

**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.	)	

**REPLY TO KCP&L’S RESPONSE TO APPLICATIONS FOR  
REHEARING AND MOTIONS FOR CLARIFICATION**

COMES NOW Intervenor Trigen-Kansas City Energy Corporation (“Trigen”), pursuant to 4 CSR 240-2.080, by and through the undersigned counsel, and for its Reply to KCP&L’s Response to Applications for Rehearing and Motions for Clarification (“Response”) filed on January 10, 2007, in the above-captioned case respectfully states as follows:

1. In its Report and Order in this case the Commission stated that “The Commission will adopt . . . Trigen’s alternative suggestion, that the Commission restrict the existing general service all-electric rate schedules and the separately metered space heating provisions of KCPL’s standard general service tariffs to existing customers **until there is a comprehensive class cost of service study.**” (emphasis added) In Trigen’s Application for Clarification or Rehearing, among other matters, Trigen requested that the Commission clarify that the Report and Order adopted Trigen’s alternative recommendation **in its entirety**, and specifically order KCPL **to conduct** a comprehensive class cost of service study and rate design investigation and/or a cost-effectiveness study which analyzes and supports KCPL’s general service all-electric rate schedules and the separately metered space heating provisions of KCPL’s standard

general service tariffs as well as KCPL's Affordability, Energy Efficiency and Demand Response programs and to file such study at a specified time.

2. Although the Report and Order did not specifically order KCPL to conduct a comprehensive class cost of service study and to file such study at a specified time, Trigen believes such was clearly contemplated by the Commission's Report and Order. In its Response, KCPL now appears to object to conducting such a study, despite not having sought clarification or rehearing of this provision itself. Furthermore, in its Response KCPL alleges<sup>1</sup> that it has already completed a comprehensive class cost of service study as part of this proceeding; however, as the Commission's Report and Order appears to recognize on page 82, 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 in KCPL's study are for the entire general service category or categories so that the cost of service study results are essentially meaningless as to the all-electric and separately metered space heating customers. (Report and Order, page 82) Therefore, the study was not as "comprehensive" as KCPL would have the Commission believe.

3. Rather than refute Trigen's position, KCPL's Response merely serves to highlight why the clarification requested by Trigen is needed. The Commission should clarify that the Report and Order adopted Trigen's alternative recommendation **in its entirety**, and specifically order KCPL **to conduct** a comprehensive class cost of service study and rate design investigation and/or a cost-effectiveness study which analyzes and

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<sup>1</sup> In its Response KCPL also refers to the Regulatory Plan Stipulation; however, Trigen was not a party in that case, nor, obviously, a signatory to that Stipulation.

supports KCPL's general service all-electric rate schedules and the separately metered space heating provisions of KCPL's standard general service tariffs as well as KCPL's Affordability, Energy Efficiency and Demand Response programs and to file such study at a specified time.

4. In Trigen's Application for Clarification or Rehearing, among other matters, Trigen requested that the Commission clarify that "existing customers," as used in the quotation from the Commission's Report and Order set forth in paragraph numbered 1 above, refers to customers currently being served under the all-electric tariffs or separately metered space heating tariff provisions [as applicable] as of December 31, 2006, and that KCPL is required to reflect this restriction in its tariffs. As set forth in Trigen's Application for Clarification or Rehearing, *only* this interpretation would be consistent with how the term "existing customers" was used throughout this proceeding and in the evidence on the record in this case. *See, e.g.*, Ex. 701, Herz Direct, pp. 5-6; Ex. 702, Herz Surrebuttal, pp. 6-7, 13. Furthermore, unlike KCPL's interpretation of "existing customers," Trigen's interpretation, as set forth in its requested clarification, is also consistent with the general definition of "Customer" as contained within KCPL's tariffs:

1.04 CUSTOMER: Any person applying for, receiving, using, or agreeing to take **a class of electric service supplied by the Company under one rate schedule at a single point of delivery** at and for use within the premises either (a) occupied by such persons, or (b) as may, with the consent of the Company, be designated in the service application or by other means acceptable to the Company. (emphasis added)

Unlike Trigen, KCPL's Response has not cited any record evidence to support its interpretation on this matter, nor has it pointed to any record evidence to refute Trigen's interpretation. To interpret "existing customers" to mean other than customers currently

being served under the all-electric tariffs or separately metered space heating tariff provisions would effectively eviscerate the Commission's Report and Order; however, that is precisely what KCPL has asked the Commission to do in its Response. Only when KCPL filed its tariffs, purportedly in "compliance" with the Commission's Report and Order, did it appear that KCPL might be attempting to apply a much more expansive definition of the term, so as to render the Commission's restriction essentially meaningless. In its Response, KCPL has confirmed that it is, in fact, planning to interpret the term in such a way so as to render the Commission's restriction essentially meaningless unless ordered by the Commission to interpret the term otherwise – *i.e.*, ordered to apply the definition of "existing customers" used throughout the proceeding and in the evidence.

5. In its Report and Order, the Commission stated that it is concerned about the enormous discounts currently being received by customers on these discounted rates (see Report and Order page 83). Under KCPL's interpretation of "existing customers," even more customers could start receiving these huge discounts and continue to receive such discounts until a cost study is conducted at some future undetermined date. Furthermore, to adopt KCPL's interpretation would do nothing to fix the numerous flaws in these discounted rates which were identified and discussed in detail in the record evidence of this proceeding and in Trigen's briefs<sup>2</sup> – *i.e.*, during the study period and until the results of such study could be implemented, the problems would continue. In

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<sup>2</sup> For example: unfair and unreasonable discrimination between C&I customers, some of which may be competing with each other, by charging different amounts for identical usage under similar circumstances; favoring low load factor, high demand use customers; creating additional and unnecessary burdens and cost to administer, monitor and police which, as a practical matter, are not possible to fully implement or maintain; the discounted rates are a matter of simply continuing past practice and are not cost-based; the discounted rates have the potential to adversely impact competition. (*See, e.g.*, Ex. 701, Herz Direct, pp. 4-5, 12, 27-29).

fact, as new customers took advantage of the existing discounted rates, the problems would continue to grow and magnify. Trigen believes that KCPL's interpretation is in conflict with the intent of the Commission as reflected in the Commission's Report and Order. The recommendation put forth by Trigen, and adopted by the Commission, was to "grandfather" the discount rate customers who are currently being subsidized, but *not* to allow new converts to these discount rates prior to a cost of service study proving their justification (if it is even possible to prove their justification). Under KCPL's approach, the subsidized rate problem would not be stopped, but exacerbated. Furthermore, any potential discount rate customers who constructed in reliance on the tariffs continuing<sup>3</sup> did so at their peril – "The Missouri Supreme Court has held that there is no protected property interest in a particular utility rate." *State ex rel. Coffman v. Public Service Commission*, 121 S.W.3d 534, 539 (Mo. App. 2003).

6. Once again, rather than refute Trigen's position, KCPL's Response merely serves to highlight why the clarification requested by Trigen is needed. The Commission should clarify that "existing customers" refers to customers currently being served under the all-electric tariffs or separately metered space heating tariff provisions [as applicable] as of December 31, 2006, and that KCPL is required to reflect this restriction in its tariffs.

7. In Trigen's Application for Clarification or Rehearing, among other matters, Trigen requested that the Commission clarify that the Report and Order adopted Trigen's alternative recommendation **in its entirety**, and specifically order KCPL to investigate and determine whether the customers currently served under the all-electric general service tariffs and the separately metered space heating tariff provisions currently meet the eligibility requirements for those discounted rates; to remove those customers

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<sup>3</sup> In its Response, KCPL cites to no record evidence to support its claims in this regard.

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. KCPL's Response completely fails to address this requested clarification. Trigen's request on this matter therefore stands unrefuted and should be granted.

8. As set forth in Trigen's Application for Clarification or Rehearing, in the event that the Commission does not clarify its December 21, 2006, Report and Order as set forth therein, the Commission should grant rehearing for the reasons set forth therein. KCPL's Response failed to address the matters set forth in the rehearing portion of Trigen's Application for Clarification or Rehearing, and such matters therefore stand unrefuted on the record of this proceeding.

WHEREFORE, Trigen-Kansas City Energy Corporation respectfully requests that the Commission grant the relief requested in Trigen's Application for Clarification or Rehearing filed 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 12th day of January, 2007.

**/s/ Jeffrey A. Keevil**

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