

**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-2007-0291
Service to Implement Its Regulatory Plan	)	

**POST-HEARING REPLY 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 Post-Hearing Reply Brief in reply to the initial post-hearing briefs of Kansas City Power & Light Company (“KCPL”) and the Commission Staff (“Staff”) on the issues set forth below pursuant to the procedural schedule established herein. While this Post-Hearing Reply Brief will address several matters contained in the initial post-hearing briefs of KCPL and Staff, failure of this Post-Hearing Reply Brief to address any statements or matters contained in the initial post-hearing briefs of KCPL, Staff or any other party should not be construed as agreement or acquiescence thereto unless so indicated herein or in Trigen’s Initial Post-Hearing Brief.

**ISSUES**

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

In the class cost of service / rate design “Introduction and Overview of KCPL’s Position” portion of its brief, KCPL makes several incorrect and misleading statements, many of which it then repeats under its discussion of the specific issues, apparently being

under the belief that if it says something often enough it becomes true. Rather than reply to the allegations in KCPL's Introduction and again reply to those same allegations when addressing specific issues, this Brief will, when possible, address KCPL's allegations in its discussion of the specific issues.

However, KCPL raises one matter only in its "Introduction," to which Trigen feels the need to respond. KCPL claims that some customers have made energy investments assuming the availability of the all-electric and space-heating rates. KCPL fails to recognize that, according to the Missouri Supreme Court, there is no protected property interest in a particular utility rate. *See, State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 31 (Mo. banc 1975). Therefore, any potential discount rate customers who constructed in reliance on the tariffs continuing did so at their peril.

In Staff's "Summary" of Issue 23, although probably unintentionally, it somewhat misstates Trigen's proposal regarding increasing KCPL's general service all-electric tariffs and general service separately-metered space-heating tariff provisions (the discounted rates) more than the corresponding standard general application rates. As stated in Trigen's Initial Post-Hearing Brief, Trigen's position is that in regard to the **all-electric tariff rates**, such discounted rates should be increased (more than the standard general application rates) so that *the difference between* the standard general application rates and the all-electric tariff rates is 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).

*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?*

In its brief on this issue, KCPL points to no record evidence to refute any of the numerous, substantial flaws in KCPL's discounted rates set forth in Trigen's Initial Post-Hearing Brief. Rather, KCPL merely admits that in its last rate case these discounted rates were increased by more than the system average increase, and states that no further adjustments should be made until a cost of service study is performed. However, later in its brief it objects to performing a cost of service study – at least anytime in the near future. As testified by Mr. Herz, KCPL needs to do a comprehensive cost of service study in order to prove that the discounted rates are *not* discriminatory, rather than the other way around as KCPL would suggest. Absent such studies the discounted rates can only be viewed as discriminatory and preferential, because general service customers are treated differently depending upon whether they are billed under the standard tariff or

under the discounted rates – contrary to the requirement that customers with the same usage or other service characteristics be treated the same regardless of end use. (Ex. 701, Herz Direct, pp.12-13). For the reasons set forth in Trigen’s Initial Post-Hearing Brief, which are unrefuted in KCPL’s brief, KCPL’s position should be rejected.

On page 46 of its brief, Staff states that Trigen finds Staff’s proposal on this issue acceptable, citing to page 1100 of the transcript. However, what Trigen’s witness actually said was that Staff’s position is a “reasonable alternative” to Trigen’s position. (Tr. 1100). As set forth in Trigen’s Initial Brief, Trigen does agree with Staff in regard to the increase to the separately metered space-heating rates. However, in regard to the all-electric tariff rates, while Trigen agrees with Staff’s objective to increase these rates more than the associated standard general application rates, Trigen respectfully submits that Staff’s proposal does not go far enough, especially with respect to the medium and large general service classes. (Ex. 703, Herz Surrebuttal, p. 3). As Mr. Herz testified, “Until such discounted rates are phased out in their entirety, general service customers are treated differently depending on whether those customers are billed under the standard tariff or under the discounted . . . rates” and therefore he recommended that the Commission increase the all-electric rates more than the associated standard general application rates so that *the difference between* the general service standard general application rates and the general service all-electric tariff rates *is reduced* by one-third, or 33% of the current difference, in this case and in KCPL’s next two rate cases. (*Id.*). A comparison of Staff’s proposal and Trigen’s proposal in regard to the all-electric tariff rates for the small, medium and large general service classes is shown on Schedules JAH-6, JAH-7 and JAH-8 to the surrebuttal testimony of Mr. Herz (Ex. 703).

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

In its brief on this issue, KCPL first refers to the regulatory plan stipulation, and what was agreed by the Signatory Parties to that stipulation. However, as discussed in Trigen's Initial Post-Hearing Brief, KCPL has admitted that Trigen was *not* a Signatory Party to that stipulation and agreement. (Tr. 1055). 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, KCPL has not 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.

In its brief KCPL then claims that Trigen's proposal is to further its own economic interests. Trigen would submit that most parties that participate in cases before the Commission – including KCPL – participate for this very reason. Furthermore, this neither changes the fact, as discussed in detail in Trigen's Initial Post-Hearing Brief, 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), nor constitutes 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 to other commercial and industrial customers in the same general service class. (Ex. 701, Herz Direct, pp. 4, 7-8). KCPL's contention 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 in Trigen's Initial Post-Hearing Brief.

Also, KCPL's allegation 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).

KCPL's brief then states that a cost of service study should be performed before "further" modifications are made to these discounted rates. However, KCPL also adamantly refuses to conduct such a study. As discussed below, 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. (Ex. 701, Herz Direct, p. 11). The reasons why KCPL's position on waiting for such a study should be rejected is discussed under issue (a) above.

KCPL's brief next avers that its rate design has been in place for many years. The Commission must remember, however, 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). (*Id.*). 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.*)

KCPL's brief then states that, in 1996, Trigen agreed to support the stipulation in KCPL's 1996 rate design case. What KCPL fails to mention is that the stipulation in that case specifically provided that:

**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). Therefore, Trigen's position in this case is not inconsistent with its agreement in that 1996 case.

Since KCPL's allegations are without merit, KCPL's position should be rejected.

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)?

KCPL begins its brief on this issue by misstating Trigen's position. As set forth in its Initial Post-Hearing Brief, Trigen's position is that due to the numerous, substantial flaws in KCPL's discounted rates discussed in detail in Trigen's Initial Post-Hearing

Brief, the Commission should in this case restrict the availability of these discounted rates to those qualifying commercial and industrial customers physical locations being served under such discounted rates currently (i.e., receiving the discounted rates in the test year billing determinants<sup>1</sup>). (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).

In its brief KCPL then claims Trigen’s proposal would “likely” increase rates for “all other customers;” Trigen submits this is not true. As Mr. Herz testified, Trigen’s proposal is not about changing inter-class cost of service study results. (Ex. 701, Herz Direct, p. 11). Trigen’s proposal would not require a shifting of revenues between classes; within each of the general service classes, however, the preferential treatment of certain customers would be eliminated. Furthermore, eliminating the discount rates will result in a reduction – not an increase – of the standard general service tariff rates because the standard tariff customers would no longer need to subsidize the discount rate customers. (*Id.* at p. 12).

KCPL’s brief then claims this proposal is “premature” without a cost of service study. However, given the numerous, substantial flaws in KCPL’s discounted rates discussed in detail in Trigen’s Initial Post-Hearing brief, as testified by Mr. Herz: “The Company’s [KCPL’s] position is backwards. It would only be logical that the availability

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<sup>1</sup> 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).

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).

Finally, KCPL’s brief claims Trigen and Staff “are trying to undo a rate design that was implemented in 1996 with the support of both Staff and Trigen.” As discussed above, the stipulation in the 1996 rate design case specifically provided that no party “shall be deemed to have approved or acquiesced in any question of . . . 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” and that no party would be “prejudiced, bound by, or in any way affected by the terms of this Stipulation and Agreement: (a) in any future proceeding.” (Ex. 704). Furthermore, the Commission should recall that the 1996 case simply continued the price differentials which were in effect prior to KCPL’s 1996 class cost of service case. (Ex. 701, Herz Direct, p. 11). Finally, however, Trigen’s proposal is not trying to “undo” KCPL’s rate design; rather, Trigen’s proposal would leave the current standard general service tariff structures in place and simply eliminate the rate discounts over time. (*Id.* at p. 12).

Since KCPL’s allegations are without merit, KCPL’s position should be rejected.

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 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?

Once again KCPL refers to the stipulation in its regulatory plan case and what was agreed by the Signatory Parties to that stipulation. However, as discussed above, it is undisputed that Trigen was NOT a Signatory Party to that stipulation. Any implication to the contrary by KCPL must simply be disregarded by the Commission. KCPL's position should be rejected.

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?

Although KCPL's brief claims it would be unlawful for the Commission to order KCPL to impute these revenues, the Commission should note that KCPL does not cite any legal support – no statute, regulation or case law – for its position. KCPL's only

other response to this issue is that it opposes imputing revenues. KCPL's position should be rejected.

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?

KCPL's brief on this issue states that it has the appropriate procedures and safeguards for *placing* customers on the appropriate rates. This 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). KCPL's position should be rejected.

On page 47 of its brief, Staff states that this would be “very awkward (from a customer service standpoint), time consuming and costly.” As Mr. Herz stated:

While on one hand I agree with MPSC Staff's observations regarding the difficulty, time and awkwardness of monitoring and policing the eligibility of customers benefiting from KCPL's general service space-heating

discounted rates<sup>2</sup>, on the other hand, **that's the task and burden KCPL must bear if the Company is to properly administer these preferential end-use tariffs and tariff provisions** according to the requirements of tariffs. KCPL's general service space-heating discounted rates should require an administrative process that involves gathering "behind the meter" information about commercial and industrial customer's space-heating system and periodic reporting on the specific applications associated with the usage of these customers. Absent KCPL reporting to the Commission on the items set forth in this issue in the Company's next rate case filing, it's not known if KCPL's general service space-heating discounted rates are benefiting customers that don't meet the eligibility requirements for such discounted rates. (emphasis added)

(Ex. 703, Herz Surrebuttal, p. 10).

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

KCPL's brief cites to no record evidence to support its position on this issue. This is because there is none. KCPL's unsupported position should be rejected by the Commission.

**CONCLUSION**

Trigen-Kansas City Energy Corporation respectfully requests that the Commission reject KCPL's positions on the issues set forth above and adopt the positions of Trigen-Kansas City Energy Corporation on those issues as set forth above and as

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<sup>2</sup> "General service space-heating discounted rates" includes KCPL's discounted all-electric general service tariff rates AND the provisions for separately metered space-heating rate discounts; these rates may also be referred to collectively herein as "discounted space-heating rates," "discounted rates related to space-heating," or simply "discounted rates."



discussed in more detail in the Initial Post-Hearing Brief of Trigen-Kansas City Energy Corporation.

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 16th day of November, 2007.

**/s/ Jeffrey A. Keevil**

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