

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

BRIARCLIFF DEVELOPMENT COMPANY,)	
a Missouri Corporation)	
)	
COMPLAINANT)	CASE NO. EC-2011-0383
)	
v.)	
)	
KANSAS CITY POWER & LIGHT)	
COMPANY)	
)	
RESPONDENT)	

JOINT STIPULATION OF NON-DISPUTED MATERIAL FACTS

COME NOW the Staff of the Missouri Public Service Commission ("Staff"), Briarcliff Development Company ("Briarcliff") and Kansas City Power & Light (KCP&L), and jointly state as follows:

1. On August 3, 2011, the Commission issued its *Order Setting Procedural Schedule* ("Order") which, inter alia, ordered the parties to file a Joint Stipulation Of Non-Disputed Material Facts by November 7, 2011. That after the granting of extensions of time by the Commission, the Joint Stipulation is now due on January 19, 2012.

2. In response to the Commission's Order, the parties jointly file their Stipulation Of Non-Disputed Facts, and stipulate and agree to the following non-disputed facts:

Stipulation Of Non-Disputed Material Facts

1. Complainant Briarcliff Development Company ("Briarcliff Development") is a Missouri corporation located at 4151 N. Mulberry Street, Kansas City, Missouri 64116.

2. Respondent Kansas City Power & Light Company ("KCPL") is an electrical corporation and public utility as defined in Section 386.020, RSMo. engaged in the business of manufacture, transmission and distribution of electricity subject to the regulatory authority of the Commission pursuant to Chapters 386 and 393, RSMo.

3. Briarcliff Development is the owner of several commercial office buildings, including the Briarcliff I building ("Briarcliff I"), the Briarcliff II building ("Briarcliff II") and the Briarcliff III building ("Briarcliff III").

4. Briarcliff I is located at 4100 N. Mulberry Street, Kansas City, Missouri 64116.,

5. Briarcliff Development has owned Briarcliff I since it was developed in 1999.

6. KCPL has provided electric service to the premises located at 4100 N. Mulberry Street, Kansas City, Missouri 64116 continuously since 1999.

7. In the development of Briarcliff I, Briarcliff I relied upon the existence of KCPL's all electric rate and this all electric rate was instrumental in Complainant's decision to develop it as an all-electric building to be served under KCPL's all electric rate schedules.

8. KCPL's customer names and service dates of record for Briarcliff I are as follows:

Customer Name	Service From	Service To
Briarcliff West Development	5/17/1999	6/14/1999

Winbury Realty
Briarcliff Development

6/14/1999
8/5/2009

8/5/2009
Current

9. Electric service began at Briarcliff I on May 17, 1999 and continued through June 14, 1999 in the name of Briarcliff West Development at the request of someone who identified himself as Lee Swartz. At this time, Briarcliff West Development was the legal entity responsible for payment.

10. On June 11, 1999, someone who identified herself as Ms. Dianne Painter called KCP&L to have service set up in the name of Winbury Realty as of June 14, 1999. Service at Briarcliff I was put in the name of Winbury Realty by KCP&L on June 14, 1999. The account remained in the name of Winbury Realty for over 10 years commencing on June 14, 1999 and terminating on August 5, 2009.

11. From May 17, 1999 through January 25, 2001, service to the premise was under the 1 MGAE rate schedule, and service from January 25, 2001 through August 5, 2009 was under the 1 LGAE rate schedule.

12. The Report and Order in Case No. ER-2006-0314 addresses the discounted rates of KCPL all-electric and separately metered space heating rate schedules as outlined below:

[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? (Report and Order, Case No. ER-2006-0314,

page 82)

... The Commission is concerned that during KCPL's winter season, commercial and industrial customers under the all-electric general service tariffs pay about 23% less for the entire electricity usage than they would otherwise pay under the standard general service tariff, and that the commercial and industrial customers under the separately metered space heating provision would pay about 54% less for such usage than they would pay under the standard general service tariff.

However, the Commission recognizes that KCPL participated in an extensive class cost of service study in 1996, and that KCPL has reached an agreement for class cost of service and rate design in the present case. The Commission will adopt Staff's suggestion, and 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 tariffs to existing customers until there is a comprehensive class cost of service study. This appears to be a reasonable solution, since no one has performed a cost study of the impacts of eliminating the current rates.

(Report and Order, Case No. ER-2006-0314, page 83)
[emphasis added]

13. In Re Kansas City Power & Light Company, Case No. ER-2007-0291 ("2007 Rate Case"), The Commission ordered at p. 82 of the *Report And Order* in the 2007 Rate Case as follows:

The availability of KCPL's general service all-electric tariffs and separately-metered space heating rates should 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, and such rates should 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).

14. Since the effective date of rates in the 2007 Rate Case, the relevant KCPL rate schedules are denoted as "FROZEN" (Large General Service - All Electric (Frozen) in Sheet 19A and Separately Metered Space Heat (Frozen) in Sheet 11A.

15. In an email dated February 8, 2008, from David Sutphin (KCPL employee) to Richie Benninghoven (contact person for Briarcliff Development), KCPL notified Briarcliff that if the name changes, then the account must be changed to a standard electric tariff. The email states:

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.

16. On August 5, 2009, KCPL was contacted by someone identifying himself as Jim Unruh, Senior Vice President of the Winbury Group and directed to put the account in the name of Briarcliff Development.

17. Effective August 5, 2009, the customer name on KCP&L's records for the Briarcliff I building was changed by KCPL from "Winbury

Realty" to "Briarcliff Development."

18. On August 10, 2009, KCPL was again contacted by someone identifying himself as Mr. Jim Unruh. He stated that Briarcliff I was no longer going to be managed by their company and instead they would be managing Briarcliff I in house. He also stated that bills should be sent to Skip Rosenstock, who was the Senior Property Manager for Briarcliff Realty from July 2009 to May 2011, at 4151 N. Mulberry, Ste. 205, Kansas City, Missouri 64116.

19. Commencing with the first billing after KCPL was notified of the change of customer name on KCPL's records, KCPL ceased billing "Winbury Realty" and began billing "Briarcliff Development" for electric service to the Briarcliff I building at the Large General Service (1LGSE) rate instead of continuing on under the Large General All Electric (1LGAE) rate.

20. That the pertinent language of the Large General Service - All Electric (Frozen) schedule commencing January 1, 2008, reads as follows:

"This Schedule is available only to Customers' physical locations currently taking service under the Schedule and who are served hereunder continuously thereafter."

21. That KCPL's General Rules and Regulations Applying to Electric Service, P.S.C. MO. No. 2, Sheet 1.05 under I. Definitions defines Customer as follows:

"1.04 CUSTOMER: Any person applying for, receiving, using, or agreeing

to take a class of electric service supplied by the Company under one rate schedule at a single point of delivery at and for use within the premise either (a) occupied by such persons, or (b) as may, with the consent of the Company, be designated in the service application or by other means acceptable to the Company."

WHEREFORE, the signatory parties submit their *Joint Stipulation Of Non-Disputed Facts* for consideration by the Commission.

Respectfully submitted,

BRIARCLIFF DEVELOPMENT

/s/_ Jeremiah D. Finnegan
Jeremiah D. Finnegan MBE 18416
David L. Woodsmall MBE 40747
Attorneys for Briarcliff
Development
1209 Penntower Office Center
3100 Broadway
Kansas City, Mo 64111
Phone: (816) 753-1122
Fax: (816) 756-0373
E-mail: dwoodsmall@fcplaw.com

THE STAFF OF THE
MISSOURI PUBLIC SERVICE COMMISSION

/s/Sarah Kliethermes
Sarah L. Kliethermes MBE 60024
Attorney for the Staff of the
Missouri Public Service
Commission
P. O. Box 360
Jefferson City, MO 65102
Phone: (573) 751-2690
Fax: (573) 751-6726
E-mail:
sarah.kliethermes@psc.mo.gov

KANSAS CITY POWER & LIGHT COMPANY

/s/ James M. Fischer
James M. Fischer MBN 27543
Fischer & Dority, P.C.
101 Madison-Suite 400
Jefferson City, MO 65101

Phone: (573) 636-6758 ext. 1
Fax: (573) 636-0383
Email: jfischerpc@aol.com

Roger W. Steiner, MBN 39586
Kansas City Power & Light
Company
1200 Main - 16th Floor
Kansas City, Missouri 64105
Phone: (816) 556-2314
Fax: (816) 556-2110
E-mail: roger.steiner@kcpl.com

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 19th day of January, 2012.

/s/Sarah Kliethermes
Sarah Kliethermes