cost of service study information before it decided the availability of the general service all-electric tariffs and separately-metered space-heating rates. (Order, p. 85) As a result, the Commission "will require KCPL, not later than its next rate case, to present complete cost of service and/or cost-effectiveness studies and analysis of KCPL's general service all-electric tariffs and separately-metered 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 tariffs and separately-metered space-heating rates." (Order, p. 85).

7. In effect, the Commission's decision has placed the cart before the horse, and apparently reached a conclusion that the all-electric rates should be phased out before it has any cost of service study results to justify this dramatic conclusion. Until additional cost information is available, the Commission should not change the rate relationships that currently exist among the various customer classes, including the General Service All-Electric and Separately-Metered Space-Heating rates which have been approved for KCPL since the 1996 Rate Design proceeding, Case No. EO-94-199. Both Trigen and Staff supported the Company's rate design at that time. The Commission should reject their attempts to modify KCPL's rate structure in this proceeding, without any supporting evidence to justify the dramatic changes being proposed.

8. In this case, KCPL was precluded from presenting cost of service studies to justify its all-electric and space-heating rates since it had agreed in the Regulatory Plan Stipulation And Agreement in Case No. EO-2005-0329 that it would not file new or updated class cost of service studies in the 2007 Rate Case. Regarding the 2007 Rate Case, the Commission approved the following provision at page 35 in the 2005 Regulatory Plan Stipulation related to the filing of new or updated class cost of service studies:

(iv) Rate Design. The Signatory Parties agree not to file new or updated class cost of service studies or to propose changes to rate structures in Rate Filing #2 [i.e., 2007 Rate Case].

As a result, KCPL was precluded from providing new or updated class cost of service studies in this case to support its existing rate structures. It is now unreasonable and unlawful for the Commission to modify those rate structures, based only upon an “opinion” of Staff and Trigen that the long-approved rate structure is no longer cost-justified.

9. As the Commission’s *Report And Order* in Case No. ER-2006-0314 (“2006 Rate Case”) noted, KCPL’s general service rate design has been in place for many years with the approval of the Commission. KCPL participated in an extensive Class Cost of Service Study and rate design case in 1996. At that time, rates were established based on the Class Cost of Service Study, and rate design changes were made that changed the overall price structure. The Commission’s 2006 Rate Case *Report And Order* also noted that KCPL and numerous other parties to this proceeding had reached a comprehensive settlement of the rate design and class cost of service study issues. (2006 Rate Case, *Report And Order*, p. 83). The Commission found that no party had conducted a cost study in the 2006 Rate Case to determine the impact on customers if the Commission adopted Trigen’s recommendation that the all-electric rates for commercial and industrial customers should be totally eliminated. As a result, the Commission decided not to modify the general service all-electric rate design that has been in effect since 1996. (2006 Rate Case, *Report And Order*, p. 82-83).

10. The Commission should not now undo its decision in the 2006 Rate Case just one year later, and adversely impact customers who are receiving service under the lawfully approved and existing all-electric and separately-metered space heating tariffs while the Commission is continuing to evaluate the cost justification of these tariffs. As a practical matter,

since the Commission has mandated that KCPL file a comprehensive class cost of service study in the 2008 Rate Case, it would be reasonable to wait until the evidence is filed before the Commission renders a decision on this issue. Otherwise, the Commission decision is arbitrary and capricious, and certainly not based upon competent and substantial evidence. The Commission should therefore grant a rehearing on Issue 13a and Issue 13b.

B. Issue 13c—Availability of KCPL's general service all-electric tariffs and separately metered space heating rates to existing customers at existing locations

11. As the Commission knows, a large number of KCPL's existing customers are in the process of completing major expansions and new construction projects in downtown Kansas City and throughout the Missouri service territory of KCPL. These existing customers have relied upon KCPL's tariffs as they made their decisions regarding utility services. In this proceeding, Trigen has sought to have the Commission restrict the availability of these tariffs to all-electric customers and to separately-metered space-heating customers, and thereby retroactively alter the economics of the various decisions made by these existing customers and their choice of heating sources. Although the Commission properly resisted Trigen's attempts to adversely impact these customers who were completing such construction projects during the 2006 Rate Case, unfortunately, the Commission has reversed its decision on this issue in this 2007 Rate Case. The decision of the Commission will alter the economics of the customers with construction projects underway, as well as existing customers. The Commission's decision will restrict any new customer who may locate and elect service at a location currently receiving service under the all-electric or separately-metered space-heating tariff from qualifying to receive service under those tariffs.

12. Additionally, there appears to be confusion around the date in which the rate is no longer available for customers. KCPL has added nearly 200 customers to the all-electric or

separately-metered space-heating tariffs during 2007. Based on this confusion, Staff filed a motion for clarification of the *Order* to address this concern. Regardless of the outcome of that decision, restricting the availability of the all-electric or separately-metered space-heating tariffs causes customers who were actively evaluating all-electric and separately-metered space-heating options to reconsider their options and potentially incur significant incremental cost, based upon the decision of the Commission for which these customers had no prior notice.

At page 82 the Order stated:

Decision

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 schedule (i.e., the all-electric or separately metered space heating rate schedule they are on as of such date).

13. Once again, there is no competent and substantial evidence cited to support this decision, except that Staff now supports Trigen's position on this issue. This is not a reason to adversely impact such a large number of customers (*i.e.*, approximately 47) that have relied upon the availability of these all-electric and space-heating tariffs as they work towards completion of their construction projects. Additionally, KCPL is aware of more than 250 commercial and industrial customers who are in the process of evaluating all-electric and space-heating options, but have not yet made a final decision about their service and energy requirements. KCPL anticipates that these customers will make those decisions in the very near future. These customers represent nearly 35 million square feet of construction. In addition, and as previously noted, there is uncertainty of the Commission's ruling on the initial restriction to the tariffs that may have an impact on as many as an additional 200 customers who connected to service under

these tariffs during 2007. Most importantly, there are inadequate findings of fact and conclusions of law to support this decision.

14. The Commission's decision will also have a negative impact on customers who are developing properties with the plan to eventually transfer these properties after completion to new customers. Such new customers will no longer have available to them the same all-electric or separately-metered space heating rates.

15. KCPL has been actively promoting various energy efficiency and demand response programs which are based upon the premise that such programs will benefit all customers. The Commission's decision will adversely impact KCPL's efforts in this regard since several of these programs are intended to address electric heating during off-peak periods. These programs recover the incremental cost of the services and make a contribution to fixed costs. The competent and substantial evidence in this proceeding demonstrated that KCPL's parallel generation tariff of 2.4 cents per KWh reflects KCPL's incremental cost of providing energy. See Ex. 20, Rush Rebuttal at 3. All of KCPL's General Service All-Electric and Separately-Metered Space Heating rates exceed the Company's incremental costs and provide a substantial contribution to the fixed costs. As a result, these rates promote energy efficiency and benefit all customer classes.

16. This issue is currently on appeal before the Cole County Circuit Court in Case No. 07AC-CC00133. The Commission should not reverse its position on this issue while the matter is being fully considered by the appellate courts. For these reasons, the Commission should grant a rehearing of Issue 13c.

REQUEST FOR STAY

17. KCPL respectfully requests that the Commission grant a rehearing and stay of the effect of the Commission's decision on Issue 13c, or in the alternative, grant KCPL a waiver or

variance from this decision, and 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. Otherwise, the adverse impact on such customers will be significant, and the public outcry is likely to be great. Customers have not had reasonable notice that such tariffs would be rendered unavailable to them at the critical time that they were making their economic decisions regarding their energy sources for their newly constructed facilities.

APPLICATION FOR WAIVER OR VARIANCE

18. In the event the Commission denies rehearing and stay of the decision on Issue 13c, a waiver² of the Commission's holding with respect to that issue is warranted concerning a finite list of KCPL customers. KCPL has identified a number of customers who do not currently receive service under the all-electric tariffs or separately-metered space-heating rates, but nonetheless have made or have committed to make substantial investments based upon the presumed continued availability of those rates. Illustrative examples are the Performing Arts Center presently under construction and the GSA - Richard Bolling Federal Building, which have purchased equipment, and in the case of the GSA Building, is in the process of installing such equipment. Both of these customers are in downtown Kansas City, Missouri.

19. Based on the availability of KCPL's general service all-electric tariffs and separately-metered space-heating rates, the Performing Arts Center was designed and is being constructed as an all-electric facility. In addition, KCPL understands that the Performing Arts Center 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.

² For purposes of the provisions of 4 CSR 240-2.060(1), KCPL hereby incorporates by reference paragraphs 1-5, inclusive, of the Application filed in this proceeding on February 1, 2007.

The decision to purchase that equipment was premised upon the continued availability of KCPL's general service all-electric tariffs and separately-metered space heating rates. However, the Performing Arts Center is not presently being served under those rates. As such, as KCPL reads the *Report and Order*, the Commission prohibits KCPL from providing the all-electric tariffs or separately-metered space heating rates to the Performing Arts Center.

20. The Richard Bolling Federal Department Building (GSA Building) is an existing customer in downtown Kansas City, which is currently receiving electric service under the standard rate. This customer is in the process of replacing existing heating equipment with energy efficient electric heating equipment. As with the Performing Arts Center, the GSA Building relied upon the availability of the all-electric tariffs in making its decision to install electrical heating equipment.

21. If KCPL applies the *Report and Order* to all its customers as written, the Commission's decision will suddenly and dramatically alter the economics of millions of dollars worth of investment by those customers. KCPL understands the Commission's intent to limit future availability of KCPL's general service all-electric tariffs and separately-metered space-heating rates until such time as those rates are cost justified. Nevertheless, KCPL believes that it likely was not the Commission's intent to significantly alter the underlying rationale for the investment decisions of a number of KCPL's customers.

22. Attached as Attachment 1 (Highly Confidential) is a list of customers that KCPL believes are at various stages of design and construction of projects that contemplate use of KCPL's general service all-electric tariffs and separately-metered space-heating rates. In each instance, KCPL believes the customer has made a financial or contractual commitment with suppliers or contractors to purchase electric heating equipment and other related all-electric infrastructure.

23. In the event the Commission denies KCPL's request for rehearing and stay of Issue 13c, KCPL respectfully requests a waiver of the *Report and Order* to the extent necessary to make KCPL's general service all-electric tariffs and separately-metered space-heating rates available to the customers listed in Attachment 1 (Highly Confidential). Each of these customers made investment decisions based on the continued availability of KCPL's general service all-electric tariffs and separately-metered space-heating rates. It would be inequitable, and perhaps a regulatory taking, to change at this late stage such a fundamental underpinning to their investment decisions.

WHEREFORE, the Company hereby respectfully requests that the Commission grant a rehearing on Issues 13a, 13b and 13c, and a stay of the decision related to Issue 13c, or in the alternative, grant KCPL a waiver or variance from this decision, as more fully described herein, and allow KCPL to grandfather any existing KCPL customer who has entered into a contract for, or purchased heating equipment or committed to make decisions, in reliance upon the existence of the availability of KCPL's all-electric and space-heating rates.

Respectfully submitted,

/s/ James M. Fischer

James M. Fischer, MBN 27543
email: jfischerpc@aol.com
Fischer & Dority, P.C.
101 Madison Street, Suite 400
Jefferson City, MO 65101
Telephone: (573) 636-6758
Facsimile: (573) 636-0383

William G. Riggins, MBN 42501
General Counsel
Curtis Blanc, MBN 58052
Kansas City Power & Light Company
1201 Walnut, 20th Floor
Kansas City, MO 64106-2124

Telephone: (816) 556-2785
Facsimile: (816) 556-2787
email: bill.riggins@kcpl.com
curtis.blanc@kcpl.com

Karl Zobrist, MBN 28325
Roger W. Steiner, MBN 39586
Sonnenschein Nath & Rosenthal LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
Telephone: (816) 460-2545
Facsimile: (816) 531-7545
email: kzobrist@sonnenschein.com
email: rsteiner@sonnenschein.com

Attorneys for Kansas City Power & Light Co.

CERTIFICATE OF SERVICE

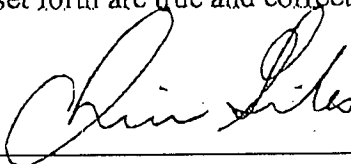
I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 14th day of December, 2007, to all counsel of record.

/s/ James M. Fischer
James M. Fischer

VERIFICATION

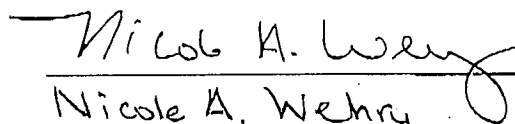
State of Missouri)
) ss.
County of Jackson)

I, Chris Giles, being duly affirmed according to law, depose and say that I am authorized to make this affidavit on behalf of Kansas City Power & Light Company being Vice-President – Regulatory Affairs, and that the facts above set forth are true and correct to the best of my knowledge, information and belief.



Chris Giles

Subscribed and affirmed to before me this 14th day of December, 2007.



Nicole A. Wehry
Notary Public

My commission expires:

