

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

In the Matter of the Application of WST, Inc.,	)	
a Missouri Corporation, for a Variance From	)	
Kansas City Power & Light Company's General	)	<u>Case No. EE-2006-0123</u>
Rules and Regulations Requiring Individual	)	
Metering	)	

**WST'S SUGGESTED PROVISIONS OF 4 CSR 240-13 TO BE INCLUDED IN THE  
DECLARATION OF THE WALLSTREET TOWER CONDOMINIUMS IN RESPONSE  
TO ORDER ISSUED BY THE COMMISSION ON OCTOBER 19, 2005**

COMES NOW, Applicant WST, INC. ("WST") and for its Suggested Provisions of 4 CSR 240-13 To Be Included In The Declaration Of The Wallstreet Tower Condominiums, hereby respectfully states the following:

1. Pursuant to the Report and Order ("Order") issued by the Public Service Commission of the State of Missouri ("Commission") on October 19, 2005, in the above-captioned proceeding, whereby the Commission granted a variance from KCPL's tariff to allow the master metering plan proposed by WST. The Commission also included in the Order the requirement that WST insert certain language into the Declaration of the WallStreet Tower Condominiums, and that WST insert in the Declaration language regarding the relevant provisions of Commission Rule 4 CSR 240-13 and submit said language in a pleading filed in this case no later than October 21, 2005.

2. As directed by the Commission, and in response thereto, in addition to the language set forth in section 2 of the Order, WST asserts that the following language and the following provisions of 4 CSR 240-13 be included in the Declaration (as said term is defined by

the Uniform Condominium Act of Missouri, Chapter 448) of WallStreet Tower Condominiums, in compliance with the Order:

*Pursuant to an order granting a variance pertaining to the individual electric metering requirements of Kansas City Power & Light Company ("KCPL"), issued by the Missouri Public Service Commission ("Commission"), the customer of KCPL for electric service to the Tower shall be the Association, whereby the Tower shall have one master meter for the electric service and only the Association will receive the billing for said service from KCPL. The consumer protection provisions of KCPL's tariff on file with the Commission and the consumer protection provisions of 4 CSR 240-13 will apply to the Association, which is the Customer of KCPL. Because the Unit Owners will not purchase electric service from KCPL, but rather, directly from the Association, the terms and conditions of KCPL's tariffs and 4 CSR 240 will not apply to the Unit Owners. However, the following provisions, which are based upon the provisions of 4 CSR 240-13, will govern the electric service indirectly provided to the Unit Owners by the Association:*

***I. Billing and Payment Standards***

- (1) The Association shall render a bill for each month to every Unit Owner in accordance with this section.*
- (2) Each billing statement to the Unit Owner rendered by the Association shall be computed on the actual usage of the Unit during the billing period, and said billing statement shall also be based upon the Unit Owner's proportionate share of the electrical service for the Tower Common Elements based upon the Unit Owner's percentage of interest in*

*the Tower Common Elements, (the total amount due for the electrical service for the Tower Common Elements will be determined by calculating the total amount of the billing statements for the actual usage of all of the Units combined, and subtracting that amount from the total amount billed to the Association by the electric utility provider,) except as follows:*

*(A) The Association may render a bill based on estimated electric usage when conditions beyond the control of the Association prevent an actual meter reading.*

*(B) When the Association renders an estimated bill in accordance with these rules, it shall:*

- 1. Maintain accurate records of the reasons for the estimate and the effort made to secure an actual reading;*
- 2. Clearly and conspicuously note on the bill that it is based on estimated usage.*

*(3) The Association shall bill the Unit Owner for its electric usage on a monthly basis. The Unit Owner shall have at least twenty-one (21) days from the rendition of the bill to pay the electric charges. If the due date or delinquent date falls upon a Sunday, legal holiday, or any other day when the offices of the Association are not open, the due date or delinquent date shall be extended through the next business day. The date of payment for remittance by mail is the date on which the Association receives the remittance. The Association shall not base a late fee or a discontinuance of service, on a payment that was made to the Association on or before the due date or delinquent date.*

- (4) *Every bill for electric service to the Unit Owner shall clearly state:*
- (A) *The beginning and ending meter readings of the billing period and the dates of these readings;*
  - (B) *The date when the bill will be considered due and the date when it will be delinquent, if different;*
  - (C) *Any previous balance which states the balance due for electric utility charges separate from other non-electric utility charges; and*
  - (D) *The total amount due.*

## **II. Billing Adjustments**

- (1) *For all billing errors, the Association will determine from all related and available information the probable period during which this condition existed and shall make billing adjustments for the estimated period involved as follows:*
- (A) *In the event of an overcharge, an adjustment shall be made for the entire period that the overcharge can be shown to have existed not to exceed sixty (60) consecutive monthly billing periods, calculated from the date of discovery, inquiry or actual notification of the Association, whichever comes first;*
  - (B) *In the event of an undercharge, an adjustment shall be made for the entire period that the undercharge can be shown to have existed not to exceed twelve (12) monthly billing periods, calculated from the date of discovery, inquiry or actual notification of the Association, whichever was first;*
  - (C) *No billing adjustment will be made where the full amount of the adjustment is less than one dollar (\$1);*

*(D) Where, upon test, an error in measurement is found to be within the limits prescribed by Commission rules, no billing adjustment will be made; and*

*(E) When evidence of tampering is found, or there are misrepresentations of the use of service by the Unit Owner, the Association will calculate the billing adjustment period in accordance with the applicable statute of limitations for the prosecution of such claim after determining the probable period during which such condition existed from all related and available information.*

### **III. Inquiries**

*(1) The Association shall insure that:*

*(A) Qualified personnel shall be available and prepared at all times during normal business hours to receive and respond to all Unit Owner inquiries, service requests and complaints;*

*(B) Qualified personnel shall be available at all times to receive and initiate response to Unit Owner contacts regarding any discontinuance of service or emergency condition occurring within the Tower; and*

*(C) Names, addresses and telephone numbers of personnel designated and authorized to receive and respond to the requests of the Unit Owners.*

### **IV. Disputes**

*(1) A Unit Owner shall advise the Association that all or part of a charge is in dispute by written notice, in person or by a telephone message directed to the Association during normal business hours. A dispute must be registered with the Association at least twenty-four (24) hours prior to the date of proposed discontinuance for a Unit Owner to avoid discontinuance of service as provided by these rules.*

- (2) *When a Unit Owner advises the Association that all or part of a charge is in dispute, the Association shall record the date, time and place the contact is made; investigate the contact promptly and thoroughly; and attempt to resolve the dispute in a manner satisfactory to both parties.*
- (3) *Failure of a Unit Owner to participate with the Association in efforts to resolve an inquiry which has the effect of placing charges in dispute shall constitute a waiver of the Unit Owner's right to continuance of service and the Association, not less than five (5) days after provision of the notification required by section (8), may proceed to discontinue service unless the Unit Owner submits the dispute to arbitration under the procedure set forth in this Declaration, within the five (5) day period.*
- (4) *If a Unit Owner disputes a charge, the Unit Owner shall pay to the Association an amount equal to that part of the charge not in dispute. The amount not in dispute shall be mutually determined by the Unit Owner and the Association. The Unit Owner and the Association shall consider the Unit Owner's prior consumption history, weather variations, the nature of the dispute and any other pertinent factors in determining the amount not in dispute.*
- (5) *If the parties are unable to mutually determine the amounts not in dispute, the Unit Owner shall pay to the Association, at the Association's option, an amount not to exceed fifty percent (50%) of the charge in dispute or an amount based on usage during a like period under similar conditions which shall represent the amount not in dispute.*
- (6) *Failure of the Unit Owner to pay to the Association the amount not in dispute within four (4) working days from the date that the dispute is registered or by the*

*delinquent date of the disputed bill, whichever is later, shall constitute a waiver of the Unit Owner's continuance of service and the Association may then proceed to discontinue service as provided in this rule.*

*(7) If the dispute is ultimately resolved in favor of the Unit Owner in whole or in part, any excess moneys paid by the Unit Owner shall be refunded promptly.*

*(8) If the Association does not resolve the dispute to the satisfaction of the Unit Owner, the Association shall notify the Unit Owner that each party has a right to submit the dispute to binding arbitration.*

*(9) The Association may treat a Unit Owner complaint or dispute involving the same question or issue based upon the same facts as already determined, and is not required to comply with these rules more than once prior to discontinuance of service.*

***V. Discontinuance of Service***

*(1) Service to a Unit may be discontinued for any of the following reasons:*

*(A) Nonpayment of an undisputed delinquent charge;*

*(B) Unauthorized interference, diversion or use of the electric utility service situated or delivered on or about the Unit;*

*(C) Failure to comply with terms of a settlement agreement;*

*(D) Refusal after reasonable notice to permit inspection, maintenance, replacement or meter reading of electric utility equipment. If the Association has a reasonable belief that health or safety is at risk, notice at the time inspection is attempted is reasonable.*

*(2) None of the following shall constitute sufficient cause for the Association to discontinue service:*

*(A) The failure of a Unit Owner to pay for services or other items that are not an integral part of the electric service provided;*

*(B) The failure of a Unit Owner to pay for service received at a separate Unit.*

*In the event of discontinuance or termination of service at a separate Unit, the Association may transfer and bill any unpaid balance to any other account of the Unit Owner and may discontinue service after twenty-one (21) days after rendition of the combined bill, for nonpayment;*

*(C) The failure of the Unit Owner to pay for a different class of service received at the Unit;*

*(D) The failure to pay the bill of another Unit Owner, unless the Unit Owner whose service is sought to be discontinued received substantial benefit and use of the service; and*

*(E) The failure to pay a bill correcting a previous underbilling, whenever the Unit Owner claims an inability to pay the corrected amount, unless the Association has offered the Unit Owner a payment arrangement equal to the period of underbilling.*

*(3) On the date specified on the notice of discontinuance or within eleven (11) business days after that, and subject to the requirements of this section, the Association may discontinue service to the Unit Owner between the hours of 8:00 a.m. and 4:00 p.m. Service shall not be discontinued on a day when the Association personnel are not available to reconnect the Unit Owner's service, or on a day immediately preceding*



*such a day. After the eleven (11) business day effective period of the notice, all notice procedures required by this section shall again be followed before the Association may discontinue service.*

*(4) The notice of discontinuance shall contain the following information:*

*(A) The name and address of the Unit Owner and the address, if different, of the address of record with the Association of the Unit Owner;*

*(B) A statement of the reason for the proposed discontinuance of service and the cost for reconnection;*

*(C) The date on or after which service will be discontinued unless appropriate action is taken; and*

*(D) How a Unit Owner may avoid the discontinuance.*

*(5) The Association shall not discontinue service pursuant to this section unless written notice by first class mail is sent to the Unit Owner at least ten (10) days prior to the date of the proposed discontinuance. Service of notice by mail is complete upon mailing. As an alternative, the Association may deliver a written notice in hand to the Unit Owner at least ninety-six (96) hours prior to discontinuance. The Association shall maintain an accurate record of the date of mailing or delivery. A notice of discontinuance of service shall not be issued as to that portion of a bill which is determined to be an amount in dispute, or that is currently the subject of a dispute pending with the Association or in arbitration.*

*(6) Notice shall be provided as follows:*

*(A) Upon receiving any notice from the electric utility provider to the Association of an intent by the electric utility provider to discontinue*

*service for nonpayment of an Association bill, notices of the electric utility provider's intent to discontinue service shall be conspicuously posted in public areas of the Tower. The notices shall include the date on or after which discontinuance may occur.*

*(B) At least twenty-four (24) hours preceding a discontinuance of service to a Unit, the Association shall make reasonable efforts to contact the Unit Owner to advise the Unit Owner of the proposed discontinuance and what steps shall be taken to avoid it. Reasonable efforts shall include either a written notice following the notice, a door hanger or at least two (2) telephone call attempts reasonably calculated to reach the Unit Owner;*

*(7) Immediately preceding the discontinuance of electric service, the employee or agent of the Association designated to perform this function, except where the safety of said person is endangered, shall make a reasonable effort to contact and identify him/herself to the Unit Owner or a responsible person then upon the premises of the Unit and shall announce the purpose of his/her presence. When service is discontinued, the employee/agent shall leave a notice upon the Unit's door in a manner conspicuous to the Unit Owner that service has been discontinued and the address and telephone number of a person on behalf of the Association where the Unit Owner may arrange to have service restored.*

*(8) Notwithstanding any other provision of this section, the Association shall postpone a discontinuance for a time not in excess of twenty-one (21) days if the discontinuance will aggravate an existing medical emergency of the Residential Unit Owner, a member of his/her family or other permanent resident of the*

*Residential Unit where service is rendered. Any person who alleges a medical emergency, if requested, shall provide the Association with reasonable evidence of the necessity.*

(9) *Notwithstanding any other provision of this Declaration, the Association may discontinue service temporarily for reasons of maintenance, health, safety or a state of emergency.*

(10) *Upon the Unit Owner's request, the Association shall restore service consistent with all other provisions of the Declaration when the cause for discontinuance has been eliminated and applicable restoration charges have been paid. At all times, a reasonable effort shall be made to restore service upon the day restoration is requested, and in any event, restoration shall be made not later than the next working day following the day requested by the Unit Owner. The Association may charge the Unit Owner a reasonable fee for restoration of service.*

***VI. Cold Weather Maintenance of Service; Provision of Residential Heat-Related Utility Service During Cold Weather***

(1) *The following definitions shall apply in this section:*

(A) *Energy Crisis Intervention Program (ECIP) means the federal ECIP administered by the Missouri Division of Family Services under section 660.100, RSMo;*

(B) *Heat-related utility service means any electric service that is necessary to the proper function and operation of a Residential Unit Owner's heating equipment;*

(C) *Low Income Home Energy Assistance Program (LIHEAP) means the federal LIHEAP administered by the Missouri Family Support Division under section 660.110, RSMo;*

(D) *Registered elderly or disabled Residential Unit Owner means a Residential Unit Owner's household where at least one (1) member of the household, residing in the Residential Unit, has filed with the Association a form approved by the Association attesting to the fact that s/he:*

- 1. Is sixty-five (65) years old or older;*
- 2. Is disabled to the extent that s/he has filed with the Association a medical form submitted by a medical physician attesting that such Residential Unit Owner's Residential Unit must have electric utility service provided in the Residential Unit to maintain life or health; or*
- 3. Has a formal award letter issued from the federal government of disability benefits. In order to retain his/her status as a registered elderly or disabled Residential Unit Owner, each such Residential Unit Owner must renew his/her registration with the Association annually. Such registration should take place by October 1 of each year following his/her initial registration; and*

(E) *Low income registered elderly or disabled Residential Unit Owner means a Residential Unit Owner registered under the provisions of this section whose household income is less than one hundred fifty percent (150%) of the federal poverty guidelines, and who has a signed affidavit attesting to that fact on file with the Association. The Association may periodically audit the incomes of*

*low income registered elderly or disabled Residential Unit Owners. If, as a result of an audit, a registered low income elderly or disabled Residential Unit Owner is found to have materially misrepresented his/her income at the time the affidavit was signed, that Residential Unit Owner's service may be discontinued per the provisions of this rule that apply to Residential Unit Owners who are not registered low income elderly or disabled Residential Unit Owners and payment of all amounts due as well as a deposit may be required before electric service is reconnected.*

- (2) This section takes precedence over other sections on electric service from November 1 through March 31 annually as it pertains to Residential Unit Owners.*
- (3) Notice Requirements. From November 1 through March 31, prior to discontinuance of service due to nonpayment, the Association shall –*
  - (A) Notify the Residential Unit Owner, at least ten (10) days prior to the date of the proposed discontinuance, by first-class mail, and in the case of a registered elderly or handicapped Residential Unit Owner the additional party listed on the Residential Unit Owner's registration form of the Association's intent to discontinue service. The contact with the registered Residential Unit Owner shall include initially two (2) or more telephone call attempts with the mailing of the notice*
  - (B) Make further attempts to contact the Residential Unit Owner within ninety-six (96) hours preceding discontinuance of service*

*either by a second written notice as in this subsection 3(A), sent by first class mail; or a door hanger; or at least two (2) telephone call attempts to the Residential Unit Owner;*

*(C) Attempt to contact the Residential Unit Owner at the time of the discontinuance of service in the manner specified by Article V(7) herein*

*(D) Make a personal contact with a registered elderly or handicapped Residential Unit Owner or some member of the family above the age of fifteen (15) years, at the time of the discontinuance of electric service; and*

*(E) Ensure that all of the notices and contacts required in this section shall describe the terms for provisions of electric service under these sections, including the method of calculating the required payments, the availability of financial assistance from the Division of Family Services and social service or charitable organizations that have notified the Association that they provide that assistance and the identify of those organizations.*

*(4) The Association will not make oral representations of electric service termination for nonpayment when termination would occur on a known “no-cut” day as governed by the temperature moratorium.*

*(5) Weather Provisions. Discontinuance of electric service to all Residential Unit Owners for nonpayment of bills where electricity is used as the source*

*of space heating or to control or operate the only space heating equipment at the Residential Unit is prohibited –*

- (A) On any day when the National Weather Service local forecast between 6:00 a.m. to 9:00 a.m., for the following twenty-four (24) hours predicts that the temperature will drop below thirty-two degrees Fahrenheit; or*
- (B) On any day when Association personnel will not be available to reconnect electric service during the immediately succeeding day(s) (Period of Unavailability) and the National Weather Service local forecast between 6:00 a.m. to 9:00 a.m. predicts that the temperature during the Period of Unavailability will drop below thirty-two degrees Fahrenheit; or*
- (C) From November 1 through March 31, for any registered low income elderly or low income disabled Residential Unit Owner (as defined in this section), provided that such Residential Unit Owner entered into a cold weather rule payment plan, made the initial payment required by section 9 herein and has made and continues to make payments during the effective period of these sections that are at a minimum the lesser of fifty percent (50%) of:*

- 1. The actual bill for usage in that billing period; or*

2. *The levelized payment amount agreed to in the cold weather rule payment plan. Such reductions in payment amounts may be recovered by adjusting the Residential Unit Owner's subsequent levelized payment amounts for the months following March 31.*

*(D) Nothing in this section shall prohibit the Association from establishing a higher temperature threshold below which it will not discontinue electric service.*

*(6) Discontinuance of Service. From November 1 through March 31, the Association may not discontinue heat-related residential electric service due to nonpayment of a delinquent bill or account provided –*

*(A) The Residential Unit Owner contacts the Association and states his/her inability to pay in full;*

*(B) The Association receives an initial payment and the Residential Unit Owner enters into a payment agreement both of which are in compliance with section 9 herein;*

*(C) The Residential Unit Owner complies with the Association's requests for information regarding the Residential Unit Owner's monthly or annual income; and*

*(D) There is no other lawful reason for discontinuance of electric service.*

*(7) Deposit Provisions. The Association shall not assess a new deposit or bill deposits that were previously assessed during or after the period of*



*this section to those Residential Unit Owners who enter into a payment agreement and make timely payments in accordance with these sections.*

*(8) Reconnection Provisions. If the Association has discontinued heat-related electric service to a Residential Unit Owner due to nonpayment of a delinquent account, the Association, from November 1 through March 31, shall reconnect service to that Residential Unit Owner without requiring a deposit; provided –*

*(A) The Residential Unit Owner contacts the Association, requests the Association to reconnect service and states an inability to pay in full;*

*(B) The Association receives an initial payment and the Residential Unit Owner enters into a payment agreement both of which are in compliance with section 9;*

*(C) The Residential Unit Owner complies with the requests of the Association for information regarding the Residential Unit Owner's monthly or annual income;*

*(D) None of the amount owed in an amount due is a result of unauthorized interference, diversion or use of the Association's service, and the Residential Unit Owner has not engaged in such activity since last receiving service; and*

*(E) There is no other lawful reason for continued refusal to provide electric service.*

*(9) Payment Agreements. The payment agreement for service under this article shall comply with the following:*

*(A) A pledge of an amount equal to any payment required by the Commission's rules by the agency which administers LIHEAP shall be deemed to be the payment required. The Association shall confirm in writing the terms of any payment agreement, unless the extension granted the Residential Unit Owner does not exceed two (2) weeks.*

*(B) Payment Calculations.*

*1. The Association shall first offer a twelve (12) month budget plan which is designed to cover the total of all preexisting arrears, current bills and the Association's estimate of the ensuing bills.*

*2. If the Residential Unit Owner states an inability to pay the budget plan amount, the Association and the Residential Unit Owner may upon mutual agreement enter into a payment agreement which allows payment of preexisting arrears over a reasonable period of in excess of twelve (12) months. In determining a reasonable period of time, the Association and the Residential Unit Owner shall consider the amount of the arrears, the time over which it developed, the reasons why it developed, the Residential Unit Owner's payment history and the Residential Unit Owner's ability to pay.*

*3. The Association shall permit the Residential Unit Owner to enter into a payment agreement to cover the current bill plus arrearages*

*in fewer than twelve (12) months if requested by the Residential Unit Owner.*

*4. The Association may revise the required payment in accordance with its budget or levelized payment plan.*

*5. If the Residential Unit Owner defaults on a cold weather rule payment agreement but has not yet had service discontinued by the Association, the Association shall permit such Residential Unit Owner to be reinstated on the payment agreement if the Residential Unit Owner pays in full the amounts that should have been paid pursuant to the agreement up to the date service is requested, as well as, amounts not included in a payment agreement that have become past due.*

*(C) Initial Payments.*

*1. For a Residential Unit Owner who has not defaulted on a payment plan under the cold weather rule, the initial payment shall be no more than twelve percent (12%) of the twelve (12) month budget bill amount calculated in section 9(B) herein unless the Association and the Residential Unit Owner agree to a different amount.*

*2. For a Residential Unit Owner who has defaulted on a payment plan under the cold weather rule, the initial payment shall be an amount equal to eighty percent (80%) of the Residential Unit*

*Owner's balance, unless the Association and Residential Unit Owner agree to a different amount.*

*(10) If the Association refuses to provide service pursuant to this article and the reason for refusal of service involves unauthorized interference, diversion or use of the Association's service situated or delivered on or about the Residential Unit Owner's premises, the Association shall maintain records concerning the refusal of service which, at a minimum, shall include: the name and address of the person denied reconnection, the names of all Association personnel involved in any part of the determination that refusal of service was appropriate, the facts surrounding the reason for the refusal and any other relevant information.*

WHEREFORE, WST respectfully submits the foregoing in response to the Commission's request of October 19, 2005.

Respectfully submitted,

STEWART LAW FIRM, L.C.

By: /s/ Shawn E. Stewart  
SHAWN E. STEWART #49202  
4505 Madison Avenue  
Kansas City, Missouri 64111  
Telephone: (816) 751-0517  
Facsimile: (816) 751-0518  
Email: [stewartlaw@birch.net](mailto:stewartlaw@birch.net)  
ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 19<sup>th</sup> day of October, 2005.

/s/ Shawn E. Stewart \_\_\_\_\_  
Shawn E. Stewart