

Briarcliff Exhibit No.: 3
Witness: Nathaniel Hagedorn
Type of Exhibit: Surrebuttal Testimony
Issues: Continued Receipt of the Frozen All-Electric Rate
Sponsoring Party: Briarcliff Development Company
Case No.: EC-2011-0383

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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY DIVISION

BRIARCLIFF DEVELOPMENT COMPANY

CASE NO. EC-2011-0383

SURREBUTTAL TESTIMONY OF

NATHANIEL HAGEDORN

October 28, 2011

Briarcliff Exhibit No. 3
Date 1/24/12 Reporter JL
File No. EC-2011-0383

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

BRIARCLIFF DEVELOPMENT COMPANY,
A Missouri Corporation,

COMPLAINANT

v.

Case No. EC-2011-0383

KANSAS CITY POWER AND LIGHT
COMPANY,


RESPONDENT

AFFIDAVIT OF NATHANIEL HAGEDORN

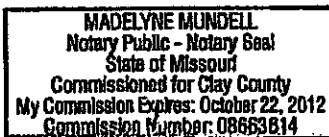
STATE OF MISSOURI)

COUNTY OF Clay) ss

Nathaniel Hagedorn, of lawful age, on his oath states:
That he has reviewed the attached written testimony in question
and answer form, all to be presented in the above case, that the
answers in the attached written testimony were given by him; that
he has knowledge of the matters set forth in such answers; that
such matters are true to the best of his knowledge, information
and belief.


Nathaniel Hagedorn

Subscribed and sworn to before me this 28 day of October,
2011




Notary Public

[SEAL]

My Commission expires: October 22, 2012

BRIARCLIFF DEVELOPMENT COMPANY

EC-2011-0383

SURREBUTTAL TESTIMONY OF NATHANIEL HAGEDORN

1Q. **PLEASE STATE YOUR NAME AND ADDRESS.**

2A. My name is Nathaniel Hagedorn. My business address is
3 Briarcliff Development Company, 4151 N. Mulberry Street,
4 Kansas City, MO 64116.
5

6Q: **ARE YOU THE NATHANIEL HAGEDORN WHO PROVIDED DIRECT AND
7 REBUTTAL TESTIMONY IN THIS CASE?**

8A: Yes.
9

10Q. **WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

11A: The purpose of my testimony is to respond to issues
12 presented in the Rebuttal testimonies of Tim M. Rush and
13 Jason H. Henrich of Kansas City Power and Light Company. My
14 major concern with their testimonies is that they fail to
15 reach the determination that Briarcliff Development was a
16 Customer of KCPL as defined under Rule 1.04 of KCPL's own
17 tariffs which defines Customer as follows:
18

1 **"1.04 CUSTOMER: Any person applying for, receiving,**
2 **using, or agreeing to take a class of electric service**
3 **supplied by the Company under one rate schedule at a**
4 **single point of delivery at and for use within the**
5 **premise either (a) occupied by such persons, or (b) as**
6 **may, with the consent of the Company, be designated in**
7 **the service application or by other means acceptable to**
8 **the Company." [Emphasis Added.]**

9 Despite the fact that the Company's own rule defines
10 customer as any person "applying for, receiving, using, or
11 agreeing to take a class of electric service," they refuse
12 to find Briarcliff to be a customer, even though it is clear
13 that Briarcliff Development was and has been receiving and
14 using electricity at the Briarcliff One building
15 continuously since it opened in 1999 for use within the
16 premise occupied by Briarcliff Development and its tenants
17 and that, therefore, Briarcliff Development was and is a
18 customer of KCPL at the Briarcliff One office building as
19 defined by KCPL's own rule.

20 Further, as a customer of KCPL, Briarcliff Development has
21 continuously qualified for the frozen all-electric rate that
22 it was receiving from KCPL at Briarcliff One prior to the
23 time Briarcliff Development terminated its outside property
24 manager and began managing Briarcliff One and its other
25 office buildings in-house commencing on August 5, 2009.
26 Thus, the Briarcliff One building qualifies for the frozen
27 all-electric rate, which under KCPL's tariff, P.S.C. MO
28 No.7, Third Revised Sheet No. 19 states that after January

1, 2008:

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

We do not agree that the clear language of the freeze tariff applied to bar an existing customer who terminated its property manager and requested a change in the name on the billing to the owner, when the ultimate customer was and continues to remain the owner of the all-electric building at which it received and used service and the only change is substituting the owner's name on KCPL's billing records.

14Q. ON PAGE 6 OF HIS TESTIMONY, MR. RUSH CLAIMS THAT EVEN IF BRIARCLIFF CONTINUOUSLY OWNED THE PROPERTY THAT BRIARCLIFF IS NOT ELIGIBLE FOR THE FROZEN ALL-ELECTRIC RATE BECAUSE THE AVAILABILITY OF THE RATE IS TIED TO THE "CUSTOMER OF RECORD" ON THE ACCOUNT. WHAT COMMENTS DO YOU HAVE TO THIS?

19A. In the first place, the term "Customer of Record" is not used anywhere in the all-electric rate schedule stating who is eligible for the rate, nor is it defined in KCPL's tariffs, nor is there anything in the Commission orders regarding a change in the "Customer of Record". In the frozen rate schedule itself, it states it is available only to "Customers' physical locations currently taking service under this Schedule and who are served hereunder

1 continuously thereafter." Clearly, Briarcliff's physical
2 location, Briarcliff One, was currently taking service under
3 the all-electric rate schedule on January 1, 2008 when the
4 freeze took effect. Furthermore, it was continuously served
5 under such tariff until August 5, 2009, when KCPL changed
6 its rate and but for KCPL arbitrarily deciding that its
7 frozen rate was only available to "Customers of Record"
8 Briarcliff One would still be on the all-electric rate.
9 KCPL's action in changing the rate for Briarcliff One from
10 all-electric to the standard rate because Briarcliff
11 Development was not the "Customer of Record" is not
12 supported by the language of the frozen rate schedule in
13 which the clear concern is to limit it to "Customers'
14 physical locations currently taking service." There is no
15 mention of or any apparent concern expressed with whether a
16 Customer was a "Customer of Record." The only expressed
17 concern was with limiting the rate to Customers' physical
18 locations currently taking service.
19 The same is true of the Commission's orders referenced by
20 Mr. Rush. In the Commission's Report and Order in Case No.
21 ER-2007-0291, in which the freeze was authorized, the
22 Commission only states that the all-electric tariffs "should
23 be restricted to those qualifying customers' commercial and
24 industrial physical locations being served under such all-

1 electric tariffs ... and such rates should only be available
2 to such customers for so long as they continuously remain on
3 that rate schedule." There is no mention of or any apparent
4 concern expressed with whether a Customer was a "Customer of
5 Record." The only expressed concern was with limiting the
6 rate to Customers' physical locations being served under
7 such schedules at the time the freeze became effective.
8 It is obvious to me that the "Customer of Record" concern
9 was something manufactured by KCPL out of thin air in an
10 effort to keep Briarcliff from continuing on under the all-
11 electric rate at its Briarcliff One building.

12
13 Q. **ALSO ON PAGE 6 OF MR. RUSH'S TESTIMONY, HE ATTEMPTS TO**
14 **SUPPORT HIS "CUSTOMER OF RECORD" ARGUMENT WITH REFERENCE TO**
15 **A RULE APPLICABLE TO RESIDENTIAL CUSTOMERS. WHAT ARE YOUR**
16 **COMMENTS ON THIS?**

17 A. I believe that Mr. Rush is being disingenuous. In the first
18 place, this rule, 4 CSR 240-13.010(E), is a Billing
19 Practices rule for **Residential Customers** and thus applies
20 only to residential customers as its title clearly states.
21 Obviously, since Briarcliff is not a residential customer,
22 it does not apply to Briarcliff One.
23 Secondly, the definition of "Customer" is found in KCPL's
24 own rules, Rule 1.04, as we have pointed out and under such

1 Rule, Briarcliff Development is a Customer. Apparently, Mr.
2 Rush either ignored his Company's own rule or could not
3 justify his "Customer of Record" argument under the
4 Company's own rules.

5 Thirdly, even if the residential billing practices did
6 apply, which is does not, Briarcliff Development would be a
7 Customer under the language thereof in which a Customer is
8 defined in the rule as: "Customer means a person or legal
9 entity responsible for payment for service except one
10 denoted as a guarantor." Obviously, Briarcliff is a legal
11 entity and is responsible for payment since it is a
12 "Responsible Party" as defined in KCPL's Rule 1.21, which
13 provides:

14
15 1.21 **RESPONSIBLE PARTY:** Any adult, landlord, property
16 management company, or **owner** applying for agreeing to
17 take, and **or receiving substantial use and benefit of**
18 **electric service at a given premise.** [Emphasis added]
19

20 Thus, Mr. Rush fails to support his argument that the frozen
21 rate only applies to "Customers of Record" and his argument
22 is disproven by KCPL's own rules.

23
24 Q. AGAIN ON PAGE 6 OF MR. RUSH'S TESTIMONY, HE STATES THAT IF
25 BRIARCLIFF HAD BEEN THE "CUSTOMER OF RECORD" IT WOULD HAVE
26 STILL BEEN ELIGIBLE FOR THE ALL-ELECTRIC RATE TODAY. WHAT
27 ARE YOUR COMMENTS ON THIS?
28

1A. I think that it is a ridiculous statement to make. Not only
2 is the entire emphasis of Mr. Rush's argument on whose name
3 KCPL put on the account (even if it is the wrong name) this
4 argument is not supported by: KCPL's own rules defining a
5 Customer and Responsible Party; or its own rate schedule
6 restricting the all-electric rate to Customers' physical
7 locations taking service under the all-electric rate
8 schedule on January 1, 2008; or the language of the
9 Commission's order which only restricts the all-electric
10 rate to customer's physical locations being served under the
11 all-electric rate, none of which make any reference
12 whatsoever as to limitation of the tariff to a "customer of
13 record."
14 Furthermore, under KCPL's "Customer of Record" theory, if,
15 instead of changing property managers, Briarcliff
16 Development sold Briarcliff One to a third party who
17 retained the property manager so that there was no change in
18 the "Customer of Record" on KCPL's records, the all-electric
19 rate would continue to be available for the building and the
20 new owner of Briarcliff One would be able to enjoy the all-
21 electric rate since the "Customer of Record" remained the
22 same. Clearly, this is not what the Commission intended
23 when it ordered the rate frozen. Yet under KCPL's "Customer
24 of Record" theory, this is the ludicrous result that would
25 occur.

1Q. ON PAGE 7 OF HIS TESTIMONY, MR. RUSH APPEARS TO RECOGNIZE
2 THAT PROPERTY MANAGERS ARE AGENTS OF THE PROPERTY OWNER AND
3 THAT SINCE WINBURY REALTY PROVIDED THIS SERVICE FOR THE
4 BRIARCLIFF ONE BUILDING, WINBURY REALTY THEREFORE WAS THE
5 RESPONSIBLE PARTY ON THE ACCOUNT AND RECEIVED SUBSTANTIAL
6 USE AND BENEFIT OF ELECTRIC SERVICE AT THE PROPERTY. DO YOU
7 AGREE WITH HIS CONCLUSION?

8A. While I agree that property managers are agents of the
9 owners, I do not agree that Winbury Realty was the property
10 manager; or that it was the responsible party on the
11 account; or that it received substantial use and benefit of
12 electric service at the Property.

13 In the first place, Mr. Rush appears to be either confused
14 or attempting to mislead the Commission as to what entity
15 was Briarcliff's property manager. He first says Winbury
16 Realty was the "customer of record" for the property, which
17 may be true as far as KCPL's records are concerned since
18 that is the entity KCPL billed, however, Winbury Realty was
19 neither the property manager nor the entity that paid the
20 bills. As we have previously shown in my Direct Testimony
21 and schedules, the property manager of Briarcliff One was
22 The Winbury Group, a separate corporation from Winbury
23 Realty. Winbury Realty had no association with Briarcliff
24 Development with respect to managing the Briarcliff One
25 building or any other building on the Briarcliff property.

1 Secondly, Mr. Rush states that, "The Company billed Winbury
2 Realty and received payment from Winbury", and also that
3 "Winbury" provided property management services for
4 Briarcliff. These are misleading statements making one
5 mistakenly think that the "Winbury" that paid KCPL and
6 managed the property was Winbury Realty, when the actual
7 payments to KCPL came from The Winbury Group, the actual
8 property manager with whom Briarcliff Development had an
9 agreement with to manage the property.

10 Thirdly, Mr. Rush appears to know that property managers
11 are common in KCPL's service territory, that they are agents
12 of the owner and whose duty is to manage the property of the
13 owner, its principal. As such, he must be aware that they
14 are not owners of the property. In the case of Briarcliff
15 One, neither The Winbury Group, the actual property manager,
16 nor Winbury Realty, whom KCPL listed as the customer despite
17 its having no connection with the building, were the owner
18 of Briarcliff One. Briarcliff One has been owned by
19 Briarcliff Development, or its predecessor Briarcliff West
20 Realty Company before such company was merged into
21 Briarcliff Development Company in June of 1999, since the
22 inception of Briarcliff One to this date.

23 Fourthly, while Mr. Rush claims that Winbury Realty was "the
24 responsible party on the account and received substantial
25 use and benefit of electric service at the property", I

1 believe that KCPL would have a hard time trying to prove
2 that since even under its Rule 1.21 defining "Responsible
3 Party", Winbury Realty does not fit the definition since
4 Winbury Realty is neither the landlord, the property manager
5 nor the owner. Further, since Winbury Realty was not the
6 property manager, Winbury Realty did not apply for, nor
7 agree to take, nor did it receive substantial use and
8 benefit of the electric service. According to Mr. Jason
9 Henrich's rebuttal testimony at pages 2 and 3, he claims
10 that Dianna Painter, whom he identified as Tenant Relations
11 Specialist with The Winbury Group was the one who requested
12 the service to be put in the name of Winbury Realty. It is
13 quite disconcerting to me that KCPL would put the account in
14 the name of Winbury Realty, when it knew that the request
15 for service came from an employee of a different
16 corporation, The Winbury Group. It makes me wonder if
17 anyone has requested service in the name of Briarcliff
18 Development, who was not associated with Briarcliff
19 Development and someday in the future KCPL will try to hold
20 Briarcliff Development responsible as "the customer of
21 record" for service it never agreed to take nor never
22 received.

23 On the other hand, Briarcliff Development, as the owner and
24 as one "receiving substantial use and benefit of electric
25 service" at Briarcliff One, would clearly be a Responsible

1 Party under KCPL's rules as well as a Customer. I am quite
2 sure that if both of the Winburys had gone bankrupt and did
3 not pay KCPL, that KCPL would have attempted to collect from
4 Briarcliff Development who was the owner and both a customer
5 and a responsible party under KCPL's rules.

6 Finally, a review of the language of the frozen tariff
7 discloses that there is nothing in it saying or any words to
8 the effect that "if the customer name changes on an account
9 served by these tariffs, the account must be changed to a
10 standard electric tariff." The freeze merely restricts the
11 all-electric rate to those qualifying customers' commercial
12 and industrial physical locations being served under such
13 all-electric tariffs as of January 1, 2008 for so long as
14 they continuously remain on that all-electric rate schedule.
15 Under such language, Briarcliff Development clearly
16 qualifies as an all-electric customer at Briarcliff One on
17 the date the frozen rate schedule became effective and was
18 an all-electric customer continuously thereafter until it
19 changed property managers and but for KCPL's unreasonable
20 and arbitrary action in changing the rate Briarcliff One was
21 served under as a result of changing the property manager,
22 Briarcliff One would still be on that all-electric rate
23 today.

24
25 **Q. OTHER THAN THE CHANGE FROM AN OUTSIDE PROPERTY MANAGER TO**

1 BRIARCLIFF DEVELOPMENT MANAGING THE PROPERTY IN HOUSE, HAS
2 THERE BEEN ANY OTHER CHANGE IN OPERATIONS AT BRIARCLIFF ONE?
3

4A. No. In the case of Briarcliff One, there has been no change
5 in the physical location of the Briarcliff One building
6 being served under the all-electric rate. Nor has there
7 been a change in the qualifying customer. Briarcliff
8 Development continues to own and operate Briarcliff One and
9 is continuing to lease space therein as landlord to its
10 tenants as it has done since 1999 and Briarcliff One has
11 continuously been supplied with electricity by KCPL since
12 1999. The only changes are that Briarcliff Development now
13 manages the property in-house rather than with an outside
14 property manager and on August 5, 2009 KCPL commenced
15 billing for service at the building at the standard electric
16 rate instead of the all-electric rate it had been served
17 under since January 25, 2001. Had KCPL not changed the
18 billing rate on its own, the building would have been
19 continuously served on the all-electric rate schedule to
20 this date, since Briarcliff Development definitely did not
21 want the change in rate and would not have requested a
22 change in rates.
23

24Q. WHAT RELIEF ARE YOU ASKING THE COMMISSION TO PROVIDE?

25A. We are asking the Commission to see through the charade and

1 misinformation and recognize that Briarcliff Development was
2 both a customer and responsible party as defined in KCPL's
3 rules since 1999 at Briarcliff One and was such on August 5,
4 2009 when KCPL arbitrarily determined that it was not
5 entitled to continue on the 1LGAE rate because the "Customer
6 of Record", i.e., the name on the account at such date was
7 Winbury Realty, a corporation that was not even involved in
8 the matter. Further, even if KCPL had listed the customer
9 as The Winbury Group, the property manager, we are asking
10 the Commission to recognize that The Winbury Group was
11 merely an agent of the owner, Briarcliff Development, and
12 that the change in the name of the account from an owner's
13 agent to the owner's name did not violate the letter or the
14 spirit of the Commission's freeze order nor the Availability
15 provision in the frozen all-electric rate schedule so that
16 Briarcliff One was entitled to have been continuously served
17 under the all-electric tariff even after the change in
18 property manager. Finally, we are asking that the Commission
19 order KCPL to reinstate the all-electric rate for Briarcliff
20 Development retroactively to August 5, 2009 and to order
21 KCPL to rebill Briarcliff Development at the 1LGAE rate
22 effective August 5, 2009 to date and to refund the
23 overpayment with interest due to unlawfully and unreasonably
24 placing Briarcliff One on the 1LGSE rate instead of keeping
25 it on the 1LGAE rate like it did with the Briarcliff Two and

1 Briarcliff Three office buildings whose only distinction
2 from Briarcliff One was the "Customer of Record" was
3 Briarcliff Two and Briarcliff Development, respectively and
4 not Winbury Realty.

5

6Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?

7A. Yes it does.