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Witness: Michael S. Scheperle  
Sponsoring Party: MO PSC Staff  
Type of Exhibit: Direct Testimony  
Case No.: EC-2011-0383  
Date Testimony Prepared: September 8, 2011

**MISSOURI PUBLIC SERVICE COMMISSION**

**REGULATORY REVIEW DIVISION**

**DIRECT TESTIMONY**

**OF**

**MICHAEL S. SCHEPERLE**

**BRIARCLIFF DEVELOPMENT COMPANY**

**V.**

**KANSAS CITY POWER AND LIGHT COMPANY**

**CASE NO. EC-2011-0383**

*Jefferson City, Missouri  
September 2011*

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

Briarcliff Development Company,     )  
Complainant v. Kansas City Power &     )  
Light Company, Respondent             )

Case No. EC-2011-0383

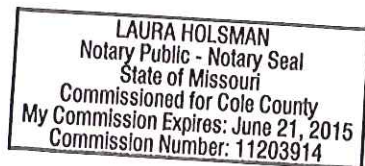
**AFFIDAVIT OF MICHAEL S. SCHEPERLE**

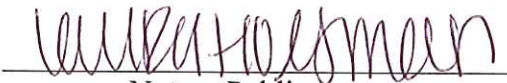
STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF COLE     )

Michael S. Scheperle, of lawful age, on his oath states: that he has participated in the preparation of the following Direct Testimony in question and answer form, consisting of 6 pages of Direct Testimony to be presented in the above case, that the answers in the following Direct Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.

  
\_\_\_\_\_  
Michael S. Scheperle

Subscribed and sworn to before me this 7 day of September, 2011.



  
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Notary Public

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**CASE NO. EC-2011-0383**

Q. Please state your name and business address.

A. Michael S. Scheperle and my business address is Missouri Public Service Commission, P. O. Box 360, Jefferson City, Missouri 65102.

Q. By who are you employed?

A. I am employed by the Staff of the Missouri Public Service Commission (Staff) and my title is Manager, Economic Analysis Section; Energy Department; Regulatory Review Division.

Q. Please summarize your educational background and work experience.

A. Schedule 1, which is attached to this testimony, is a summary of my credentials. Schedule 2 is a list of cases in which I have previously testified.

## **EXECUTIVE SUMMARY**

Q. What is the purpose of this direct testimony?

A. This direct testimony presents Staff's recommendation based on Staff's investigation and analysis of the complaint of Briarcliff Development Company (Briarcliff) versus Kansas City Power & Light Company (KCPL). The issues in the complaint turn on whether 4100 N Mulberry Street, Kansas City, Missouri (Briarcliff I) remained eligible for service under restricted rate schedule— Large General Service All Electric (1LGAE) after

1 August 4, 2009, when KCPL's customer of record changed from "Winbury Realty" to  
2 "Briarcliff Development." The availability of the 1LGAE rate schedule is restricted to those  
3 qualifying customers' commercial and industrial physical locations being served under such  
4 rates as of December 31, 2007, for so long as they continuously remain on that rate schedule.

5 Q. Please provide a summary of your testimony.

6 A. Based on its investigation and the analysis of information provided by  
7 Briarcliff and KCPL, Staff recommends the Commission find that KCPL properly applied its  
8 tariff when it refused to provide service to Briarcliff I on the 1LGAE rate schedule after  
9 August 4, 2009, because the customer name associated with that service changed and the  
10 Commission has restricted the availability of the 1LGAE rate schedule to those qualifying  
11 customers' commercial and industrial physical locations being served under such rates as of  
12 December 31, 2007, for so long as they continuously remain on that rate schedule.

13 **HISTORY**

14 Q. Has the cost-effectiveness of KCPL's commercial and industrial all-electric  
15 rate schedules been called into question in prior cases?

16 A. Yes. As described below, KCPL was ordered to perform a cost study  
17 concerning its commercial and industrial all-electric and separately metered space heating rate  
18 schedules and to restrict the availability of its existing general service all-electric rate  
19 schedules and separately metered space heating provisions to those qualifying customers  
20 being served such rates as of December 31, 2007.

21 Q. In which cases has the Commission addressed KCPL's commercial and  
22 industrial all-electric rate schedules?

23 A. Prior to the current Complaint Case, Case No. EC-2011-0383, the commercial  
24 and industrial all-electric rate schedules have been addressed in two KCPL rate cases, Case

1 Nos. ER-2006-0314 and ER-2007-0291, and in a waiver request filed by KCPL in Case No.  
2 EE-2008-0238.

3 Q. How were these discounted rate schedules addressed in Case No. ER-2006-  
4 0314?

5 A. The issue involving these discounted rate schedules in Case No. ER-2006-0314  
6 was whether to generally restrict their availability until a cost justification for the discounts  
7 could be established. The issue was given as:

8 Should the existing general service all-electric rate schedules and the  
9 separately metered space heating provisions of KCPL's standard general  
10 service tariffs be eliminated or restricted to existing customers only until  
11 there is a comprehensive class cost of service study and/or cost-  
12 effectiveness study which analyzes and supports such tariffs and  
13 provisions as well as KCPL's Affordability, Energy Efficiency and  
14 Demand Response programs? (Report and Order, Case No. ER-2006-  
15 0314, page 82)

16  
17 The corresponding Commission decision in the Case No. ER-2006-0314 Report and  
18 Order was:

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

26 However, the Commission recognizes that KCPL participated in an  
27 extensive class cost of service study in 1996, and that KCPL has reached  
28 an agreement for class cost of service and rate design in the present case,  
29 The Commission will adopt Staff's suggestion, and Trigen's alternative  
30 suggestion, that the Commission restrict the existing general service all-  
31 electric rate schedules and the separately metered space heating provisions  
32 of KCPL's standard general tariffs to existing customers until there is a  
33 comprehensive class cost of service study. This appears to be a reasonable  
34 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)

Q. How were these discounted rate schedules addressed in Case No. ER-2007-0291?

A. The issue involving these discounted rate schedules in Case No. ER-2007-0291 dealt more specifically with setting out the customer criteria for qualifying customers. The issue was given as:

13c. Should the availability of KCPL's general service all-electric tariffs and separately-metered space heating rates 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 (or as an alternative, the operation of law date of this case) and should such rates 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). (Report and Order, Case No. ER-2007-0291, pages 80 and 81, effective December 16, 2007)

The corresponding Commission decision in the Case No. ER-2007-0291 Report and Order was:

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). (Report and Order, Case No. ER-2007-0291, page 82, effective December 16, 2007 - emphasis added)

Q. What relief was sought in Case No. EE-2008-0238?

1           A.     KCPL sought a waiver or variance to allow it to offer the discounted rates to  
2 customers and potential customers who were in varying stages of the construction process but  
3 were not accepting service at a particular location on the discounted rate schedules at the time  
4 the discounted schedules were frozen. While some of the customers had already installed  
5 equipment to comply with the schedules in nearly completed structures, some of those  
6 included were potential customers who had not even begun construction at the time the  
7 discounted schedules were frozen.

8           Q.     What does the Order Granting Motions to Dismiss (Order) in Case No. EE-  
9 2008-0238 state?

10          A.     The Order states that KCPL did not seek judicial review of the Commission's  
11 decision in Case No. ER-2007-0291, and its tariff revisions filed in compliance with the rate  
12 case Report and Order incorporated the restrictions required by the Commission. Instead of  
13 filing an appeal, on January 22, 2008, KCPL filed its new application for waiver or variance,  
14 resulting in the opening of Case No. EE-2008-0238. The Order additionally notes that  
15 KCPL's application in this case seeks the same relief it sought in Case No. ER-2007-0291 and  
16 even uses the same arguments it raised in that case. Because KCPL did not appeal the  
17 Commission's adverse decision in Case No. ER-2007-0291 it was precluded from raising a  
18 collateral attack against that decision, so the Commission dismissed KCPL's application.

19     **STAFF INVESTIGATION**

20          Q.     Did Staff conduct an investigation of Briarcliff's complaint?

21          A.     Yes. In response to Briarcliff's formal complaint, Staff conducted an  
22 investigation. The Report of the Staff attached as Appendix A is Staff's Investigation Report.

23          Q.     What is Staff's recommendation resulting from its investigation?



1           A.     Based on its investigation and the analysis of information provided by  
2 Briarcliff and KCPL, Staff recommends the Commission finds that KCPL properly applied its  
3 tariff as of August 2009 in refusing to provide service to Briarcliff I on the 1LGAE rate  
4 schedule under a customer name differing from the customer name associated with that  
5 service prior to the general service all-electric rate schedule being frozen. Staff did not find  
6 any facts to indicate that KCPL's actions constituted a violation of applicable statutes, the  
7 Commission's rules or KCPL's tariff. Therefore, Staff recommends that the Commission not  
8 make the findings or enter the orders requested by Briarcliff.

9           Q.     Does this conclude your direct testimony?

10          A.     Yes, it does.

Michael S. Scheperle  
Manager, Economic Analysis Section of the Energy Department  
Utility Operations Division

Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO. 65102

I graduated with a Bachelor of Science Degree in Mathematics from Lincoln University in Jefferson City, MO. Upon graduation, I was employed by Missouri Power & Light Company as a Clerk and later as a Supervisor of Rates, Regulations and Budgeting for seven years. My responsibilities included rate case filings and budget preparation for both electric and natural gas operations. Additional responsibilities included fuel adjustment filings and purchase gas adjustments as needed for both Missouri Power & Light and Missouri Edison Company.

In 1983, I began my employment as Commercial Manager at United Water Missouri (now part of Missouri-American) in Jefferson City. I supervised a customer service department (customer service representatives and service field personnel) for seventeen years. I have extensive experience dealing with the public and handling consumer complaints.

I began my employment at the Commission in June, 2000, in the Telecommunications Department of the Utility Operations Division where my duties included analyzing tariff filings, reviewing Missouri Universal Service Fund activities for the Missouri Universal Service Board, and assisting in Relay Missouri meetings and activities. In July, 2008, I was transferred to the Economic Analysis Section of the Energy Department. I became the Manager of the Economic Analysis Section, Energy Department, Utility Operations Division, in December 2009. This group is responsible for various issues related to annualizations and normalizations of sales, class cost of service and rate design.

**Michael S. Scheperle**

**Testimony/Reports Filed Before  
The Missouri Public Service Commission:**

**CASE NOS:**

TO-98-329, *In the Matter of an Investigation into Various Issues Related to the Missouri Universal Service Fund*

TT-2000-527/513, *Application of Allegiance Telecom of Missouri , Inc. ... for an Order Requiring Southwestern Bell Telephone Company to File a Collocation Tariff; Joint Petition of Birch Telecom of Missouri, Inc. for a Generic Proceeding to Establish a Southwestern Bell Telephone Company Collocation Tariff before the Missouri Public Service Commission*

TT-2001-139, *In the Matter of Mark Twain Rural Telephone Company's Proposed Tariff to Introduce its Wireless Termination Service*

TT-2001-298, *In the Matter of Southwestern Bell Telephone Company's Proposed Tariff PSC Mo. No. 42 Local Access Service Tariff, Regarding Physical and Virtual Collocation*

TT-2001-440, *In the Matter of the determination of Prices, Terms, and Conditions of Line-Splitting and Line-Sharing*

TO-2001-455, *In the Matter of the Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*

TC-2002-57, *In the Matter Of Northeast Missouri Rural Telephone Company's And Modern Telecommunications Company's Complaint Against Southwestern Bell Telephone Company Regarding Uncompensated Traffic Delivered by Southwestern Bell Telephone Company To Northeast Missouri Rural Telephone And Modern Telecommunications Company.*

TC-2002-190, *In the Matter Of Mid-Missouri Telephone Company vs. Southwestern Bell Telephone Company*

TC-2002-1077, *BPS Telephone Company, et al., vs. Voicestream Wireless Corporation, Western Wireless Corp., and Southwestern Bell Telephone Company*

TO-2005-0144, *In the Matter of a Request for the Modification of the Kansas City Metropolitan Calling Area Plan to Make the Greenwood Exchange Part of the Mandatory MCA Tier 2*

TO-2006-0360, *In the Matter of the Application of NuVox Communications of Missouri, Inc. for an Investigation into the Wire Centers that AT&T Missouri Asserts are Non-Impaired Under the TRRO*

IO-2007-0439, *In the Matter of Spectra Communications Group, LLC d/b/a CenturyTel's Request for Competitive Classification Pursuant to section 392.245.5 RSMo*

IO-2007-0440, *In the Matter of CenturyTel of Missouri, LLC's Request for Competitive Classification Pursuant to Section 392.245.5 RSMo*

TO-2009-0042, *In the Matter of the Review of the Deaf Relay Service and Equipment Distribution Fund Surcharge*

ER-2009-0090, *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges for Electric Service*

ER-2009-0089, *In the Matter of the Application of Kansas City Power and Light Company for Approval to Make Certain Changes in its Charges for Electric Service To Continue the Implementation of Its Regulatory Plan*

ER-2010-0036, *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*

ER-2010-0130, *In the Matter of The Empire District Electric Company of Joplin, Missouri for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*

ER-2010-0355, *In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric service to Continue the Implementation of Its Regulatory Plan*

ER-2010-0356, *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges for Electric Service*

ER-2011- 0004, *In the Matter of The Empire District Electric Company of Joplin, Missouri for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*

ER-2011-0028, *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Annual Revenues for Electric Service*

## **REPORT OF THE STAFF**

TO: Missouri Public Service Commission Official Case File  
Case No. EC-2011-0383  
Briarcliff Development Company vs. Kansas City Power & Light Company

FROM: Mike Scheperle, Manager, Economic Analysis

DATE: July 11, 2011

/s/ Michael S. Scheperle 07/11/11  
Economic Analysis Department / Date

/s/ Sarah Kliethermes 07/11/11  
Staff Counsel Division / Date

### **SUMMARY**

On May 26, 2011, Briarcliff Development Company (“Briarcliff Development”) filed a formal complaint against Kansas City Power & Light Company (KCPL). Briarcliff Development alleges, among other things, that KCPL’s actions in charging Briarcliff Development for service provided to 4100 N Mulberry Street, Kansas City, Missouri, (“Briarcliff I”) at the Large General Service (1LGSE) rate since August 5, 2009, instead of the Large General Service All-Electric (1LGAE), rate is arbitrary, capricious, unreasonable, unlawful, and unduly discriminatory in violation of Sections 393.130 and 393.140(11).

Based on its investigation and the analysis of information provided by Briarcliff Development and KCPL, Staff recommends the Commission find that KCPL properly applied its tariff as of August 2009 in refusing to provide service to Briarcliff I on the 1LGAE rate schedule under a customer name differing from the customer name associated with that service prior to the general service all-electric rate schedule being frozen.

Staff did not find any facts to indicate that KCPL’s actions constituted a violation of applicable statutes, the Commission’s rules, or KCPL’s tariff.

Staff recommends the Commission not make the findings or enter the orders requested by Briarcliff Development.

However, there are areas of concern due to circumstances of other Briarcliff accounts compared to the Briarcliff I account.

### **RELIEF REQUESTED**

Briarcliff Development seeks a Commission order as follows:

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 was arbitrary, capricious, and unreasonable.
2. Finding 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 Briarcliff 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 for service at the 1LGSE rate continuously since August 5, 2009.
4. Ordering KCPL to commence billing Briarcliff Development at the Briarcliff I building at the 1LGAE rate.
5. 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.
6. 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.
7. For such other relief the Commission shall deem just and appropriate.

### **STAFF INVESTIGATION**

In response to Briarcliff Development's formal complaint, Staff reviewed the information contained in the complaint and sent Data Requests to both KCPL and Briarcliff Development for additional information. Staff also reviewed orders issued in Case Nos. ER-2006-0314, ER-2007-0291, and EE-2008-0238 which relate to this complaint.

Briarcliff Development is the owner of several commercial office buildings, including the Briarcliff I building at 4100 N. Mulberry, Kansas City, Mo.

Briarcliff Development alleges that in 1999 Briarcliff Development's agent, the Winbury Group of K.C., Inc., ("Winbury Group") applied for service at Briarcliff I "in the name of the Owner, Briarcliff Development." Staff's investigation indicates that the customer names and service dates for Briarcliff I are as follows:

<u>Customer Name</u>	<u>Service From</u>	<u>Service To</u>
Briarcliff West Development	5/17/1999	6/14/1999
Winbury Realty	6/14/1999	8/5/2009
Briarcliff Development	8/5/2009	Current

Under KCPL's tariffs, a Customer is defined as follows:

**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 premises 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. (P.S.C. MO. No. 2, section 1.04, Sheet 1.05)

Under KCPL's tariffs, a Person is defined as follows:

**PERSON:** Any individual, partnership, co-partnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision, governmental agency or other legal entity recognized by law. (P. S.C. MO. No. 2, section 1.03, Sheet 1.05)

Under KCPL's tariffs, a Responsible Party is defined as follows:

**RESPONSIBLE PARTY:** Any adult, landlord, property management company, or owner applying for agreeing to take, and or receiving substantial use and benefit of electric service at a given premise.

A connect order for initial service in the name of Briarcliff West was entered on October 15, 1998 and completed on May 17, 1999 after the city inspection was received by KCPL.

The Briarcliff I building was set up on the Large General Service – All Electric rate schedule (1LGAE) commencing January 25, 2001. Prior to January 25, 2001, the account was on the Medium General Service – All Electric rate schedule (1MGAE).

On June 11, 1999, a Ms. Dianne Painter called to have service set up in the name of Winbury Realty for Briarcliff I as of 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. Service was under the Medium General Service All Electric rate schedule (1MGAE) through January 25, 2001 and was under the Large General Service All Electric rate schedule (1LGAE) through August 5, 2009.

According to the Management Agreement between Briarcliff West Realty Company and the Winbury Group of K.C.. Inc. (Exhibit A of Complaint), under Article 1, Property Management Services, section 1.6 defines Property Management as follows:

**Property Management:** Manager shall enter into or renew contracts in the name of the Owner for electricity, gas, steam, telephone, water, cleaning fuel, oil, elevator maintenance, pest control, garbage removal, and other services in the ordinary course of business. ...

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.

Effective August 5, 2009, at the request of Briarcliff Development, the customer name for the Briarcliff I building changed from Winbury Realty to Briarcliff Development. Briarcliff Development's Briarcliff I building was set up on the Large General Service – Schedule LGS rate schedule (1LGSE) since the new customer no longer qualified for the Large General Service – All Electric rate schedule (1LGAE).

In an internal email by KCPL dated April 19, 2010, KCPL noted inconsistencies pertaining to the frozen electric tariff and account transfers. The email states in part:

In reviewing their other accounts, I noticed inconsistencies pertaining to the frozen electric tariff and account transfers. Briarcliff's location at 4150 N. Mulberry was set up under the name of Briarcliff Development while 4100 N. Mulberry was set up under Winbury Realty. As a result 4150 still has the all electric but 4100 does not. Should a new service be set up for a property if the management company has changed hands?

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]

The Report and Order in Case No. ER-2007-0291 lays out customer criteria for qualifying customers as outlined below:

[Issue] 13c. Should the availability of KCPL's general service all-electric tariffs and separately-metered space heating rates 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 (or as an alternative, the operation of law date of this case) and should such rates 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)? (Report and Order, Case No. ER-2007-0291, pages 80 and 81, effective December 16, 2007)

Decision: 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. (Report and Order, Case No. ER-2007-0291, page 82, effective December 16, 2007)

According to Briarcliff Development's responses to Staff Data Requests 0003 and 0005, the first time that Briarcliff became aware that its bills for service at 4100 N. Mulberry Street were issued to a customer name other than Briarcliff Development company was in August 2009. Winbury, then known as Grubb/Winbury, sent a copy of the utility invoices for the active accounts for all the properties at the Briarcliff Development so that Briarcliff could review the names of all its utility accounts and change billing addresses, if needed, in anticipation of taking over the property management in house. Briarcliff states that Briarcliff I was the only account that was incorrectly titled in the property manager's name instead of Briarcliff's name.

## **CONCLUSION AND RECOMMENDATION**

KCPL Large General Service – All Electric (Frozen) 1LGAE rate schedule states "[t]his Schedule is available only to customers' physical locations currently taking service under this Schedule and who are served hereunder continuously thereafter." From its electric service that started in the summer of 1999, the electric service at 4100 N. Mulberry Street was served from the Large

General Service – All Electric rate schedule (Sheet No. 19A) under the names of Briarcliff West Development (1 month) and Winbury Realty (over 10 years) until August 5, 2009. The payment checks were from the Winbury Group of Kansas City for the account of Winbury Realty. According to the complaint, the Winbury Group continued as the exclusive managing agent for Briarcliff development from 1999 through July of 2009, when the Management Agreement was terminated. In August of 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 address of 4100 N. Mulberry Drive. Commencing with the first billing and thereafter (commencing August 5, 2009), KCPL has billed Briarcliff Development for its electric usage at 4100 N. Mulberry under the Large General Service – Schedule LGSE (Sheet No. 11A).

The Report and Order in Case No. ER-2007-0291, states under Decision:

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 schedules they are on as of such date). The Commission decision became effective December 16, 2007.

Both the Report and Order and KCPL's rate schedule refer to customers served hereunder continuously thereafter and to such customers who continuously remain on that rate schedule. Furthermore, KCPL's rate schedules are denoted as "FROZEN" (Large General Service – All Electric (Frozen) in Sheet 19A and Separately Metered Space Heat (Frozen) in Sheet 11A. In this case, the customer name has changed from Winbury Realty to Briarcliff Development. Staff cannot conclude that KCPL is in violation of its tariff, a Commission rule or order, or applicable Statute

Staff does note Briarcliff Development's response to Staff Data Request 0005, which could be indicative of customer name and mailing address inconsistencies.

Data Request 0005: Please indicate the date that Briarcliff Development advised Kansas City Power & Light Company that Briarcliff Development Company was the appropriate customer name for service at 4100 N. Mulberry Street, Kansas City, Mo. 64116.

Response: In August of 2009. KCPL was contacted regarding the change in mailing address for all the KCPL accounts as soon as copies of the invoices for the accounts were presented to Briarcliff Development Company by Grubb/Winbury. The Briarcliff I building at 4100 N. Mulberry Drive, Kansas City, MO 64116 was the only account that was incorrectly titled in the property manager's name instead of in Briarcliff's name.

Also, an internal email by representatives of KCPL dated April 19, 2010 notes inconsistencies of Briarcliff accounts pertaining to the frozen all-electric tariff and accounts: The email states in part: "In reviewing their other accounts, I noticed inconsistencies pertaining to the frozen electric tariff and account transfers. Briarcliff's location at 4150 N. Mulberry was set up under the name of Briarcliff Development while 4100 N. Mulberry was set up under Winbury Realty. As a result 4150 still has the all electric but 4100 does not.

