

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

MISSOURI PUBLIC SERVICE COMMISSION  
UTILITY DIVISION

BRIARCLIFF DEVELOPMENT COMPANY  
CASE NO. EC-2011-0383

DIRECT TESTIMONY OF  
NATHANIEL HAGEDORN

September 8, 2011

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

BRIARCLIFF DEVELOPMENT COMPANY,  
A Missouri Corporation,

COMPLAINANT

v.

KANSAS CITY POWER AND LIGHT  
COMPANY,

RESPONDENT

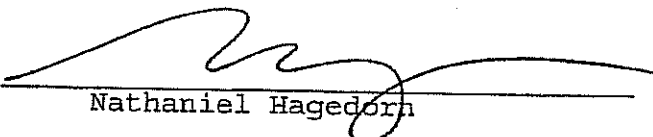
Case No. EC-2011-0383

AFFIDAVIT OF NATHANIEL HAGEDORN

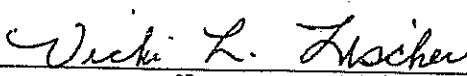
STATE OF MISSOURI )  
COUNTY OF CLAY )

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 8 day of September,  
2011 .

  
Notary Public

[SEAL]

My Commission expires: 4-3-15

VICKI L. FISCHER  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Clay County  
My Commission Expires: April 03, 2015  
Commission Number: 11389816

**BRIARCLIFF DEVELOPMENT COMPANY**

**EC-2011-0383**

**DIRECT TESTIMONY OF NATHANIEL HAGEDORN**

1 **Q. 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

6 **Q: ON WHOSE BEHALF ARE YOU APPEARING?**

7A: Briarcliff Development Company.

8

9 **Q: WHAT IS YOUR POSITION WITH BRIARCLIFF DEVELOPMENT COMPANY?**

10A: I am Chief Operating Officer ("COO") of the Company.

11

12 **Q: PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND WORK**  
13 **EXPERIENCE.**

14A: I graduated from UMKC in 2002. Upon graduation, I started  
15 with Briarcliff Development as a project manager eventually  
16 becoming COO. I am also president of Briarcliff Realty.  
17 I am in charge of all property management and leasing for

1 all the Briarcliff office buildings. I also led the  
2 construction of the retail center (Briarcliff Village), the  
3 9-story Hilltop Office and various smaller buildings around  
4 our development. I worked very closely with Grubb and  
5 Ellis/The Winbury Group when they managed the Briarcliff  
6 properties.

7  
8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9A: The purpose of my testimony is to present Briarcliff's  
10 position in an effort to convince the Commission to rule in  
11 Briarcliff's favor and find that Briarcliff Development's  
12 Briarcliff One office building continuously qualified for  
13 the frozen all-electric rate that it was receiving from KCPL  
14 prior to the time Briarcliff Development terminated its  
15 outside property manager and began managing Briarcliff One  
16 and its other office buildings in-house commencing on August  
17 5, 2009.

18  
19 **Q. WHAT IS THE BACKGROUND UNDERLYING THE COMPLAINT?**

20A: Briarcliff One is located at 4100 N. Mulberry Street, Kansas  
21 City, MO 64116. Briarcliff Development has continuously  
22 owned Briarcliff One office building since it was developed  
23 in 1999. In the development of the Briarcliff One office  
24 building, KCPL was instrumental in Briarcliff Development's

1 decision to develop it as an all-electric building to be  
2 served under KCPL's all-electric rate schedule with its more  
3 favorable winter rate.

4 Briarcliff One was served under KCPL's Large General Service  
5 All Electric rate schedule (1LGAE) commencing January 25,  
6 2001. Prior to that, from May 17, 1999 to January 25, 1999,  
7 it was served on KCPL's Medium General Service All Electric  
8 rate schedule (1MGAE).

9 However, effective August 5, 2009, KCPL commenced billing  
10 the Briarcliff One building at its Large General Service  
11 rate (1LGSE) due to the Winbury Group advising KCPL that it  
12 was no longer its property manager and that Briarcliff  
13 Development had taken the management of the building in  
14 house and requested that KCPL begin billing Briarcliff  
15 Development for service at 4100 N. Mulberry Drive. (See KCPL  
16 Answer, Paragraph 30.)

17 Since such date, despite efforts to get KCPL to change its  
18 decision, KCPL has billed the Briarcliff One building at the  
19 1LGSE rate resulting in higher charges for service in the  
20 winter months for the Briarcliff One building since August  
21 5, 2009 through today's date than it would have paid for  
22 such period under the all-electric 1LGAE rate. According to  
23 our analysis, for the period starting 9/17/2009 through  
24 4/18/2011, Briarcliff One has paid \$15,550.15 more under the

1 1LGSE rate than it would have paid under the 1LGAE rate.  
2 (See Briarcliff's Clarification of Amount in Dispute filed  
3 with the Commission on June 8, 2011.)  
4

5 **Q. OTHER THAN A CHANGE IN PROPERTY MANAGEMENT, WAS THERE ANY**  
6 **OTHER CHANGE IN THE BRIARCLIFF ONE BUILDING'S OPERATIONS**  
7 **THAT WOULD HAVE CAUSED IT TO HAVE ITS RATE CHANGED FROM ALL**  
8 **ELECTRIC TO GENERAL SERVICE?**

9A. No. Briarcliff Development still continued to own the  
10 building and lease space to tenants and it still continued  
11 to be an all-electric building and receive electricity from  
12 KCPL. The only change was the termination of the property  
13 manager and asking KCPL to bill the owner, Briarcliff  
14 Development, at the 4100 N. Mulberry address. As a result  
15 of such change, KCPL began billing the Briarcliff One  
16 building at the standard rate instead of the all-electric  
17 rate.  
18

19 **Q. WHAT WAS KCPL'S EXPLANATION FOR THE CHANGE IN RATES?**

20  
21A. KCPL claimed that due to the change in customer name, i.e.,  
22 from Winbury Realty to Briarcliff Development, the property  
23 no longer qualified for the all-electric tariff because the  
24 Commission restricted the rate to existing customers as of  
25 January 1, 2008 for so long as they remain on the all-

1 electric rate. Further, according to KCPL, this also meant  
2 that if the customer name changes on an account served by  
3 these tariffs, the account must be changed to a standard  
4 electric tariff.

5  
6**Q: DO YOU AGREE WITH KCPL'S EXPLANATION?**

7**A:** No. While the Commission did order the all-electric rate to  
8 be frozen in its Report and Order issued on December 6,  
9 2007, in KCPL's Rate Case ER-2007-0291, as clarified on  
10 December 21, 2007, however, neither I nor our counsel agree  
11 that the clear language of the freeze applied to an existing  
12 customer who terminated its property manager and requested a  
13 change in the name on the billing from its former agent, the  
14 property manager, to the owner, when the customer continues  
15 to remain the owner of the all-electric building and the  
16 only change is substituting the owner's name for the name of  
17 the customer's former agent.

18  
19**Q: WHAT WAS THE LANGUAGE THE COMMISSION USED TO FREEZE THE ALL-**  
20 **ELECTRIC TARIFFS?**

21**A:** What the Commission stated with respect to the freeze in  
22 all-electric rates in Case No. ER-2007-0291 as clarified in  
23 its subsequent Order dated December 21, 2007, may be  
24 paraphrased as follows:

25 The availability of KCPL's general service all-

1 electric tariffs should be restricted to those  
2 qualifying customers' commercial and industrial  
3 physical locations being served under such all-  
4 electric tariffs as of January 1, 2008 and such rates  
5 should only be available to such customers for so long  
6 as they continuously remain on that rate schedule  
7 (i.e., the all-electric rate schedule they are on as  
8 of such date).

9 A review of such language discloses that there is nothing in  
10 it saying that "if the customer name changes on an account  
11 served by these tariffs, the account must be changed to a  
12 standard electric tariff." Apparently, KCPL made that up  
13 itself. The freeze merely restricts the all-electric rate  
14 to those qualifying customers' commercial and industrial  
15 physical locations being served under such all-electric  
16 tariffs as of January 1, 2008 for so long as they  
17 continuously remain on that all-electric rate schedule.  
18

19 **Q. OTHER THAN THE CHANGE FROM AN OUTSIDE PROPERTY MANAGER TO**  
20 **BRIARCLIFF DEVELOPMENT MANAGING THE PROPERTY IN HOUSE, HAS**  
21 **THERE BEEN ANY OTHER CHANGE IN OPERATIONS?**

22 **A.** No. In the case of Briarcliff One, there has been no change  
23 in the physical location of the Briarcliff One building  
24 being served under the all-electric rate. Nor has there



1        been a change in the qualifying customer. Briarcliff  
2        Development continues to own and operate Briarcliff One and  
3        leasing space therein to tenants as it has since 1999 and  
4        Briarcliff One has continuously been supplied with  
5        electricity by KCPL since 1999. The only changes are that  
6        Briarcliff Development now manages the property in house  
7        rather than with an outside property manager and on August  
8        5, 2009 KCPL commenced billing for service at the building  
9        at the standard electric rate instead of the all-electric  
10       rate it had been served under since January 25, 2001. Had  
11       KCPL not changed the billing on its own, the building would  
12       have been continuously on the all-electric rate schedule  
13       since Briarcliff Development definitely did not and would  
14       not request a change in rates. See Schedule **NH-1**, a copy of  
15       the last bill to Winbury Realty for the Briarcliff One  
16       building dated August 6, 2009 at the 1LGAE rate and the  
17       first bill to Briarcliff Development for the Briarcliff One  
18       building dated August 24, 2009 at the 1LGSE rate.

19  
20 **Q:        WHAT DO KCPL's TARIFFS SAY ABOUT THE AVAILABILITY OF THE**  
21 **1LGAE ALL-ELECTRIC RATE EFFECTIVE JANUARY 1, 2008?**

22 **A:**       KCPL's tariff, P.S.C. MO No. 7, Third Revised Sheet No. 19,  
23        issued December 13, 2007, effective January 1, 2008, (a copy  
24        of which is attached as Schedule **NH-2** states the following

1 with respect to the continued availability of the 1LGAE  
2 rate: "This Schedule is available only to Customers'  
3 physical locations currently taking service under this  
4 Schedule and who are served hereunder continuously  
5 thereafter." Under such rule, the all-electric schedule is  
6 available for customers' physical locations currently taking  
7 service and continuously being served under it thereafter.  
8 This is the case with Briarcliff One. The rule does not  
9 say, as KCPL would wish it said, that if the customer name  
10 changes on an account served by these tariffs, the account  
11 must be changed to a standard electric tariff. Under the  
12 definition of customer in KCPL's tariffs, Briarcliff  
13 Development as owner of the building has been a customer of  
14 KCPL at such building all along.

15  
16 **Q: HOW DO KCPL'S TARIFFS DEFINE THE WORD CUSTOMER?**

17 **A:** KCPL's General Rules and Regulations Applying to Electric  
18 Service, P.S.C. MO. No. 2, Sheet 1.05, defines Customer as  
19 follows:

20  
21 "1.04 **CUSTOMER:** Any person applying for, receiving,  
22 using, or agreeing to take a class of electric service  
23 supplied by the Company under one rate schedule at a  
24 single point of delivery at and for use within the  
25 premise either (a) occupied by such persons, or (b) as  
26 may, with the consent of the Company, be designated in  
27 the service application or by other means acceptable to  
28 the Company." [Emphasis Added.]

1 **Q: HAS BRIARCLIFF DEVELOPMENT BEEN RECEIVING OR USING A CLASS**  
2 **OF ELECTRIC SERVICE SUPPLIED BY KCPL AT BRIARCLIFF ONE UNDER**  
3 **ONE RATE SCHEDULE AT A SINGLE POINT OF DELIVERY AT AND FOR**  
4 **USE WITHIN THE PREMISE OCCUPIED BY BRIARCLIFF DEVELOPMENT AS**  
5 **CUSTOMER IS DEFINED?**

6A: Yes. Briarcliff Development has been receiving and using  
7 electric service at Briarcliff One at a single point of  
8 delivery at and for use within the Briarcliff One building  
9 for use by Briarcliff Development and its tenants since  
10 1999. It is currently and has been continuously since 1999,  
11 a customer of KCPL, as defined by KCPL's tariffs, at the  
12 Briarcliff One physical location and qualifies for the  
13 Frozen All-Electric rate.

14

15 **Q: DO YOU KNOW HOW OR WHY THE BRIARCLIFF ONE ACCOUNT WAS OPENED**  
16 **IN THE NAME OF WINBURY REALTY AND WHEN DID YOU BECOME AWARE**  
17 **THAT IT WAS IN WINBURY'S NAME AND NOT IN BRIARCLIFF'S NAME?**

18A: We do not know how or why the account was opened in the name  
19 of Winbury Realty. The Winbury Group was our property  
20 manager under the Management Agreement and it is a  
21 completely different corporation than Winbury Realty, albeit  
22 with the same officers and board members. (See Schedule **NH-3**  
23 and **NH-4**, the respective 1999 Annual Registration Reports  
24 for The Winbury Group of K.C., Inc. and Winbury Realty of

1 K.C., Inc.)). Apparently, anyone can just call KCPL and tell  
2 them to open an account in a certain name and KCPL does so.  
3 Further, it was a violation of our Management Agreement with  
4 The Winbury Group for it to open an account with an electric  
5 company or any other utility or service provider in a name  
6 other than the "name of the Owner." See Schedule **NH-5**, a  
7 copy of the Management Agreement between Briarcliff West  
8 Realty Company and The Winbury Group of K.C., Inc. dated  
9 June 1, 1999, Paragraph 1.6. Briarcliff Development then  
10 took the place of Briarcliff West Realty when the two  
11 companies merged less than a month later effective on June  
12 28, 1999 with Briarcliff Development Company as the  
13 surviving corporation and Briarcliff Development became the  
14 owner under the Management Agreement. See Schedule **NH-6**, a  
15 copy of the Articles of Merger and the Certificate of Merger  
16 issued by the Secretary of State.

17 We did not even know it was in Winbury Realty's name until  
18 August of 2009 when we received copies of the utility  
19 invoices for the active accounts for all the properties at  
20 the Briarcliff development so that we could review the names  
21 of all its utility accounts and change billing addresses, if  
22 needed, in anticipation of taking over the property  
23 management in house. Of course, it did not matter whose  
24 name the account was in until after January 1, 2008 when the

1 freeze on the all-electric rate became effective and KCPL  
2 began billing at the standard electric rate for the sole  
3 reason that the name under which it billed the account  
4 changed.

5  
6 **Q. WHAT ENTITY PAID THE KCPL BILLS ON THE BRIARCLIFF ONE**  
7 **BUILDING AND WHOSE FUNDS WERE USED TO PAY THE BILLS?**

8 **A.** KCPL apparently does not care who paid the bill addressed to  
9 Winbury Realty. Attached as Schedule **NH-7** is a copy of a  
10 bill to Winbury Realty at the service address of 4100 N.  
11 Mulberry, the location of the Briarcliff One building, dated  
12 April 23, 2009 in the amount of \$3,902.15 and a copy of the  
13 check in the amount of \$3,902.15 dated April 28, 2009 to  
14 KCPL paid by The Winbury Group of Kansas City for the  
15 Briarcliff One building. Of course, The Winbury Group paid  
16 the KCPL bills out of the proceeds from the rental income  
17 from Briarcliff Development's tenants in the Briarcliff One  
18 building before remitting the profits to Briarcliff  
19 Development. Thus, it was always Briarcliff Development's  
20 funds regardless of whom the check to KCPL came from paying  
21 the bill.

22 Briarcliff Development was always the owner of the building  
23 and the customer. The property manager, The Winbury Group,  
24 was always Briarcliff Development's agent. Winbury Realty

1 had no role in this relationship except that KCPL  
2 inexplicably listed it as the Customer Name on the bills.

3  
4 **Q. DOES BRIARCLIFF DEVELOPMENT HAVE OTHER BUILDINGS AT**  
5 **BRIARCLIFF THAT WERE ON THE ALL-ELECTRIC RATE THAT HAVE NOT**  
6 **BEEN CHANGED TO THE STANDARD ELECTRIC TARIFF DUE TO THE**  
7 **CHANGE IN THE PROPERTY MANAGER?**

8A. Yes. Both the Briarcliff Two building at 1201 Briarcliff  
9 Parkway and the Briarcliff Three building at 4150 N.  
10 Mulberry have continued on the all-electric rate despite the  
11 change in the property manager from The Winbury Group to in  
12 house management at the same time the Briarcliff One  
13 building property manager changed. The only difference  
14 between the buildings is that the Briarcliff Two building  
15 was billed in the name of Briarcliff Two and the Briarcliff  
16 Three building was billed in the name of Briarcliff  
17 Development both before and after the change in property  
18 manager. See Schedule **NH-8**, a copy of the bills for the  
19 Briarcliff Two building dated 12/23/2008 (before the change)  
20 and aa/20/2009 after the change showing that it was on the  
21 1LGAE rate before and after the change. See Schedule **NH-9**,  
22 a copy of the bills for the Briarcliff Three building for  
23 the same billing periods.

1 Q. IS THERE ANY DIFFERENCE IN OPERATIONS OR ANY OTHER REASON  
2 WHY KCPL RETAINED THESE BUILDINGS ON THE ALL-ELECTRIC RATE  
3 WHEN THE BRIARCLIFF ONE BUILDING WAS NOT?

4 A. No. Everything was the same except that they were not  
5 billed in the name of Winbury Realty but were always billed  
6 in Briarcliff's name. In other words, under KCPL's  
7 reasoning, the Briarcliff One building lost the all-electric  
8 rate solely because it was billed by KCPL in the name of  
9 Winbury Realty, a company that was not even involved in the  
10 matter and consequently was not even a customer or  
11 responsible party under KCPL's rules. A Responsible party  
12 is defined in Rule 1.21 as:

13  
14 1.21 **RESPONSIBLE PARTY:** Any adult, landlord, property  
15 management company, or owner applying for agreeing to  
16 take, and or receiving substantial use and benefit of  
17 electric service at a given premise.  
18

19 Obviously, since Winbury Realty was a non-player and in no  
20 way received substantial use and benefit at the Briarcliff  
21 One building it was not a responsible party. Equally  
22 obvious, since Briarcliff Development, as a landlord and  
23 owner, was receiving substantial use and benefit of electric  
24 service at the Briarcliff One building it was a responsible  
25 party ever since it began receiving substantial use of  
26 electric service from KCPL in 1999 and through today.  
27 Briarcliff One was also a Customer of KCPL as defined in

1 Rule 1.04 in that it was receiving and using electric  
2 service at the Briarcliff One building continuously since  
3 1999, a building it owned, occupied and leased space to  
4 other parties also occupying the premises.

5  
6Q. **WHAT RELIEF ARE YOU ASKING THE COMMISSION TO PROVIDE?**

7A. We are asking the Commission to see through the charade and  
8 recognize that Briarcliff Development was a customer and  
9 responsible party as defined in KCPL's rules since 1999 and  
10 was such on August 5, 2009 when KCPL arbitrarily determined  
11 that it was not entitled to continue on the 1LGAE rate  
12 because the name on the account at such date was Winbury  
13 Realty, a corporation that was not involved in the matter.  
14 Further, that even if KCPL had listed the customer as The  
15 Winbury Group, we are asking the Commission to recognize  
16 that The Winbury Group was merely an agent of the owner,  
17 Briarcliff Development, and that the change in the name of  
18 the account from an owner's agent to the owner's name did  
19 not violate the letter or the spirit of the Commission's  
20 freeze order nor the Availability provision in the 1LGAE  
21 tariff so that Briarcliff was entitled to have been  
22 continuously served under the tariff even after the change  
23 in property manager. Finally, we are asking that the  
24 Commission order KCPL to reinstitute the all-electric rate  
25 for Briarcliff Development retroactively to August 5, 2009



1     and to rebill Briarcliff Development at the 1LGAE rate  
2     effective August 5, 2009 to date and to refund the  
3     overpayment due to placing Briarcliff Development on the  
4     1LGSE rate instead of keeping it on the 1LGAE rate.

5

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

7A.    Yes it does.