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Witness: Tim M. Rush
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Kansas City Power & Light Company
Case No.: EC-2011-0383
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Service Commission

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: EC-2011-0383

REBUTTAL TESTIMONY

OF

TIM M. RUSH

ON BEHALF OF

KANSAS CITY POWER & LIGHT COMPANY

**Kansas City, Missouri
October 2011**

KCPL Exhibit No. 2
Date 1/24/12 Reporter JL
File No. EC-2011-0383

DIRECT TESTIMONY

OF

TIM M. RUSH

Case No. EC-2011-0383

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

2 A: My name is Tim M. Rush. My business address is 1200 Main Street, Kansas City,
3 Missouri 64105.

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

5 A: I am employed by Kansas City Power & Light Company (“KCP&L” 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 both KCP&L and KCP&L Greater Missouri Operations
10 Company. I am also responsible for overseeing the regulatory reporting and general
11 activities as they relate to the Missouri Public Service Commission (“MPSC” or
12 “Commission”).

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

14 A: I received a Master of Business Administration degree from Northwest Missouri State
15 University in Maryville, Missouri. I did my undergraduate study at both the University
16 of Kansas in Lawrence and the University of Missouri in Columbia. I received a
17 Bachelor of Science degree in Business Administration with a concentration in
18 Accounting from the University of Missouri in Columbia.

1 **Q: Please provide your work experience.**

2 A: I was hired by KCP&L in 2001 as the Director, Regulatory Affairs. Prior to my
3 employment with KCP&L, I was employed by St. Joseph Light & Power Company
4 (“Light & Power”) for over 24 years. At Light & Power, I was Manager of Customer
5 Operations from 1996 to 2001, where I had responsibility for the regulatory area, as well
6 as marketing, energy consultant and customer services area. Customer services included
7 the call center and collections areas. Prior to that, I held various positions in the Rates
8 and Market Research Department from 1977 until 1996. I was the manager of that
9 department for fifteen years.

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

12 A: I have testified on several occasions before the MPSC on a variety of issues affecting
13 regulated public utilities. I have additionally testified at the Federal Energy Regulatory
14 Commission and the Kansas Corporation Commission.

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

16 A: I received a Master of Business Administration degree from Northwest Missouri State
17 University in Maryville, Missouri. I did my undergraduate study at both the University
18 of Kansas in Lawrence and the University of Missouri in Columbia. I received a
19 Bachelor of Science degree in Business Administration with a concentration in
20 Accounting from the University of Missouri in Columbia.

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

22 A: The purpose of my testimony is to respond to issues presented in the direct testimonies
23 filed by Mr. Nathaniel Hagedorn with Briarcliff Development Company and Mr. Michael

1 S. Scheperle with MPSC Staff ("Staff"). Additionally I will provide background and
2 facts to clarify that Briarcliff Development Company ("Briarcliff") is not eligible for the
3 all-electric rate for the service at 4100 N. Mulberry Drive, Kansas City, Missouri (the
4 "Property") based on the current all-electric tariff availability provisions.

5 **Q: Have you reviewed the direct testimony offered in this case?**

6 A: Yes. I have reviewed the direct testimony of Mr. Hagedorn and Mr. Scheperle.

7 **Q: Please summarize the testimony of Mr. Hagedorn?**

8 A: Mr. Hagedorn establishes the position of Briarcliff with respect to the electric service
9 received at 4100 N. Mulberry Street in Kansas City, Missouri. Mr. Hagedorn attempts to
10 characterize the actions of KCP&L as arbitrary and incorrect.

11 **Q: Do you agree with the position offered by Mr. Hagedorn?**

12 A: No. I believe the Company acted properly with respect to the appropriate rate tariff
13 availability at this address.

14 **Q: Is there any other area of concern with Mr. Hagedorn's testimony?**

15 A: Yes. Mr. Hagedorn provides an incomplete background of the cases associated with the
16 freeze of the all-electric and separate-meter space heating rates for commercial and
17 industrial customers.

18 **Q: Would you please provide a summary of the cases and the issues associated with the
19 all-electric and separate-meter space heating rates for commercial and industrial
20 customers?**

21 A: Yes. There have been several KCP&L cases before the MPSC regarding the Company's
22 all-electric and separate-meter space heating rates for commercial and industrial
23 customers. I was directly involved in providing testimony in each of the following cases.

1 I. In Re Kansas City Power & Light Company, Case No. ER-2006-0314 (“2006
2 Rate Case”), Trigen-Kansas City Energy Corp. (“Trigen”), now operating as
3 Veolia Energy Kansas City, Inc., over the strenuous objection of KCP&L,
4 recommended that the all-electric and separately-metered space heating rates for
5 commercial and industrial customers should be eliminated. The Commission
6 adopted KCP&L’s position, and rejected Trigen’s recommendation. As a result,
7 the Commission decided not to modify the general service all-electric rates that
8 had been in effect since 1996. (2006 Rate Case, *Report And Order*, pp. 82-83).

9 II. In Re Kansas City Power & Light Company, Case No. ER-2007-0291 (“2007
10 Rate Case”), Trigen again sought to have the Commission restrict the availability
11 of these all-electric and separately-metered space heating rates for commercial
12 and industrial customers. The Commission reversed its prior decision on the issue
13 in this 2007 Rate Case. The Commission decided this issue at p. 82 of the *Report*
14 *And Order* in the 2007 Rate Case as follows:

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

24 III. In its application for rehearing in the 2007 Rate Case, KCP&L requested that the
25 Commission grant a rehearing and stay of the effect of the Commission’s decision
26 to restrict the availability of the all-electric rate schedules, or in the alternative,
27 grant KCP&L a waiver or variance from this decision, and allow KCP&L to
28 grandfather any existing KCP&L customer who had entered into contracts or

1 purchased heating equipment, in reliance upon the existence of the availability of
2 KCP&L's all-electric and space heating rates. The Commission denied KCP&L's
3 request. (*Order Regarding Motions For Rehearing and Request For Clarification*
4 in the 2007 Rate Case (issued December 21, 2007)).

5 IV. On January 22, 2008, KCP&L filed an *Application For Waiver or Variance*
6 *Concerning Certain All-Electric And Electric Heating Customers Of Kansas City*
7 *Power & Light Company* (Case No. EE-2008-0238) in which the Company
8 sought a waiver of the provision in the *Report and Order* from KCP&L's 2007
9 Rate Case decision that limited all-electric and space heating rates to certain
10 customers. By a 3-2 vote the Commission granted motions to dismiss filed by
11 Trigen and Missouri Gas Energy on the grounds that KCP&L's application for
12 variance represented an improper collateral attack on the Commission's previous
13 decision in the 2007 Rate Case.

14 **Q: Following these cases what measures did KCP&L take to ensure the Commission's**
15 **orders and resulting rate freeze was reflected in KCP&L's operating procedures?**

16 A: As of January 1, 2008, KCP&L froze the rate to customers of record as of that date. Any
17 change of customer resulted in the rate reverting to the applicable standard electric tariffs.

18 **Q: Have you reviewed the details around the Briarcliff account?**

19 A: Yes.

1 **Q: Do you believe the Company acted properly when it created the accounts for this**
2 **Property?**

3 A: Yes, I believe the Company acted properly and consistently. Please refer to the rebuttal
4 testimony of Mr. Jason A. Henrich, Manager, Customer Care Center for the Company,
5 for further details around the practices used to establish service.

6 **Q: If the customer of record in 1999 had been Briarcliff would they still be eligible for**
7 **the all-electric rate today?**

8 A: Yes. The all-electric rates were grandfathered for the customer of record at a premise
9 prior to January 1, 2008. If the customer of record changed after that date the new
10 customer would not be eligible for the rate.

11 **Q: If Briarcliff continuously owned the Property, why are they ineligible for the all-**
12 **electric rate?**

13 A: Availability of the rate is tied to the customer of record on the account. According to the
14 Missouri Code of State Regulations, Chapter 13—Service and Billing Practices for
15 Residential Customers of Electric, Gas and Water Utilities, 4 CSR 240-13.010(E):

16 Customer means a person or legal entity responsible for payment for
17 service except one denoted as a guarantor.

18 As noted by Mr. Hagedorn on p. 12 of his direct testimony, there are other properties
19 within the Briarcliff development that retain the all-electric rate since the account name
20 (i.e. customer of record) was consistent throughout the term of service. Consistent with
21 the Commission orders regarding this issue, once the customer of record changed, the
22 rate was no longer available for this property.

1 **Q: Mr. Hagedorn on p. 13 says that Winbury Realty was not a responsible party or**
2 **customer on the account because it is no way received substantial use and benefit at**
3 **the Property. Do you agree?**

4 A: No. Winbury Realty was the customer of record for the Property. The Company billed
5 Winbury Realty and received payment from Winbury. Property management companies
6 are common in the Company's service territory. These companies agree to take electric
7 service so that they can manage the property (manage utilities, collect rent from tenants,
8 repair and maintain property, etc.) for a fee paid by the property owner. Winbury
9 provided this service for Briarcliff and therefore was the responsible party on the account
10 and received substantial use and benefit of electric service at the Property.

11 **Q: Was Briarcliff notified in anyway that a name change for an account would result in**
12 **the loss of the all-electric rate?**

13 A: Yes. The Company advised Briarcliff, via an email to Richie Benninghoven [mail to:
14 rcb@briarcliffkc.com] on February 8, 2008 concerning another property, advising that a
15 change in the customer name at any premise currently being served under the all-electric
16 tariff would result in the loss of the rate (Schedule TMR-1).

17 **Q: Please summarize the testimony of Mr. Scheperle?**

18 A: Mr. Scheperle summarizes the investigation completed by Staff and concludes KCP&L
19 properly applied its tariff with respect to this service.

20 **Q: Do you agree with the position offered by Mr. Scheperle?**

21 A: Yes. I believe Mr. Scheperle correctly defined the history of the issue and the steps taken
22 by the Company in application of the tariff.

1 **Q: What is your recommendation for the Commission in this complaint?**

2 A: I recommend that the Commission finds the Company applied its tariffs correctly, as
3 supported by Staff witness Mr. Scheperle, and reject and dismiss Briarcliff's complaint.

4 **Q: Is there any thing else for the Commission to consider?**

5 A: Yes. As stated in our July 1, 2011 Answer and Motion to Dismiss, KCP&L does support
6 Briarcliff in its request for all-electric rates on a going forward basis only. The Company
7 believes that the Commission may grant a variance or waiver from the tariff provisions
8 that restrict the Company from providing all-electric service to this customer. Good
9 cause exists for a variance from the Commission's ruling since Briarcliff relied on the all-
10 electric tariff when it constructed the Property. However, the Commission should not
11 and cannot lawfully grant Complainant's request for a refund of previously paid amounts
12 properly billed under KCP&L's tariffs.

13 **Q: Does that conclude your testimony?**

14 A: Yes, it does.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Briarcliff Development Company)	
)	
Complainant,)	
)	
v.)	Case No. EC-2011-0383
)	
Kansas City Power & Light Company)	
)	
Respondent.)	

AFFIDAVIT OF TIM M. RUSH

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

Tim M. Rush, being first duly sworn on his oath, states:

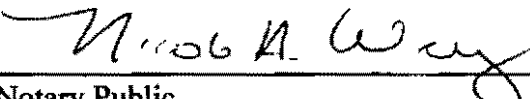
1. My name is Tim M. Rush. I work in Kansas City, Missouri, and I am employed by Kansas City Power & Light Company as Director, Regulatory Affairs.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on behalf Kansas City Power & Light Company consisting of eight (8) pages, having been prepared in written form for introduction into evidence in the above-captioned docket.

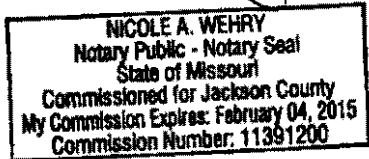
3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.


Tim M. Rush

Subscribed and sworn before me this 7th day of October, 2011.


Notary Public

My commission expires: Feb. 4, 2015



From: Sutphin David
Sent: Friday, February 08, 2008 2:23 PM
To: Richie Benninghoven
Subject: Commission Rate Order

KCP&L Jobs

Application	Briarcliff Office Bldgs A,B,C & Daycare
3-204440	Briarcliff Pad 2 / Lot 5 (Nell Hills)
3-220559	Briarcliff (new office)

Dear Mr. Benninghoven,

The purpose of this email is to inform you of a recent rate case order by the Missouri Public Service Commission affecting your electrically heated project(s) listed above:

Effective January 1, 2008, the Commission restricted KCP&L's general service all-electric and separately-metered space heating tariffs to those commercial and industrial customers who have been taking service under these rates as of December 31, 2007. This action "Freezes" these rates to existing customers for so long as they remain on the all-electric or space heating rate schedules. This also means that if the customer name changes on an account served by these tariffs or if an existing heat rate customer requests the rate to be changed, due to changes in building usage or load, the account must be changed to a standard electric tariff.

It is our belief that the rate case order places building owners, who made application for service prior to January 1, 2008, in a predicament in that owners made economic decisions based on the continuing availability of the space heat rates.

On January 21, 2008, KCP&L submitted an Application for Waiver or Variance that would allow the company to "grandfather" those customers who have projects underway so as to preserve the rate's availability to these projects, as they are completed. Accompanying the waiver request was a list of projects still in our planning process or under construction. The project listed above was placed on the waiver list because the KCP&L Application for Electric Service indicated that the project is designed to have electric heat.

In consideration of KCP&L's waiver application, the Commission decided to establish this concern as regulatory case - Case No. EE-2008-0238. Under normal case proceedings, it appears this issue may be set for a future public hearing. If this occurs, KCP&L will request the public hearing be held in Kansas City to allow customers the opportunity to express their opinions to the Commission.

While the outcome of this case is unknown at this time, we believe the Commission will act prudently and fairly take into consideration the resources and investment decisions customers have made based on the availability of the space heating rates.

Please forward this to others in your organization that might have an interest in this information and please feel free to contact me or a member of my staff if you have any questions or need additional information.

Regards,
David Sutphin
Kansas City Power & Light
Commercial Sales Consultant (Missouri)
816-556-2095 (Office)
[REDACTED] (Mobile)
816-556-2221 (Fax)