

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

In the Matter of the Application of Kansas City)	
Power & Light Company for Approval to Make)	
Certain Changes in Its Charges for Electric)	Case No. ER-2006-0314
Service to Begin the Implementation of Its)	
Regulatory Plan.)	

**POSTHEARING REPLY BRIEF OF TRIGEN-KANSAS
CITY ENERGY CORPORATION**

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COMES NOW Trigen-Kansas City Energy Corporation (“Trigen”), by and through the undersigned counsel, and submits this Posthearing Reply Brief in reply to the initial posthearing briefs of Kansas City Power & Light Company (“KCPL”) and the Commission Staff (“Staff”) on the issues set forth below pursuant to the procedural schedule established herein.

ISSUES

I. In this case, should the qualification provision of the existing general service all-electric rate schedules be expanded as proposed by KCPL, and the all-electric winter energy rate increased an additional 5%, to make rate discounts available to existing and future customers who are not all-electric customers?

Given the lack of competent and substantial record evidence to support KCPL’s proposal to expand the qualification provision of its existing general service all-electric rate schedules to make rate discounts available to customers who are not all-electric, in its initial brief KCPL chooses to mischaracterize Trigen’s position. KCPL states that it and the other signatory parties to the rate design stipulation in this case are proposing to

increase the general service space heating and all-electric winter energy rate by 5 percentage points more than each class' general application rates; in footnote 9 KCPL then claims that Trigen has taken the position that the increase should be significantly greater than 5%, citing to Trigen's prehearing brief. However, what Trigen's prehearing brief actually said was that KCPL has failed to show that such increase should not be significantly greater than 5% *to avoid an effective subsidy of those customers receiving the discount rates*. This is still true; however, as stated in Trigen's initial posthearing brief herein, the point being made in regard to the 5% differential increase is that this 5% differential increase does not constitute evidentiary support for, save or otherwise justify KCPL's proposal to expand the availability of the all-electric discount to customers who are not all-electric. Although the Stipulation and Agreement Regarding Class Cost-of-Service and Rate Design Issues filed herein by Staff on November 9, 2006, provides that general service space heating and all-electric winter rates will be increased by 5 percentage points more than each class' general application rates, this provision of the Stipulation *will only come into play if* the Commission decides to not eliminate these rates, and does not provide support for the continuation of these rates. Likewise, in the unlikely event that the Commission erroneously decides to approve KCPL's proposal to expand the availability of the all-electric discount to customers who are not all-electric, this rate would be increased by 5 percentage points more than the corresponding general application rate. *In other words, it is not the 5% differential increase to which Trigen objects; it is the expansion or broadening of the tariff itself*. The Commission should also recognize that Trigen filed a response to the stipulation within seven days of the filing of the stipulation in which Trigen stated it did not oppose the stipulation, which KCPL

failed to mention in the previous section of its brief when it purportedly listed the parties who had expressed no objection to the stipulation in an attempt to further mischaracterize Trigen's position. Furthermore, in its initial posthearing brief KCPL mischaracterizes the stipulation itself, which will be addressed under the next issue.

The only thing mentioned by KCPL in its initial brief which even approaches the realm of "evidence" to support its proposal to expand the availability of the discount rate is its unsubstantiated claim that the change it proposes will "meet customer needs" and give customers more choice. However, there is no evidence in the record of this case of any such "need." Furthermore, as discussed in Trigen's initial brief, KCPL has not conducted any analyses of, nor does it appear to possess information as to, the impact its proposal will have on customers, billing determinants or revenues, or for that matter, **how many customers would be affected by its proposal.** (Ex. 701, Herz Direct, page 11; Ex. 702, Herz Surrebuttal, page 2)(emphasis added). In response to Trigen's data request 7, KCPL stated that "Potential customer shifts that would result from the requested change in availability of this rate has not been measured. As a result, billing determinates are not available to project the associated revenue impact." (Ex. 701, Herz Direct, page 11). Mr. Rush also admitted this at the hearing. (Tr. 1025-1026). Therefore, KCPL has admitted that the impact of its proposed change on revenues is neither known nor measurable at this time.

This unsubstantiated claim of "need" cannot serve to support KCPL's proposal. As testified by Mr. Herz in response to this claim of KCPL, "the fact still remains that the Company has not presented any cost support, analyses or underlying basis from which the Commission or any party to this proceeding can evaluate, test, scrutinize or critique

the proposal to expand the availability of the general service all-electric discounted rates to C&I customers that are not all-electric.” (Ex. 702, Herz Surrebuttal, page 4).

Nowhere in KCPL’s initial brief does it point to any evidence which would prove the reasonableness of its proposal.¹

Staff, in its initial brief on this issue, merely states it does not oppose expansion of the tariff. However, as discussed in Trigen’s initial brief, it should be noted that Staff testified that KCPL’s proposed tariff language regarding broadening the availability of the all-electric rates “is too vague.” (Ex. 129, Pyatte Rebuttal, page 18). However, Staff did not offer alternative tariff language to correct the vagueness. Therefore, no record evidence exists to fix the vagueness problem identified by Staff, and KCPL’s proposal must be rejected by the Commission.

Given the glaring absence of competent and substantial evidence on the record to support KCPL’s proposal, nothing in the initial briefs of either KCPL or Staff has diminished in any way the arguments set forth by Trigen in its initial brief. Therefore, for all of the reasons discussed in detail in Trigen’s initial posthearing brief filed in this case, the qualification provision of the existing general service all-electric rate schedules **should not be expanded** as proposed by KCPL to make rate discounts available to existing and future customers who are not all-electric customers.

II. Should the existing general service all-electric rate schedules and the separately metered space heating provisions of KCPL’s standard general service tariffs

¹ Any difference in charges must be based upon some difference in the service provided by the Company and must have some reasonable relation to the amount of difference, and cannot be so great as to produce unjust discrimination; the reasonableness of the basis of the classification must appear and competent and substantial record evidence must exist to support the classification as reasonable. This is accomplished by proof of the cost to the Company of serving customers under the various rates. See the “Applicable Law” section of Trigen’s initial brief for a discussion of the legal basis for this.

be (1) eliminated; or (2) 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?

Once again, given the lack of evidence to support its position, KCPL begins this issue of its initial brief by attacking Trigen, stating that Trigen's interest is due to its role as a competitor of KCPL. Even if this true, Trigen respectfully asks "So what?" The fact that Trigen and KCPL are competitors does not change the facts, as discussed in detail in Trigen's initial posthearing brief, that KCPL has no cost of service support for either its existing general service all-electric rate discount or its existing separately metered space heating discount. (Ex. 701, Herz Direct, pp. 28-29). In fact, KCPL has provided no documentation that its discounted rates related to C&I space heating exceed the incremental cost of providing the service. (Ex. 701, Herz Direct, pp. 27-28). Furthermore, in its response to Trigen's data request 11, KCPL admitted that "Within the context of the rate case, the Company did not perform any incremental or marginal cost studies related to serving our all-electric, electric space heating customers." (Ex. 701, Herz Direct, page 12). At the hearing, Mr. Rush of KCPL admitted that KCPL did not file any incremental or marginal cost studies related to serving its existing all-electric or electric space heating customers in this case. (Tr. 1031).

Furthermore, the fact that Trigen and KCPL are competitors does not change the fact, as discussed in detail in Trigen's initial brief, that KCPL's discounted rates are unreasonable and unfairly discriminate between C&I customers (*See, e.g.*, Ex. 701, Herz Direct, pp. 4, 8-9, 14-17) in violation of law (*See, e.g.*, Section 393.130 RSMo), or

constitute any justification for such discrimination. It likewise does not change the fact that the discounted rates send price signals that favor low load factor, high demand use for selective end use customers, which directly conflicts with the price signals sent other C&I customers in the same general service class. (Ex. 701, Herz Direct, page 4). It likewise does not constitute any justification or “fix” for the other numerous, substantial flaws in KCPL’s discounted all-electric general service tariff rates and KCPL’s tariff provisions for separately metered space heating rate discounts which were discussed in detail in Trigen’s initial posthearing brief.

The fact that Trigen and KCPL are competitors does not negate the fact that the law requires that any difference in KCPL’s charges must be based upon some difference in the service provided by the Company and must have some reasonable relation to the amount of difference, and cannot be so great as to produce unjust discrimination; the reasonableness of the basis of the classification must appear and competent and substantial record evidence must exist to support the classification as reasonable². Nor does it constitute any difference in the service provided by KCPL to these customers or any evidence regarding the reasonableness of KCPL’s classification. KCPL’s reference to Trigen’s interest being due to its role as a competitor of KCPL, as alleged support for KCPL’s position, is nothing but a red herring because it does not constitute any support for KCPL’s position, and the Commission should recognize it as the red herring it is.

KCPL’s raising of Trigen’s status as a competitor is also somewhat disingenuous, given that Trigen has never tried to hide that it is a competitor. In fact, Trigen even mentioned that it is a competitor of KCPL’s as early as Trigen’s application to intervene in this case. However, despite raising the matter of KCPL’s and Trigen’s status as

² See the “Applicable Law” section of Trigen’s initial posthearing brief.

“competitors,” KCPL failed to mention the one ground on which this fact is relevant to this issue – because such ground clearly supports elimination of these rate discounts. It must be remembered that KCPL has presented no testimony or analyses which demonstrates that the discounted rates related to space heating are needed by either KCPL or its customers. As testified by Mr. Herz, “if selective price cuts or tariff discounts are allowed, such as KCP&L’s space heating related discounts³, that are specifically directed at an alternative energy supplier (such as Trigen) available to the customer, the Commission should want to proceed with extreme caution so as to not undermine or encourage the elimination of such competition that could allow predatory situations to arise.” (Ex. 701, Herz Direct, pp. 26-27). Trigen fears that the temptation to use these selective end-use discount rates as an unfair competitive practice – by targeting customers of Trigen or customers in its service territory – could prove too great for KCPL to resist, given their status as “competitors.” This is simply another in the long list of reasons why these discounted rates should be eliminated.

On page 69 of its initial brief, KCPL appears to attempt to imply that these discount rates were based on a class cost of service study from its 1996 rate design case. However, KCPL’s brief then goes on to admit, as discussed in Trigen’s initial brief, that these discount rates merely maintained the price differential that was in place prior to the 1996 rate design case, effectively admitting that the discount rates are not cost-based. Certainly, no evidence has been produced by KCPL to show that they are, or were in 1996. On page 69 of its brief KCPL also mischaracterizes Mr. Herz’ position as “trying to unwind” the work done in the 1996 rate design case; this is simply inaccurate. As Mr.

³ “Space heating related discounts” refers to both the general service all-electric discount rate tariffs and the separately metered space heating discount rate provisions of the standard general service tariffs.

Herz testified, he does not object to KCPL's standard general service rate "structure" which was the result of the 1996 rate design case, but, rather, objects to the discount rates which were merely based on maintaining price differentials in place prior to the 1996 case. (Ex. 702, Herz Surrebuttal, pp. 8, 11). KCPL continues to confuse rate "structure," to which Mr. Herz does not object, with the discount rates, to which objection is made. As made clear at the hearing, the recommendation of Mr. Herz would not change the rate "structure" itself – the impact would be to change the rates, not the "structure." (Tr. 1060).

Also on page 69 of its brief, KCPL criticizes Mr. Herz for not conducting a cost of service study. This is particularly disingenuous on the part of KCPL, because, as discussed in detail in Trigen's initial brief, and as admitted by Mr. Rush of KCPL (Tr. 1029-1030), although KCPL filed a class cost of service study in this case, its all-electric tariff customers and its separately metered space heating customers were *rolled-in with* the standard tariff customers within each general service category and therefore the cost of service study results shown in KCPL's study are for the entire general service category or categories; **KCPL has no cost of service support for either its existing general service all-electric rate discounts or its existing separately metered space heating discounts.** (Ex. 701, Herz Direct, pp. 28-29). In fact, KCPL has provided no documentation that its discounted rates related to C&I space heating exceed the incremental cost of providing the service. (Ex. 701, Herz Direct, pp. 27-28). Furthermore, in its response to Trigen's data request 11, KCPL admitted that "Within the context of the rate case, the Company did not perform any incremental or marginal cost studies related to serving our all-electric, electric space heating customers." (Ex. 701,

Herz Direct, page 12). At the hearing, Mr. Rush of KCPL admitted that KCPL did not file any incremental or marginal cost studies related to serving its existing all-electric or electric space heating customers in this case. (Tr. 1031). Also on page 69 of its brief, KCPL criticizes Mr. Herz for not calculating the rate impact, on KCPL's customers in the downtown Kansas City area, of eliminating these discount rates; what they fail to mention is that (a) he sought information from KCPL which would enable him to perform this calculation but the information was not provided by KCPL (Tr. 1046); (b) apparently KCPL has not performed such a calculation either, since they did not offer any evidence regarding it; and (c) most importantly, although he did not limit his analysis to customers in the downtown Kansas City area, Mr. Herz did calculate an analysis of the customer impact of eliminating the discount rates for the entire KCPL Missouri jurisdictional area, as shown on Schedule JAH-1. (Ex. 701, Herz Direct, pp. 9, 15, and Schedule JAH-1; Tr. 1052-1053).

Finally, as mentioned under the previous issue, in its initial brief KCPL mischaracterizes the rate design Stipulation and Agreement which was filed in this case on November 9, 2006. In its brief, beginning on page 69, KCPL claims that a "diverse number of customer representatives have carefully studied KCPL's cost of service studies and rate design proposals in this case, and have reached a Unanimous Stipulation And Agreement that resolves the cost of service and rate design issues." The fallacy of this representation by KCPL should be obvious to anyone with a familiarity with the English language based on merely a cursory review of the Stipulation itself. First, the Stipulation was not unanimous when filed⁴, as it was signed by only seven of the numerous parties to

⁴ Trigen recognizes that, pursuant to the Commission's rule on stipulations, if no party timely objects to a nonunanimous stipulation *the Commission may treat the stipulation as* unanimous; this does not, however,

this case. Second, and most importantly, while the Stipulation resolved many of the cost of service and rate design issues, it did not resolve **all** cost of service and rate design issues. In fact, the Stipulation specifically stated that “The Signatories have reached an agreement (“Agreement”) that resolves among them, **with the exception of those issues listed under the subheading “Availability of General Service Space-Heating Rate Discounts,”** all of the Rate Design/Cost-of-Service issues listed under the heading “Class Cost-of-Service and Rate Design,” in the List of Issues.” (emphasis added) The issues specifically excepted from the Stipulation are those issues addressed in this brief. Furthermore, Appendix A to the Stipulation states that the “general service space heating and all-electric issues (broadening availability, restricting availability to existing customers or totally eliminating the rate schedules) will be litigated.” Again, these are the issues addressed in this brief, and which were specifically excepted from the Stipulation. Therefore, the Stipulation does not affect the issues addressed in this brief, nor should it affect in any way the Commission’s deliberations on these issues. KCPL’s mischaracterization of the Stipulation should not be countenanced by the Commission.

In its initial brief on this issue, Staff states it opposes eliminating the existing discount rates because no one has studied the customer impacts if they were eliminated; however, Mr. Herz performed an analysis of the overall impact as shown on Schedule JAH-1. (Ex. 701, Herz Direct, pp. 9, 15, and Schedule JAH-1; Tr. 1052-1053).

Furthermore, it must be remembered that if the Commission decides to not eliminate the discount rates at this time but to *restrict* them to qualifying customers currently being

mean the stipulation was a unanimous stipulation, particularly not when it was filed. As mentioned above, Trigen, though not a signatory, even filed a pleading in this case indicating that it did not oppose the stipulation.

served under such discounted rates, there would, of course, be no impact to current customers. (Tr. 1052-1053).

Staff also states that it is willing to study eliminating the discount rates in the context of a comprehensive CCOS and rate design investigation and/or a cost-effectiveness study of KCPL's Affordability, Energy Efficiency and Demand Response programs. However, in the meantime, such an approach would do nothing to fix the numerous flaws in these discounted rates which were identified and discussed in detail in Trigen's initial brief⁵ – *i.e.*, during the study period and until the results of such study could be implemented, the problems would continue. In fact, as new customers took advantage of the existing discounted rates, the problems would continue to grow and magnify. Therefore, if the Commission decides not to eliminate these discount rates at this time, these rates should at least be restricted to qualifying C&I customers currently being served under such discounted rates until there is a comprehensive class cost of service study and/or cost-effectiveness study which analyzes and supports such discount rate tariffs and discount rate provisions as well as KCPL's Affordability, Energy Efficiency and Demand Response programs. Such an approach would at least prevent the current situation from getting worse until the necessary studies can be completed and implemented.

Nothing in the initial briefs of either KCPL or Staff has diminished in any way the arguments set forth by Trigen in its initial brief. The overwhelming weight of the

⁵ For example: unfair and unreasonable discrimination between C&I customers, some of which may be competing with each other, by charging different amounts for identical usage under similar circumstances; favoring low load factor, high demand use customers; creating additional and unnecessary burdens and cost to administer, monitor and police which, as a practical matter, are not possible to fully implement or maintain; the discounted rates are a matter of simply continuing past practice and are not cost-based; the discounted rates have the potential to adversely impact competition. (*See, e.g.*, Ex. 701, Herz Direct, pp. 4-5, 12, 27-29).

competent and substantial evidence on the record supports the position that, for all of the reasons discussed in detail in Trigen's initial posthearing brief filed in this case, the Commission should eliminate all of KCPL's general service space heating related rate discounts – *i.e.*, KCPL's existing all-electric general service tariffs should be terminated *and* the separately metered space heating provisions should be eliminated from KCPL's standard general service tariffs. (Ex. 701, Herz Direct, page 5; Ex. 702, Herz Surrebuttal, page 13). However, in the event that the Commission does not eliminate all of KCPL's general service space heating related rate discounts at this time, the availability of such discounted rates should at least be restricted to those qualifying C&I customers currently being served under such all-electric tariffs or separately metered space heating tariff provisions until a comprehensive class cost of service study and rate design investigation and/or a cost-effectiveness study which analyzes and supports such tariffs and provisions as well as KCPL's Affordability, Energy Efficiency and Demand Response programs (as referenced in the rebuttal testimony of Staff witness Pyatte, Ex. 129 at page 17) has been completed, reviewed and presented for the Commission's consideration. (Ex. 701, Herz Direct, pp. 5-6; Ex. 702, Herz Surrebuttal, pp. 6-7, 13). In that event, KCPL should be ordered to present such a study as soon as possible and to implement a phase out plan for the remaining C&I customers served under the all-electric general service tariffs and the separately metered space heating tariff provisions. (Ex. 701, Herz Direct, page 6). In addition, KCPL should be required to investigate and determine whether the C&I customers currently served under the all-electric general service tariffs and the separately metered space heating tariff provisions meet the eligibility requirements for those discounted rates; to remove those customers which the investigation determines are no

longer eligible for such discounts; and to monitor and police the eligibility requirements of those customers receiving the discount rates until the discount rates are phased out.

(*Id.* at 5-6).

CONCLUSION

For all of the foregoing reasons, Trigen-Kansas City Energy Corporation respectfully requests that the Commission adopt its position as set forth above and in its initial posthearing brief on each of the issues set forth herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was sent to counsel for parties of record by depositing same in the U.S. Mail, first class postage prepaid, by hand-delivery, or by electronic mail transmission, this 27th day of November, 2006.

/s/ Charles Brent Stewart
