

Briarcliff Development Company)
Complainant,)
)
v.)
)
Kansas City Power & Light Company)
Respondent.)

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2. Does the Commission have the authority to waive or vary KCP&L's tariff provisions that restrict KCP&L from providing service to Briarcliff I on the all-electric schedule ILGAE on a prospective basis? If so, should it?

KCP&L Position: Yes. The Commission has routinely reviewed and granted appropriate requests for variances from the provisions of public utility tariffs in the past. In fact, the Commission's own rules authorize the filing of such applications. See 4 CSR 240-3.015 and 4 CSR 240-2.060(4).

The Commission has also previously held that it has the authority to waive or vary public utilities' tariff provisions. *See Report & Order, Re Application of WST, Inc. a Missouri Corporation, For A Variance from Kansas City Power & Light Company's General Rules and Regulations Requiring Individual Metering*, Case No. EE-2006-0123 (October 19, 2005), pp. 12-13 wherein the Commission held that it has the statutory authority to grant variances to KCP&L's tariffs:

WST and KCPL agree that the Commission has the authority needed to grant the variance requested by WST. WST indicates that the Commission's authority is derived from Section 393.140(11), RSMo 2000, which gives the Commission the authority to require electric corporations to file tariffs. That statute specifically gives the Commission the power to "prescribe the form of every such schedule, and from time to time prescribe by order such changes in the form thereof as may be deemed wise."

It is also clear that the Commission has granted variances from the questioned provision of KCPL's tariff in the past. In two recent cases, EE-2003-0199³¹ and EE-2003-0282,³² the Commission granted variances from Section 5.03 of KCPL's tariff to allow for the master metering of service to apartment buildings in Kansas City. Since the Commission has granted such variances in the past, and since KCPL agrees that the Commission has the authority to grant such a variance from its tariff, the Commission finds that it has the authority to grant the variance requested by WST, if it is in the public interest to do so. (footnotes omitted)

See also Order Granting Variance, Re Kansas City Power & Light Company, Case No. EE-2003-0199 (March 27, 2003); and Case No. EE-2003-0282 (May 13, 2003); Order Granting Variance, Re Missouri Gas Energy, Case No. GE-2009-0194 (December 30, 2008); Order Approving Agreement and Granting Variance, Re Laclede Gas Company, Case No. GE-2005-0405 (April 11, 2006); Order Granting Waiver Regarding Refunds, Re Missouri Gas Energy, Case No. GO-2004-0524 (May 6, 2004).

The Commission should again reaffirm in this proceeding that it has the authority to grant a variance or waiver from specific tariff provisions related to the Company's all-electric tariffs to allow Briarcliff I to be grandfathered into the all-electric tariff. Good cause exists for a variance since Briarcliff relied on the all-electric tariff when it constructed the property.

3. Should the Commission order KCP&L to file a revised tariff sheet allowing KCP&L to provide service to Briarcliff I on an all-electric schedule on a prospective basis?

KCP&L Position: Yes. If the Commission does not grant KCP&L a variance or waiver, then the Company is willing to file a revised tariff sheet allowing KCP&L to provide service to Briarcliff I on an all-electric schedule on a prospective basis. Since KCP&L properly applied its tariff any variance or waiver should not be made retroactively.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, on this 13th day of January, 2012, to all counsel of record.

/s/ James M. Fischer
James M. Fischer