

Exhibit No.:
Issue: Waiver or Variance from certain
provisions of KCPL's Commercial
Space Heating Rates
Witness: Tim M. Rush
Type of Exhibit: Direct Testimony
Sponsoring Party: Kansas City Power & Light Company
Case No.: EE-2008-0238
Date Testimony Prepared: April 4, 2008

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: EE-2008-0238

DIRECT TESTIMONY

OF

TIM M. RUSH

ON BEHALF OF

KANSAS CITY POWER & LIGHT COMPANY

**Kansas City, Missouri
April 2008**

DIRECT TESTIMONY

OF

TIM M. RUSH

Case No. EE-2008-0238

1 **Q: Please state your name and business address.**

2 A: My name is Tim M. Rush. My business address is 1201 Walnut, Kansas City, Missouri
3 64106-2124.

4 **Q: By whom and in what capacity are you employed?**

5 A: I am employed by Kansas City Power & Light Company (“KCPL” or “Company”) as
6 Director, Regulatory Affairs.

7 **Q: What are your responsibilities?**

8 A: My general responsibilities include overseeing the preparation of the rate case, class cost
9 of service, and rate design of the Company. I am also responsible for overseeing the
10 regulatory reporting and general activities as they relate to the Missouri Public Service
11 Commission (“MPSC”).

12 **Q: Please describe your education, experience and employment history.**

13 A: In addition to public schools, I received a Master's Degree in Business Administration
14 from Northwest Missouri State University in Maryville, Missouri. I did my
15 undergraduate study at both the University of Kansas in Lawrence and the University of
16 Missouri in Columbia. I received a Bachelor of Science Degree in Business
17 Administration with a concentration in Accounting from the University of Missouri in
18 Columbia.

1 **Q: Have you previously testified in a proceeding at the MPSC or before any other**
2 **utility regulatory agency?**

3 A: I have testified on numerous occasions before the MPSC on a variety of issues affecting
4 regulated public utilities.

5 **Q: What is the purpose of your testimony?**

6 A: The purpose of my testimony is to describe in detail the basis for the Company's request
7 for a waiver or variance from certain provisions of KCPL's general service all-electric
8 tariffs and separately-metered space heating rates ("All-Electric/Space-Heating Rates") as
9 the availability of those rates were modified by the Commission's Report and Order in
10 Case No. ER-2007-0291 ("2007 Rate Case Order"). Specifically, KCPL requests
11 authorization to makes its All-Electric/Space-Heating Rates available to certain, specified
12 customers who were not taking service under those rates as of January 1, 2008, but who
13 committed financial resources prior to that date based on their expectation that those rates
14 would be available.

15 **Q: Would you please describe the circumstances and background for your request for a**
16 **Waiver or Variance?**

17 A: Case No. ER-2007-0291 was the second rate case of a potential four cases that were the
18 result of the Stipulation and Agreement ("S&A") in the Experimental Regulatory Plan in
19 Case No. EO-2005-0329. In that S&A, a number of issues were addressed regarding
20 various aspects of the utility, including the construction of a new wind generation and a
21 coal unit (Iatan 2), environmental upgrades and improvements at LaCygne 1 and Iatan 1,
22 transmission and distribution programs intended to address aging infrastructure and
23 improve reliability, customer programs targeted at affordability, energy efficiency and

1 demand response, a number of specific accounting issues and other actions encompassing
2 the utility over the next few years.

3 The S&A contemplated the potential for four potential rate cases, including
4 among other things the schedule, intervention status of the Signatory Parties,
5 infrastructure plans, amortization Expense. Additionally, the first rate case was to
6 include the filing of a class cost of service study.

7 The first rate case, Case No. ER-2006-0314, addressed the issues set out in the
8 S&A, which included the filing of the class cost of service study. The case was litigated
9 before the Commission on a number of issues, including certain portions of the rate
10 design. The class cost of service study results were stipulated.

11 **Q: What happened in the second rate case (Case No. ER-2007-0291)?**

12 A: In the second rate case, Case No. ER-2007-0291, it was the Company's position that rate
13 design and class cost of service was not an issue. This is because in the S&A from the
14 Experimental Regulatory Plan (Case No. EO-2005-0329), in Section III, paragraph 3.b.iv,
15 "Rate Design, the Signatory Parties agreed not to file new or updated class cost of service
16 studies or to propose changes to rate structures in Rate Filing #2." This was a
17 contentious issue in the second rate case proceeding and the Commission ultimately ruled
18 on the issues. The Company took the position that any change to the rates that would
19 cause customers to re-evaluate the rate they have chosen constituted a change to rate
20 structures, and that the changes recommended by certain parties would cause customers
21 to re-evaluate the rate they have chosen. Therefore, in the Company's view, the changes
22 represented a rate structure change. The Company further argued that by shifting
23 revenues between classes, customers would be forced to re-evaluate the best available

1 rate option. Additionally, by restructuring the rate design by either limiting the rates
2 availability or increasing different components of the rates by different levels also causes
3 customers to re-evaluate rate options. It was the Company's position that anything other
4 than an equal shift in rates uniformly to all classes does not comply with the provisions of
5 the S&A.

6 In the 2007 Rate Case Order, the Commission addressed numerous issues
7 including issues associated with rate design. The Commission ruled that it could shift
8 revenues between classes and specifically, the Commission addressed the rate design of
9 the All-Electric/Space-Heating Rates and concluded that:

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

19 After the Order was issued, KCPL submitted an Application for Rehearing and
20 Stay, or in the Alternative, Application for Waiver or Variance from Decision for
21 Specific Customers ("KCPL Motion"), which among other things, requested a waiver or
22 variance from the 2007 Rate Case Order to the extent necessary to "allow KCPL to
23 grandfather any existing KCPL customer who has entered into contracts or purchased
24 heating equipment, in reliance upon the existence of the availability of KCPL's all-
25 electric and space-heating rates."²

¹ 2007 Rate Case Order, at p. 82.

² KCPL Motion, at p. 9.

1 The purpose for the request for rehearing or in the alternative for a waiver or
2 variance from this portion of the Order was to protect customers who had relied upon the
3 existing tariffs, and prior Orders of the Commission regarding the availability of the tariff
4 and who had made decisions based on that information.

5 In response to the KCPL Application, Staff acknowledged “the predicament of
6 building owners or operators who have allegedly made economic decisions based on the
7 continuing availability of KCPL’s general service all-electric and separately-metered
8 space heating rate options.”³ Reasoning that there was insufficient evidence in the record
9 in Case No. ER-2007-0291 concerning KCPL’s request, Staff requested that the
10 Commission reopen the record in order to take additional evidence.

11 On December 21, 2007, the Commission issued an order denying both KCPL’s
12 request for a waiver or variance and Staff’s motion to reopen the record (“Order Denying
13 Motions”). The Commission correctly noted in its Order Denying Motions that “there is
14 no protected property interest in any particular utility rate.”⁴ KCPL understands the
15 Commission’s position, but nonetheless believes that although a customer might not have
16 a “protected property interest,” notions of equity and fairness require certain
17 accommodations for those customers that have pending investments and contractual
18 obligations premised on the availability of the All-Electric/Space-Heating Rates. KCPL
19 also acknowledges Staff’s observation that there was limited evidence in the record in
20 Case No. ER-2007-0291 concerning the impact of the Commission’s decision on the
21 individual customers listed in the schedules attached to the Company’s application. For
22 those reasons, KCPL initiated this proceeding.

³ *Staff’s Response*, at pp. 5-6.

⁴ *Order Denying Motions*, at p. 3.

1 Additionally, as part of the Report and Order in Case No. ER-2007-0291, the
2 Commission ordered that in the next rate case, the Company was to present a
3 complete cost of service and/or cost-effectiveness studies and analyses of
4 KCPL's general service all-electric tariffs and separately metered space
5 heating rates and, consistent with the findings of such studies and
6 analyses, allow KCPL the opportunity at that time to present its preferred
7 phase-out plan for the remaining commercial and industrial customers
8 served under the all-electric tariffs and separately metered space heating
9 rates.

10 This study is currently underway and will be completed and filed as a part of the
11 Company's next rate case, later in 2008.

12 **Q: How many customers are directly affected by the Commissions ruling on limiting**
13 **the tariff to existing customers who were on this tariff as of December 31, 2007?**

14 A: In total, over 200 customers are affected by the Commissions ruling in the case. The
15 Company included in the Application a listing of each customer and the circumstances
16 surrounding each customer's particular situation. KCPL identified four categories of
17 customers that were/are in various stages of commitment to constructing facilities or
18 modifying existing facilities to qualify for KCPL's All-Electric/Space-Heating Rates.
19 The information was based on knowledge at the time of the filing of the Application.
20 Since then, more information has come to light, and consequently the Company has
21 revised the list to include this new information. Company witness David L. Wagner
22 addresses the creation of the original lists and the details around these changed
23 circumstances in his Direct Testimony.

24 **Q: What are you requesting in this case?**

25 A: KCPL requests a waiver or variance of the tariff provisions and the Report and Order in
26 Case No. ER-2007-0291 to the extent necessary to make KCPL's Commercial and
27 Industrial All-Electric/Space-Heating Rates available to the customers listed in Schedules

1 1-4, as well as the specific cases discussed in the Direct Testimony of David L. Wagner.
2 Each of these customers made investment decisions based on the availability of the All-
3 Electric/Space-Heating Rates. It would be inequitable to change at this late stage such a
4 fundamental underpinning to their investment decisions.

5 KCPL is further requesting that any waiver or variance granted herein be
6 sufficiently broad to permit the first customer of record that takes service after the
7 developer to receive service under the All-Electric/Space-Heating Rates. This is because
8 in some instances, the developer is currently the customer of record. Based on the 2007
9 Rate Case Order, any subsequent customer would not be able to continue service under
10 the All-Electric/Space-Heating Rates.

11 **Q: If these customers receive a variance or waiver from the Report and Order in Case**
12 **No. ER-2007-0291 and related tariff provisions, will other customers of the**
13 **Company be impacted in any way?**

14 **A:** No. As noted above, the Commission in its 2007 Rate Order has Ordered that KCPL
15 complete a class cost of service study and/or cost effectiveness study to address the All-
16 Electric/Space-Heating Rates. The Commission appears to contemplate phasing the rates
17 out over time based on the results of the cost-benefit study KCPL will file with its 2008
18 rate case.

19 The same logic for the Commission's Order should apply to the customers for
20 whom this request is made. These customers have made commitments for all-electric or
21 space-heating infrastructure based on their expectation that the All-Electric/Space-
22 Heating Rates would continue to be available. If the rates are to be eliminated, these

1 customers should also benefit from the phasing out of those rates as contemplated in the
2 2007 Rate Order.

3 **Q: If these customers receive a variance or waiver from the Report and Order in Case**
4 **No. ER-2007-0291 and related tariff provisions, will the Company be impacted?**

5 A: Yes. The Company's revenues from those customers receiving the waiver or variance
6 will be lower between the time the Customers are placed on the All-Electric/Space-
7 Heating Rates and the next rate case. It will be limited to this time period. At that time,
8 the overall cost of service and/or cost effectiveness study results will have been filed and
9 a decision made on how to proceed with the customer rates and class of service. The
10 Company anticipates filing its next rate case in the summer of 2008, with rates to become
11 effective sometime in mid- to late 2009.

12 **Q: Does this conclude your testimony?**


13 A: Yes, it does.

In the Matter of the Application of Kansas City)
Power & Light Company for a Waiver or Variance) Case No. EE-2008-0238
Of Certain Provisions of the Report and Order in)
Case No. ER-2007-0291)

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

1. My name is Tim M. Rush. I work in Kansas City, Missouri, and I am employed by Kansas City Power & Light Company as Director, Regulatory Affairs.

3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.


Tim M. Rush

Subscribed and sworn before me this 4th day of April, 2008.

Nicol A. Wiley
Notary Public

My commission expires: Feb. 1/2011

