

## MEMORANDUM

TO: Missouri Public Service Commission Case File  
File No. EO-2012-0141, The Cathedral Square Corporation

FROM: Electric Meter Variance Committee

/s/ Michael S. Scheperle 12/7/11  
Michael Scheperle, Regulatory Review Division

/s/ Michael E. Taylor 12/7/11  
Michael Taylor, Regulatory Review Division

/s/ Nathan Williams 12/7/11  
Nathan Williams, Department of Staff Counsel

/s/ Lewis Mills 12/7/11  
Lewis Mills, Office of the Public Counsel

SUBJECT: Recommendation that the Commission grant relief to The Cathedral Square Corporation in response to its Request for a Variance from Kansas City Power & Light Company's tariff requirement that electric service to the separate living premises of the Cathedral Square Towers building located at 444 W. 12th Street in Kansas City, Missouri be separately metered

DATE: December 7, 2011

### **Recommendation**

The Electric Meter Variance Committee ("Committee") recommends the Commission grant relief so that Kansas City Power & Light Company ("KCPL" or "Company") can provide master metering to the Cathedral Square Towers building located at 444 W. 12th Street in Kansas City, Missouri, so long as the building is being operated by a IRC § 501(c)(3) qualified organization and used to provide subsidized housing to low-income elderly and/or disabled individuals who pay fixed rent inclusive of utilities.

## Background

On November 4, 2011, The Cathedral Square Corporation (“CSC”), a Missouri Non-Profit Corporation, filed an *Application For Variance from Kansas City Power & Light Company’s General Rules and Regulations on Individual Metering* (“Variance Application”) with respect to CSC’s building located at 444 W. 12<sup>th</sup> Street, Kansas City, Missouri, including Sections 5.01 and 5.03 of Rule 5, to permit the installation of a master meter for the building, and eliminate (remove) the existing 156 individual residential meters.

On November 7, 2011, the Commission issued an *Order Directing Filing* ordering KCPL and Commission Staff (“Staff”) to respond to the variance request no later than December 7, 2011. In the past, this type of variance request was assigned to a Variance Committee in conjunction with Commission rule 4 CSR 240-20.050 as detailed below.

(5) Any person or entity affected by this rule may file an application with the commission seeking a variance from all or parts of this rule (4 CSR 240-20.050) and for good cause shown, variances may be granted as follows:

\* \* \* \*

(C) A variance committee consisting of two (2) members of the commission’s utility division staff and a member of the commission’s general counsel’s office shall be established by the commission within (30) days from September 28, 1981. The public counsel shall be an ex officio member of this committee.

The Regulatory Review Division Director assigned two members of the Commission’s Energy Unit Staff, Michael S. Scheperle and Michael E. Taylor, and a member of the Commission’s Department of Staff Counsel, Nathan Williams, to the variance committee.

The variance committee met on December 6, 2011, considered the application, and data request responses received from CSC.

According to the Variance Application by CSC, during the construction of the CSC building in 1977, CSC voluntarily elected to install separate electric meters for each of the 156 residential apartment units, which meters are still in operation to date. Recently, CSC contracted for an investment grade audit report for electricity, steam heat, water and sewer utility costs. One of

the energy efficiency recommendations is that CSC remove the 156 residential electric meters and consolidate the individual metering into a single master electric meter for the entire building. The audit estimated that CSC could save approximately \$37,000 a year by moving from 156 residential bills to a single medium general service bill.

KCPL's tariff provisions that forbid the resale or redistribution of electricity are related to a federal statute enacted in 1978 designed to encourage the conservation of energy. The Public Utility Regulatory Policies Act of 1978, known as PURPA, requires that individual meters be installed in new buildings to encourage the conservation of energy by the occupants of those buildings.

#### **Commission Rule – 4 CSR 240-20.050**

The Commission promulgated a regulation to implement the requirements of PURPA—Rule 4 CSR 240-20.050—that requires the use of individual electric meters in multiple occupancy buildings unless the Commission, on a case-by-case basis makes an exception.

4 CSR 240-20.050(2) states:

Each residential and commercial unit in a multiple-occupancy building construction of which has begun after June 1, 1981 shall have installed a separate electric meter for each residential or commercial unit.

4 CSR 240-20.050(1)(D) states that construction begins when the footings are poured.

Commission Rule, 4 CSR 240-20.050(2), applies only to multiple-occupancy buildings constructed after June 1, 1981. Since the CSC building was constructed before 1981, the Commission's regulation does not apply, and separate metering requirements are not required for the CSC building.

4 CSR 240-20.050(6) provides:

The commission, in its discretion, may approve tariffs filed by an electric corporation which are more restrictive of master metering than the provisions of this rule.

KCPL's tariff is more restrictive than the Commission's regulation or PURPA and does not contain an explicit limitation on master meter applicability to older buildings.

4 CSR 240-20.050(5) authorizes the Commission the power to grant a variance for good cause shown.

Any person or entity affected by this rule may file an application with the commission seeking a variance from all or parts of this rule (4 CSR 240-20.050) and for good cause shown, variances may be granted .....

### **Kansas City Power & Light Company Tariff Provisions**

Two sections of KCPL's tariff relate to the master metering question which are subparts 5.01 and 5.03 of KCPL's Missouri Tariff No. 2.

Subpart 5.01 of Kansas City Power & Light Company's Tariff Schedule 2, 2<sup>nd</sup> Revised Sheet No. 1.18 issued December 5, 1980, and made effective January 19, 1981, follows:

#### **GENERAL RULES AND REGULATIONS APPLYING TO ELECTRIC SERVICE**

##### **5. MULTIPLE OCCUPANCY PREMISES**

5.01 INDIVIDUAL METERING FOR SEPARATE PREMISES: Except as otherwise provided in this Rule 5, the occupant of each separate premises in or on any multiple occupancy premises will be individually metered and supplied electric service as the Customer of the Company, which electric service shall be utilized by the Customer only for the operation of the Customer's installation located in or on the separate premises for which such electric service is supplied pursuant to the Customer's service agreement.

Subpart 5.03 of KCPL's Missouri Tariff No. 2, 2<sup>nd</sup> Revised Sheet Nos. 1.19 and 1.20 issued December 5, 1980, and made effective January 19, 1981, follows:

RESALE AND DISTRIBUTION: Except as provided in Rules 5.05, 5.06 and 5.07 hereof, the Company will not supply electric service to a Customer for resale or redistribution by the Customer.

- (a) “Resale” shall mean the furnishing of electric service by a Customer to another person under any arrangement whereby the Customer makes a specific or separate charge for the electric service so furnished, either in whole or in part, and whether the amount of such charge is determined by submetering, remetering, estimating or rebilling as an additional charge, flat, or excess charge, or otherwise.
- (b) “Redistribution” shall mean the furnishing of electric service by the Customer (i) to another building occupied by the Customer and located on the same premises of the Customer but used by the Customer for a separate business enterprise, or (ii) to separate premises occupied by another person, whether or not such premises are owned, leased or controlled by the Customer, without making a specific or separate charge for the electric service so furnished. With respect to any multiple-occupancy premises, the Company will not supply (sic) electric service to the owner, lessee, or operator thereof, as the Customer of the Company, and permit redistribution by such Customer to his office or residential tenants therein, except for those premises being supplied such service on the effective date of this schedule. The restriction against “redistribution” may be waived by the Company where the operation of certain types of multiple occupancy premises, either in whole or in part, makes it impractical for the company, in its judgment, to separately meter and supply electric service to each occupant as a Customer of the Company. Such exceptions may include:
  - (i) An operation catering predominantly to transients, such as hotels, motels, and hospitals;
  - (ii) An operation where the individual dwelling quarters are not equipped with kitchen and bathroom facilities, such as recognized rooming houses, dormitories, old folks homes, orphanages and eleemosynary institutions;
  - (iii) An operation of a building used essentially for general office or commercial purposes where the separate premises leased to office or commercial tenants are adjustable and subject to rearrangement or relocation to conform to the needs of the tenants and the Company deems it would be impractical to rearrange wiring to conform to any such changes;
  - (iv) An operation of a transient mobile home court (see Rule 14.02) where electric service is supplied by the Company to the operator, as the Customer of the Company, pursuant to an applicable rule or rate schedule of the Company.

In cases where redistribution is permitted under this Rule 5.03, the Company will supply electric service to the owner, lessee, or operator of such multiple occupancy premises, as the Customer of the Company, under an applicable rate schedule and the Customer may, by redistribution, furnish electric service to his tenants in or on such multiple occupancy premises on a rent inclusion basis; i.e.,

as an incident of the tenancy and without a specific or separate charge for the electric service so furnished by the Customer to his tenant, or a variable rental on account thereof.

These two tariff provisions prevent KCPL from providing electric service to the residents of the CSC building through the use of a master meter, as individual metering is required for multiple occupancy premises, with exceptions as noted in KCPL Tariff Subpart 5.03.

### **CSC's Application for Old Folks Home Exception**

In CSC's Application, it references that an exception to KCPL's tariff may exist. Paragraph 35 of the Application states: "[W]hile the Cathedral Square Towers are equipped with kitchen and bathroom facilities, its use is, in fact, very similar to an '**old folks home**' and other uses set forth in the exception, and a convincing argument could be made that the use by low-income elderly seniors in the Cathedral Square Towers should be included in one of the exceptions to the KCPL tariff; and if not, should be included by the granting of this variance." (Paragraph 35 of the Variance Application). CSC responded to a Data Request that the operations and character of the CSC Tower are very similar to many of the uses of an "old folks home." While "old folks home" is not defined in the text of the KCPL tariff, CSC stated that it believes the CSC Tower is similar in the following ways:

- a. The average age of the residents in the Tower is 74, or the residents are physically or mentally impaired or disabled;
- b. The Tower makes available assistance with incidental activities of daily living by supplying regular health clinics, all utilities included in rent, high speed internet access and cable available, controlled access for safety, regular van and bus trips to grocery and convenience stores, trash pickup, exterminator services, full maintenance, public transportation available, laundry facilities, recreation and coordinated activities;
- c. The Tower has special design features to accommodate the elderly, infirm or disabled, whereby it is handicapped accessible and it provides numerous design features throughout the facility, including the living units, to assist the elderly residents;
- d. A communal dining facility is available to the residents;

- e. A significant portion of the communal living areas – 22 percent of the entire building – are included in the layout of the Tower, such as a large communal dining and residents’ lounge; a large communal kitchen; a large lobby; a large fitness room; a crafts room; a business center; and a putting green.

However, the restriction against “redistribution” in the Company’s tariff may be waived by the Company for the operation of certain types of multiple occupancy premises, either in whole or in part, where it is impractical for the Company, in its judgment, to separately meter and supply electric service to each occupant as a Customer of the Company. CSC attempts to apply an exception to a building where electric service to the occupants is already separately metered and supplied. Based on CSC’s application and data request responses, the Electric Meter Variance Committee recommends that the Commission not grant the relief requested based on the CSC building being an “old folks home” as an exception in KCPL’s tariff.

### **Electric Meter Variance Committee Consideration**

The Electric Meter Variance Committee considered the following factors in determining its recommendation to the Commission:

1. Is individual metering of the multiple-occupancy building required by KCPL’s tariff Subpart 5.01 and 5.03?

**Finding:** Individual metering is required by KCPL’s Tariff Subparts 5.01 and 5.03 unless an exception exists. In this case, no exception has been documented and KCPL’s tariff clearly provides that KCPL may not serve the residents of the CSC facility through a master meter unless KCPL voluntarily or involuntarily revises its tariff to include such buildings as CSC. Currently, KCPL has installed separate electric meters for each of the 156 residential apartment units.

2. Do the occupant(s) of each unit have control over a portion of the electric energy used in such unit?

**Finding:** The resident(s) of each residential unit control(s) the use of all electric energy used in such unit for lighting, any kitchen appliances, and all other uses. Heating and cooling is provided by central hot and chilled water systems supplying fan coil units in each apartment. Currently, the residents never see or pay their utility bills. The residents do not review the utility bills, nor is their rent determined by their usage of electricity. Regardless of the metering configuration, CSC pays the bill or bills for all of the electricity consumed in the building. In reviewing the last month’s energy bill for CSC

from KCPL, the average electric bill for each residential unit was approximately \$30.96 (does not include communal common area).

3. With respect to such portion of electric energy used in such unit, do the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters?

**Finding:** Individual metering has been in place since at least 1979 for the building. CSC states that separate meters were installed (over 30 years) but the long-run benefits to the electric consumers exceed the cost of maintaining and continuing the operation of the separate meters. However, CSC neither maintains nor operates the meters. KCPL maintains and operates the meters.

CSC has estimated an annual cost savings of more than \$37,000. However, this \$37,000 will not be realized through a reduction in maintenance or operation of the meters. It would be realized as a result of going from the Residential rate classification for each apartment (156 units) to a Medium General Service rate classification with a master meter for meter charges, fees, administrative costs and rate savings.

The investment grade energy audit proposes there will be economic energy savings that will result from meter consolidation if CSC uses the savings to pay for other electrical energy-efficiency improvements such as installing new lighting in the common areas and individual units along with new high-efficiency chillers to cool the CSC building. This savings is estimated to be another \$23,300 per year above, and beyond the savings associated with consolidating the electric meters.

4. Would the granting of a variance be consistent with the goals of PURPA to increase conservation of electric energy, increase efficiency in the use of facilities and resources by electric utilities, and establish equitable retail rates for electric consumers?

**Finding:** Currently, the CSC building is in compliance with PURPA mandated policies which are designed (1) to increase conservation of electrical energy, (2) to increase efficiency in the use of facilities and resources by electric utilities, and (3) equitable retail rates for electric consumers.

However, the consumers of CSC do not review their utility bills, nor is their rent determined by their usage of electricity. CSC has been, and will continue to be, responsible for the maintenance, repair, and replacement of the CSC building and its utilities, having full responsibility for the payment of the bills for electric service. Granting of a variance will not necessarily increase or decrease conservation of electric energy, or increase efficiency in the use of facilities and resources by electric utilities. Since CSC will pay for all of the electricity consumed, whether metered unit-by-unit or in total, actions by individual consumers would not be productive of any direct economic benefits to them.



Granting a variance may be contrary to the goal of establishing equitable retail rates for electric consumers. One concern is that granting the requested variance could result in unduly preferential rates, on average, for residential electric consumers living in these units, relative to residential electric consumers living in other multiple-occupancy buildings, because of their ability to aggregate load and qualify for service under the Company's Medium General Service Rate, which is otherwise not available to residential consumers.

5. Would the granting of a variance be in the public interest because it furthers a public policy objective in conjunction with other federal, state, or local government programs, such as subsidizing housing costs for low-income residents or promoting economic development in certain urban areas?

**Finding:** CSC is a non-profit corporation providing rental housing and related facilities for lower income families and elderly and handicapped families and elderly and handicapped persons pursuant to Section 202 of the National Housing Act. The criteria to qualify for rental housing are not to exceed \$23,950 for one individual, or \$27,350 for two persons. The minimum age requirement is sixty-two (62) and over, unless the person is disabled or eligible to receive disability. The average age is 74 with over 96% paying below market rent based on each tenant's income. The average monthly rent by the tenants is approximately \$292 and is subsidized. The CSC building offers a housing need for low-income residents in the Kansas City area.

#### **Additional Considerations by Variance Committee**

In addition to the factors listed above, the Electric Meter Variance Committee reviewed additional distinguishing characteristics for possibly granting a variance. The Commission previously approved a *Unanimous Stipulation and Agreement*, granting a variance in Case Nos. EE-2004-0267 and EE-2004-0268. Staff's *Suggestions in Support of the Unanimous Stipulation and Agreement*, set forth six distinguishing characteristics which formed the basis it used to ultimately reach a Unanimous Stipulation and Agreement in both cases. These characteristics are:

- (1) The average age of the residents is well over 65 years, or the residents are physically or mentally impaired or disabled;
- (2) The facility makes available assistance with Incidental Activities of Daily Living;
- (3) The facilities have special design features to accommodate the elderly, infirm or disabled;
- (4) Communal dining is provided to residents;
- (5) Communal living areas make up a portion of the facility, and
- (6) The individual units are relatively small.

In order to further evaluate the variance requested in Case No. EO-2012-0141, the additional information is listed below.

- (1) Is the average age of the residents is well over 65 years, or the residents are physically or mentally impaired or disabled?

**Finding:** The average age of the residents of the rental housing at CSC is seventy-four (74) years with 160 residents in 156 units. There are thirty-one (31) residents with physical disabilities and nineteen (19) mentally impaired.

- (2) Does the facility make available assistance with incidental Activities of Daily Living?

**Finding:** Numerous local organizations work closely with the CSC Service Coordinator to meet the needs of residents such as homemaking services, blood pressure checks, rides to and from appointments, and dinner's quarterly for residents. Services include regular health clinics, all utilities included in rent payment, high speed internet and cable available, controlled safety access, regular van and bus trips to grocery and convenience stores, trash pickup, full maintenance, laundry facilities, and numerous coordinated activities.

- (3) Do the facilities have special design features to accommodate the elderly, infirm or disabled?

**Finding:** Currently, there are 31 residents with physical disabilities (10 with power chairs, 21 with walkers) and nineteen mentally impaired residents. Along with incidental activities described in (2) above, a communal dining facility is available to the residents, a large communal dining and resident's lounge, a large communal kitchen, a large lobby, a large fitness room, a crafts room, and a business center.

- (4) Is communal dining provided to residents?

**Finding:** Communal dining is not provided on a daily basis; however, there is a large dining area and kitchen where communal meals are prepared for parties and on special occasions.

- (5) Do communal living areas make up a portion of the facility?

**Finding:** Twenty-two percent of the facility involves the communal living area. A significant portion includes a large communal dining and residents' lounge, a large communal kitchen, a large lobby, a large fitness room, a crafts room, a business center, and a putting green.

- (6) Are the individual units relatively small?

**Finding:** There are 144 single bedroom units and 12 two-bedroom units with 525 sq. ft. for a one bedroom and 625 sq. ft. for a two-bedroom living area.

### **Conclusion of Variance Committee**

In this situation, the CSC building is currently in compliance with Commission Rule 4 CSR 240-20.050, PURPA mandated policies, and KCPL tariff provisions, and has been for over 30 years. Due to the age of the building and an investment grade energy audit recommendation, CSC is requesting a variance to potentially save approximately \$37,000 annually that is dependent upon a rate differential based on providing electric service to the CSC building through a more favorable rate (Medium General Service) instead of the residential rate applicable for individual residential apartments. The Electric Meter Variance Committee is not relying on this purported savings as a basis for recommending relief here.

The findings which influenced the Electric Meter Variance Committee to recommend that the Commission grant relief are the following:

- The average age of the residents is 74 with over 96% paying below market rent based on each tenant's income.
- The average monthly rent by the tenants is approximately \$292 with all utilities paid by CSC.
- There are 31 residents with physical disabilities and 19 mentally impaired residents out of the total 160 residents.
- The CSC building offers a housing need for humanity in the Kansas City area.
- The individual units are relatively small with 144 single bedroom facilities having 525 square feet living area and 12 two bedroom facilities having 625 square feet living area.
- CSC is a non-profit corporation provided housing and related facilities for lower income families and elderly and handicapped families and elderly and handicapped persons. The criteria to qualify for rental housing are incomes not to exceed \$23,950 for an individual, or \$27,350 for two persons, unless the individual is disabled or eligible to receive disability.
- CSC pays for all electricity consumed, whether metered unit-by-unit or in total, granting of a variance will not increase or decrease energy efficiency.

Therefore, given the particular facts in this case, the Electric Meter Variance Committee recommends the Commission grant relief so that Kansas City Power & Light Company can provide master metering to the Cathedral Square Towers building located at 444 W. 12<sup>th</sup> Street in Kansas City, Missouri, so long as the building is being operated by a IRC § 501(c)(3) qualified organization and used to provide subsidized housing to low-income elderly and/or disabled individuals who pay fixed rent inclusive of utilities.