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

INITIAL POST-HEARING BRIEF OF TRIGEN-KANSAS CITY ENERGY CORPORATION

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COMES NOW Trigen-Kansas City Energy Corporation ("Trigen"), by and through the undersigned counsel, and submits this Initial Post-Hearing Brief on the issues set forth below pursuant to the procedural schedule established herein. As to the issues addressed below, this Brief will use the description and numbering of the issues as set forth in the List of Issues filed in this case by Staff.

APPLICABLE LAW

As the rate case applicant herein, Kansas City Power & Light Company ("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)[1]; *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

[1] "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.

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, 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**. (emphasis added)

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. (emphasis added)

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[2]) 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).

[2] Or, in the present case, supplying electricity.

Finally, in 2005, 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 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

23. General Service All-electric tariffs and general service separately-metered space heating tariff provisions

As a preliminary matter, the Commission should be aware that the issues (or sub-issues) set forth under Issue 23 deal with KCPL's general service tariffs applicable to commercial and industrial customers. More specifically, these issues deal with KCPL's discounted all-electric general service tariffs and the discounted separately-metered space heating rate provisions[3] of KCPL's standard general service tariffs. As stated by Mr. Herz, Trigen's witness, in his prefiled written testimony:

> **A.** KCPL has three general service categories applicable to commercial and industrial customers: small, medium and large. Within each of these three general service categories, KCPL 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. The standard and all electric tariffs within each of the three general service categories have the same rate structure (i.e., a seasonal, load factor energy rate structure) and the same energy rates during the four summer months (i.e., May 16 through September 15), but different energy rates for the winter season (i.e., the eight month period from September 16 through May 15). Within each of the three general service categories, the all electric tariffs have

[3] The discounted all-electric general service tariff rates and the provisions for separately metered space-heating rate discounts may be referred to collectively herein as "discounted space-heating rates," "discounted rates related to space-heating," or simply "discounted rates."

substantially lower winter season energy rates, with the greatest reduction or rate discounts occurring in the low load factor energy rate blocks (i.e., the first 180 hours use per month which is a load factor of less than 25%). In other words, it's the low load factor energy use by commercial and industrial customers taking service under the all electric tariff that receive the most significant space-heating rate discounts.

Q. Are there any other discounted rates related to space-heating in KCPL's general service tariffs?

A. Yes. 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 general service tariff rates, the separately metered space-heating provision provides for a substantially lower winter season energy rate. Just as is the case with the all electric tariff, the separately metered space-heating provision provides for a substantial rate discount from the standard tariff rate that most significantly benefits low load factor energy use by commercial and industrial customers served under the separately metered space-heating provision.

Q. What impacts, if any, do the space-heating rate discounts have on the KCPL standard tariff commercial and industrial customer?

A. Standard tariff customers in essence pay more for their electric service as a consequence of the discounted space-heating rates under the all-electric tariffs and KCPL's separately metered space-heating provisions. In other words, the standard tariff customer provides a cross-subsidy to those customers receiving discounted service. . . .(Ex. 701, Herz Direct, pp. 7-8)

a. Should KCPL's general service all-electric tariff rates and separately metered space heating rates be increased more (i.e., by a greater percentage) than KCPL's corresponding standard general application rates and if so, by how much more?

KCPL is proposing an equal percentage increase to each of its rate tariffs (*see, e.g.,* Ex. 21, Rush Surrebuttal, p. 1). In other words, KCPL is proposing to increase its general service tariff rates, including the discounted space-heating rates, by the overall percentage revenue increase received by KCPL in this case. (*See, e.g.,* Ex. 701, Herz

Direct, p. 10). As set forth above under the Applicable Law section of this Brief, 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)[4]. KCPL has failed in its burden of proof to show that its proposed rate design is reasonable. KCPL gives two reasons for its proposed rate design – the rate design stipulation and agreement in its last rate case[5] (ER-2006-0314), and the stipulation and agreement in its regulatory plan case[6]. (Ex. 19, Rush Direct, p. 5). Neither reason supports KCPL's equal percentage rate design proposal, at least not as applied to KCPL's discounted space-heating rates.

As for KCPL's first reason – the rate design stipulation and agreement in its last rate case – the Commission must be aware that the class cost of service study in the last case lumped all of the standard tariff customers, all-electric tariff customers, and separately metered space-heating commercial and industrial customers together into one of the three general service categories (small, medium and large). (Ex. 701, Herz Direct, p. 11). It did not investigate or calculate the cost of serving the discounted rate customers, nor did it investigate or calculate the cost-effectiveness of the space-heating rate discounts; instead, it only looked at the general service standard tariff customers and the discounted rate customers as a whole. (*Id.*) In fact, the same is true for KCPL's prior class cost of service study in 1996; the standard tariff versus discounted space-heating rates are the result of maintaining the price differentials which were in effect prior to KCPL's 1996 class cost of service case. (*Id.*)

[4] See Footnote 1 above.
[5] KCPL admits that Trigen was NOT a signatory to this stipulation and agreement. (Tr. 1055-1056)
[6] KCPL admits that Trigen was NOT a signatory to this stipulation and agreement. (Tr. 1055)

As for KCPL's second reason – the stipulation and agreement in its regulatory plan case – that stipulation did not preclude *rate design* changes; it provided that the *Signatory Parties*[7] to that stipulation would not propose changes to *rate structures* in the present case. (*See, e.g.*, Ex. 21, Rush Surrebuttal, p. 1). This stipulation does not mandate an equal percentage increase as claimed by KCPL. As testified by Staff witness Pyatte (Ex. 111, Pyatte Surrebuttal, pp. 7-9), KCPL's interpretation of the term "rate structure" is unduly restrictive – rate structure does not refer to all aspects of rate design. Furthermore, if KCPL is correct, it appears that KCPL itself has violated the regulatory plan stipulation and agreement, because KCPL proposed elimination of its municipal street lighting service and municipal traffic signal control tariffs. (Ex 19, Rush Direct, p. 5).

In its Report and Order in KCPL's last rate case, ER-2006-0314, issued on December 21, 2006, the Commission stated that it "is concerned that during KCPL's winter season[8], commercial and industrial customers under the all-electric general service tariffs pay about 23% less for the entire electricity usage than they would otherwise pay under the standard general service tariff, and that commercial and industrial customers under the separately metered space heating provision . . . pay about 54% less for such usage than they would pay under the standard general service tariff." *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 Begin the Implementation of its Regulatory Plan,* Case No. ER-2006-0314, Report and Order issued December 21, 2006, page 83.

[7] As will be discussed in more detail below, Trigen was NOT a Signatory Party to the stipulation and agreement in the KCPL regulatory plan case; therefore, this provision of that stipulation would not and does not apply to Trigen in any event.

[8] The Commission should also recall that KCPL's winter season is eight months long as defined in its tariffs. (Tr. 1054-1055)

The Commission also restricted the discounted rates to existing customers[9]. (*Id.*) Finally, it should be noted that the stipulation and agreement in the last KCPL rate case provided for an additional, incremental increase to the discounted rates on top of and in addition to the standard general service tariff rate increase – the effect of which was to reduce the size of the rate discounts. (Ex. 701, Herz Direct, p. 14). However, in this case, KCPL's proposal for an across-the-board increase that is equal to its overall rate increase effectively will *increase* the size of the rate discounts, because as each demand and energy rate component is increased by the same percentage the *difference between* the proposed standard tariff rates and the discounted rates will be increased and be larger than the difference under current rates; this is clearly shown on Schedules JAH-1 through JAH-4, attached to the Rebuttal Testimony of Mr. Herz. (Ex. 702 NP, Herz Rebuttal, pp. 1-2 and Schedules JAH-1 through JAH-4). Such a result is inconsistent with what was done in the last KCPL rate case to reduce the rate discounts; does not make sense in light of the "concerns" expressed by the Commission in the last KCPL rate case; would not be consistent with the Commission's restriction of the discounted rates in the last KCPL rate case (regardless of how "existing customers" is defined); and could establish a bad precedent for future KCPL rate case filings since KCPL plans to file two more rate cases as part of "implementing" its regulatory plan[10]. (Ex. 701, Herz Direct, pp. 9-10 and 14-15; Ex. 702 NP, Herz Rebuttal, pp. 1-2). One could even argue that such a result would

[9] Although the Commission restricted the discounted rates to existing customers (i.e., any existing customer), it did not restrict the discounted rates to only those qualifying commercial and industrial customers who were then receiving service under the discounted rates. Accordingly, the Commission's restriction in the last case was insufficient to address the problems presented by the discounted rates, and will be addressed further below.

[10] If, for example, the increases sought by KCPL in its next two rate cases are the same as that originally sought by KCPL in this case, KCPL's approach would increase the discounts by 27%. (Ex. 701, Herz Direct, p. 15).

be inconsistent with KCPL's interpretation of the term "rate structure." KCPL has simply failed in its burden of proof to show that its proposed rate design is reasonable.

Flaws in KCPL discounted rates

KCPL's discounted space-heating rates suffer from several substantial flaws. KCPL's discounted rates are unreasonable and unfairly discriminate between commercial and industrial customers, some of which may be competing with each other, by charging different amounts for identical usage under similar circumstances. (Ex. 701, Herz Direct, p. 3). Customers with the exact same usage or other service characteristics – regardless of end use – should be treated the same; however, KCPL's general service customers are treated differently depending on whether they are billed under the standard tariff rate or the discounted space-heating rates. (*Id.* at pp. 12-13). General service tariff customers (which are often in competition with each other) that have identical monthly usage characteristics should have the same electric bill and not be discriminated against by having different electric bills 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. (*Id.* at pp. 16-17). Furthermore, the standard tariff customers wind up paying more for their service to subsidize the discount service. (Ex. 701, Herz Direct, pp. 8, 16). Other than the argument "we've always done it that way," there has been no cost-based support for KCPL's preferential treatment of the discounted rate customers in KCPL's cost of service study in either the last KCPL rate case or in KCPL's 1996 class cost of service case[11]; rather, the discriminatory, preferential discounted space-heating rates are simply a continuation of the rate differentials that were in existence prior to the 1996 case. (Ex. 701, Herz Direct, pp. 4, 13).

[11] Remember that KCPL filed no cost of service study in this case.

It should be reiterated that the law requires that any difference in charges must be based upon some difference in the service provided by KCPL 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[12]. KCPL's discounted rates fail to meet the requirements of the law.

In addition, 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, pp. 4, 7-8). As the Commission is aware, low load factor customers are typically not viewed as being as attractive or desirable as high load factor customers. 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). However, KCPL's discounted rates related to 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. (Ex. 701, Herz Direct, pp. 7-8).

Furthermore, *if* building space-heating load is a reasonable objective for KCPL, it should be achieved through programs specifically designed to examine the relative costs and benefits of such an undertaking – not with discounts embedded in the all-electric or separately metered space-heating rate (especially when such rates are not based on a detailed cost of service or cost-effectiveness study). (Ex. 701, Herz Direct, p. 13). *If* certain sizes and types of commercial and industrial space-heating equipment are

[12] See the "Applicable Law" section of this brief and Section 393.130 RSMo, above.

desirable on KCPL's system, there are programs already approved by which KCPL provides technical assistance, evaluation and even funding that are targeted directly toward such equipment. (*Id.* at p. 4). KCPL's general service all-electric tariff provides a *huge* rate discount on a commercial and industrial customer's *entire* winter usage – not just a discount on space-heating use. (*Id.* at p. 13). *If* space-heating is deemed to be important, it should be encouraged through specifically designed programs – not through rate discrimination. (*Id.*).

Also, discounted rates for selective, behind-the-meter use (such as those at issue) 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, pp. 4, 13; Ex. 703, Herz Surrebuttal, p. 10). This is because, in order to *properly* apply discounted rates for selective end use, KCPL's tariffs should require an administrative process that involves gathering information about commercial and industrial customers' behind-the-meter usage and periodic reporting to the Commission on the specific applications associated with the usage of these customers. (Ex. 701, Herz Direct, pp. 13-14; Ex. 703, Herz Surrebuttal, p. 10).

Additional KCPL allegations

KCPL alleges that Trigen's position in this case is inconsistent with its agreement, reflected in a letter attached to Mr. Rush's Rebuttal testimony as Schedule TMR-4, to support and endorse the results of KCPL's 1996 rate design case (Case No. EO-94-199). (Ex. 20, Rush Rebuttal, p. 10 and Schedule TMR-4). However, a review of the letter attached to Mr. Rush's testimony as Schedule TMR-4 clearly reveals that Trigen did not, as alleged by KCPL, agree to support and endorse "any basis offered in the establishment

of the all-electric and separately metered space-heating tariffs" as alleged by Mr. Rush. (Schedule TMR-4 to Ex. 20). Furthermore, a review of Schedule TMR-4, paragraph 7, reveals that what Trigen agreed to support and endorse was the stipulation in that case. That stipulation is Exhibit 704, which clearly states as follows:

> **2.C.** . . .Furthermore, this commitment does not bind the parties after the conclusion of Case No. EM-96-248 with regard to the reasonableness of rates. . .
>
> **10. No Acquiescence**
>
> None of the parties to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any question of Commission authority, cost of capital methodology, capital structure determination, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, **rate design methodology**, **cost allocation**, cost recovery, or prudence, that may underlie this Stipulation and Agreement, or for which provision is made in this Stipulation and Agreement. (emphasis added)
>
> **11. Negotiated Settlement**
>
> This Stipulation and Agreement represents a negotiated settlement. Except as specified herein, the signatories to this Stipulation and Agreement **shall not be prejudiced, bound by, or in any way affected by the terms of this Stipulation and Agreement: (a) in any future proceeding**; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Stipulation and Agreement in the instant proceeding, or in any way condition approval of same. (emphasis added)

(Ex. 704). Trigen's position in this case is not inconsistent with its agreement in Case No. EO-94-199, and KCPL's allegation to the contrary provides no support for KCPL's position in this case.

In its prefiled testimony, KCPL states that the last energy block in the all-electric small general service rate is higher than the corresponding small general service rate that is not all-electric, and alleges that Trigen's proposal would exaggerate and continue this inappropriate price signal. However, this is simply untrue as shown by lines 5 and 10,

Column (e) of Schedule JAH-6 attached to the Surrebuttal Testimony (Ex. 703) of Mr. Herz. Mr. Herz, on behalf of Trigen, has proposed to reduce the difference between the standard general application rates and the all-electric tariff rates by one-third, which would actually begin to correct the problem identified by KCPL. (*See*, Ex. 703, Herz Surrebuttal, p. 3 and Schedules JAH-6 through JAH-9). In fact, *only* Trigen's proposal would begin to correct this anomaly – KCPL's equal percentage increase proposal would not. Even Mr. Rush was forced to admit at the hearing that Trigen's proposal would not "exaggerate" this problem (as originally alleged by Mr. Rush in his prefiled testimony) but would actually decrease the rate for the last energy block in the all-electric small general service tariff. (Tr. 1071-1072).

KCPL alleges that Trigen's interest in this matter is due to its role as a competitor of KCPL. Even if true, that Trigen and KCPL are competitors does not change the fact, as discussed above, that KCPL's discounted rates are unreasonable and unfairly discriminate between customers (*See, e.g.,* Ex. 701, Herz Direct, pp. 3, 12-13, 16-17) in violation of law (*See, e.g.,* Section 393.130 RSMo), or constitute any justification for such discrimination. It likewise does not change the fact that 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 commercial and industrial customers in the same general service class. (Ex. 701, Herz Direct, pp. 4, 7-8). It likewise does not constitute any justification or "fix" for the other substantial flaws in KCPL's discounted all-electric general service tariff rates and KCPL's tariff provisions for separately metered space heating rate discounts which were discussed in detail above.

The fact that Trigen and KCPL are competitors does not negate the fact that the law requires that any difference in KCPL's charges must be based upon some difference in the service provided by KCPL 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[13]. Nor does it constitute any difference in the service provided by KCPL to these customers or any evidence regarding the reasonableness of KCPL's classification.

Also, KCPL's reference to Trigen's interest being due to its role as a competitor of KCPL certainly does not explain *Staff's* agreement with Trigen "that the all electric and space heating rates should be increased in this case by more than the general application rates" (Ex. 117, Watkins Rebuttal, p. 4); *Staff's* support for "restricting the availability of the all electric and separately-metered space heating rates to customers currently served on one of those rate schedules" (*Id.*); *Staff's* statement that it "sees no justification for continuing" the discounted rates (*Id.*); or for *Staff's* position that "a step be taken toward phasing [the discounted rates] out." (*Id.* at p. 5).

Finally, given the testimony the Commission has heard in this case concerning the stipulation and agreement in KCPL's regulatory plan case, and what that stipulation and agreement may or may not permit in this case, Trigen would note that even KCPL has admitted that Trigen was *not* a signatory party to that stipulation and agreement. (Tr. 1055). According to KCPL's prefiled testimony, that stipulation and agreement provided that "the Signatory Parties agree[d] not to file new or updated class cost of service studies or to propose changes to rate structures" in this case. (Ex. 21, Rush Surrebuttal, p. 8).

[13] See the "Applicable Law" section of this brief, above.

However, since it is undisputed that Trigen was not a Signatory Party to that stipulation and agreement, this provision is completely inapplicable to Trigen; Trigen is free to make any proposals it desires to make in this case. Furthermore, no party has pointed to any provision of the stipulation and agreement in that case which would prohibit the Commission from adopting any proposal put forth in this case by a non-Signatory Party to that stipulation. In fact, in its order issued on July 28, 2005, adopting the stipulation and agreement in that case (Case No. EO-2005-0329), the Commission concluded that its regulatory powers would remain fully intact if it approved the stipulation and agreement. *In the Matter of a Proposed Regulatory Plan of Kansas City Power & Light Company*, 2005 Mo. PSC LEXIS 1025. Since Trigen is free to make the proposals it has made and the Commission is free to adopt those proposals, KCPL's continued reliance on the stipulation and agreement in the regulatory plan case is without merit.

Conclusion of Issue 23(a)

Due to the numerous, substantial flaws set forth above from which KCPL's discounted space-heating rates suffer, Trigen submits that KCPL's general service all-electric tariff rates and separately metered space heating rates ***should*** be increased more than KCPL's corresponding standard general application rates, so as to reduce the size of the discount and continue to move the discounted rates to be on par with the standard general service rates. (Ex. 701, Herz Direct, p. 18; Ex. 703, Herz Surrebuttal, pp. 3-4). Staff agrees with Trigen "that the all electric and space heating rates should be increased in this case by more than the general application rates." (Ex. 117, Watkins Rebuttal, p. 4). As for the question "by how much more?", in regard to the **all-electric tariff rates**, *the difference between* the standard general application rates and the all-electric tariff

rates should be reduced by one-third, or 33% of the current difference, in this case **and** in KCPL's next two rate cases (the remaining rate cases contemplated by the regulatory plan) so that these rates will reach parity over three KCPL rate case filings. (Ex. 701, Herz Direct, p. 18; Ex. 703, Herz Surrebuttal, p. 3 and Schedules JAH-6 through JAH-9). As for the **separately-metered space heating rates**, *such rates* should be increased in this case by 10% on a revenue-neutral basis (10% more than the corresponding standard general application rates). (Ex. 703, Herz Surrebuttal, p. 4 and Schedule JAH-10; Ex. 117, Watkins Rebuttal, p. 5). Furthermore, in the event the Commission orders any reduction in revenue responsibility for the small, medium or large general service rate classes as a result of its decision regarding other issues in this case, none of any such reduction in revenue responsibility should be applied to these rates. (Tr. 1090-1091).

b. Should KCPL's general service all-electric tariffs and separately metered space heating rates be phased-out, and if so, over what period?

The simple answer to the question posed by this issue is "Yes," these discounted rates should be phased-out. Due to the numerous, substantial flaws in KCPL's discounted rates discussed in detail above under issue (a)[14], the difference between the standard general application rates and the *all-electric tariff rates* should be reduced by one-third, or 33% of the current difference, in this case **and** in KCPL's next two rate cases so that these rates will reach parity – in effect, be phased-out – over three KCPL rate case filings (this case and KCPL's next two rate cases – one-third of the difference in this case, half of the remaining difference in the next case, all of the remaining difference

[14] Since these flaws were discussed in detail above, that discussion will not be repeated here; however, Trigen would refer the Commission to the discussion under issue (a) above.

in the following case). (Ex. 701, Herz Direct, p. 18; Ex. 703, Herz Surrebuttal, pp. 3, 6 and Schedules JAH-6 through JAH-9). Also, the *separately-metered space-heating rates* should be phased-out over a two-rate case period starting with this rate case (i.e., they should be eliminated in KCPL's next rate case). (Ex. 703, Herz Surrebuttal, pp. 6-7). If and when KCPL files the cost of service and/or cost effectiveness studies discussed below, KCPL could propose an alternative phase-out plan for consideration by the Commission (Ex. 701, Herz Direct, p. 18); however, KCPL's delay in filing such studies should not be the basis for allowing the preferential, discriminatory discounted rates to continue until such filing. (Ex. 703, Herz Surrebuttal, p. 8).

The Commission should also recognize that Staff has stated that it "sees no justification for continuing" the discounted rates and has taken the position that "a step be taken toward phasing [the discounted rates] out." (Ex. 117, Watkins Rebuttal, pp. 4-5).

c. Should the availability of KCPL's general service all-electric tariffs and separately-metered space heating rates 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 (or as an alternative, the operation of law date of this case) and should such rates only be available to such customers for so long as they continuously remain on that rate schedule (i.e., the all-electric or separately-metered space heating rate schedule they are on as of such date)?

As mentioned above, in its Report and Order in KCPL's last rate case, ER-2006-0314, issued on December 21, 2006, the Commission stated that it "is concerned that

during KCPL's winter season, commercial and industrial customers under the all-electric general service tariffs pay about 23% less for the entire electricity usage than they would otherwise pay under the standard general service tariff, and that commercial and industrial customers under the separately metered space heating provision . . . pay about 54% less for such usage than they would pay under the standard general service tariff." *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 Begin the Implementation of its Regulatory Plan*, Case No. ER-2006-0314, Report and Order issued December 21, 2006, page 83. The Commission also restricted the discounted rates to existing customers. (*Id.*) Although the Commission restricted the discounted rates to existing customers (i.e., *any* existing KCPL customer), it did not restrict the discounted rates to only those qualifying commercial and industrial customers *who were then receiving service under the discounted rates*. Therefore, any then-existing KCPL customer was and is free to switch to the discounted rates, assuming they otherwise qualify. This is insufficient to address the problems presented by the discounted rates, discussed at length above under issue (a)[15], because customers who are not currently receiving service under the discounted rates are free to switch to such rates, thereby compounding the problems. The Commission's action in the last rate case is not only inconsistent with its expressed "concerns" in that case, it allows the situation to get worse rather than better.

Due to the numerous, substantial flaws in KCPL's discounted rates discussed in detail above under issue (a), the Commission should in this case restrict the availability of these discounted rates to those qualifying commercial and industrial customers physical

[15] Since these flaws were discussed in detail above, that discussion will not be repeated here; however, Trigen would refer the Commission to the discussion under issue (a) above.

locations being served under such discounted rates currently (i.e., receiving the discounted rates in the test year billing determinants[16]). (Ex. 701, Herz Direct, p. 18). Only in this manner can the restriction be made meaningful. (Ex. 701, Herz Direct, p. 10 footnote 5). Furthermore, these discounted rates should only be available to those qualifying commercial and industrial customers physical locations currently being served under such discounted rates for so long as they continuously remain on that schedule. (Ex. 117, Watkins Rebuttal, p. 4). Staff also supports "restricting the availability of the all electric and separately-metered space heating rates to customers currently served on one of those rate schedules" (*Id.*)

KCPL's position, on the other hand, would be to address this issue at some undetermined future time, when and if KCPL files a comprehensive cost of service study. Given the numerous, substantial flaws in KCPL's discounted rates discussed in detail above, as testified by Mr. Herz, "The Company's [KCPL's] position is backwards. It would only be logical that the availability of these discounts should be restricted unless and until the Company presents the Commission with the appropriate studies and analyses that, pending Commission review and approval of such studies and analyses, provides an underlying basis of support for general service space-heating discounted rates in the first place; not the other way around as suggested by KCPL." (Ex. 703, Herz Surrebuttal, pp. 7-8).

d. i. Should the Commission require KCPL, as soon as possible but not later than its next rate case, to present complete cost of service and/or cost-effectiveness studies and

[16] As an alternative, the Commission could use the operation of law date for this case; however, Trigen believes that the date used for billing determinants should be used. (Ex. 701, Herz Direct, p. 18).

analyses 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?

It should first be noted that the class cost of service study in KCPL's last rate case lumped all of the standard tariff customers, all-electric tariff customers, and separately metered space-heating commercial and industrial customers together into one of the three general service categories (small, medium and large). (Ex. 701, Herz Direct, p. 11). It did not investigate or calculate the cost of serving the discounted rate customers, nor did it investigate or calculate the cost-effectiveness of the space-heating rate discounts; instead, it only looked at the general service standard tariff customers and the discounted rate customers as a whole. (*Id.*) In fact, the same is true for KCPL's prior class cost of service study in 1996; the standard tariff versus discounted rates are the result of maintaining the price differentials which were in effect prior to KCPL's 1996 class cost of service case. (*Id.*) In other words, even though KCPL conducted class cost of service studies in 1996 and in its last rate case, there are no cost of service or cost-effectiveness studies that provide any basis for the discounted rates related to space-heating. (*Id.*) The time is past due for a comprehensive class cost of service study that will specifically address KCPL's discounted rates related to space-heating. (*Id.*)

Therefore, the Commission should direct KCPL to file, as soon as possible but not later than its next rate case, such cost of service and/or cost effectiveness studies. (*Id.* at pp. 5, 17). If and when KCPL files the cost of service and/or cost effectiveness studies,

KCPL could propose an alternative phase-out plan for the remaining commercial and industrial customers served under the all-electric tariffs and separately metered space heating rates for consideration by the Commission (*Id.* at p. 18). However, any delay by KCPL in filing such studies – such as until *after* the rate case when Iatan 2 is placed into rates, as proposed by KCPL[17] (Ex. 20, Rush Rebuttal, p. 11) – should certainly not be a basis for allowing the preferential, discriminatory discounted rates to continue until such filing. (Ex. 703, Herz Surrebuttal, p. 8).

d. ii. In the event that KCPL does not file such cost of service and/or cost-effectiveness studies before or as part of its next rate case, should the Commission require KCPL to impute the revenues associated with the discounted rates in the all-electric general service tariffs and separately-metered space heating provisions of its tariffs and impute revenues equal to KCPL's cost of administering these discounted rates as part of its next rate case?

The simple answer to the question posed by this issue is "Yes." (Ex. 701, Herz Direct, pp. 6, 17; Ex. 703, Herz Surrebuttal, p. 9). This would provide an incentive for KCPL to attempt to timely provide some basis or support (if there is any) for the discounted rates related to space-heating for Commission review before the end of the phase-out period *and* imputing the above revenues would result in the general service

[17] At the hearing, Mr. Rush admitted that under KCPL's preferred approach, it would be late in the year 2010 before KCPL would file a rate design case to address the cost of service study and could be late in 2011 (or later) before any results from such rate design case would be implemented. (Tr. 1061-1067). The Commission should also note that line 22 on page 1066 of the transcript should be corrected and should say "late 2011" rather than "late 2007" – this can be seen from reading the preceding portion of the transcript (see for example line 8 of page 1065 which says "late 2011.")

standard rate tariff customers no longer having to subsidize the discounted rate customers. (*Id.*).

e. Should the Commission require KCPL to (a) investigate and determine whether the commercial and industrial customers currently served under the general service all-electric tariffs and the separately-metered space heating provisions of the standard general service tariffs continue to meet the eligibility requirements for those discounted rates; (b) remove from the discounted rates those customers which KCPL's investigation determines are no longer eligible for such discounted rates; and (c) monitor and police the eligibility requirements of those customers receiving such discounted rates for reporting in KCPL's direct testimony in its next rate case filing?

Once again, the simple answer to the question posed by this issue is "Yes." (Ex. 701, Herz Direct, pp. 6, 13-14, 18; Ex. 703, Herz Surrebuttal, p. 10). KCPL's discounted rates related to space-heating should require an administrative process that involves gathering behind-the-meter information about commercial and industrial customers' space-heating systems and periodic reporting on the specific applications associated with the usage of these customers. (Ex. 701, Herz Direct, pp. 13-14; Ex. 703, Herz Surrebuttal, p. 10). Without having KCPL reporting to the Commission on the items set forth in this issue in KCPL's next rate case filing, it is not known if KCPL's discounted rates related to space-heating are benefiting customers that do not meet the eligibility requirements for such discounted rates. (Ex. 703, Herz Surrebuttal, p. 10). Furthermore, it is not clear that KCPL has developed and implemented a process by which it would

remove a customer from a discounted rate if the customer no longer meets the eligibility requirements. (Ex. 701, Herz Direct, p. 14).

KCPL's response to this issue is that it has the appropriate procedures and safeguards for *placing* customers on the appropriate rates. (Ex. 20, Rush Rebuttal, p. 13). KCPL's response misses the point, however, because this issue deals with customers who are already being served under the discounted rates, and whether they continue to remain eligible for such rates – not with *placing* customers on appropriate rates initially. There is no indication – no record evidence – that KCPL has developed and implemented a process by which it would *remove* a customer from a discounted rate if the customer no longer meets the eligibility requirements. (Ex. 703, Herz Surrebuttal, p. 10). To repeat, the answer to the question posed by this issue is "Yes."

f. Should the Commission approve KCPL's proposal to rename its general service "All-Electric" tariffs as "Space Heating" tariffs?

The Commission should **not** approve KCPL's proposal to rename its general service "All-Electric" tariffs as "Space Heating" tariffs. (Ex. 702 NP, Herz Rebuttal, p. 6). Staff agrees that these tariffs should not be renamed. (Ex. 117, Watkins Rebuttal, p. 8). Trigen submits that renaming these all-electric tariffs as space-heating tariffs would be misleading *and* would not be consistent with the "Availability" section of the tariffs. (Ex. 702 NP, Herz Rebuttal, p. 6). Furthermore, KCPL failed to provide any evidence why the tariffs should be renamed; therefore, KCPL's unsupported proposal cannot be adopted.

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,

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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 5th day of November, 2007.

/s/ Jeffrey A. Keevil