

**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.	)	

**APPLICATION FOR CLARIFICATION OR REHEARING**

COMES NOW Intervenor Trigen-Kansas City Energy Corporation (“Trigen”), pursuant to Section 386.500 RSMo and 4 CSR 240-2.160, by and through the undersigned counsel, and for its Application for Clarification or Rehearing of certain limited matters regarding the Commission’s Report and Order (“Order”) issued on December 21, 2006, in the above-captioned case respectfully states as follows:

1. On page 83 of the Order, under the issue “Should the existing general service all-electric rate schedules and the separately metered space heating provisions of KCPL’s standard general service tariffs be eliminated or restricted to existing customers only until there is a comprehensive class cost of service study and/or cost effectiveness study which analyzes and supports such tariffs and provisions as well as KCPL’s Affordability, Energy Efficiency and Demand Response programs?,” 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 [on such rates] until there is a comprehensive class cost of service study.”

2. Trigen's alternative recommendation on this issue, or alternative suggestion as referred to in the Order, was that in the event that the Commission did not eliminate all of KCPL's general service space heating related rate discounts<sup>1</sup> at this time, the availability of such discounted rates should at least be restricted to those **qualifying customers currently being served under such all-electric tariffs or separately metered space heating tariff provisions** until a comprehensive class cost of service study and rate design investigation **and/or a cost-effectiveness study which analyzes and supports such tariffs and provisions as well as KCPL's Affordability, Energy Efficiency and Demand Response programs** (as referenced in the rebuttal testimony of Staff witness Pyatte, Ex. 129 at page 17) has been completed, reviewed and presented for the Commission's consideration. (Ex. 701, Herz Direct, pp. 5-6; Ex. 702, Herz Surrebuttal, pp. 6-7, 13). Trigen's alternative recommendation also included the recommendation that KCPL **should be ordered to present such a study** in its next rate case filing, or as soon as possible, and to implement a phase out plan for the remaining customers served under the all-electric general service tariffs and the separately metered space heating tariff provisions (Ex. 701, Herz Direct, page 5-6); **and in addition**, that KCPL should be required to investigate and determine whether the customers currently served under the all-electric general service tariffs and the separately metered space heating tariff provisions meet the eligibility requirements for those discounted rates; to remove those customers 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. (*Id.* at 5-6).

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<sup>1</sup> "General service space heating related rate discounts" includes both the general service all-electric rate schedules and the separately metered space heating provisions of KCPL's standard general service tariffs.

3. As shown in paragraph numbered 1 above, although on the one hand the Commission stated that it was adopting Trigen's alternative suggestion, on the other hand the Order only refers specifically to restricting KCPL's existing general service all-electric rate schedules and the separately metered space heating provisions of KCPL's standard general service tariffs to existing customers<sup>2</sup> *until* there is a comprehensive class cost of service study. The Order did not specifically state, as set forth in Trigen's alternative recommendation, that KCPL was being ordered to conduct a comprehensive class cost of service study and rate design investigation, nor did the Order specifically state that such study should include a cost-effectiveness study of KCPL's Affordability, Energy Efficiency and Demand Response programs. Furthermore, the Order did not specify a specific time in which such study should be filed (*i.e.*, as part of KCPL's next rate case filing, or its 2008 rate case, or its 2009 rate case). In addition, the Order did not specifically state that KCPL was being ordered to investigate and determine whether the customers currently served under the all-electric general service tariffs and the separately metered space heating tariff provisions meet the eligibility requirements for those discounted rates; to remove those customers 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.

4. Therefore, the Commission should clarify<sup>3</sup> that the Order adopted Trigen's alternative recommendation in its entirety, and **specifically order KCPL** (a) to conduct a comprehensive class cost of service study and rate design investigation and/or a cost-

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<sup>2</sup> In addition to the other matters requiring clarification addressed herein, **the Commission should also clarify that** "existing customers" refers to customers **currently being served under such all-electric tariffs or separately metered space heating tariff provisions as of December 31, 2006**, and that KCPL is required to reflect this restriction in its tariffs.

<sup>3</sup> See Footnote 2 above.

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**; (b) 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 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; and (c) clarify those matters set forth in footnote 2 above.

5. In the event that the Commission does not clarify its December 21, 2006, Report and Order as set forth above, the Order is unlawful, unjust, unreasonable, arbitrary and capricious, an abuse of discretion, unsupported by competent and substantial evidence on the evidentiary record before the Commission, and contrary to the weight of the competent and substantial evidence on the evidentiary record before the Commission. It also fails to make adequate and sufficient findings of fact and conclusions of law.

- As shown in paragraph numbered 1 above, although on the one hand the Commission stated that it was adopting Trigen's alternative suggestion, on the other hand the Order only refers specifically to adopting a portion of Trigen's alternative suggestion or recommendation; therefore, unless clarified as set forth above, this finding conflicts with itself, and fails to satisfy the requirements of Section 386.420 RSMo, Section

536.090 RSMo, and *State ex rel. Laclede Gas Co. v. PSC*, 103 S.W.3d 813 (Mo. App. 2003).

- If, as set forth specifically in the Order, KCPL's existing general service all-electric rate schedules and the separately metered space heating provisions of KCPL's standard general service tariffs are allowed to continue *until* there is a comprehensive class cost of service study, without KCPL being ordered to actually **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**, even if such rate schedules and tariff provisions are restricted to customers currently receiving service thereunder<sup>4</sup> the substantial flaws<sup>5</sup> with such discounted rates identified and discussed in detail in the testimony of Mr. Herz and the briefs of Trigen could continue indefinitely, *until* KCPL decided to conduct the necessary study. Such a result is unlawful, unjust, unreasonable, arbitrary and capricious, an abuse of discretion, unsupported by competent and substantial evidence on the evidentiary record before the Commission, and contrary to the weight of the competent and substantial evidence on the evidentiary record before the Commission.

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<sup>4</sup> See Footnote 2 above.

<sup>5</sup> For example: unfair and unreasonable discrimination between 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).

- As demonstrated by the competent and substantial evidence on the evidentiary record before the Commission, discounted rates for selective, behind-the-meter use 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, page 4). In order to apply discounted rates for selective end use, KCPL's tariffs require it to have an administrative process that involves gathering information about the customer's space heating system and periodic reporting on the usage of these customers. (Ex. 701, Herz Direct, page 22). Although KCPL indicates it has the capability to monitor usage under these rate schedules, it is not clear that KCPL has a process under which it would remove a customer from a discounted rate if the customer no longer meets the requirements. (Ex. 701, Herz Direct, page 23). In fact, **KCPL indicated** in response to a data request **that "Only in the event that a customer would contact KCP&L and inform us of a significant change in the size and design of equipment would KCP&L have cause to revisit the availability of an all electric tariff for a customer."** (emphasis added) (Ex. 701, Herz Direct, page 23; KCPL response to Trigen data request number 25). This is inadequate, because if a customer no longer meets the requirements of the discounted rate, that customer's use is no different from a customer not receiving the discount. Not only is the continued qualification of some customers for the discounted rate questionable, but it does not appear that the energy usage of these customers is increasing the efficiency of KCPL's system. (See, Ex. 701, Herz Direct, pp. 24-26). Therefore, it is unlawful, unjust, unreasonable, arbitrary and capricious, an abuse of discretion, unsupported by competent and substantial evidence on the evidentiary record before the Commission, and contrary to the weight of

the competent and substantial evidence on the evidentiary record before the Commission to allow KCPL's existing general service all-electric rate schedules and the separately metered space heating provisions of KCPL's standard general service tariffs to continue, even if such rate schedules and tariff provisions are restricted to customers currently receiving service thereunder, **unless KCPL is ordered** 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 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.

- The competent and substantial evidence on the evidentiary record before the Commission is clear that the "existing customers" referred to in this issue (as set forth in paragraph numbered 1 above) are those customers currently being served under KCPL's existing general service all-electric rate schedules and the separately metered space heating provisions of KCPL's standard general service tariffs and that Trigen's alternative recommendation, which the Commission stated it is adopting, was likewise referring to the customers currently being served under such rate schedules and tariff provisions. (Ex. 701, Herz Direct, pp. 5-6; Ex. 702, Herz Surrebuttal, pp. 6-7, 13). It is therefore unlawful, unjust, unreasonable, arbitrary and capricious, an abuse of discretion, unsupported by competent and substantial evidence on the evidentiary record before the Commission, contrary to the weight of the competent and substantial evidence on the evidentiary record before the Commission, and in conflict with the Commission's own

statement that it is adopting Trigen's alternative recommendation for the Commission to allow KCPL to define or interpret the term "existing customers" in some other manner and not clarify that "existing customers" refers to customers currently being served under such all-electric tariffs or separately metered space heating tariff provisions as of December 31, 2006 (*i.e.*, the effective date of the Commission's Report and Order), and order that KCPL is required to reflect this restriction in its tariffs.

WHEREFORE, Trigen-Kansas City Energy Corporation respectfully requests that the Commission (i) clarify its Report and Order issued in the above-captioned case on December 21, 2006, as set forth above in this pleading, or, in the event that the Commission does not clarify its December 21, 2006, Report and Order as set forth above, (ii) grant rehearing with respect to its Report and Order issued in the above-captioned case on December 21, 2006, and upon rehearing correct the errors in said Order discussed above and issue a new order consistent with the applicable law and facts as more fully set forth above in this pleading.

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 29th day of December, 2006.

**/s/ Jeffrey A. Keevil**

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