

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

In the Matter of the Application of)
The Cathedral Square Corporation,)
a Missouri Non-Profit Corporation,)
For a Variance from Kansas City) **Case No. EO-2012-0141**
Power & Light Company’s)
General Rules and Regulations)
Requiring Individual Metering)

THE CATHEDRAL SQUARE CORPORATION’S POSITION STATEMENT

COME NOW Applicant, The Cathedral Square Corporation (“CSC”), and for its Position Statement, states as follows:

Issue No. 1: Does Missouri law, i.e. Section 393.140(11), RSMo, give the Commission the authority to grant variances to provisions of KCPL’s tariffs?

CSC Position: Yes.

CSC’s position is that the Commission does have the authority to grant a variance from KCPL’s tariffs, and does so by the order of the Commission.

In its Conclusions of Law set forth in its Report and Order issued in Case No. EE-2006-0123 on October 19, 2005, styled *In the Matter of the Application of WST, Inc., a Missouri Corporation, for a Variance from Kansas City Power & Light Company’s General Rules and Regulations Requiring Individual Metering*, the Commission held “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.” Id. at 12-13.

The Commission went onto hold in *WST* that “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-2003-0199 and EE-2003-0282, 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.”

The Commission has the authority to grant the variance requested by CSC in the instant case.

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Issue No. 2: Does 4 CSR 240-20.050(2) of the Commission’s regulations, which provides that “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”, require the Cathedral Square Towers building located at 444 W. 12th Street in Kansas City, Missouri to have installed a separate electric meter for each residential or commercial unit?

CSC Position: No.

CSC’s position is that Rule 4 CSR 240-20.050(2) does not apply to the Cathedral Square Tower building, because the footing were poured before June 1, 1981. (See Direct Testimony of William L. Foreman, Sr., Representative of the Cathedral Square Corporation 5:105-113.) Rule 4 CSR 240-20.050(2) only requires those residential and commercial unit in multiple-occupancy buildings constructed after June 1, 1981 to have installed a separate electric meter for each unit, and Rule 4 CSR 240-20.050(1)(D) states that “construction begins when the footings are poured.” With the Cathedral Square Towers building, the footings were poured, the construction began, and the building was even completed and occupied, before June 1, 1981.

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Issue No. 3: If (a) the Commission does have the authority to grant variances to provisions of KCPL's tariffs, and (b) 4 CSR 240-20.050(2) does not require the Cathedral Square Towers building to have installed a separate electric meter for each unit, then should the Commission grant CSC its requested variance to the pertinent provisions of KCPL's tariffs requiring separate metering, i.e. 5.01 and 5.03 of its General Rules and Regulations Applying to Electric Service, and permit the installation of a master electric meter for the Cathedral Square Towers?

CSC Position: Yes.

As the Commission clearly does have the authority to grant variances to provisions of KCPL's tariffs, and 4 CSR 240-20.050(2) clearly does not require the Cathedral Square Towers building to have installed a separate electric meters for each unit, CSC's position is that it is wise and in the public interest for the Commission to grant the variance to KCPL's tariffs requiring separate metering, to order KCPL to modify its tariffs accordingly, and to order KCPL to permit the installation of a master electric meter for the Cathedral Square Towers.

The Public Utility Regulatory Act of 1978, 16 U.S.C. 2601 et. seq., known as "PURPA", requires that individual meters be installed in new buildings to encourage the conservation of energy by the occupants of those buildings. See 16 U.S.C. 2625(d). See *WST* at 7-8. The Commission promulgated 4 CSR 240-20.050 to implement the requirements of PURPA. See *WST* at 7. The Commission held in *WST* that "in general, consumers of electricity are more likely to restrict their use of that resource if they are responsible for paying for the electricity that they use. That is the rationale for the restriction on master metering found in PURPA." See *WST* at 8.

Although the Cathedral Square Towers is not required by 4 CSR 240-20.050 to have the separate meters installed because its building was constructed after June 1, 1981, KCPL's tariffs are

broader than 4 CSR 240-20.050. However, the plain reality is that KCPL's requirement for individual meters to be installed in the Cathedral Square Towers building (a) does not accomplish or serve the energy conservation goals of PURPA, the Commission, or KCPL, and (b) are burdensome and wastefully absorb administrative time and money. (See *Direct Testimony of Jeffrey G. Flathman*, 3:63-74; 5:1-8-115; Exhibit A to *Flathman Direct Testimony*, Page 8-11.)

It is in the public interest for the Commission to grant the requested variances to KCPL's tariffs. CSC has sought out ways that it can make energy-conservation improvements to its building, and Energy Solutions Professionals has provided those recommendations in its Investment Grade Audit Report. (See Exhibit A to *Flathman Direct Testimony*.) Of the many improvements that CSC intends to make that will in part be funded by the cost savings attributed to the electric meter variance, are new lighting improvements, a new chiller and a new cooling tower. (See page 8 of Exhibit A.) The annual savings from the meter consolidation will pay for over \$300,000 in electrical energy-efficient improvements. (See *Direct Testimony of William L. Foreman, Sr.*, 9:211-216; 10:217-218.)

The goal of PURPA, the Commission's regulations in 4 CSR 240-20.050 and KCPL's tariffs in Section 5 are energy conservation. The result of the variance in this case will be energy conservation. The low-income, elderly people that need housing in the Kansas City community, which CSC is providing as a non-profit organization, will immensely benefit by the variance because it will provide new air conditioning, new lighting, other improvements, and most significantly, it continues to assist CSC in being able to provide below-market rent housing to low-income elderly.

There is no better definition of "in the public interest" than to 1) assist CSC in being able to provide a humanitarian need in Kansas City to low-income elderly; and 2) to assist CSC in being able to provide more energy efficient and energy conservation operations and improvements at the

Cathedral Square Towers through the elimination of burdensome, unnecessary charges and administration of 156 individual units throughout the building. The residents never see, review or pay their electric bills and so there is no upside to the individual electric meters, only a downside in increased costs to CSC, and which results in inhibiting CSC in making improvements for energy conservation at the building. (See Direct Testimony of Foreman, 10:229-238.)

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Issue No. 4: If the Commission grants CSC the variance from the separate meter requirements of the KCPL tariffs, would the Cathedral Square Towers building qualify for KCPL's Residential Service rate schedule or its General Service rate schedule?

CSC Position: General Service rate schedule.

The Cathedral Square Towers building would qualify for KCPL's General Service rate schedule, specifically its Medium General Service rate schedule, if the Commission grants the variance to the separate meter requirements of the KCPL tariffs and orders KCPL to permit the master metering. CSC's position is that the Residential rate schedule, Sheet 5 of KCPL tariff, P.S.C. Mo. No. 7, does not allow KCPL to provide the Residential Rate Schedule R where the buildings were not served as such prior to June 1, 1981.

Sheet 10 of KCPL tariff, P.S.C. Mo. No. 7, provides that KCPL's Medium General Service Schedule MGS is applicable to "multiple-occupancy buildings when the tenants or occupants of the building are furnished with electric service on a rent inclusion basis." CST is precisely that: a multiple-occupancy building, where the tenants are furnished with electric service on a rent inclusion basis. The rent of each tenant is fixed based upon their income, and so the utilities are included in that amount. (See Direct Testimony of Foreman, 8:192)

Further, in the *Report and Order* in Case No. EE-2006-0123, the Commission indicated that "KCPL suggested that there may be more condominium development projects underway that will request master metering under similar circumstances. KCPL requests that the Commission provide guidance on how such future developments should be handled. The Commission will not do so in this case, but suggests that KCPL carefully examine its own tariff to determine whether it wishes to make any modifications to that tariff." See *WST* at 15.

That Report and Order also set forth that “KCPL indicates that if a master meter is permitted for this building, it would be appropriate for KCPL to provide service to the condominium owners association under its commercial rate schedule.” See *WST* at 14.

While KCPL indicated that a residential high-rise condominium conversion in downtown Kansas City would receive a commercial rate schedule, it now claims CSC’s consolidation of its meters for the benefit of low-income elderly should receive a residential rate schedule, which carries a higher rate than commercial.

Further, it was suggested to KCPL that it “carefully examine its own tariff to determine whether it wishes to make any modifications to that tariff to determine how future developments would be handled. KCPL made no changes to Sheet 5 or Sheet 10 of its tariffs. If it desired for multiple occupancy residential buildings that were built prior to June 1, 1981 to receive only the residential rate schedule, then it should have (a) modified Sheet 5 to eliminate the provision that “this paragraph applies only to single metered multiple-occupancy buildings served as such prior to June 1, 1981”, which it did not do, and (b) KCPL should refrain from taking arbitrary, capricious and inconsistent positions on multiple occupancy residential buildings, indicating a commercial rate schedule for some, and a residential rate schedule for others.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 9th day of April, 2012.

/s/ Shawn E. Stewart