

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

BRIARCLIFF DEVELOPMENT COMPANY,)
a Missouri Corporation)

COMPLAINANT)

v.)

KANSAS CITY POWER & LIGHT)
COMPANY)

RESPONDENT)

CASE NO. _____

COMPLAINT

COMES NOW, Complainant, by its attorneys, pursuant to Section 386.390, RSMo. and 4 CSR 240-2.070 of the Commission's Rules of Practice and Procedure, and for its Complaint against Kansas City Power & Light Company ("KCPL"), respectfully states as follows:

1. Complainant Briarcliff Development Company ("Briarcliff Development") is a Missouri corporation located at 4151 N. Mulberry Street, Kansas City, Missouri 64116. Its telephone number is (816) 741-8540 and its fax number is (816) 746-5138. Its contact person is Rebecca Hill, Controller, whose e-mail address is rhill@briarcliffkc.com.

2. Respondent Kansas City Power & Light Company ("KCPL") is an electrical corporation and public utility as defined in §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").

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 continuously supplied Briarcliff I with electricity since 1999.
7. In the development of Briarcliff I, KCPL 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. Effective on June 1, 1999, Briarcliff Development through its then subsidiary, Briarcliff West Realty Company ("Briarcliff West"), entered into a Management Agreement with The Winbury Group of K.C., Inc. ("Winbury Group"), wherein the Winbury Group was designated as exclusive managing agent for Briarcliff I. A true copy of such Management Agreement is attached hereto as **Exhibit A** and incorporated by reference herein.
9. Less than a month later, on June 28, 1999, Briarcliff Development and Briarcliff West filed Articles of Merger with the Missouri Secretary of State seeking to merge Briarcliff West, the subsidiary, into Briarcliff Development, the parent corporation, with Briarcliff Development becoming the surviving corporation. On the same date the Secretary of State issued its Certificate of Merger as requested. A true copy of the Articles of Merger and the Certificate of Merger is attached hereto as **Exhibit B** and incorporated by reference herein.
10. Pursuant to the Articles of Merger, Paragraph (10) Plan of Merger, Subparagraph 2.: "All of the property, rights, privileges, leases and patents of Briarcliff West Realty Co. are to be transferred to and become the property of Briarcliff Development Company the survivor."
11. Pursuant to the Management Agreement with The Winbury Group, which Agreement was transferred to Briarcliff Development from Briarcliff West, Briarcliff

Development was now the "Owner" under the Management Agreement instead of Briarcliff West.

It was expressly provided in Article I, Paragraph 1.1 of the Management Agreement that:

"all obligations or expenses incurred hereunder by Manager shall be for the account of, on behalf of, and at the expense of Owner, except as otherwise specifically provided herein." [Emphasis Added.]

12. Also pursuant to Paragraph 1.6 of Article I of the Management Agreement, it was specifically provided that:

"Manager shall enter into or renew contracts in the name of the Owner for electricity ..., and other services in the ordinary course of business." [Emphasis Added.]

13. Pursuant to the Management Agreement, in 1999, Briarcliff Development's agent, the Winbury Group, contacted KCPL and applied for electric service under the All-Electric Rate Schedule for the Briarcliff I all electric building in the name of the Owner, Briarcliff Development.

14. KCPL then set up Briarcliff Development's Briarcliff I building on its Large General Service - All Electric rate schedule (1LGAE).

15. However, while the Manager, the Winbury Group, only had authority to open an account for electric service in the name of the Owner, for reasons known only to KCPL, KCPL did not list the Owner of the building as the customer on its billings. Instead it listed the "Customer Name" as "Winbury Realty" at the Service Address of 4100 N. Mulberry Dr. A true copy of a KCPL bill addressed to Winbury Realty is attached hereto as **Exhibit C** and incorporated by reference herein. Also attached hereto as **Exhibit D** and incorporated by reference is a true copy of the check to KCPL issued by "The Winbury Group of Kansas City"

as agent for Briarcliff Development paying such KCPL bill for the Briarcliff I building that was addressed to "Winbury Realty" at 4100 N. Mulberry Drive.

16. Not only did KCPL not list Briarcliff Development, the Owner of the building, as the customer on its billings, but by listing the customer as "Winbury Realty", it did not even list the owner's Manager as the customer. KCPL instead listed as the customer an entirely different corporate entity with no association with the building. A search of the records of the Secretary of State of Missouri discloses that The Winbury Group of K.C., Inc., while having the same officers and board members, is a different corporation than Winbury Realty of K.C., Inc. A true copy of the 1999 Annual Registration Report for Winbury Realty of K.C., Inc. is attached hereto as **Exhibit E-1** and incorporated by reference herein. A true copy of the 1999 Annual Registration Report for The Winbury Group of K.C., Inc. is attached hereto as **Exhibit E-2** and incorporated by reference herein.

17. The Winbury Group continued as the exclusive managing agent for Briarcliff Development from 1999 through July of 2009, when the Management Agreement was terminated.

18. In August of 2009, Briarcliff Development took the property management of Briarcliff I in house.

19. In early August 2009, Briarcliff Development notified KCPL that the Winbury Group was no longer its agent and asked KCPL to begin billing the Briarcliff I building in the name of Briarcliff Development Company at the same address, 4100 N. Mulberry Dr.

20. KCPL did not advise Briarcliff Development that by merely changing the billing name for the Briarcliff I building from Winbury Realty (a company that was not even involved in the property but in whose name KCPL had mistakenly billed for electric service to the building

since 1999) to Briarcliff Development (the name of the party that has owned the building and has received such electric service at the all-electric rate since 1999, that KCPL would no longer bill the building at the frozen all-electric rate schedule that the building was served under since 1999.

21. Instead, commencing with the first billing after KCPL was notified of the change, 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. A true copy of the last billing to the building with KCPL listing the customer as Winbury Realty dated 08/07/2009 is enclosed as **Exhibit F** and incorporated by reference herein. A true copy of the first billing to the building with KCPL listing the customer as Briarcliff Development dated 08/24/2009 is enclosed as **Exhibit G** and incorporated by reference herein.

22. Shortly after discovery of the change in billing classification, Briarcliff Development attempted to get KCPL to reconsider its actions, however after substantial dialogue between Briarcliff Development and KCPL, KCPL stood by its determination that under its Large General Service - All Electric (Frozen) schedule commencing January 1, 2008, that if the customer name changes on an account being served under the all electric rate, i.e., from Winbury Realty to Briarcliff Development, Briarcliff Development cannot continue to receive the all electric rate even though Briarcliff Development was the actual customer continuously receiving the electricity from KCPL at the Briarcliff I building, both before and after the change in billing rates at the physical location.

23. 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."

24. 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." [Emphasis Added.]

25. That as a result of KCPL's actions in charging the Briarcliff I building at the Large General Service (1LGSE) rate instead of continuing on under the Large General All Electric (1LGAE) rate, Briarcliff Development has been damaged in that the 1LGSE rate results in higher rates being charged to Briarcliff I for electric service since August 5, 2009, commencing with KCPL's August 24, 2009 billing (Exhibit G), than had it been continuously billed at the 1LGAE rate for which it qualified.

COUNT I

26. Complainant incorporates paragraphs 1-25 as if fully set out in Count I.

27. That KCPL's actions in charging Complainant for service provided the Briarcliff I building at the 1LGSE rate since August 5, 2009 instead of the 1LGAE rate is arbitrary, capricious, unreasonable and unlawful and unduly discriminatory in violation of Sections 393.130 and 393.140(11) in that:

a. KCPL arbitrarily and capriciously in 1999 named Winbury Realty as the Briarcliff I customer, when Winbury Realty was a company that was not involved with Briarcliff I nor with Briarcliff Development, the owner of the building;

b. That even had KCPL named The Winbury Group as the Customer, that too would have been arbitrary and capricious, and in violation of the Management Agreement, since The Winbury Group was Briarcliff Development's managing agent of the Briarcliff I building and pursuant to the Management Agreement between The Winbury Group and Briarcliff Development, The Winbury Group was not authorized to enter into a contract for electricity in its own name or any name other than the name of the owner, Briarcliff Development. Under the Management Agreement, The Winbury Group was required to enter into contracts for electricity "in the name of the owner" and all obligations or expenses incurred pursuant to the Management Agreement by the managing agent "shall be for the account of, on behalf of and at the expense of the owner";

c. At all times continuously since 1999, Briarcliff Development, as the owner of Briarcliff I, was a Customer of KCPL at its Briarcliff I building as the term "Customer" is defined in KCPL's tariffs under I. Definitions, Paragraph 1.04 in that Briarcliff Development has continuously been "receiving" and "using" electric service provided by KCPL at the Briarcliff I building physical location at 4100 N. Mulberry Drive since 1999;

d. That but for KCPL in 1999 naming Winbury Realty as the Customer instead of Briarcliff Development, the owner of Briarcliff I continuously since 1999, when Briarcliff Development removed The Winbury Group as its managing agent of the Briarcliff I building and replaced them with its in house management team in August 2009 and asked KCPL to correctly bill the building as Briarcliff

Development, there would have been no question that the frozen all electric rate schedule would have continued to apply to the Briarcliff I building;

e. That in violation of Section 393.130.2, KCPL is unduly and unreasonably discriminating against Briarcliff Development and its Briarcliff I building in not providing it with the frozen all electric rate due to KCPL's failing to name Briarcliff Development, the owner of the building continuously since 1999, as the Customer on the billing for the Briarcliff I building and then in denying it the frozen all electric rate for which it would qualify but for the arbitrary and capricious naming of Winbury Realty as the Customer, when Winbury Realty was not the customer or even involved in any way whatsoever in the receipt of the electric service at the Briarcliff I building.

WHEREFORE, Complainant prays for an order from this Commission:

1. Finding that KCPL's actions in naming Winbury Realty as the Customer Name under which Briarcliff I was billed by KCPL instead of Briarcliff Development, the owner of the building, was arbitrary, capricious and unreasonable.

2. Finding that under the circumstances, that KCPL's refusal to allow Briarcliff Development to continue to receive the frozen all electric rate was arbitrary, capricious, unreasonable, unlawful and unduly discriminatory.

3. Finding that under the circumstances, that Briarcliff Development is and has been entitled to have been continuously served at its Briarcliff I building under the frozen all electric rate at all times and that KCPL acted arbitrarily, capriciously, unreasonably, unlawfully and

discriminatorily in commencing to bill Briarcliff Development for service at the 1LGSE rate continuously since August 5, 2009.

4. Ordering KCPL to commence immediately billing Briarcliff Development at the Briarcliff I building at the 1LGAE rate


4. Ordering KCPL to rebill Briarcliff Development for service to the Briarcliff I building at the 1LGAE rate for all service provided it at the 1LGSE rate since August 5, 2009 and for the period thereafter until KCPL reinstitutes service at the 1LGAE rate.

5. Ordering KCPL to make an accounting of the difference collected from Briarcliff Development for the service it billed at the 1LGSE rate and what the charges would have been for such period under the 1LGAE rate and refunding such difference in amount to Briarcliff Development with interest at the legal rate of interest.

6. For such other relief as the Commission shall deem just and appropriate.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.,

By: 
JEREMIAH D. FINNEGAN MO#18416
DAVID W. WOODSMALL MO#40747
1209 Penntower Office Center
3100 Broadway
Kansas City, MO 64111
(816) 753-1122
(816) 756-0373 FAX

ATTORNEYS FOR BRIARCLIFF
DEVELOPMENT COMPANY