

TRANSCRIPT OF PROCEEDINGS  
Evidentiary Hearing  
January 24, 2012  
Jefferson City, Missouri  
Volume 2

Briarcliff Development Company )  
A Missouri Corporation, )  
 )  
Complainant, ) File No.  
 ) EC-2011-0383  
vs. )  
 )  
Kansas City Power and Light )  
Company, )  
 )  
Respondent. )

MICHAEL BUSHMANN, Presiding  
REGULATORY LAW JUDGE  
KEVIN D. GUNN, Chairman  
TERRY M. JARRETT  
ROBERT S. KENNEY,  
STEPHEN M. STOLL,  
COMMISSIONERS

REPORTED BY:  
Jennifer Leibach, CCR No. 1108  
TIGER COURT REPORTING, LLC

## A P P E A R A N C E S

JEREMIAH D. FINNEGAN, Attorney at Law

Finnegan, Conrad & Peterson, LC

3100 Broadway, Suite 1209

Kansas City, Missouri 64111

816.753.1122

FOR: Briarcliff Development Company

JAMES FISCHER, Attorney at Law

Fischer & Dority, P.C.

101 Madison Street, Suite 400

Jefferson City, Missouri 65101

573.636.6758

FOR: Kansas City Power & Light Company

SARAH KLIETHERMES, Legal Counsel

Public Service Commission

200 Madison Street

P.O. Box 309

Jefferson City, Missouri 65102

573.751.6514

FOR: The Staff of the Missouri Public Service Commission

1 PROCEEDINGS

2 (ALL EXHIBITS WERE MARKED FOR EXAMINATION BY  
3 THE COURT REPORTER PRIOR TO ANY PROCEEDINGS.)

4 JUDGE BUSHMANN: Let's bring the proceeding to  
5 order. We're on the record.

6 Good morning. Today is January 24th, 2012.  
7 The Commission has set this time for an evidentiary hearing  
8 in Briarcliff Development Company versus Kansas City Power &  
9 Light Company, File No. EC-2011-0383.

10 My name's Michael Bushman. I'm the regulatory  
11 law judge presiding over today's hearing. Let's begin by  
12 taking entries of appearance. For Briarcliff Development  
13 Company?

14 MR. FINNEGAN: For Briarcliff Development,  
15 Jeremiah D. Finnegan, Finnegan, Conrad & Peterson,  
16 3100 Broadway, Kansas City, Missouri 64111.

17 JUDGE BUSHMANN: Kansas City Power & Light  
18 Company?

19 MR. FISCHER: Thank you, Judge. On behalf of  
20 Kansas City Power & Light Company, let the record reflect the  
21 appearance of James M. Fischer, Fischer & Dority, P.C. Our  
22 address is 101 Madison Street, Suite 400, Jefferson City,  
23 Missouri 65101.

24 JUDGE BUSHMANN: Staff of the Missouri Public  
25 Service Commission?

1                   EMS. KLIETHERMES: Thank you, Judge. Of and  
2 on behalf of the Missouri Public Service Commission, Sarah  
3 Kliethermes, 200 Madison Street, Jefferson City, Missouri  
4 65101.

5                   JUDGE BUSHMANN: Office of Public Counsel?  
6 Let the record reflect that there's no appearance on behalf  
7 of the Public Counsel.

8                   I'd advise anyone in the audience to please  
9 turn off any cell phones or BlackBerry devices, as those can  
10 interfere with the video streaming.

11                  Do the parties have any procedural matters,  
12 preliminary matters to take care of before we get started?

13                  Hearing none, the Commission will take  
14 official notice of the following cases: File Number  
15 ER-2006-0314, ER-2007-0291, and EE-2008-0238.

16                  As far as the witnesses for today, I have the  
17 following list of witnesses in this order:

18                  Nathaniel Hagedorn, Jason Henrich, Tim Rush,  
19 and Michael Scheperle. Do the parties want to make any  
20 changes to that list?

21                  MR. FINNEGAN: No.

22                  JUDGE BUSHMANN: All right. I think we're  
23 ready, then, for opening statements. Opening statement first  
24 on behalf of Briarcliff.

25                  MR. FINNEGAN: May it please the Commission,

1 I'm Jeremiah D. Finnegan. I'm the attorney for Briarcliff  
2 Development Company, who is the complainant in this case  
3 against Kansas City Power & Light Company involving the --  
4 their unwillingness to shift from the all-electric rate to  
5 the regular standard commercial rate for the -- for one of  
6 their buildings, the Briarcliff One building.

7 I was going to start to say this is a tale of  
8 three office buildings -- Briarcliff One, Briarcliff Two, and  
9 Briarcliff Three -- all of which were or are total electric  
10 buildings. And I found out last night that all the buildings  
11 at the Briarcliff Development are all-electric buildings,  
12 including the one they just built that will never receive the  
13 all-electric rate.

14 The -- what we have here with Briarcliff One,  
15 Briarcliff Two, and Briarcliff Three is that Briarcliff One,  
16 the first building they built, the one that -- they are all  
17 owned by Briarcliff Development Company. They are all leased  
18 by Briarcliff Development Company. They are the lessor.

19 All -- the three buildings, unfortunately,  
20 when the Briarcliff One building was first put online, it was  
21 put in the name of Winbury Realty. And Winbury Realty is not  
22 even affiliated with Briarcliff Development. Briarcliff  
23 Development's agent was the Winbury Group, which is a  
24 separate corporation from Winbury Realty.

25 Somebody from the water -- the Winbury Group

1       called KCP&L and said put this building in the name of the  
2       Winbury Group -- the Winbury Realty Company, Winbury Realty.  
3       They didn't say put it in the name of the Winbury Group.

4               For one thing, it was a problem for Winbury to  
5       do that because, under the agreement, the management  
6       agreement with Briarcliff Development, Winbury Group was to  
7       put all the buildings in the name of the owner, which is  
8       Briarcliff Development, which has been, always has been,  
9       continues to be Briarcliff Development.

10              What happened was in 2009, Briarcliff  
11       Development decided that they no longer wanted the Winbury  
12       Group as their agent and called -- well, talked to KCP&L and  
13       said please take them off this account and put our name on  
14       it. And as a result of changing the name on the account,  
15       they lost -- KCP&L stopped providing the service under the  
16       all-electric rate. And there's a reason that you want the  
17       all-electric rate because there's a discount and -- during  
18       the winter months when Kansas City Power & Light is off-peak.

19              The rate was frozen in 20- -- January 1st,  
20       2008, first after a Commission Order in 2007 in which the  
21       Commission stated that the -- cited in Case Number  
22       ER-2007-0291, the 2007 rate case, they decided that -- the  
23       Commission decided that the availability of KCP&L's general  
24       service all-electric tariffs and separately metered space  
25       heating rates should be restricted to those qualifying

1 customers' commercial and industrial physical locations,  
2 being served under such all-electric tariffs or separately  
3 metered space heating rate as of the date used for the  
4 billing determinants. In this case it became -- it  
5 eventually became January 1st, 2008, used in this case, and  
6 such rates should only be available to such customers for so  
7 long as they continuously remain on the rate schedule. And  
8 that -- and that meaning either the all-electric or if you're  
9 a space heating customer, in the space heating.

10 And I want to point out the important thing  
11 here is the customers' commercial and industrial physical  
12 locations, effective January 1st, 2008, KCP&L froze --  
13 introduced the frozen tariff. It's PSC Missouri Number 7,  
14 Third Revised Sheet Number 19. In this -- and this is the  
15 language: "This schedule is available only to Customers'  
16 physical locations currently taking service under this  
17 schedule and who are served hereunder continuously  
18 thereafter."

19 And "customers" is capitalized, and that's  
20 important because if you look at the definition of -- Kansas  
21 City Power & Light's definition of the customer, and that's  
22 PSC Missouri Number 2, Third Sheet Number 105, Rule 1.04.  
23 And a customer is any person applying for, receiving, using,  
24 or agreeing to take a class electric service supplied by the  
25 company under one rate schedule at a single point of delivery

1 at and for use within the premises either occupied by such  
2 person or as may, with the consent of the company, be  
3 designated to service application or by other means  
4 acceptable to the company.

5 But the important part of this rule is any  
6 person receiving, using electricity is a customer under this  
7 rule. And that means that the Briarcliff Development Company  
8 was a customer under this rule.

9 And, under another rule, responsible party --  
10 this is on PSC Missouri Number 2, Third Revised Sheet Number  
11 1.07 -- it might be revised since then -- the  
12 response -- Rule 1.21, "Responsible party: Any adult,  
13 landlord," which is my client, "property management company,  
14 or owner," which is my client, "applying for, agreeing to  
15 take and/or receiving substantial use and benefit of electric  
16 service at a given premise."

17 Of course, what this means is that if the  
18 Winbury Realty doesn't pay, which actually never did pay, all  
19 the bills were paid through the Winbury Group. Even though  
20 the bill went to the Winbury Realty, which is a separate  
21 corporation from the Winbury Group -- and I don't know how  
22 they got in here because they didn't have the contract -- the  
23 management contract, Winbury Realty did not have a management  
24 contract with Briarcliff, and it made no difference until  
25 January 1st, 2008, by the way, under whose name it was



1       because the bills were being paid.

2                       They sent it to Winbury Realty, somehow  
3       Winbury Group would pay the bill from the account on the  
4       building. If there wasn't any money in that account, Winbury  
5       Group was not going to pay the bill, Winbury Realty wasn't  
6       going to pay the bill because they weren't a customer -- I  
7       mean, they were -- they were a customer of record, whatever  
8       that means.

9                       It's important to KCP&L because their whole  
10      case depends on the fact, their claim that the customer of  
11      record is the one who is responsible. And when you change  
12      the name of the customer of record, you lose the all-electric  
13      rate. There's a provision -- basically, what they said and  
14      they sent an e-mail to my clients in February of 2008 -- of  
15      course, that was a month or so after February 8th, which was  
16      a month and eight days after the rule changed, and after  
17      citing to the -- to them what the rule change would mean,  
18      this action freezes these rates to existing customer for so  
19      long as they remain on the all-electric or space heating rate  
20      schedules, which is basically what KCP&L's tariff says.

21                      But then they went on to say to our client,  
22      "This also means that if the customer name changes on an  
23      account served by these tariffs or if an existing heat rate  
24      customer requests the rate to be changed due to changes in  
25      building usage or load, the account must be changed to a

1 standard electric tariff." This is not in the tariff. This  
2 is an addition in an e-mail sent months -- a month after the  
3 rate changed, as if we could do anything about it at that  
4 point.

5 And it was not really known what name it was  
6 in until the time came to get rid of the Winbury Group as a  
7 property manager and take it in-house. There was no change  
8 in the physical location, which is part of the rule, which  
9 says the schedule is available to customers' physical  
10 locations currently taking service under the schedule and who  
11 are served hereunder continuously thereafter.

12 But for KCP&L changing the rate, they would  
13 still be on the all-electric rate. They are a customer, the  
14 physical locations are still being served, they've been  
15 served since 1999 as all-electric. In fact, they can't  
16 change because they built their whole buildings all-electric  
17 at an extreme cost to get that benefit, and then they lost  
18 it. But they lost it improperly, unreasonably, and  
19 discriminatorily.

20 The Briarcliff One building was on the  
21 customer record, according to KCP&L, as Winbury Realty. The  
22 Briarcliff Two building, customer of record was Briarcliff  
23 Two. The Briarcliff Three building, customer of record was  
24 Briarcliff Development. Both Briarcliff Two, Briarcliff  
25 Development, and all the other buildings are still on the

1 all-electric rate. The only one that's not is the Briarcliff  
2 One building, the first one that was built.

3 We think this is a travesty, and it's not what  
4 the Commission intended. It's not what the rule says. They  
5 added to the rule and they're the ones that wrote the rule.  
6 So the rule should be strictly construed against them. It  
7 was approved by the Commission, so that the Commission was  
8 satisfied with it, and we think that the situation should be  
9 that their actions were found to be unreasonable, unlawful,  
10 and that the company be ordered to repay the difference to  
11 put them back on the all-electric rate and repay the  
12 difference between the time from between August the 4th --  
13 I'm sorry, August the 5th, 2009, and today, or whenever  
14 decision is rendered.

15 And that's all I have. Any questions?

16 JUDGE BUSHMANN: Any questions from  
17 Commissioners?

18 CHAIRMAN GUNN: I don't have anything.

19 JUDGE BUSHMANN: Thank you, Mr. Finnegan.  
20 Opening from KCP&L? Did you have a PowerPoint, Mr. Fischer?

21 MR. FISCHER: I do. I'm going to go through  
22 it briefly.

23 May it please the Commission. My name's Jim  
24 Fischer, and I'll be representing Kansas City Power & Light  
25 today. And it's -- this is a customer complaint, as

1 Mr. Finnegan has mentioned, brought by Briarcliff  
2 Developments against Kansas City Power & Light, and they are  
3 seeking really two things. They're seeking a refund of past  
4 electricity usage. On that particular point, KCP&L opposes  
5 the refund because we feel that we followed the Commission's  
6 rules and the tariffs.

7 And then the second item that they're asking  
8 is the opportunity to have its service billed at commercial  
9 all-electric rates on a prospective basis. On that  
10 particular point, we agree with the complainant. We believe  
11 that they should be billed on a prospective basis, and the  
12 Commission should grant a variance to allow us to do that.

13 While KCP&L does oppose the refund, we are  
14 willing to -- we believe it would be appropriate for  
15 Briarcliff to be given the commercial all-electric rate on a  
16 prospective basis. When we go to the Staff's recommendations  
17 in this case, Staff also recommends that the Commission  
18 should find that KCP&L properly applied its tariff when it  
19 refused to provide service to Briarcliff One on the  
20 all-electric rate after August 4th, 2009.

21 And that's because the customer name  
22 associated with that service changed, and the Commission had,  
23 as Mr. Finnegan has already indicated, restricted the  
24 all-electric rate as of December 31, 2007, for as long as the  
25 customers continuously remained on that rate schedule.

1                   On Thursday of last week, the parties filed a  
2     Joint Stipulation of Non-Disputed Material Facts and, Judge,  
3     I understand that that will be considered part of the  
4     evidence in this record; is that right?

5                   JUDGE BUSHMANN: That's correct.

6                   MR. FISCHER: Okay. Well, this Joint  
7     Stipulation of Non-Disputed Material Facts contains what I  
8     believe are the essential facts for resolving the case, and  
9     those facts really aren't in dispute. But just briefly,  
10    KCP&L has provided electric service to the premises located  
11    at 41 North Mulberry Street, Kansas City, Missouri, since  
12    1999. I'm going to refer to that, as Mr. Finnegan did, as  
13    Briarcliff One.

14                  The electric service began at Briarcliff One  
15    on May 17th, 1999, and continued through June 14th, 1999, in  
16    the name of Briarcliff West Development. And that was at the  
17    request of Lee Swartz. Now, at this time, Briarcliff West  
18    Development was the legal entity responsible for the  
19    payments, and that's reflected in Paragraph 9 of the  
20    stipulated facts.

21                  Now, on June 11, 1999, Dianne Painter called  
22    Kansas City Power & Light to have service set up in the name  
23    of Winbury Realty as of June 14, 1999. Service at Briarcliff  
24    One was put in the name of Winbury Realty by KCP&L on  
25    June 14, 1999, as requested.

1           The account remained in the name of Winbury  
2   Realty for over ten years, commencing on June 14, 1999, and  
3   terminating on August the 5th, 2009. And, again, that's  
4   reflected in our stipulated facts at Paragraph 10. From  
5   May 17th, 1999, through January 25th of 2001, services to the  
6   premises was under what's called a rate schedule 1 MGAE.  
7   That's a rate schedule that reflects that it's an  
8   all-electric commercial rate.

9           And from January 25th, 2001, through  
10   August 5th, 2009, it was under the 1 LGAE rate schedule,  
11   which is also an all-electric commercial rate schedule.  
12   That's in Paragraph 11 of the stipulated facts.

13           Now, at the beginning of the case, the judge  
14   took official notice of Case Number ER-2006-0314. That's the  
15   first of several cases before the Commission regarding the  
16   company's all-electric and separate-meter space heating rates  
17   for commercial and industrial rates.

18           In that particular case, which I'll probably  
19   refer to as the 2006 rate case, Trigen Energy, which is now  
20   known as Veolia Energy Kansas City, over our objections,  
21   recommended that the all-electric and separately metered  
22   space heating rates for commercial and industrial customers  
23   should just be eliminated. The Commission adopted KCP&L's  
24   position and didn't just eliminate it. They rejected  
25   Trigen's primary recommendation. And as a result, the

1 Commission decided not to modify the general all-electric  
2 rates that had been in effect since 1996.

3           However, the Commission did decide to restrict  
4 the existing general service all-electric rate schedules and  
5 the separately metered space heating provisions of KCP&L's  
6 standard electric service tariffs to existing customers until  
7 there was a comprehensive class cost of service study, and  
8 that's reflected in Paragraph 12 of the stipulated facts.

9           Now, if you go to the next case that the judge  
10 took official notice of, the 2007 rate case, Trigen again  
11 sought to have the Commission restrict the availability of  
12 these all-electric and separately metered space heating rates  
13 for commercial and industrial rates. The Commission in that  
14 case adopted the Trigen recommendation, and I put the  
15 relevant language on the screen here.

16           But basically, the availability of the  
17 all-electric rates were restricted to qualifying customers'  
18 physical locations being served by or under such all-electric  
19 tariffs or separately metered space heating rates as of the  
20 date used for the billing determinants, which is basically  
21 the effective date of the case. And such rates should only  
22 be available to such customers for so long as they  
23 continuously remain on that rate schedule.

24           We filed an application for rehearing in that  
25 2007 rate case, and we requested that the Commission grant a

1 rehearing and a stay of the effect of the Commission's  
2 decision to restrict the availability of the all-electric  
3 rate schedules or, in the alternative, we asked that KCP&L be  
4 given a waiver or a variance from this decision, and allow it  
5 to grandfather any existing KCP&L customer who had entered  
6 into contracts or purchased heating equipment relying on the  
7 existence of this all-electric discount or heating tariff.  
8 The Commission denied KCP&L's request.

9               So then on January 22nd of 2008, KCP&L filed a  
10 separate application for a variance or a waiver related to  
11 these all-electric tariffs, in which at that time the  
12 application sought a waiver of the provisions of the Report  
13 and Order in the 2000 rate case that limited all-electric and  
14 space heating rates to certain customers.

15              By a three-to-two vote, the Commission granted  
16 Motions to Dismiss filed by Trigen and Missouri Gas Energy on  
17 the grounds that KCP&L's applications for a variance  
18 represented an improper collateral attack on the Commission's  
19 previous decision in the 2007 rate case.

20              At that point, January 1st, 2008, KCP&L froze  
21 the rate to customers of record as of that date, as the  
22 Commission had instructed them to do. And that's found in  
23 the Stipulation of Facts in Paragraph 14.

24              Now, as Mr. Finnegan has already mentioned,  
25 Briarcliff was informed of the PSC's decision in an e-mail



1     dated February 8, 2008, from David Sutphin, a KCP&L employee,  
2     to a Richie Benninghoven, a contact person for Briarcliff  
3     Development. KCP&L notified Briarcliff that if the name on  
4     the account changed, then the account must be changed to the  
5     standard electric tariff.

6                 The slide I have on -- on the screen now shows  
7     what the -- what the e-mail said to Briarcliff. It basically  
8     said, though, that this -- the Commission's action  
9     "refreezes" these rates to existing customers for so long as  
10    they remain on the all-electric or space heating rate  
11    schedules. This also means that if the customer name changes  
12    on the account served by these tariffs or if an existing heat  
13    rate customer requests the rate be changed, due to changes in  
14    the building usage or load, the account must be changed to a  
15    standard electric tariff. And that's stipulated to in  
16    Paragraph 15 of the non-disputed facts.

17                Then there was a name change requested. On  
18    August 5th, 2009, KCP&L was contacted by Jim Unruh, Senior  
19    Vice-President of Winbury Group to put the account in the  
20    name of Briarcliff Development. That's stipulated to at  
21    Paragraph 16.

22                Now, effective August the 5th, 2009, the  
23    customer name for the Briarcliff One building was changed by  
24    KCP&L from Winbury Realty to Briarcliff Development as  
25    requested. That was at Paragraph 17 of the stipulated facts.

We were also informed on August the 10th that there was going to be a change of management. August the 10th, 2009, KCP&L was contacted again by Jim Unruh. He stated that Briarcliff One was no longer going to be managed by their company, but instead Briarcliff intended to manage the property in-house. Mr. Unruh stated that the bills should go to Skip Rosenstock, who was the senior property manager at Briarcliff Realty from July 9th -- excuse me, from July 2009 to May 2011 at 4151 North Mulberry, Suite 205, Kansas City, Missouri. That's stipulated to at Paragraph 18 of the stipulated facts.

Now, on August 28th, 2009, KCP&L was contacted by Rebecca Hill, Chief Financial Officer for Briarcliff Development, to have the mailing address changed. Ms. Hill contacted the company again on September 17th of 2009 to verify that the mailing address had been changed.

Commencing with the first billing after KCP&L was notified of the change of the customer name, KCP&L ceased billing Winbury Realty and began billing Briarcliff Development for electric service to the Briarcliff One building at the large general service rate instead of the -- and continuing under the large general all-electric rate. Again, that's stipulated to at Paragraph 19 of the stipulated facts.

Now, the pertinent language of the large

1     general service all-electric (frozen) schedule commencing on  
2     January 1st, 2008, is found at Paragraph 20 of the stipulated  
3     facts. So these are the essential facts which really aren't  
4     in dispute.

5                 Now, the issues that we have in this case  
6     are -- the first one is: Did KCP&L properly apply the tariff  
7     in refusing to provide Briarcliff One with the all-electric  
8     rate? And this -- the company and the Staff both have  
9     answered that yes, we properly followed the Commission's  
10    Orders, we properly followed the Commission's approved  
11    tariffs in this case, and we denied the all-electric service  
12    when the name of the account changed.

13                Now, the second issue in the case is: Does  
14    the Commission have the authority to waive or vary KCP&L's  
15    tariff provisions that restrict KCP&L from providing service  
16    to Briarcliff One on the all-electric schedule, and if so,  
17    should it? Our position is that yes, you have the authority,  
18    and yes, in this case you should grant the variance or -- and  
19    allow the company to provide all-electric service to -- to  
20    Briarcliff on the all-electric rate.

21                Now, the Commission has routinely reviewed and  
22    granted appropriate requests for variances for the provisions  
23    of public utility tariffs in the past. And, in fact, if you  
24    look at your own rules, you've got two rules that allow  
25    applications to be filed that allow you to request variances

1 from tariffs. And that's 4 CSR 240 3.015 and 4 CSR  
2 240-2.060(4).

3 The Commission most recently in a KCP&L case  
4 specifically addressed this question and held that it has the  
5 authority to waive or vary public utility care provisions,  
6 and I would refer you to that Report and Order in the WST  
7 case, which is EE-2006-0123, decided on October 19th of 2005.  
8 And then there's a whole variety of other Orders. I pulled a  
9 few of them out involving Kansas City Power & Light, Missouri  
10 Gas Energy and Laclede Gas where the Commission has granted  
11 various variances or waivers from public utility tariffs.

12 I think with that, I'll stop and suggest that  
13 if you have questions, I have two witnesses today, Jason  
14 Henrich from the company and Tim Rush, who can address your  
15 questions about tariffs and the Commission's Orders, and I'd  
16 certainly be happy to answer any of your questions as well.

17 JUDGE BUSHMANN: Questions from Commissioners?

18 COMMISSIONER GUNN: I actually have a couple.  
19 Could you go back to the slide where you quote the Report and  
20 Order language, I think, from page 82 of the Report and  
21 Order? I think that's it.

22 MR. FISCHER: Yeah.

23 COMMISSIONER GUNN: So, I'm trying to figure  
24 out how you -- how you-guys made the leap from this language  
25 to saying that a name change alone pulls you off the tariff.

1                   MR. FISCHER: It's based on the use of the  
2     term "customer." The definition of "customer" changes -- or  
3     the customer changes whenever you -- whenever you go from  
4     Winbury to Briarcliff.

5                   COMMISSIONER GUNN: Based on what you  
6     interpret the definition of "customer?"

7                   MR. FISCHER: Based on the tariff definition  
8     of "customer," which is included in, I believe, Mr. --  
9     Mr. Rush's testimony.

10                  COMMISSIONER GUNN: But doesn't -- I mean,  
11     this -- the Report and Order here has two -- has basically  
12     two provisions. It says, "Qualifying commercial and  
13     industrial physical locations." And the physical location  
14     did not change, correct?

15                  MR. FISCHER: The customer's physical location  
16     did change because the customer changed. Now, the physical  
17     building didn't change, you're right.

18                  COMMISSIONER GUNN: The location being served  
19     under an all-electric tariff did not change, correct?

20                  MR. FISCHER: That's correct.

21                  COMMISSIONER GUNN: Okay. And then the only  
22     reason why they were not on the same rate schedule is because  
23     Kansas City Power & Light removed them once the name changed?

24                  MR. FISCHER: Whenever the customer requested  
25     that they -- the name to be changed.

1                   COMMISSIONER GUNN: I understand the argument.  
2 I'm just trying from a factual -- there was no -- there was  
3 no increase in load as other -- other -- there was no other  
4 reason to remove them from the rate schedule other than the  
5 name change?

6                   MR. FISCHER: Other than the fact -- yes,  
7 that's right. The customer's name -- the customer that was  
8 entitled -- was calling the shots on that property changed.

9                   COMMISSIONER GUNN: So we have essentially  
10 come down to what our interpretation is of what a customer is  
11 under the tariff language?

12                  MR. FISCHER: That's right.

13                  COMMISSIONER GUNN: That's basically the  
14 sole --

15                  MR. FISCHER: And if you look at that tariff  
16 language, it specifically includes property management  
17 companies.

18                  MR. FINNEGAN: I object to that. It does not.

19                  MR. FISCHER: Oh, well, maybe I'm --

20                  MR. FINNEGAN: That's responsible parties.

21                  MR. FISCHER: Oh, I'm sorry, responsible  
22 party.

23                  COMMISSIONER GUNN: And we can get into that  
24 when we actually take a look at that on the customer  
25 language.

1                   But my question is: Is this -- is this a  
2     little bit of a tempest in a teapot? I mean, are we talking  
3     about clerical issues rather than actual substantive issues  
4     here? Because the physical location didn't change, right?

5                   I mean, so when we talk about -- and I can ask  
6     this because all this stuff happened before I came on the  
7     Commission, so there's no need for me to kind of be  
8     consistent with what happened previously. But when you're  
9     talking about grandfathering in a customer or -- I mean, was  
10    the intent to be for new customers coming in requesting the  
11    electric tariff?

12                  I mean, so -- or was it for this kind of --  
13    and I understand what the tariff language may or may not say,  
14    but I'm talking about intent here. I'm talking about beyond  
15    the four corners of the document.

16                  MR. FISCHER: Mr. Chairman, the company didn't  
17    want this to happen at all from the very beginning. We  
18    argued in both cases that we shouldn't get rid of or restrict  
19    the availability of the all-electric rate in any way. The  
20    Commission in the first case said, well, it should be  
21    restricted to existing customers.

22                  The second case that used this language, which  
23    basically says if -- if the customer's location, if it  
24    changes in any way, if -- if, for example, you sell the  
25    property to somebody else, that's not available to the next

1 customer, the customer is different. Or if the customer, as  
2 is defined in the tariff, changes, which has happened here,  
3 you have a different party paying -- we used to have Winbury  
4 paying the bill and now we have Briarcliff paying the bill.  
5 They're the responsible party. That changed.

6 Under the Commission's language, which is not  
7 our preference, we would have liked to have a variance to  
8 allow everybody to continue if they had relied on the fact  
9 that we had an all-electric rate when they built the  
10 property. We asked that that be rehearing -- be  
11 reconsidered. We filed -- that was denied.

12 We asked for an application for variance, and  
13 the Commission said no, that was an improper collateral  
14 attack, and so now we're following the Commission's Orders.

15 COMMISSIONER GUNN: I think that's part of the  
16 point is that we can have a situation here where you  
17 absolutely have a good faith following of the tariff.  
18 There's no wrongdoing here. You have a good faith following  
19 of the tariff by the company.

20 But in reality, all things -- you look --  
21 because someone changed the name on a bill doesn't alter  
22 whether or not this physical location should be continued  
23 under an all-electric tariff. So we have -- we have two  
24 people that are probably right, and it's going to be our job  
25 to figure out how we're going to kind of figure out how --



1           MR. FISCHER: And it doesn't alter the fact  
2   that Briarcliff One, whenever they built the building, relied  
3   on the existence of that all-electric tariff, and we thought  
4   that was a good enough reason to grant waivers for customers  
5   that had done that and continue to allow them to get the  
6   benefit of that rate. I mean, we are -- prospectively, the  
7   company is willing to try to find a way to get Briarcliff on  
8   this, and we're asking that the Commission grant a variance  
9   for this particular situation.

10           We don't think it's fair for the company to be  
11   asked to refund money because we were following the tariff  
12   and we were following the Commission's Order, and I believe  
13   Staff's looked at that issue and decided that's correct. We  
14   followed it properly.

15           So it's not proper -- we don't think it's  
16   right that the Commission order us to give back the  
17   difference, but prospectively, if you'd like to grant a  
18   variance in this situation or, you know, find another  
19   solution, we'd be happy to work with -- with you on that.

20           COMMISSIONER GUNN: Okay. I don't have  
21   anything further. Thanks.

22           JUDGE BUSHMANN: Any other questions?

23           COMMISSIONER JARRETT: I don't have any  
24   questions. Thanks.

25           JUDGE BUSHMANN: Thank you, Mr. Fischer.

1                   Opening statement from Staff?

2                   MS. KLIETHERMES: Good morning, Judge,  
3           Commissioners. I agree with exactly half of what Mr. Fischer  
4           had to say. And, Chairman, you -- you're headed in the right  
5           direction on what the issue is on this, and I'll get to that  
6           in one moment.

7                   This is a complaint case. There is no  
8           properly pled application for waiver of variance pending, and  
9           we discussed that in quite a bit of detail in the cover  
10          pleadings of the Staff recommendation.

11                  So even if it were lawful for the Commission  
12          to waiver-vary a tariff, it can't do so in this pleading  
13          because that hasn't been properly pled. Of course, Staff  
14          argues that it's not lawful following the guidance the  
15          Supreme Court handed down in 1926 in the St. Louis Gas cases.

16                  Staff's position is that KCP&L properly denied  
17          Briarcliff's request to be placed on the 1 LGAE rate schedule  
18          when that customer name changed. Briarcliff raises claims  
19          that Briarcliff's agent didn't have the authority to open the  
20          account in anything other than the name of Briarcliff. That  
21          has nothing to do with KCP&L. And the PSC is not the forum  
22          for breach of agency suit.

23                  The reliance on customer name by KCP&L and  
24          Staff does seem awfully specific. Mr. Fischer did a very  
25          good job of explaining the procedural history, but he did

1     omit a bit that is helpful to understanding the remedial  
2     nature of the language that was used in the Orders and  
3     tariff.

4                 Going back to that 2006 rate case, when the  
5     Commission ordered KCP&L that the discounted rate schedule  
6     along with several others was to be restricted to existing  
7     customers, KCP&L had a hard time finding someone who wasn't  
8     an existing customer. In that rate case, the Commission  
9     restricted the schedule after considering evidence about how  
10    the separately metered space heating and all-electric rate  
11    schedules were paying quite a bit less for their electricity  
12    than other customers who weren't on those schedules.

13                The process of deciding what classes and what  
14    rate schedules pay which amounts divided up over which  
15    elements is what we call rate design. Rate design is where  
16    we divide up the total amount the utility is authorized to  
17    collect from its customers among customer classes,  
18    subclasses, rate elements and seasons. And rate design is a  
19    zero sum game. It is simply dividing up the pie. In order  
20    for one slice to be smaller, one or more slices have to get  
21    bigger. And, unfortunately, and differently from real pie,  
22    classes and subclasses don't want a larger slice, typically.

23                So getting back to that 2006 existing customer  
24    restriction, at that time the Commission increased the energy  
25    charge of the 1 LGAE winter rates approximately five percent

1 more than the comparable large general service rates. This  
2 move reduced the 23 percent discount that the 1 LGAE subclass  
3 received prior to that 2006 case. In its Order, the  
4 Commission discusses the importance of waiting for a complete  
5 class cost of service study before anything doing [sic] too  
6 rash. But in that Order, the Commission did begin the  
7 process of closing the discounted subclass by attrition, by  
8 limiting the availability of that class to existing customers  
9 and also reducing the size of the discount itself.

10 So in short, that 2006 rate case that  
11 Mr. Fischer mentioned was where the Commission not only  
12 restricted the availability of the rate that Briarcliff wants  
13 to be on because it was discounted, it also reduced the size  
14 of that discount. And that's where Staff views that the  
15 Commission made the decision to close this class by  
16 attrition.

17 So what does the 2006 rate case have to do  
18 with why Briarcliff's name matters if Briarcliff's location  
19 hasn't changed? Well, the need for the high level of detail  
20 and the seemingly bizarre specificity is occasioned by  
21 KCP&L's rather liberal interpretation of the Commission's  
22 limitation to existing customers coming out of that 2006 rate  
23 case. And as I mentioned, coming out of the 2006 rate case,  
24 it was really hard to not be an existing customer of KCP&L's.

25 KCP&L interpreted that order as meaning that

1     any KCP&L customer receiving any class of service at any  
2     location could get the 1 LGAE discount. Not only that, but  
3     buildings were customers, too. So if someone owned a  
4     building that was receiving the discount, then the building  
5     would continue to receive the discount, even if the building  
6     outright changed hands. Not only that, but KCP&L interpreted  
7     that you could mix and match those two theories and still  
8     satisfy KCP&L's interpretation of the existing customer  
9     restriction.

10                 So if a developer had a shop in KCP&L  
11     territory, his office, machine shed, that kind of thing, that  
12     developer could build a new shopping center, somehow imbed it  
13     with existing customer status and then sell it so some other  
14     entity, and the new complex would qualify for the discounted  
15     rate. That was an existing customer to KCP&L coming out of  
16     2006.

17                 Needless to say, that practice did not do much  
18     to eliminate the discounts by attrition. These  
19     differences -- pardon me. These differences in  
20     interpretation got Staff and intervenors thinking about what  
21     it meant to be a commercial electricity customer. Surely, we  
22     didn't want to rely on who the ultimate consumers of  
23     electricity were in a commercial context. Tenants can change  
24     all the time.

25                 Tying to a particular customer made sense, but

1 KCP&L had already found so much wiggle room in that  
2 restriction that it was rendered meaningless. Tying to a  
3 location made some sense, but changes in ownership or entity  
4 should be recognized as triggering a change in customer  
5 status. This brings us to the language ultimately ordered in  
6 KCP&L's 2007 rate case.

7 MR. FINNEGAN: Judge, I'm going to have to  
8 object to this opening statement. There's nothing in the  
9 record -- no testimony on this whatsoever in your testimony.

10 MS. KLIETHERMES: We'll have a fair amount of  
11 cross on this, and most of this is --

12 MR. FINNEGAN: Cross? This is your testimony.  
13 You're making an opening statement on what --

14 JUDGE BUSHMANN: Sir, I'm going to overrule  
15 the objection. The official notice has been taken of the  
16 case, so I think she's got some leeway to discuss --

17 MR. FINNEGAN: Of the case, but she's making  
18 arguments about what the Staff and intervenors did. They're  
19 not here. There's no testimony. I'm sorry. I mean, you  
20 might want to win the case, but you got to do it fairly.

21 JUDGE BUSHMANN: I understand your objection.  
22 It's overruled. Go ahead.

23 MS. KLIETHERMES: And going back to that  
24 language that you had looked at, Chairman Gunn, we view it  
25 actually as being a little bit more granular, and

1 conveniently, I think it's still up there. We look at it as  
2 the Commission Order in 2007 restricted it to qualifying  
3 customers' commercial and industrial locations being served  
4 under such all-electric tariffs or separately meter space  
5 heating rates for so long as they continuously remain on that  
6 rate schedule. But it's actually four separate restrictions.  
7 Now, given that history, the specificity of that language  
8 should make a bit more sense now.

9           Also, in that '07 case, the Commission further  
10 reduced the amount of the discount bringing the rate of  
11 return provided by the all-electric customers closer to that  
12 provided by the comparable general service customers.

13           Now, KCP&L mentioned that they filed an  
14 application for rehearing. In that application, KCP&L told  
15 the Commission how, after the 2006 rate case, it had been  
16 actively soliciting new accounts for the discounted schedules  
17 and said it wouldn't be fair to those customers to make the  
18 rates unavailable in 2007.

19           KCP&L filed a list of approximately 325  
20 locations that it thought would like to get the discounted  
21 rates. Staff responded by saying that it didn't know that  
22 there were 325 locations that had actively been solicited  
23 since the 2006 rate case during the pendency of the hearing,  
24 but given the potential customer impact, it recommended  
25 reopening the record on the language of the freeze. And this

1 is all in the pleadings filed in that pocket.

2 The Commission did not reopen the record in  
3 the 2007 rate case. So in January of 2008, KCP&L filed its  
4 application for waiver of variance. And in that request,  
5 KCP&L sought waiver of the freeze with respect to only 215  
6 locations. So they did pare it down a bit. The Commission  
7 concluded that it had already decided the matter of closing  
8 the class when it entered its Report and Order. So the  
9 Commission rejected the request on the grounds that it was a  
10 collateral attack.

11 And some of this Mr. Fischer covered, in  
12 Staff's opinion, quite accurately. Regarding KCP&L's notice  
13 to Briarcliff explicitly stating that if the customer name  
14 changed, that the account would be disqualified from the  
15 discounts. And that should be where the Commission inquiry  
16 ends. There's no properly pled request for waiver of  
17 variance before the Commission at this time, so I won't spend  
18 much time discussing the evidence the Commission considered  
19 in its decisions to close the class by attrition in two  
20 separate rate cases, to continue that closure in the third  
21 and to limit the amount of the discounts in three rate cases.  
22 That's because the Commission ordered another five percent  
23 increase to energy charge in 2007.

24 So I also won't spend much time discussing  
25 KCP&L's conclusion and admission in those cases that there



1     was no cost justification for the discounts, nor will I spend  
2     much time discussing KCP&L's assertions in other cases  
3     regarding the importance of full allocations of costs and  
4     proper price signals in proceedings involving other  
5     utilities. As Mr. Fischer mentioned, MGE and Veolia,  
6     Trigen.

7                     I realize we spent quite a bit of time going  
8     over the history of the closure of the discounted rates, but  
9     that's to understand the context of the remedial nature of  
10    that freeze language. There's significantly more that can be  
11    said about the rationale and need for the closure of the  
12    discounted schedules, but because they have not properly pled  
13    for variance or waiver, there's no need to do so at this  
14    time.

15                    So if the Commission concludes and Staff  
16    recommends that KCP&L did properly deny Briarcliff the  
17    discounted 1 LGAE rate, that should be the end of this  
18    matter. As discussed in the initial Staff recommendation,  
19    the Commission cannot lawfully waive or vary a properly  
20    promulgated tariff. The Commission could order the filing of  
21    a new tariff to address this very particular and narrow  
22    situation going forward, preferably in a separate docket.  
23    Staff does not recommend the Commission actually do this and,  
24    in any case, not to deal with a new tariff in this  
25    proceeding.

1                   Now, I don't like slippery slope arguments  
2     because you can always make them and they're always  
3     speculative and fuzzy, but KCP&L's slippery slope on the  
4     frozen discounted rates is already mapped out. Mr. Fischer  
5     said earlier that KCP&L did not want the rates frozen and  
6     KCP&L did not want the restriction. Well, KCP&L has already  
7     told the Commission it would like to give an additional 215  
8     to 325 customers these discounts.

9                   While that may sound generous of KCP&L, there  
10    are two things to keep in mind. First, rate design is a zero  
11    sum gain. You can't have discounted rates without some other  
12    rate being higher. If KCP&L is going to recover its cost of  
13    service -- and I suspect KCP&L would like to do that -- for  
14    one customer to receive a discount, one or more other  
15    customers will have to pay more.

16                  Unlike many utilities in most parts of the  
17    state and downtown Kansas City, customers do have options for  
18    heating. Many of the buildings KCP&L would like to give  
19    these discounts to have the option of receiving gas from MGE  
20    or steam from Veolia. Some may be current customers of one  
21    or more of those other utilities.

22                  Now, I bring this up not to argue the points  
23    here, but to reiterate the point that this is not the proper  
24    case to address any reopening of the frozen classes. To that  
25    point, KCP&L has filed its Notice of Intent to File a Rate

1 Case. If the Commission decides it is appropriate to  
2 reconsider the freeze, it could do so in that case, and  
3 that's especially true if KCP&L and other parties will be  
4 filing class cost of service studies, particularly if they  
5 occur at the subclass level that would address the  
6 all-electric separately metered classes or subclasses versus  
7 the regular general service classes.

8               So in conclusion, KCP&L properly denied  
9 Briarcliff the 1 LGAE discount. The propriety of this denial  
10 is particularly clear in the light of KCP&L's past behavior.  
11 And while Briarcliff may have some valid disputes with its  
12 former agent, those disputes are not subject to the  
13 Commission's jurisdiction. Agency and contract are matters  
14 for civil court.

15               Now, while that should end this matter,  
16 honestly, I can understand the Commission wanting to do  
17 something to help Briarcliff. It's tough to look a customer  
18 in the face and say, I'm sorry, there's nothing we can do for  
19 you. However, to do otherwise would require the rest of  
20 KCP&L's customers to pay more so that Briarcliff can be  
21 charged less and then give Briarcliff an advantage over  
22 similarly situated businesses.

23               So concluding that KCP&L did not violate its  
24 tariff and ordering no further relief is exactly what the  
25 Commission should do in this proceeding. It would be

1 understandable if the Commission wants to reexamine the  
2 freeze in another proceeding. Some other proceeding would be  
3 the proper place to reexamine the rate freeze if the  
4 Commission does want to reexamine the rate freeze.

5           Such a proceeding should involve a class cost  
6 of service study at the subclass level and should give  
7 opportunity for the participation of additional customers and  
8 classes not present in this proceeding. To be clear, I'm not  
9 advocating taking the freeze up in another proceeding and it  
10 is not Staff's recommendation to do so. Staff's position is  
11 that the Commission made the proper decision when it decided  
12 to close the discounted subclasses by attrition and  
13 periodically reduce the amount of the discount as it is done  
14 over three rate cases.

15           I'm simply saying that, if the Commission  
16 concludes that KCP&L did not violate its tariff or the  
17 Commission Order, but the Commission still feels it needs to  
18 do something because Briarcliff is before it, then the  
19 Commission also needs to remember other KCP&L customers who  
20 are not currently before it.

21           If the Commission is going to consider  
22 allowing Briarcliff back on to the frozen discounted rates  
23 via a tariff change, it needs to consider the other customers  
24 like Briarcliff who would like discounted electricity, and it  
25 needs to consider KCP&L's other customers not party to this

1 proceeding who would prefer not to pay more for their  
2 electricity so that KCP&L can continue to offer discounts.

3 This is a complaint case. This case is not  
4 the proper context for any redetermination of the closure by  
5 attrition of the discounted rate subclasses. As urged by  
6 KCP&L and Mr. Rush's rebuttal in the 2009 case when he  
7 stated, "It is the company's intent to eliminate the  
8 distinction between heat and non-heat winter prices and move  
9 to seasonal prices without regard to end use." This change  
10 should be made in a generic rate design proceeding.

11 Any questions?

12 JUDGE BUSHMANN: Questions from the  
13 Commissioners?

14 COMMISSIONER GUNN: I have a couple. Not very  
15 many. We do -- I get your point. You made it very well, but  
16 we do have the option to make a determination that Briarcliff  
17 should have never been removed from the tariff in this case,  
18 which would allow the -- and putting aside refund arguments  
19 and things like that, but we could -- we could make the  
20 determination that under either -- under the definition of  
21 customer or under -- and this is where I'll get into a second  
22 question, but that they could -- they should have always  
23 remained a customer class even though Kansas City Power &  
24 Light had a good faith interpretation of the tariff.

25 MS. KLIETHERMES: Sure. The difficulty with

1     that is I'm not sure how you could give a different  
2     interpretation of what a customer is in this context without  
3     KCP&L having the ability to apply it in other contexts as  
4     they have in the past.

5                 COMMISSIONER GUNN: But we could specify in  
6     the order that our definition of customer is limited to this  
7     particular situation.

8                 MS. KLIETHERMES: I suppose you could do that.

9                 COMMISSIONER GUNN: The second thing is that  
10    you mentioned that -- whether or not someone was authorized  
11    on behalf of the company shouldn't have an impact on the  
12    case. But if, in an extreme example, I had called up Kansas  
13    City Power & Light and said I want you to switch it over to  
14    this realty group.

15                MS. KLIETHERMES: Sure.

16                COMMISSIONER GUNN: Clearly, I wasn't  
17    authorized to do that, and if Kansas City Power & Light did  
18    that, then there clearly would have been a mistake or an  
19    improper changing of the account, which would have meant that  
20    they never should have been left off the -- or removed from  
21    the rate schedule.

22                MS. KLIETHERMES: Sure. But I think that the  
23    situation that we're dealing with here, there was clearly  
24    apparent authority.

25                COMMISSIONER GUNN: Well, that's a different

1 argument. Because you still have to make the inquiry whether  
2 there was apparent authority.

3 MS. KLIETHERMES: Sure.

4 COMMISSIONER GUNN: And if it could be  
5 demonstrated -- because you seemed to cut off the line of  
6 inquiry. All I'm saying is there actually may need to be an  
7 inquiry as to whether or not someone properly was authorized  
8 to do that.

9 MS. KLIETHERMES: Sure.

10 COMMISSIONER GUNN: And if we found that, even  
11 though there was apparent authority, which meant Kansas City  
12 Power & Light acted in good faith in removing them, there  
13 wasn't actual authority to do that, which meant that they  
14 should have never been removed from the rate schedule in the  
15 first place. That is a potential conclusion in this case, I  
16 think.

17 MS. KLIETHERMES: In this case, again, I would  
18 caution the implications of that, how much we want to  
19 encourage KCP&L to be doing, you know, inspecting the  
20 contracts of -- of the property managers before making  
21 routine rate changes, that sort of thing.

22 COMMISSIONER GUNN: And I appreciate the  
23 point. But you've made the point repeatedly that this is a  
24 complaint case, which is a very narrow circumstance case, and  
25 not something that should be necessarily taken as broader

1       implications that -- that we might take up in a rate case.

2                       So can't we -- wouldn't we have the ability to  
3       have very narrow findings within this complaint case, and  
4       whether KCP&L wants to take that and try something else in  
5       another -- in another proceeding is -- is up to them. It  
6       doesn't, obviously, mean that we're going to listen to them  
7       or doesn't mean that they're going to win. But a big part of  
8       your opening was that this is a very narrow case --

9                       MS. KLIETHERMES:   Yes.

10                      COMMISSIONER GUNN:   -- and that we should  
11       decide it based on the facts that are before us rather  
12       than --

13                      MS. KLIETHERMES:   And Staff is comfortable  
14       recognizing something as a narrow case and applying it as the  
15       Commission instructs. We are somewhat hesitant to rely on  
16       the ability of other parties to follow such guidelines.

17                      COMMISSIONER GUNN:   And I get that point, and  
18       I think it's a valid one. Thank you very much.

19                      JUDGE BUSHMANN:   Questions?

20                      COMMISSIONER JARRETT:  Yeah, I just had a  
21       couple questions. I just wanted to, I guess, flush out or  
22       understand Staff's position.

23                      Is it Staff's position that a name change only  
24       takes that person off of the all-electric rate?

25                      MS. KLIETHERMES:   As regards KCP&L's



1 all-electric and separately metered space heating tariff,  
2 yes.

3 COMMISSIONER JARRETT: So I own a company  
4 named Briarcliff One and I've got -- qualify for the  
5 all-electric rate case. And I decide or realize that, you  
6 know, I'm not getting enough business, maybe if I change my  
7 name to something that starts with A, so I'm listed first in  
8 the Yellow Pages, I might get more business. Nothing about  
9 my business changes. I am the same person, I got the same  
10 workers, I've got the same equipment, I'm doing exactly the  
11 same thing, no changes other than I file a fictitious name  
12 registration with the Secretary of State and change my  
13 fictitious name doing business as to Acme Corporation, and I  
14 call KCP&L and tell them change the name on my bill to Acme  
15 Corporation.

16 MS. KLIETHERMES: Just --

17 COMMISSIONER JARRETT: Then under Staff's  
18 position, that is a customer change?

19 MS. KLIETHERMES: Under the Commission's  
20 decision to close these classes by attrition, yes, I believe  
21 so.

22 COMMISSIONER JARRETT: And so then even though  
23 nothing has changed other than I decided I wanted to change  
24 my name, I would no longer qualify for the all-electric?

25 MS. KLIETHERMES: Well, respectfully, if you

1 had only filed a fictitious name registration, I don't know  
2 why you would change your name on your billing accounts, but  
3 that aside, yes, I think that that is consistent with the  
4 remedial nature of this language.

5 COMMISSIONER JARRETT: Let's do another  
6 example. My wife and I own a company together, and it's  
7 Terry Jarrett Corporation, but we own it 50/50. I die. My  
8 widow calls KCP&L and says my husband's died, it's still  
9 Terry Jarrett Corporation, but I want you to change the name  
10 on the bill to me and bill it in the name of Julie Jarrett.

11 MS. KLIETHERMES: Now, assuming, and I'm  
12 not -- Mr. Rush would actually be the -- or Mr. Hedegrine  
13 [phonetic] would be the better -- not Hedegrine, I'm sorry.  
14 KCP&L's other witness would probably be more knowledgeable on  
15 this.

16 I believe that there's a difference between  
17 customer name and the person who's designated -- I think  
18 there's separate forms or separate fields on the form, I  
19 should say that you can have a customer name that differs  
20 from the responsible party. But again, that would be a  
21 better question --

22 COMMISSIONER JARRETT: But I'm changing the  
23 bill name. I don't want it billed to Terry Jarrett  
24 Corporation anymore. I want it billed to Julie Jarrett  
25 because my husband died.

1 MS. KLIETHERMES: On the assumption that that  
2 is the same as the customer name, yes, I believe that would  
3 be consistent with the remedial nature of the language.

4 COMMISSIONER JARRETT: I don't -- what do you  
5 mean assuming what's the same? I'm changing the customer  
6 name on the bill.

7 MS. KLIETHERMES: Okay. That's not what you  
8 said earlier.

9 COMMISSIONER JARRETT: That's what I meant.  
10 I'm changing the customer name on the bill. I want the  
11 customer name to be Julie Jarrett.

12 MS. KLIETHERMES: Yes. If you are changing  
13 the customer name, I believe that's consistent with the  
14 remedial nature of the rate freeze.

15 COMMISSIONER JARRETT: It also is -- is your  
16 witness going to speak on the apparent authority issue? I  
17 didn't read anything in the record on that. You had  
18 indicated that there was clearly apparent authority to change  
19 the name.

20 MS. KLIETHERMES: From the property manager?  
21 I was going to do some cross on that.

22 COMMISSIONER JARRETT: Okay. Thank you.

23 JUDGE BUSHMANN: Before you go,  
24 Ms. Kliethermes, Commissioner Kenney asked me to address a  
25 question. His question is: So are the Commission's goal in

1 the 2007 rate case was to strictly and narrowly limit the  
2 discounted rate schedule with the goal to ultimately phase it  
3 out altogether?

4 MS. KLIETHERMES: I believe that is consistent  
5 with -- with what had been said in testimony in that case,  
6 with what the Commission's Order was in that case, and with  
7 what KCP&L's response to -- it was -- the Commission in the  
8 2007 case instructed KCP&L to do a class cost of service  
9 study to present in its next case that would demonstrate that  
10 the rates were or were not cost effective.

11 And if they were not cost effective, to  
12 present KCP&L's preferred plan for discontinuing the rates.  
13 And those two Orders, yes, were consistent with the closure  
14 of the class by attrition.

15 JUDGE BUSHMANN: Thank you. Any other  
16 questions?

17 We're ready for our first witness, which is  
18 Nathaniel Hagedorn. Could you come forward, please. Could  
19 you stand and raise your right hand, sir.

20 (The witness was sworn.)

21 DIRECT EXAMINATION

22 QUESTIONS BY MR. FINNEGAN:

23 Q. State your name, please, for the record.

24 A. My name is Nathaniel Hagedorn.

25 Q. And by whom are you employed?

1 A. Briarcliff Realty Company.

2 Q. Is that a change from when we first filed this  
3 testimony?

4 A. Yes.

5 Q. What was your position then?

6 A. The chief operating officer of Briarcliff  
7 Development Company.

8 Q. Okay. And Briarcliff Development and  
9 Briarcliff Realty are separate corporations?

10 A. They are.

11 Q. Okay.

12 MR. FINNEGAN: I'm going to hand -- hand him  
13 the testimony, if that's all right.

14 JUDGE BUSHMANN: Go ahead.

15 MR. FINNEGAN: I have a copy of what's  
16 Briarcliff Exhibit Number 1.

17 BY MR. FINNEGAN:

18 Q. Could you identify that, please?

19 A. This is the testimony in this rate case.

20 Q. The direct testimony --

21 A. This case. The direct testimony, yes.

22 Q. -- of Nathaniel Hagedorn?

23 There are a couple mistakes or changes I need  
24 to make at this point, if that's all right. On page 1, would  
25 you turn to page 1, line 10, and it says you're chief

1 operating officer of the company. You just indicated that  
2 has changed?

3 A. It was correct at the time, but it has  
4 changed.

5 Q. But you're still working with them?

6 A. Yes.

7 Q. On page 3, line 6 -- these are minor --  
8 well -- I'm sorry, no -- I don't think I find an error there.

9 On page 12, line 20, if you notice, there's a  
10 date, it's -- it says aa/20/2009 on line 20. That should be  
11 an 11, shouldn't it?

12 A. Yes.

13 Q. I'm sorry, I found the mistake on page 3,  
14 line 6. The last number that goes -- prior to that, from  
15 May 17th, 1999, to January 25th, 1999, that's to January  
16 2001?

17 A. 2001.

18 Q. And the final one is on page 13, line 29 --  
19 there is no 29. Line 27. It says "Briarcliff One." That  
20 should read "Briarcliff Development" --

21 A. Company.

22 Q. -- was a customer, is also a customer of KCP&L  
23 as defined in Rule 1.04; is that correct?

24 A. Right.

25 Q. With those changes, if I were to ask you

1       today -- first, was this prepared by you or under your  
2       supervision and control?

3             A.       Yes.

4             Q.       And if I were to ask you the questions with  
5       the changes today, would your answers still be the same?

6             A.       Yes.

7             Q.       Okay. Now, I want to hand you what's been  
8       marked as Briarcliff Exhibit Number 2. And can you identify  
9       that as --

10            A.       This is the rebuttal testimony of Nathaniel  
11       Hagedorn.

12            Q.       And if I were to -- did you -- was this  
13       prepared by you under your supervision -- or under your  
14       supervision and control?

15            A.       Yes.

16            Q.       If I were to ask you the questions on this  
17       today, would your answers be the same?

18            A.       Yes.

19            Q.       Okay. And there's no changes on this one?

20            A.       No.

21            Q.       And then I want to hand you -- okay.  
22       Briarcliff Exhibit Number 3. Can you identify that, please?

23            A.       The surrebuttal testimony of Nathaniel  
24       Hagedorn.

25            Q.       And was that prepared by you or under your

1 supervision and control?

2 A. Yes.

3 Q. And if I were to ask you the questions today,  
4 would your answers be the same?

5 A. Yes.

6 MR. FINNEGAN: At this point, I'd like to  
7 offer Briarcliff Exhibits 1, 2 and 3 and tender Mr. Hagedorn  
8 for cross-examination.

9 JUDGE BUSHMANN: Briarcliff Exhibits 1, 2, and  
10 3 have been offered. Are there any objections? Hearing  
11 none, Briarcliff Exhibits 1, 2 and 3 are admitted into the  
12 record.

13 (BRIARCLIFF EXHIBIT NUMBERS 1, 2, AND 3 WERE  
14 RECEIVED INTO EVIDENCE BY JUDGE BUSHMANN.)

15 JUDGE BUSHMANN: Cross-examination by Staff?

16 MS. KLIETHERMES: Thank you.

17 CROSS-EXAMINATION

18 QUESTIONS BY MS. KLIETHERMES:

19 Q. Good morning, Mr. Hagedorn. Did the  
20 management agreement provide that Briarcliff should have  
21 access to the records, like utility bills?

22 A. Yes.

23 Q. Do you know who Dianne Painter is?

24 A. Yes.

25 Q. Who is Dianne Painter?



1           A.       She's a -- like a clerical worker at the  
2 Winbury Group.

3           Q.       Did you ask her about her conversations with  
4 KCP&L in August of 2009?

5           A.       I can't recall specifically.

6           Q.       I'm sorry. Did you ask her at any time about  
7 those conversations that she had in August of 2009?

8           A.       I mean, I don't know -- I don't recall having  
9 a conversation with Dianne Painter about a conversation in  
10 2009 of August.

11          Q.       Do you review utility bills for Briarcliff  
12 One?

13          A.       The utility bills are typically -- are paid by  
14 the property manager. Winbury Group is our property manager,  
15 and so at that time, before Briarcliff Realty, which is the  
16 company that I'm the president for, after -- in 2009 when we  
17 made the management switch, Briarcliff Realty, in its normal  
18 course of business, pays the -- all the bills, whether it be  
19 lawn mowing or utility bills, and typically owners do not  
20 review specific bills from a property.

21                They look at financial results from the  
22 property itself, but hundreds of bills get paid each month,  
23 whether it be buying toilet paper or paying an electricity  
24 bill or getting the grass cut or snow removed. So an owner  
25 would typically not review line by line specific bills from a

1 property, and I don't believe we reviewed them when Winbury  
2 was our property manager, nor would our ownership group  
3 review those specific bills when Briarcliff Realty was the  
4 property manager.

5 Q. Now, does your management agreement, Article  
6 II, Arabic Number 2 -- Arabic number 1.B state that, Owner's  
7 representative and others designated by him shall at all  
8 times have access to such records and do all other material  
9 on file pertaining to the project and its operation?

10 A. I'm sure it does.

11 MR. FINNEGAN: Could you show him that,  
12 please?

13 MS. KLIETHERMES: Do you have your direct  
14 testimony?

15 THE WITNESS: I'm sure -- yes, property  
16 manager is simply a processor for an owner. They -- you  
17 know, owners don't want to have to collect the bills and  
18 collect the rent and pay the bills. So they're just a  
19 processor of information and bills.

20 BY MS. KLIETHERMES:

21 Q. So after the Briarcliff One name was changed  
22 out of Briarcliff Development back in 1999, you never  
23 received a utility bill for Briarcliff One, correct?

24 A. Those bills, I believe, were sent to Winbury  
25 Group, who paid them with money that they received from

1 Briarcliff Development Company. So Briarcliff Development  
2 Company had a lease with tenants. Those tenants remitted  
3 lease payments to Winbury Group because they collected the  
4 rent as part of the normal course of fulfilling their  
5 property management obligations, and they also subsequently  
6 paid all of the bills out of an account that was solely for  
7 that building.

8 So that building had a specific bank account  
9 that the Winbury Group maintained. Rents flowed into it,  
10 expenses flowed out of it, and then the net remaining monies  
11 were transmitted back to us.

12 Q. Prior to August of 2009, in whose name were  
13 your contracts for lawn mowing?

14 A. I don't know. It could have been directly  
15 with the building.

16 Q. So you don't know if they were in Winbury  
17 Group, Winbury Realty, Briarcliff One, or anything else?

18 A. In all likelihood, we typically would put --  
19 when we do the property management functions ourselves, those  
20 accounts are all put in the building name. A property  
21 manager -- if I do property management for third-party  
22 clients, just like Winbury Group performed third-party  
23 property management for us, meaning they just charged a fee  
24 to do all these activities, they would not be the -- you  
25 know, the definition of a customer is, you know, the

1 responsible party.

2 Most property managers -- and we are the  
3 same -- will not put the bills in our name. They put the  
4 bills in the name of the customer itself. That's the normal  
5 course of business because at the end of the day, they  
6 didn't -- the property manager gets charged, get benefits  
7 from a very small fee that they get paid to do the accounting  
8 and some of these other processes.

9 So they would never usually put the name of a  
10 building in their name because they're not the responsible  
11 party. If -- if the money was not in the account to pay the  
12 bill, Winbury Group or Winbury Realty would not pay the bill.  
13 They didn't benefit from any use of the power, nor do they  
14 benefit from somebody mowing the grass.

15 So it would be most common that all accounts  
16 and functions would be put in the name of the property owner  
17 or the owner of the facility itself because they're the  
18 responsible party who's benefiting from any service that's  
19 provided to that building. So it's unusual that Winbury put  
20 that name -- put their name in the account -- on the account  
21 for KCP&L.

22 Q. Now, you said that Briarcliff is also a  
23 third-party property manager, correct?

24 A. Briarcliff Realty Company.

25 Q. Thank you for the distinction. So would

1 Briarcliff Realty having a company -- having an electric  
2 account in its name, do you think that should trigger any  
3 sort of red flag within KCP&L if Briarcliff Realty calls and  
4 requests an account be placed in its name?

5 A. I don't know.

6 Q. As a property manager, have you ever requested  
7 the contractual documents associated with any of your clients  
8 prior to -- let me rephrase that question.

9 As a third-party property manager, do you  
10 request -- I'm sorry, have you ever -- let me start over  
11 again.

12 As a property manager, when establishing  
13 something like a lawn mowing in a client's name, have you  
14 ever had that vendor request the contractual relationship  
15 between you and the entity for which you are getting the  
16 service as a precondition to establishing that service?

17 A. No. The contracts are typically with the  
18 limited liability company or whatever entity it is that owns  
19 the building or facility that we might be managing. So the  
20 contracts are, as I mentioned earlier, most traditionally  
21 between the -- the management -- or the ownership of the real  
22 estate in our case and the property manager -- or, I'm sorry,  
23 and the service provider.

24 Q. So it would be atypical of a vendor to request  
25 documentation of the contractual relationship between a

1 property manager and the ultimate client, correct?

2 A. I suppose that would probably -- well, it  
3 depends. I mean, we've not had that, but I don't see any  
4 reason why if we are -- as the property manager, are acting  
5 for -- on behalf of the owner and have the ability to direct  
6 service, incur costs, then it would not be atypical that that  
7 service provider would want to know that we, as the property  
8 manager, have the authority to incur those costs.

9 Q. But have you ever had that happen?

10 A. I have not. To me personally, I don't manage  
11 the properties day to day. I have a property manager that  
12 does it, so I don't know what conversations he has.

13 Q. And, again, I meant that in your capacity as a  
14 third-party property manager, which you've testified you are.

15 A. Well, my company is. I don't manage  
16 properties day-to-day personally.

17 Q. Thank you. During his opening, did your  
18 counsel confuse the names Winbury Realty and Winbury Group a  
19 couple of times?

20 A. I don't know if he confused them. The Winbury  
21 Group, who is -- who was the company that we had a management  
22 contract with, we don't know who the realty -- Winbury Realty  
23 Company is other than that's the company that this -- and the  
24 reason -- if I had a suspicion, I don't know, is that Winbury  
25 Realty is probably a shell company because Winbury Realty --

1 Winbury Group has assets. And if we didn't pay our bill, my  
2 guess is that they would not pay it either.

3 Q. To be clear, my question was -- and I may have  
4 just misheard this --

5 A. Uh-huh.

6 Q. -- I thought your counsel may have confused  
7 the two a couple of times as they are stated in the  
8 Stipulation of Facts and in your earlier testimony. You  
9 didn't notice that, though? I may have -- I was just trying  
10 to make the record clear.

11 A. Yeah. I don't know.

12 Q. Now, going back to your earlier testimony, was  
13 it your statement that you don't think there's anything  
14 atypical about a property manager handling the billing for  
15 utility, lawn mowing, toilet paper purchase, I think, were  
16 your examples?

17 A. That's correct.

18 Q. But your claim is that KCP&L should have known  
19 not to bill the property manager, correct?

20 A. I would say that would be atypical, but I  
21 don't know what KCP&L's policies are.

22 MS. KLIETHERMES: I think that's all I have.  
23 Thank you.

24 JUDGE BUSHMANN: Cross-examination by KCP&L.

25 MR. FISCHER: Thank you, Judge.

## 1 CROSS-EXAMINATION

2 QUESTIONS BY MR. FISCHER:

3 Q. Mr. Hagedorn, I apologize. I wasn't sure I  
4 followed some of the changes that you made early on in your  
5 testimony, so let me just clarify a couple things.

6 On whose behalf are you appearing today?

7 A. Briarcliff Development Company.

8 Q. And what's your position today?

9 A. I'm the president of Briarcliff Realty  
10 Company.

11 Q. Okay. Are those two the same corporation?

12 A. They have a shared ownership, but -- the  
13 person who owns Briarcliff Development Company is a gentleman  
14 named Charles Garney [phonetic]. He owns 20 percent -- he  
15 owns 100 percent of Briarcliff Development Company of which I  
16 was a former officer of the company, and he owns 20 percent  
17 of Briarcliff Realty Company, and I own the other 80 percent  
18 of that company.

19 Q. Is Briarcliff Development Company a different  
20 corporation from Winbury Development?

21 A. There is no -- yes. There's no affiliation or  
22 co-ownership of any kind between those entities.

23 Q. Is that also true for Winbury Realty or  
24 Winbury Group?

25 A. We don't have any affiliation with Winbury



1 Realty or Winbury Group, Briarcliff -- any Briarcliff entity  
2 other than just a third-party management provider.

3 Q. And to your knowledge, Winbury Realty, Winbury  
4 Group, or Winbury Development didn't just file something with  
5 the Secretary of State to change their name to Briarcliff; is  
6 that right?

7 A. Correct.

8 Q. Do you know who Rebecca Hill is?

9 A. Yes.

10 Q. Who is she?

11 A. She's Chief Financial Officer for Briarcliff  
12 Development Company.

13 Q. Do you know who Jim Unruh is?

14 A. Yes.

15 Q. Who is he?

16 A. He's a property -- he was our property manager  
17 for the Winbury Group that managed our accounts.

18 Q. And do you know who Skip Rosenstock is?

19 A. Yes. He was one of my property managers at  
20 Briarcliff Realty Company.

21 Q. Now, today, who pays the bill at Briarcliff  
22 One?

23 A. The bill is Briarcliff Development Company.  
24 Briarcliff Realty, in its course of doing the day-to-day  
25 property management, pays the bills on behalf of Briarcliff

1 Development Company. So we actually, you know -- there's an  
2 account for Briarcliff One building.

3 We -- Briarcliff Realty pays the -- all the  
4 vendors, including the electricity bill, just through our  
5 normal course of business based out of the operating revenue  
6 that is deposited in that account.

7 Q. And so the responsible party for paying that  
8 bill is Briarcliff Development Company?

9 A. Briarcliff Development Company, who owns the  
10 building and has owned it since the building was established.

11 Q. Has Briarcliff Development Company always paid  
12 the bill at Briarcliff One since the beginning of history?

13 A. Yes. Its own -- while Winbury may have  
14 physically written the check, it was only out of Briarcliff  
15 Development Company's resources and money that always paid  
16 the bill.

17 Q. But did it come out of a Briarcliff account?

18 A. It came out of a, like, an account that  
19 Winbury held in trust for Briarcliff One building, which was  
20 owned by Briarcliff Development. If there -- whenever the  
21 agreement terminated, any money in that or any obligations  
22 would be -- would be remitted to Briarcliff Development  
23 Company.

24 Q. When did the account change?

25 A. The property management?

1           Q.       The account that you paid the bill for KCP&L's  
2       electricity from.

3           A.       In 2009. And I believe it was August of 2009  
4       when the -- when we -- when we, Briarcliff Realty took over  
5       the day-to-day property management.

6           Q.       So at that point, the responsible party that  
7       paid the bill changed?

8           A.       No.

9           Q.       Prior to that time, did the bill be paid by  
10      a -- out of an account called the Winbury Group of Kansas  
11      City?

12          A.       I believe that's correct.

13          Q.       And then when you asked that the name of the  
14      account be changed over, then Briarcliff One was the account  
15      that the money was paid from, correct?

16          A.       Correct. I believe that's correct, yes.

17                   MR. FISCHER: Thank you. That's all I have.

18                   JUDGE BUSHMANN: Any questions by  
19      Commissioners?

20                   COMMISSIONER GUNN: I don't have anything.

21                   COMMISSIONER JARRETT: I don't have any  
22      questions. Thank you.

23                   JUDGE BUSHMANN: I have one question, just for  
24      clarification.

25                   At any time prior to August 2009, did

1 Briarcliff Development Company physically occupy the  
2 Briarcliff One building in any way?

3 THE WITNESS: I joined the company in -- in  
4 2001, 2002 -- end of 2001, and I believe the company had --  
5 well, no, I don't think they ever did have any office space  
6 in there. They've occupied their physical -- or Briarcliff  
7 Development Company offices have -- we've moved around as  
8 we've built new buildings, so I don't know that we ever  
9 occupied -- not while I was with the company did we ever  
10 physically occupy space in that building.

11 JUDGE BUSHMANN: Thank you.

12 THE WITNESS: If I -- Commissioners and Judge,  
13 if I may offer a little bit of insight, if anything else, can  
14 I offer at least a few statements?

15 JUDGE BUSHMANN: Well, I'll give your counsel  
16 a chance to ask additional questions. Since I've asked a  
17 question, is there any recross from the parties, Staff?

18 MS. KLIETHERMES: No.

19 JUDGE BUSHMANN: KCP&L?

20 MR. FISCHER: No, thank you, Judge.

21 JUDGE BUSHMANN: Redirect?

22 MR. FINNEGAN: Just a few questions.

23 REDIRECT EXAMINATION

24 QUESTIONS BY MR. FINNEGAN:

25 Q. Mr. Hagedorn, you indicated that Briarcliff

1 Development had no relationship with Winbury -- I'm sorry,  
2 with Winbury Realty?

3 A. Correct.

4 Q. Your relationship was with the Winbury Group?

5 A. As a property manager, yes.

6 Q. And they are separate corporations?

7 A. Between Winbury Group and Winbury Realty?

8 Q. Yes.

9 A. Yes, as far as I know.

10 Q. And you indicated that you were the landlord  
11 to the lessor of Briarcliff One?

12 A. Correct.

13 Q. That's true of Briarcliff Two, Briarcliff  
14 Three?

15 A. Correct.

16 Q. And you have any other buildings on the  
17 property?

18 A. Yes, we do. And we, interestingly enough,  
19 because I think there's always two sides to the story, the  
20 Staff mentioned that there were 324 and then 215 claimants or  
21 people that were wanting to qualify for the all-electric  
22 rate. You know, there's -- the whole thing is, that we were  
23 one of those claimants.

24 We were on the list for another nine-story  
25 office building that we developed in this same area. We

1     invested hundreds of thousands of dollars going to build a  
2     building that was all-electric based on the rate because the  
3     tariff at the time provided for the all-electric rate. So we  
4     made an investment decision that we invested hundreds of  
5     thousands of dollars in order to -- to qualify for the  
6     all-electric rate.

7                     And so -- not to try to usurp other customers.  
8     We made a business decision based on the rules that were in  
9     place. Those rules were changed, and then we were -- we  
10    were -- that rate was taken away from us and it cost us, you  
11    know -- we would have made a different business decision. So  
12    we're not trying to, you know, take advantage of other  
13    customers, as the Staff might suggest that that's our intent.

14                    Our intent -- and just like with Briarcliff  
15    One, when we built that building, we made investment  
16    decisions about building the building to qualify for the  
17    all-electric rate, and we made different capital decisions  
18    than we would have had we known that rate would be taken away  
19    from us.

20                    Now, one building, we just got -- we just got  
21    screwed on, in my opinion, because of the decision that was  
22    made to take that electric rate away from us after it's too  
23    late. We can't go and -- we built a building and we made  
24    those decisions based on the rules that were in place, and  
25    then those were taken away from us and changed. So we were

1 one of those claimants that got, in my opinion, treated  
2 unfairly in that case.

3 And then -- then this case, or this complaint,  
4 you know, we -- in our opinion, the customer never changed.  
5 The responsible party, the definition, you know, the KCP&L  
6 tightened up their rules to say this customer name. But the  
7 customer name was not part of that. The customer and the  
8 responsible party was always Briarcliff Development Company.  
9 We were always the one responsible for that bill. And so  
10 just because the name of a bill changes doesn't, I don't  
11 think -- is certainly not fair, and it's the same -- I think  
12 we really -- I mean, we lost tens of thousands of dollars on  
13 the other decision that was made to take away the  
14 all-electric rate from those people who made the investment  
15 decisions. This same situation almost happened to us when we  
16 built some apartments. I mean, I know this doesn't matter,  
17 but --

18 MR. FISCHER: Judge, I'm going to object at  
19 this point. Since it's a consumer complaint, I was going to  
20 allow some narrative, but this has gone on quite awhile.

21 JUDGE BUSHMANN: I think your answer is  
22 starting to become non-responsive to the question, sir.

23 THE WITNESS: I apologize.

24 JUDGE BUSHMANN: Mr. Finnegan, can you push  
25 the button on your microphone?

1 BY MR. FINNEGAN:

2 Q. With respect to -- you say it cost you  
3 hundreds of thousands of dollars to make a building  
4 all-electric. Can't you just switch to natural gas?

5 A. No.

6 Q. What would happen -- how would you --

7 A. We'd have to entirely replace all of the  
8 heating and air-conditioning equipment, which is what we  
9 spent all that money on. But it was the right investment  
10 decision based on the all-electric rate.

11 Q. And not only that, wouldn't you have to add a  
12 vent for the gas?

13 A. Oh, we'd have to provide natural gas service  
14 to the building, which doesn't exist. We'd have to pay for  
15 that, we'd have to replace all of our heating and  
16 air-conditioning equipment. All of our tenants would have to  
17 modify the way they heat and cool their space. So really,  
18 there's not a practical way to change it.

19 Q. And who receives the electricity at Briarcliff  
20 One?

21 A. The landlord, which is Briarcliff Development  
22 Company, provides the electricity services. A provision in  
23 their lease that they're required to provide to the tenants  
24 who occupy the building.

25 Q. Do you also provide electricity for the common



1 areas?

2 A. Correct.

3 Q. Do the tenants pay you for that?

4 A. The tenants don't pay for any electricity  
5 unless they use an exorbitant amount of power, say, for,  
6 like, a computer room. The electricity is just included in  
7 the rate that they pay us.

8 Q. But you use the electricity for the common  
9 areas, Briarcliff Development does?

10 A. Yes.

11 MR. FINNEGAN: That's all the questions.

12 JUDGE BUSHMANN: Mr. Hagedorn, thank you, sir.  
13 You may step down.

14 THE WITNESS: Thank you.

15 JUDGE BUSHMANN: It's now about 10:00. Why  
16 don't we take a short ten-minute break.

17 MR. FINNEGAN: Mr. Hagedorn needs to be back  
18 in Kansas City by 1:00. Can he be excused?

19 JUDGE BUSHMANN: That's up to you, sir.

20 MR. FINNEGAN: That's fine by me. There will  
21 be no other questions.

22 JUDGE BUSHMANN: Why don't we take a  
23 ten-minute break and we'll come back at approximately ten  
24 minutes after 10:00.

25 (A break was held.)

1 JUDGE BUSHMANN: The next witness that I have  
2 listed is Jason Henrich. Mr. Henrich, can you come forward?  
3 Would you raise your right hand, sir.

4 (The witness was sworn.)

5 JUDGE BUSHMANN: You may go ahead, sir.

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. FISCHER:

8 Q. Please state your name and business address.

9 A. My name is Jason Henrich, and my business  
10 address is 10700 East State Route 350, Raytown, Missouri.

11 Q. Are you the same Jason Henrich that caused to  
12 be filed in this proceeding rebuttal testimony that has been  
13 marked as Exhibit Number -- KCP&L Exhibit Number 1-HC, which  
14 is a highly confidential version and 1-NP, which is the  
15 public version?

16 A. I am.

17 Q. Mr. Henrich, did you have any changes that  
18 you'd like to make in your testimony? I think there was some  
19 typo on page 2?

20 A. Yes, that's correct. On page 2, line 20, at  
21 the end of that sentence, it reads, "Winbury Reality."  
22 That's a typo. It should be changed to Realty.

23 Q. That would be in both versions of the  
24 testimony; is that correct?

25 A. Correct.

1 Q. Did you see any other changes that you need to  
2 make?

3 A. No, I did not.

4 Q. If I were to ask you the questions contained  
5 in this rebuttal testimony today, would your answers be the  
6 same?

7 A. Yes.

8 Q. And are they true and accurate to the best of  
9 your knowledge and belief?

10 A. They are.

11 MR. FISCHER: With that, Judge, I would move  
12 for the admission of Exhibit Number 1-HC and 1-NP and tender  
13 the witness.

14 JUDGE BUSHMANN: Exhibit KCP&L HC and NP  
15 Number 1 has been offered. Are there any objections?

16 MR. FINNEGAN: No, Your Honor.

17 JUDGE BUSHMANN: Hearing none, that exhibit,  
18 both versions, will be admitted into the record.

19 (KCP&L EXHIBIT NUMBERS 1-HC AND 1-NP WERE  
20 RECEIVED INTO EVIDENCE BY JUDGE BUSHMANN.)

21 JUDGE BUSHMANN: Cross-examination by Staff?

22 MS. KLIETHERMES: Thank you, Judge.

23 CROSS-EXAMINATION

24 QUESTIONS BY MS. KLIETHERMES:

25 Q. Good morning, Mr. Henrich [as pronounced].

1       Henrich, I'm sorry. Which is the proper pronunciation?

2           A.       Henrich.

3           Q.       Thank you. Do you know who Dianne Painter is?

4           A.       I do not.

5           Q.       Do you normally request verification of  
6       identity when setting up a commercial account?

7           A.       No, we do not.

8           Q.       Do you normally review agency contracts when  
9       setting up a commercial account?

10          A.       Not at all.

11          Q.       Is it common in the utility industry to  
12       request verification of identity when setting up a commercial  
13       account?

14          A.       To my knowledge, it is not.

15          Q.       And is it common in the utility industry to  
16       review agency contracts when setting up a commercial account?

17          A.       No.

18          Q.       How much time would it take to verify an  
19       agency agreement?

20          A.       I really don't know.

21          Q.       Would it depend on the agreement?

22          A.       Absolutely.

23          Q.       Would it depend on the number of agreements?

24          A.       Certainly.

25          Q.       Would you have any way of knowing if a

1 particular agency agreement had been superceded?

2 A. I would not.

3 Q. Could you walk us through the process of  
4 setting up an account -- a commercial account?

5 A. By way of clarification, would this be a brand  
6 new, maybe a Greenfield, brand-new customer?

7 Q. Let's start with that, yes.

8 A. All right. Usually the customer -- if let's  
9 say a new construction is going on, that customer would be  
10 working with a representative of KCP&L to establish, you  
11 know, what type and size of service would be needed and so  
12 forth. And in that process would be advised and directed  
13 towards a particular rate, at which point the customer, i.e.,  
14 the one who wishes to place the billing in their name would  
15 contact my department, which is the contact center, and ask  
16 that billing be set up in their name under these addresses  
17 for this address and so forth.

18 Q. And could you then say for -- if that was a  
19 Greenfield, if that's what Briarcliff Development did back in  
20 1998, what would have happened? How was that changed? For  
21 example, what happened in 1999?

22 A. In 1999, I believe, is when KCP&L was  
23 contacted by the representative from Winbury asking to change  
24 the name from Briarcliff -- I'm sorry, from Briarcliff to  
25 Winbury. Winbury had been an established customer as a

1 property manager in other places within the KCP&L system, so  
2 they, in a sense, were an established customer taking  
3 responsibility and ownership of that account.

4 Q. Could you clarify what fields do or do not  
5 exist on your computer information system for an account,  
6 such as customer name, responsible party, billing addresses,  
7 those sorts of things? I suspect I confused the matter in my  
8 opening.

9 A. Well, there are a number of fields on a number  
10 of screens, so I certainly could not list them all, but all  
11 of those that you listed are correct.

12 Q. So out of those that I listed, to the extent  
13 you can remember them, what do they mean to KCP&L?

14 A. That is the indication of who is the customer  
15 at that property address.

16 Q. Which of those fields?

17 A. The one titled account/premise.

18 Q. And that would be where the name Briarcliff  
19 Development did appear switched to Winbury Realty, then  
20 switched to Briarcliff One, correct?

21 A. Correct.

22 Q. Is it common for a property manager to put  
23 service in its name?

24 A. Yes, it is.

25 Q. Is it common for Winbury to put service in its

1 name?

2 A. Yes.

3 Q. Is there a separate field in your CIS  
4 system -- that's Customer Information System -- for  
5 responsible person or responsible party?

6 A. I believe so, but I'm not familiar enough with  
7 the system fields specific to say for certain.

8 MS. KLIETHERMES: Nothing further. Thank you.

9 JUDGE BUSHMANN: Cross-examination on behalf  
10 of Briarcliff?

11 MR. FINNEGAN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 QUESTIONS BY MR. FINNEGAN:

14 Q. Mr. Henrich, I'm trying to make sure we get  
15 the names correct here of the companies we're dealing with.  
16 The first one was with Briarcliff West Development Company;  
17 is that correct? The first one that the name of the bill was  
18 on, was it Briarcliff West Development Company?

19 A. Correct.

20 Q. And are you aware that Briarcliff West  
21 Development Company was merged into Briarcliff Development  
22 Company?

23 A. I do not know that.

24 Q. Okay. There's copies of their changes in  
25 Mr. Hagedorn's testimony. Have you reviewed his testimony?

1           A.       I have reviewed it, but I didn't recall that  
2 piece specifically.

3           Q.       So the property was first in the name of  
4 Briarcliff West Development, which was the company that  
5 developed the property?

6           A.       Correct.

7           Q.       And then it became -- okay.

8                   And you put it in Briarcliff West Development  
9 Company as a result of a telephone call; is that correct?

10          A.       That's correct.

11          Q.       Was there any service agreement ever entered  
12 into with Briarcliff West Development Company?

13          A.       It would be the standard service agreement  
14 setting up an electric account with KCP&L.

15          Q.       And is there something in writing by -- signed  
16 by the applicant?

17          A.       I don't believe so.

18          Q.       You indicated that you do not check who the  
19 applicant is or who -- you just take them at their word?

20          A.       In the case of a commercial property, the  
21 person accepting the financial responsibility as a customer,  
22 especially in this case one that is an established property  
23 manager, in that case the answer to your question would be  
24 yes.

25          Q.       Okay. You've been in -- you've been with the



1 company since 2006; is that correct?

2 A. Correct.

3 Q. So what happened before that is not in your  
4 personal knowledge?

5 A. Correct.

6 Q. Okay. You testified that -- on page 2 that  
7 the second -- the change to Winbury Realty was at the request  
8 of Dianne Painter, who is with the Winbury Group?

9 A. Yes, that's what it reads.

10 Q. Are you aware that those are two separate  
11 corporations?

12 A. I think as it states, those two groups share  
13 similar management employees and the same mailing address.

14 Q. Do you know if they're separate corporations?

15 A. Specifically, I do not.

16 Q. Did you review Mr. Hagedorn's testimony and  
17 exhibits where it shows that they are separate corporations?

18 A. I did.

19 Q. You did. So -- okay. So somebody from the  
20 Winbury Group can call you and say, put this in the name of  
21 Winbury Realty, and you'll do it?

22 A. That would be correct.

23 Q. And then Winbury Realty would become the  
24 customer of record; is that correct?

25 A. Correct.

1           Q.       Is there a definition in the Kansas City  
2 Power & Light's rules as to what a "customer of record" is?

3           A.       I'd have to defer that question to Mr. Rush.

4           Q.       Okay. And the next change, I understand,  
5 is -- okay. On page 4 -- sorry, on page 3, line 4, you say,  
6 "It is not unusual for Winbury acting as property manager to  
7 request changes be made to the customer of record."

8                   Which Winbury are we talking about there,  
9 Winbury Realty or Winbury Group?

10          A.       Reading line 5, it would appear that it would  
11 be Winbury Realty.

12          Q.       But on line 3, you say that the name -- "the  
13 service was established under the name provided by KCP&L by  
14 Ms. Painter." And Ms. Painter is with the Winbury Group,  
15 isn't she?

16          A.       Correct.

17          Q.       Is there a service agreement with respect to  
18 this billing -- to this customer?

19          A.       Do you mean Winbury Realty?

20          Q.       Winbury Realty, Winbury Group, whoever called  
21 you. Whoever you put it in, do you have a service agreement?

22          A.       I believe so, yes.

23          Q.       A written one?

24          A.       I don't know.

25          Q.       Well, what do you mean when you say you have a

1 service agreement, but it's not in writing? How does that  
2 happen?

3 A. I would defer that question specifically to  
4 Mr. Rush and his testimony again.

5 Q. But you're the one who runs the billing  
6 department, right?

7 A. No, I don't run the billing department.

8 Q. Or whatever this department is that you're  
9 testifying on behalf -- you are the -- what is your position?

10 A. I'm the manager of the customer contact  
11 center.

12 Q. So you're in charge of customer contacts. And  
13 if somebody from Winbury Group calls you and says put  
14 something in the Winbury Realty name, you'll do it?

15 A. That's correct.

16 Q. If I called and said put something in the name  
17 of Winbury Realty, would you do that?

18 A. We would not. The explanation would be the  
19 person in the contact from Winbury Group changing it to  
20 realty was affiliated with that same company or group of  
21 companies, and therefore, would have some sort of standing or  
22 basis to make that change, whereas, a third party would not.

23 Q. Just because you know somebody is what you're  
24 saying; is that correct?

25 A. Well, I don't know her personally, but it

1 would be from historical record and account that she had with  
2 the company.

3 Q. You did not ask for her authority -- or  
4 company did not ask to find what authority she had to put  
5 this in the name of Winbury Realty?

6 A. I can't speak to the specific conversation  
7 that was held, but in the process of verifying, when the call  
8 was answered, the -- the agent who answers the phone will ask  
9 some verifying questions, who are you with, can you verify  
10 some information, a tax ID number and things like that.

11 Q. Okay. So if I've got a tax ID number and all  
12 that information, I can put my account in, correct?

13 A. That could be possible.

14 Q. And in this particular case, KCP&L put this  
15 account in the name of Winbury Realty even though it was  
16 requested by the Winbury Group, correct?

17 A. Yes, that's correct.

18 Q. Who paid the bills? Who did you get checks  
19 from? Winbury Realty?

20 A. The checks show being processed from the  
21 Winbury Group.

22 Q. Winbury Group of Kansas City. Did Winbury  
23 Realty ever pay any bills to Kansas City Power & Light?

24 A. I haven't reviewed every payment, but --

25 Q. On the Briarcliff One building, I'm talking

1       about.

2               A.       I haven't reviewed every payment. To my  
3       knowledge, those came from Winbury Group.

4               Q.       Okay. And then your testimony on page 3,  
5       starting with the question, "How did Briarcliff Development  
6       become the customer of record," your answer is that "the  
7       Company was contacted by Jim Unruh, Senior Vice-President of  
8       the Winbury Group..." "...to put the account in the name of  
9       Briarcliff Development." And that's on August 5th, 2009.

10              You were there then, right?

11             A.       Yes, I was.

12             Q.       And it was at the request of the -- somebody  
13       from the Winbury Group to put the name in the Briarcliff  
14       Development?

15             A.       Correct.

16             Q.       Now, on question 15 [sic], it says, "Did  
17       Winbury Realty contact KCP&L at any other time after the  
18       service was changed to Briarcliff Development?" And your  
19       answer is "yes." "The Company was again contacted by a Jim  
20       Unruh." Jim Unruh is with the Winbury Group, isn't he?

21             A.       Yes, I believe so.

22             Q.       You don't know if he's with Winbury Realty, do  
23       you?

24             A.       No, I do not.

25             Q.       So shouldn't this question read, "Did Winbury

1 Realty" -- "Did Winbury Group contact KCP&L to change it;" is  
2 that correct? Or that would make your answer more correct?

3 A. Are you referring to line 17?

4 Q. Yes. You said Winbury Realty contacted you.  
5 At least that was your answer.

6 A. Correct. I think from the standpoint of KCP&L  
7 and the agent who dealt with this, Winbury Realty and Winbury  
8 Group are synonymous and/or the same entity.

9 Q. But according to the records of the State of  
10 Missouri, they're not?

11 A. I believe that's correct.

12 Q. Do you have a service order for anything that  
13 you got from -- on this particular thing where they asked to  
14 change it? Is there a service order there? Oh, no, where is  
15 the service order? This last one, August 10th, I'm not sure  
16 where you got this information because you supplied the  
17 service orders on other ones, but not on this.

18 A. Do you mean specifically the change in billing  
19 address?

20 Q. Yes.

21 A. That would not necessarily be recorded as a  
22 service order like the other examples. That would just be  
23 noted as a contact in the customer notes.

24 Q. Would that same be true for the -- the  
25 conversation with Rebecca Hill who called on August 28th,

1 2009? She's the chief financial officer for Briarcliff  
2 Development.

3 A. It should. All contacts with the customer get  
4 noted in the customer accounts.

5 Q. There's no service order for that?

6 A. I'm not familiar enough with the specifics of  
7 processing the order to say for certain, if that's a service  
8 order or simply a note and a change made.

9 Q. But you supplied the service orders but you  
10 didn't supply any of the notes or anything that you say  
11 occurred?

12 A. Those are not included here.

13 Q. Starting on line 18 through the end of the  
14 page and the top of the next page, you indicate that the  
15 Winbury Group paid the bills, or that's where you got the  
16 checks from, even though the account was in the name of  
17 Winbury Realty?

18 A. I don't see where on row 18 it states that  
19 specifically, but the checks did come from the Winbury Group.

20 Q. Well, it says, "While the account was in the  
21 name of Winbury Realty, payments were received from The  
22 Winbury Group of Kansas City Disbursement Account." Is that  
23 what you say?

24 A. Which line are you on?

25 Q. Lines 21 and 22.

1 A. Of page 3?

2 Q. On page 4, I'm sorry. I moved on.

3 A. Yes, that's what it reads.

4 MR. FINNEGAN: That's all the questions I  
5 have.

6 JUDGE BUSHMANN: Any questions from the  
7 Commissioners?

8 COMMISSIONER JARRETT: Yes. Good morning.

9 THE WITNESS: Good morning.

10 CROSS-EXAMINATION

11 QUESTIONS BY COMMISSIONER JARRETT:

12 Q. I have just a few questions. I wanted to go  
13 to -- do you have your rebuttal testimony there in front of  
14 you?

15 A. Yes.

16 Q. I wanted to go to page 2, starting with your  
17 question on line 15. Are you there?

18 A. I am.

19 Q. Okay. At line 15 on page 2 of your rebuttal  
20 testimony, the question is: "Who was the customer of record  
21 for the Property from June 15, 1999 through August 5, 2009?"  
22 And I think Mr. Finnegan asked you this question, but I don't  
23 remember your answer.

24 What is the "customer of record?" What does  
25 that mean?



1           A.       The customer of record, as it shows in the  
2       examples of the screen shots later in the rebuttal, show the  
3       Winbury Realty for that time period.

4           Q.       Okay.

5           A.       And customer of record would mean that was the  
6       entity who is the financially responsible party for that  
7       address.

8           Q.       And so that's the case in any -- any billing  
9       of any customer? The customer of record is the responsible  
10      party -- my question was really more generic.

11                   What is KCP&L's definition of "customer of  
12      record?"

13          A.       The way that you're suggesting, that's  
14      absolutely correct. So if you are listed as the account  
15      holder, the customer, in that field, that is from KCP&L, that  
16      is who the customer at that address and financially  
17      responsible.

18          Q.       Okay. And I may have some questions about a  
19      couple of those screen shots later, but let me go back to  
20      your testimony on page 2, lines -- the last sentence on that  
21      page beginning at line 20 and going on to line 21. The  
22      sentence reads: "It is my understanding that Winbury Realty  
23      and Winbury Group share similar management employees and the  
24      same mailing address."

25                   Is that what it says?



1 states: "It is the responsibility of the customer to  
2 disclose to KCP&L the correct name the account is to be  
3 placed in."

4 Who was the customer when Dianne Painter  
5 requested the change?

6 A. Referencing line 5 on that same page, it would  
7 be Winbury Realty.

8 Q. No. My question was: Who was -- who was the  
9 customer when she requested the change?

10 A. Oh, the prior customer?

11 Q. The prior customer.

12 A. Briarcliff West.

13 Q. The prior name?

14 A. It would be Briarcliff West.

15 Q. So the customer was Briarcliff West, and  
16 according to your testimony, it's the responsibility of the  
17 customer, Briarwood West, to disclose to KCP&L the correct  
18 name the account is to be placed in.

19 But Dianne Painter was not a -- an employee of  
20 Briarwood West, was she?

21 A. No. With respect, I think you're  
22 misinterpreting it. It would be the responsibility of the  
23 current customer, meaning we would not have any visibility to  
24 whether Briarcliff and/or Winbury had discussions in  
25 transferring the account from one to the other. Therefore,

1 if Winbury calls and states that I am now the customer to be  
2 of record at this address, we would take that and make that  
3 change.

4 Q. Okay. Even though Winbury's not the customer  
5 at the time?

6 A. That's correct.

7 Q. And before I -- I wanted to talk a little bit  
8 about the screen savers shots in your exhibits and schedule,  
9 I guess, what is it, IAH? It's kind of cut off. JAH. And I  
10 notice those are marked highly confidential. I don't know if  
11 we need to go into in-camera for those.

12 MR. FISCHER: Judge, I think they're marked as  
13 highly confidential just because there is customer-specific  
14 information on there. I suspect you can probably ask your  
15 questions and stay in public session.

16 COMMISSIONER JARRETT: Okay. And if I stray,  
17 let me know.

18 MR. FINNEGAN: Since my client's the customer,  
19 we don't have a problem with that.

20 BY COMMISSIONER JARRETT:

21 Q. Okay. Well, would you look at JAH 1, please.  
22 Are you there?

23 A. I am.

24 Q. Now, this form doesn't -- doesn't have the  
25 word "customer" on it anywhere, does it?

1           A.       No, it does not.

2           Q.       Okay. And you go down to -- I guess there's a  
3 line called "Acct/Premise," and in that one, this is the  
4 initial turn-on order for the Briarcliff West Development.

5                    So this would be the original turning on of  
6 the service there, correct?

7           A.       Correct.

8           Q.       So under the account/premise, there's a long  
9 number there, and then it says Briarcliff West DEVS, which I  
10 assume is Briarcliff West Development; is that correct?

11          A.       Correct.

12          Q.       So that's like the account holder? Is that  
13 what that is?

14          A.       Correct.

15          Q.       Okay. And then you go on down, it's a turn  
16 on, the order type, and then the origin of that was by  
17 telephone, ordered by Lee Swartz, and it was -- the urgency  
18 was at the company's convenience; is that right?

19          A.       That's correct.

20          Q.       Okay. So that's just kind of the details of  
21 who called and what name the account was placed in; is that  
22 right?

23          A.       That's correct.

24          Q.       And what kind of service is being requested?

25          A.       Correct.

1           Q.       Now, the next one is JAH 2, and this is the  
2       turn-on for 6/14/1999 Winbury Realty. Okay. And the  
3       Acct/Premise has another long number and then Winbury Realty.  
4       And then the order type is turn-on.

5                    Now, why is that turn-on? Was the power cut  
6       off and then turned back on?

7           A.       No, it's a clarification. If you look at that  
8       field and the order subtype beneath it, turn-on read  
9       comparatively to the prior exhibit, turn-on install.

10          Q.       Okay.

11          A.       So that, in a sense, would indicate an order  
12       that we would take a reading from the electric meter and  
13       begin billing this new customer at their read from that date  
14       going forward.

15          Q.       Okay. So it's basically -- it's not like a  
16       physical turn-on. I guess it's a virtual turn off because  
17       you're separating the customers?

18          A.       Right. It's taking a manual step to say I'm  
19       going to take note of where I'm going to begin your billing  
20       and whatever meter reading number that is, that in essence  
21       would represent a baseline zero and then you would be billed  
22       from that point forward.

23          Q.       Gotcha. And then, again, the origin of that,  
24       for that service order was a telephone from Dianne Painter,  
25       and then again at the company's convenience.

1                   And then if you go to JAH 3, the  
2   Acct/Premise -- well, again, this is styled up at the top as  
3   a turn-on. It says turn-on change of name from Winbury to  
4   Briarcliff; is that correct?

5           A.       Correct.

6           Q.       And then, again, on Acct/Premise line, there's  
7   another long number and it says Briarcliff Development. Then  
8   you have the turn-on order type and the subtype is turn-on  
9   read. So that would have been, like, the second one.

10                   The power wasn't actually shut off, but you're  
11   actually shutting off the one customer virtually and then  
12   setting it to zero and turning it on for the new customer?

13           A.       Correct. Maybe a better way to say it would  
14   be to stop billing at that point and beginning at the next  
15   point.

16           Q.       Right, it's a billing issue, not an actual  
17   physical turn-on?

18           A.       That's correct. And, again, the origin of  
19   that was by telephone, ordered by Jim Unruh. Okay.

20                   COMMISSIONER JARRETT: I don't think I have  
21   any more questions. I appreciate your patience with me.  
22   Thank you.

23                   THE WITNESS: Thank you.

24                   JUDGE BUSHMANN: I just have one question,  
25   Mr. Henrich.

1                   The screen shots that Commissioner Jarrett was  
2   talking to you about, are those the same as a service  
3   application, or is a service application some other document  
4   entirely?

5                   THE WITNESS: No, it would be these same  
6   screens.

7                   JUDGE BUSHMANN: Recross by Staff?

8                   MS. KLIETHERMES: Yes, just a couple.

9                   RE CROSS-EXAMINATION

10                  QUESTIONS BY MS. KLIETHERMES:

11                 Q.     Mr. Henrich, do entities frequently request  
12   service be placed in their name if they don't want to be  
13   responsible for billing?

14                 A.     No, they do not.

15                 Q.     What happens if an entity gets a bill that  
16   they say they don't owe?

17                 A.     They would be contacted immediately.

18                 Q.     Would it take some amount of time for KCP&L to  
19   verify an agency agreement?

20                 A.     It would.

21                 Q.     How do customers react to delays in service?

22                 A.     Delays in service?

23                 Q.     Yes.

24                 A.     Not well.

25                 Q.     And then where Mr. -- where Commissioner



1 Jarrett was discussing the screen shots with you, did

2 Briarcliff receive bills in the late '90s in its name?

3 A. They would not have received bills prior to --  
4 the example -3, for that turn-on?

5 Q. Yes, but for some point in, I believe it would  
6 have been 1999, Briarcliff received service in its name,  
7 correct?

8 A. Yes, the original -- those few months, yes.

9 Q. Now, you talked about the initial turn-on for  
10 Winbury.

11 Does that mean that Briarcliff would have been  
12 final billed?

13 A. Typically, yes.

14 Q. Does a final bill state that it is a final  
15 bill?

16 A. Very clearly.

17 Q. And what is a final bill?

18 A. Means that this account has been closed,  
19 payment of this invoice represents closure of responsibility  
20 on that account.

21 Q. So if the lights are still on at a location  
22 after a final bill has been rendered, what does that mean?

23 A. It really doesn't mean anything. It's a  
24 common practice for a large area of KCP&L that we don't  
25 physically send an individual to shut the electricity off

1 with a hard disconnect. It's more a process from a billing  
2 standpoint.

3 So final bill would be paid and typically,  
4 most often a new customer, it would be a one day off, next  
5 day a new customer. If there was an event to where there was  
6 a delay but there was usage incurred, then that would be --  
7 it would pop up on our report, and we would go out and  
8 actually physically disconnect it until we could get a new  
9 customer of record responsible for the bill.

10 Q. So if Briarcliff Development still had lights  
11 on -- I'm sorry, if Briarcliff Development had received a  
12 final bill, the lights were still on and the little wheel on  
13 the side of the meter was still spinning, if Briarcliff  
14 Development didn't receive a subsequent bill, would that mean  
15 that someone else was paying that bill?

16 A. That's correct.

17 MS. KLIETHERMES: I believe that's all I have.  
18 Thank you.

19 JUDGE BUSHMANN: Recross by Briarcliff?

20 MR. FINNEGAN: Yes, I've got a couple. Just  
21 following up on this last question here.

22 RECROSS-EXAMINATION

23 QUESTIONS BY MR. FINNEGAN:

24 Q. You said it would take some time to verify it,  
25 whether or not the person calling you was authorized; is that

1 correct?

2 A. I'm just speculating. I've never done that.

3 Q. You've never asked for verification?

4 MS. KLIETHERMES: Judge, I'm going to object.  
5 This isn't responsive to questions from the bench. This is  
6 follow-up on the additional cross that I performed.

7 MR. FINNEGAN: Yes, it is.

8 JUDGE BUSHMANN: Is this within the scope?

9 MR. FISCHER: I join in that objection. I  
10 don't think there's anything the bench asked.

11 JUDGE BUSHMANN: Can you restate your question  
12 for me, sir?

13 MR. FINNEGAN: Okay.

14 BY MR. FINNEGAN:

15 Q. Well, how long would it take to verify?

16 A. To verify what specifically?

17 Q. To verify who was authorized, who called you  
18 and said they were authorized.

19 MS. KLIETHERMES: Objection. I don't believe  
20 there were any questions from the bench on authorization.

21 JUDGE BUSHMANN: I'm going to overrule it. Go  
22 ahead.

23 MR. FINNEGAN: Did you overrule?

24 JUDGE BUSHMANN: You may re-ask.

25 BY MR. FINNEGAN:

1           Q.       How long would it take to ask for and receive  
2 a copy of the management agreement?

3           A.       To physically ask for it, it would take no  
4 time.

5           Q.       And it could be sent back to you by e-mail in  
6 no time, too, couldn't it?

7           A.       It could.

8           Q.       So it wouldn't take much time?

9           A.       Not to receive it, no.

10          Q.       And to look at it -- if you look at this  
11 management agreement, you can see that it says it should be  
12 in the name of the customer -- I mean, the name of the owner?

13          A.       I've never looked at an agency agreement.

14          Q.       Well, it might be a first time to start.

15                 With respect to your exhibits -- or your  
16 schedules, JAH 2 and JAH 3 that you referred to, I see that  
17 the mailing address, even after the change from Winbury  
18 Realty to Briarcliff Development remained the same, 4520 Main  
19 Street, Suite 1000, Kansas City, Missouri 64111?

20          A.       Where are you looking?

21          Q.       I'm looking at the last -- the mailing address  
22 at the bottom of JAH 2 and JAH 3.

23          A.       Okay.

24          Q.       They're the same address, right?

25          A.       That's correct.

1 Q. And then you said that you received a phone  
2 call from -- from Briarcliff Development saying to change the  
3 address from Rebecca Hill? It's on top of page 4 of your  
4 testimony, the mailing address changed.

5 A. Yes, that's what it reads.

6 Q. But after the -- after you made this change,  
7 the bills were still going to Winbury Realty or the Winbury  
8 Group at that 4520 Main Street address?

9 A. Yeah, according to the -3 example, the mailing  
10 address is still going to the 4520 Main.

11 Q. Are you aware that other utilities are  
12 required to obtain service applications signed by the  
13 customer?

14 A. No, I'm only familiar with KCP&L.

15 MR. FINNEGAN: That's all the questions I  
16 have.

17 JUDGE BUSHMANN: Any redirect, Mr. Fischer?

18 MR. FISCHER: Just briefly.

19 REDIRECT EXAMINATION

20 QUESTIONS BY MR. FISCHER:

21 Q. Mr. Henrich, do entities typically pay bills  
22 received when such entity believes they're not responsible  
23 for payment?

24 A. Are you asking, would a person who does not  
25 believe they should be responsible still pay the bill?

1 Q. Yes.

2 A. They wouldn't.

3 Q. You were asked some questions regarding your  
4 highly confidential schedules. There's a schedule JAH-4  
5 and -5 -- or excuse me, -4. What does that schedule show?

6 A. It shows the copy of two checks received from  
7 Briarcliff One.

8 Q. And then the next page shows what? Or excuse  
9 me, the previous page, you said Briarcliff One. Is there  
10 another set of checks from a different group?

11 A. There is on the -4. There's a set of checks  
12 showing received from the Winbury Group of Kansas City.

13 Q. Do you conclude anything about who's  
14 responsible for payment by the checks you get?

15 A. At the time, the date of these checks, the  
16 name on the check would be the party responsible as the  
17 customer, both financially responsible and of record.

18 Q. Okay. And do you conclude that they're the  
19 customer then?

20 A. Yes.

21 MR. FISCHER: Okay. That's all I have. Thank  
22 you.

23 JUDGE BUSHMANN: Thank you, Mr. Henrich. You  
24 may step down now.

25 Next witness is Tim Rush.

1 (The witness was sworn.)

2 JUDGE BUSHMANN: You may proceed.

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. FISCHER:

5 Q. Please state your name and business address.

6 A. Tim Rush, 1200 Main, Kansas City, Missouri.

7 Q. Are you the same Tim Rush that caused to be  
8 filed in this proceeding rebuttal testimony which has been  
9 marked as Exhibit 2 and surrebuttal testimony which has been  
10 marked as KCP&L Exhibit 3?

11 A. I did.

12 Q. Do you have any changes or corrections that  
13 need to be made to your testimony?

14 A. I do not.

15 Q. If I were to ask you the questions contained  
16 in that testimony today, would your answers be the same and  
17 are they accurate to the best of your knowledge and belief?

18 A. Yes.

19 MR. FISCHER: Judge, I would move for the  
20 admission of KCP&L Exhibit 2 and 3 and tender the witness for  
21 cross.

22 JUDGE BUSHMANN: KCP&L Exhibits 2 and 3 have  
23 been offered. Any objections?

24 MR. FINNEGAN: No objection.

25 JUDGE BUSHMANN: Hearing none, those exhibits

1 are admitted into the record.

2 (KCP&L EXHIBIT NUMBERS 2 AND 3 WERE RECEIVED  
3 INTO THE RECORD BY JUDGE BUSHMANN.)

4 JUDGE BUSHMANN: Cross-examination by Staff?

5 CROSS-EXAMINATION

6 QUESTIONS BY MS. KLIETHERMES:

7 Q. Good morning, Mr. Rush.

8 A. Good morning.

9 Q. Do you recall Case Number ER-2006-0314?

10 A. I do.

11 Q. Fondly, I'm sure. In that case, did the  
12 Commission restrict the existing general service all-electric  
13 rate schedules and separately metered space heating  
14 provisions of KCP&L's standard general tariffs to existing  
15 customers until there is a comprehensive class cost of  
16 service study?

17 A. It did.

18 Q. Let's talk for a moment about how KCP&L  
19 interpreted existing customers from the time the Commission  
20 entered that order until the time the Commission entered its  
21 order in the ER-2007-0291 case.

22 If I received commercial electric service from  
23 KCP&L and requested service at that location under the  
24 all-electric or separately metered space heating schedules,  
25 would I have been an existing customer as KCP&L interpreted



1 it prior to the 2007 rate case?

2 A. Yes.

3 Q. If I received general commercial service from  
4 KCP&L at a particular location and I bought a new commercial  
5 building and requested service under the all-electric or  
6 separately metered space heating rate schedules at that new  
7 location, would I have been an existing customer as KCP&L  
8 interpreted it prior to the 2007 rate case?

9 A. Yes.

10 Q. If I received residential electric service  
11 from KCP&L at a particular location and I bought a new  
12 commercial building and requested service under the  
13 all-electric or separately metered space heating rate  
14 schedules, would I have been an existing customer as KCP&L  
15 interpreted it prior to the 2007 rate case?

16 A. Yes, but I would just characterize it that it  
17 wasn't just the company that agreed to it. Ultimately, it  
18 was all the other parties that -- that established that that  
19 was the standard.

20 Q. And was that as a result of the settlement  
21 negotiation?

22 A. I mean, it was. We had a rate design  
23 component of this and we had to change tariffs and whatnot.  
24 There were obviously debates about various things and  
25 characterizations of what the order said. There was -- yeah.

1 Yes.

2 Q. If I bought a commercial building that was  
3 served on the all-electric or separately metered space  
4 heating schedules but I personally was not previously a KCP&L  
5 customer, would I have been an existing customer as KCP&L  
6 interpreted it prior to the 2007 rate case?

7 A. I don't know that. I don't have an answer to  
8 that right now. I think they would be, but I don't remember  
9 all the components of it in 2007.

10 MS. KLIETHERMES: Judge, I've got a data  
11 request response from a prior rate case that involved  
12 customer specific information that did not involve this  
13 particular customer. I think I have redacted everything  
14 customer specific regarding it, but I would like the  
15 opportunity to refresh Mr. Rush's recollection with this  
16 document if that would be acceptable.

17 JUDGE BUSHMANN: Go ahead.

18 MR. FINNEGAN: Your Honor, I'm going to object  
19 to this. This was not part of this complaint case. We were  
20 not a party to this case.

21 JUDGE BUSHMANN: I'm going to overrule the  
22 objection. I think it does have some relevance based on the  
23 history of the cases.

24 MR. FINNEGAN: And I'd like to see a copy,  
25 too, please.

1 MS. KLIETHERMES: I'd have to rely on the  
2 company's representation if I have successfully redacted  
3 customer-specific information.

4 JUDGE BUSHMANN: Do you have a copy for other  
5 counsel?

6 MS. KLIETHERMES: I have that copy. I'm  
7 not -- I'd like the company's verification of the quality of  
8 my redaction because it does contain customer-specific  
9 information on approximately 350 customers.

10 BY MS. KLIETHERMES:

11 Q. Mr. Rush, is your recollection refreshed?

12 A. Not yet. You're talking about ER-2006-0314?  
13 That's what you were asking the question about?

14 Q. How the -- how the company interpreted its --  
15 no, I'm sorry. We were talking about how the company  
16 interpreted what was an existing customer out of the ER 2006  
17 case.

18 A. That's correct. And this is dealing with the  
19 2008 case.

20 Q. This is dealing with the customers that KCP&L  
21 solicited --

22 A. Right.

23 Q. -- after the 2006 case and prior to the 2007  
24 case; is that correct?

25 A. Well, I wouldn't characterize it as solicited,

1 but these are the customers who had made decisions to put  
2 electric heat in their facility that would have qualified for  
3 the electric heating rate if it had been available to them,  
4 and that was part of what we asked for in our request.

5 Q. I'm not sure procedurally in the terms of  
6 question/answer where we're at now, but yes, that is my  
7 understanding of what that document is.

8 A. Okay. So this is essentially a year and a  
9 half later, a filing that we made. So I'm trying to  
10 understand how we used this to link it back to the case in  
11 ER-2006-0314. I'm not trying to be difficult.

12 Q. Well, my question is: Did KCP&L provide that  
13 document to Staff as an indication of what it interpreted an  
14 existing customer to be after the 2006 rate case and prior to  
15 the 2007 rate case?

16 A. No. I think this was the -- what we provided  
17 to you as a result of the 2007 rate case, ER-2007-0219 or  
18 whatever that number was.

19 Q. Was that in the -- was that in the context of  
20 a request of waiver from only the 2007 rate case but not the  
21 2006 rate case?

22 A. Yes, yes.

23 MS. KLIETHERMES: I hope that's sufficiently  
24 clear at this point.

25 JUDGE BUSHMANN: Mr. Rush, is there any

1 confidential information that's remaining in that document  
2 that you're reviewing?

3 THE WITNESS: No, there is not.

4 JUDGE BUSHMANN: Mr. Fischer, do you have any  
5 objection to Mr. Finnegan looking at that document?

6 MR. FISCHER: No, I don't.

7 JUDGE BUSHMANN: Will you give Mr. Finnegan a  
8 chance to look at it?

9 MR. FINNEGAN: You do have enough copies for  
10 everybody?

11 MS. KLIETHERMES: I do not intend to offer  
12 this as an exhibit. I can run copies.

13 MR. FINNEGAN: Well, the ruling -- the Order  
14 in this case says that we're supposed to provide ten -- if  
15 it's a new exhibit, not been pre-filed, the party must bring  
16 an additional copy for the court reporter and copies for the  
17 Commissioners, Presiding Judge and all counsel.

18 MS. KLIETHERMES: Yes. And I did not intend  
19 to offer this as an exhibit. I intended to have it handy if  
20 Mr. Rush needed a refreshing of his recollection.

21 MR. FINNEGAN: Well, I have no idea what this  
22 is, and I object to the use of it again. It can be a  
23 continuing objection, Your Honor.

24 JUDGE BUSHMANN: I understand you have a  
25 continuing objection. I'm going to overrule that.

1                   Go ahead, Ms. Kliethermes, if you have any  
2 additional questions.

3                   MS. KLIETHERMES: I had no further use of the  
4 document.

5                   THE WITNESS: Okay.

6 BY MS. KLIETHERMES:

7           Q.       Mr. Rush --

8           A.       Yes.

9           Q.       -- if I bought a commercial building that was  
10 served on the all-electric or separately metered space  
11 heating rate schedules but I personally was not previously a  
12 KCP&L customer, would I have been an existing customer as  
13 KCP&L interpreted it prior to the 2007 rate case?

14          A.       I believe that's how we would have interpreted  
15 it, yes. But using that as a foundation, those were  
16 customers that had --

17          Q.       Sure.

18          A.       -- relied -- I want to back up.  
19                   Because there was no change in the tariff  
20 regarding the --

21                  MS. KLIETHERMES: Judge, I'm going to object.  
22 He's in excess of the question answered, and he's describing  
23 a document that is not being sought to be made an exhibit.

24                  JUDGE BUSHMANN: Well, I think you opened the  
25 door for it when you presented that to him and asked him to

1 use that to refresh his recollection, so I'm going to allow  
2 him to continue and finish his answer.

3 Go ahead, sir.

4 THE WITNESS: I was simply going to say that  
5 because the tariff in the 2006 rate case, this 314 -- I think  
6 it was 314 case, because none of the availability provisions  
7 were changed as a result of the tariff, because of the  
8 Commission's approved tariff, then an existing customer would  
9 not have been an issue there because we would have been in  
10 compliance with the tariff also approved by the Commission.

11 JUDGE BUSHMANN: Go ahead.

12 BY MS. KLIETHERMES:

13 Q. If I was a contractor or property developer  
14 and I had an office or two that received service from KCP&L,  
15 would every new property I built be an existing customer as  
16 interpreted by KCP&L prior to the 2007 rate case?

17 A. Based on our tariffs, yes.

18 Q. And just to be clear, when I'm referring to  
19 the 2007 rate case, I'm referring to ER-2007-0291. Is that  
20 your understanding?

21 A. That's the 2007 rate case, yes.

22 Q. From the time that the Commission restricted  
23 the availability of the all-electric or separately metered  
24 space heating rate schedules in ER-2006-0314 to the time that  
25 the Commission froze those schedules in ER-2007-0291, can any

1       entity request to be placed on those rate schedules that  
2       KCP&L did not place on those schedules because they weren't  
3       existing customers? And that is a yes-or-no question.

4                   MR. FISCHER: If you know.

5                   THE WITNESS: No.

6       BY MS. KLIETHERMES:

7               Q.       Quite a few of these I think I can skip over  
8       given the administrative notice of the rate cases, so if  
9       you'll bear with me a moment.

10                   In KCP&L's application for rehearing of the  
11       Order in 2007, did the application for rehearing list around  
12       325 potential customers or locations that KCP&L wanted to  
13       make eligible for those discounts?

14               A.       I wouldn't characterize it as discounts. I  
15       know that people do, but for that rate, yes, there were  
16       300-some customers.

17               Q.       Okay. And then in its waiver application that  
18       followed that, docketed as EE-2008-0238, do you recall that  
19       case?

20               A.       Yes.

21               Q.       Fondly as well?

22               A.       Yes.

23               Q.       In that case, did the application refer to  
24       approximately 215 physical locations?

25               A.       I don't remember the exact number, but I think



1       you're probably right.

2               Q.       Was construction not yet complete on some of  
3       those physical locations?

4               A.       Oh, yes.

5               Q.       Had construction not yet begun on some of  
6       those physical locations?

7               A.       Of the 215, I don't -- I think commitments had  
8       been made.  Whether it was, you know, the land was started  
9       or -- I mean, there was some action that would say it is  
10      committed to.  That's, I think, how we pared it down from the  
11      300-and-some-odd customers.

12               We based that waiver based on discussions with  
13      Staff and others when we came back in to clarify the number.  
14      And I don't remember all the specifics of it.

15               Q.       So if I'm looking at the Schedule 1 to that  
16      application, and the first page was titled "Missouri  
17      Commercial Electric Heat Projects Completed by KCP&L and  
18      Under Customer Construction as of 12/31/2007," what does that  
19      phrase "under customer construction" mean?

20               A.       Just as it says.  I mean, it's under  
21      construction.

22               Q.       So if there's a following page entitled  
23      "Missouri Commercial Electric Heat Projects Under KCP&L  
24      Planning or Construction as of 12/31/2007," what does that  
25      mean?

1           A.       There's some involvement that would say that  
2       probably there's a commitment to build or an action taking  
3       place, whether it's architects hired or whatever, some action  
4       that has an investment associated with it.

5           Q.       So if there was a heading titled "Pending  
6       Missouri Commercial Electric Heat Projects as of 12/31/2007,"  
7       what would that mean?

8           A.       Those are ones that have been discussed and  
9       something's been addressed, whatever that may be.

10          Q.       And if there was a page entitled "Potential  
11       Missouri Commercial Heat Projects as of" -- actually, that  
12       one says "as fo to 12/31/2007," what would that mean?

13          A.       Probably some actions have taken place that  
14       would lead someone to believe that this is an action, you  
15       know, that something will be happening.

16          Q.       Now, let's discuss the discount that  
17       Briarcliff is seeking.

18                   KCP&L submitted a class cost of service study  
19       in ER-2009-0089, correct?

20          A.       They did.

21          Q.       And that study was based on the rates set in  
22       ER-2007-0291, correct?

23          A.       Let's try that -- could you ask the first  
24       question and then ask the second one? I'm sorry. I've got  
25       to get my dates right.

1           Q.       Sure. Was the class cost of service study in  
2       the 2009 rate case using the rates that resulted in the 2007  
3       rate case?

4           MR. FINNEGAN: Your Honor, I'm going to object  
5       to this line of questioning. This has nothing to do with  
6       this complaint case. This is our complaint. All we're  
7       concerned with was when the rate was frozen and whether or  
8       not we should qualify after that.

9           JUDGE BUSHMANN: Ms. Kliethermes, what's the  
10      relevance of the 2009 case that you're discussing?

11          MS. KLIETHERMES: Judge, this relates to in  
12      the 2009 case, KCP&L established what size the discount was.  
13      That discount was somewhat reduced in the 2009 rate case  
14      itself, but this goes to show what exactly relief Briarcliff  
15      is seeking by being asked to be placed on these discounted  
16      rate schedules.

17          JUDGE BUSHMANN: Okay. Then I'll overrule the  
18      objection and allow it -- I'm sorry. Yeah, overrule the  
19      objection. Sorry, sir.

20          MR. FINNEGAN: I'd like to make a continuing  
21      objection.

22          JUDGE BUSHMANN: I understand.

23          THE WITNESS: The class cost of service study  
24      is based on information based on the 2009 case. The revenue  
25      stream, however, is based on the rates that were established

1 previously.

2 But the class cost of service elements, all  
3 the costs and the fuels and the plant and all those things  
4 are based on the case filing in the 2009 data.

5 BY MS. KLIETHERMES:

6 Q. Thank you. That's quite helpful.

7 So KCP&L's study in the 2009 case was after  
8 the Commission had reduced the size of the discounts on two  
9 prior occasions, correct?

10 A. Yes.

11 Q. Did that study indicate that the large  
12 all-electric subclass provided a summer rate of return of  
13 7.076 percent?

14 A. I don't remember any of those numbers.

15 MS. KLIETHERMES: May I approach?

16 JUDGE BUSHMANN: You may.

17 BY MS. KLIETHERMES:

18 Q. Mr. Rush, could you identify the document I've  
19 just handed you?

20 A. This is the testimony of Paul M. Norman, and  
21 it's in our ER-2009 case.

22 Q. And while Mr. Norman performed the class cost  
23 of service study, you --

24 MR. FINNEGAN: I'm going to object to this,  
25 Your Honor. Mr. Norman's not here. This is Mr. Rush.

1 JUDGE BUSHMANN: What's the purpose of  
2 presenting Mr. Rush with this document, Ms. Kliethermes?

3 MS. KLIETHERMES: Mr. Rush provided KCP&L's  
4 overall rate of return recommendations based on Mr. Norman's  
5 study. I have Mr. Rush's testimony available that  
6 establishes that, and this is to indicate the size of the  
7 discount that Briarcliff is seeking to obtain.

8 JUDGE BUSHMANN: Are you intending to offer it  
9 as an exhibit or simply to refresh recollection?

10 MS. KLIETHERMES: Simply to refresh  
11 recollection.

12 JUDGE BUSHMANN: Then I'll overrule the  
13 objection.

14 MR. FISCHER: Judge, I think I would just  
15 interject an objection to the form of the question talking  
16 about a discount. I'm not sure that there is a discount at  
17 all related to the all-electric rate.

18 I know people do use the term as counsel  
19 suggested, but I don't think -- technically, that isn't a  
20 proper use of the term, and I do object to the form of the  
21 question.

22 JUDGE BUSHMANN: All right. Well, I'll give  
23 you an opportunity on redirect, then, to make that more  
24 clear.

25 MR. FISCHER: Thank you.

1 BY MS. KLIETHERMES:

2 Q. Mr. Rush, did the 2009 study indicate that the  
3 large all-electric subclass provided a summer rate of return  
4 of 7.076 percent?

5 A. It did.

6 Q. A winter rate of return of 4.708 percent?

7 A. Yes.

8 Q. Did that study indicate that the large  
9 secondary subclass provided a summer rate of return of 9.323  
10 percent?

11 A. Yes.

12 Q. And a winter rate of return of 9.421 percent?

13 A. That's correct.

14 Q. Is 7.076 less than 9.323?

15 A. It is.

16 Q. Is 4.708 less than 9.421?

17 A. Yes.

18 Q. Is 4.708 less than half of 9.421?

19 A. Barely, but yes.

20 Q. The Commission further reduced the offset in  
21 rates in ER-2009-0291; is that correct?

22 A. There were some rate design elements that  
23 modified that, yes.

24 Q. And was that an increase in the energy charges  
25 of those subclasses by five percent?

1           A.       I believe it was only the energy charges, yes.

2           Q.       Now, that didn't double the energy charges,  
3    did it?

4           A.       No, it did not.

5           Q.       Would you agree with me that we can't  
6    determine the exact rates of return of the large all-electric  
7    subclass and the large secondary subclass without a cost of  
8    service study?

9           A.       I think that's one component of it, but I  
10   think it's a misnomer if you say this is the basis for any  
11   rate design consideration. It's just a component. It's just  
12   a piece. It's a picture in time based on information of a  
13   picture in time.

14          Q.       And that wasn't my question. My question is:  
15   Would you agree that we can't determine exact rates of return  
16   today without performing a class cost of service study that  
17   would be representative of the rates of return today?

18          A.       I would agree with that.

19          Q.       With that caveat, would you agree that under  
20   KCP&L's current rate structure, the subclass of customers  
21   receiving service on the 1 LGAE rate schedule provide a lower  
22   return to KCP&L in the winter than in the summer?

23          A.       They provide a lower return in the winter than  
24   in the summer?

25          Q.       Yes. That was my question.

1           A.       Today?

2           Q.       Yes.

3           A.       I don't believe so.

4           Q.       Would you agree that the subclass of customers  
5       receiving service on the 1 LGAE rate schedule provide a lower  
6       return to KCP&L than does the comparable general service  
7       rate?

8           A.       I don't know that information without -- what  
9       you said was a class cost of service study for more current  
10      data. There were some substantial changes made.

11          Q.       Thank you. You've answered my question.  
12      Let's discuss going forward.

13                  Mr. Rush, I'm going to read you a passage.  
14      Could you let me know if you recognize that language?

15          A.       Okay.

16          Q.       "I recommend that over the next few cases that  
17      the commercial and industrial all-electric and separately  
18      metered space heating rates be phased out. Currently, these  
19      rates are not available for new customers. Also, I am  
20      proposing that the separately metered space heating tariffs  
21      winter energy charges for the small general service, medium  
22      general service, and large general service tariffs be  
23      increased by five percent prior to any increase in the  
24      revenue requirement in this case. The increase will be  
25      applied on a revenue neutral basis within the respective



1 classes. I then recommend that the increase in revenue  
2 requirement in this case be spread on an equal percentage  
3 basis to all rates."

4 A. I believe that was my testimony in the last  
5 rate case.

6 Q. Was that in ER-2009-0089?

7 A. I think so.

8 Q. And has that recommendation changed?

9 A. We will evaluate in our upcoming case class  
10 cost of service study results and try to make a determination  
11 if any changes need to be made. There obviously with  
12 bringing on the major power plant that came in, in the last  
13 rate case, there are significant changes to our  
14 characteristics with the change in fuel prices that have  
15 happened across our nation. There are really very  
16 substantial changes in the market and fuel costs. So we  
17 would have to evaluate all that.

18 Q. And you referred to your rate case. If this  
19 is public, when does KCP&L intend to file that rate case?

20 A. I have --

21 MR. FISCHER: Judge, I'll object to that as  
22 speculative.

23 JUDGE BUSHMANN: Sustained.

24 MS. KLIETHERMES: Okay.

25 MR. FISCHER: It calls for speculation.

1 BY MS. KLIETHERMES:

2 Q. Has KCP&L filed notice that it intends to file  
3 a rate case very soon?

4 A. It has. It has filed a 60-day notice. That  
5 does not mean that it's -- that just says you can't  
6 essentially file before then.

7 Q. Thank you for the clarification.  
8 Is it important to allow current and potential  
9 customers to have an accurate economic comparison of various  
10 alternative energy sources when making long-term investment  
11 decisions?

12 A. That would be helpful.

13 Q. Was that KCP&L's testimony in Veolia's rate  
14 case, HR-2011-0241?

15 A. I believe it was, yes.

16 Q. Was the basis of KCP&L's intervention in  
17 Veolia's rate case to encourage that the Commission ensure  
18 that Veolia's customers were charged their fully allocated  
19 cost of service?

20 A. That was one of the considerations that we  
21 included.

22 Q. I'm looking at a document entitled Kansas City  
23 Power & Light Company's Motion to Intervene in the matter of  
24 Veolia Energy Kansas City, Inc., for authority to file  
25 tariffs to increase rates, Case Number HR-2011-0241.

1 I'm looking at paragraph 6 which states:

2 "KCP&L has a direct and pecuniary interest in this proceeding  
3 that is different than that of the general public. KCP&L  
4 provides electricity in the same service for which Veolia is  
5 providing steam service. It is, therefore, important to  
6 KCP&L that Veolia's rates appropriately reflect its cost of  
7 service."

8 That is the only paragraph I see indicating a  
9 reason for KCP&L's intervention. Am I missing another  
10 paragraph?

11 A. No. But what I believe you said is you  
12 implied that the company should pay their full cost of  
13 service. All I was saying in -- all that was said in that is  
14 that they -- that we address cost of service as a principle.

15 Q. Okay. So that it appropriately --

16 A. Appropriately addresses cost of service. It  
17 does not say what I think you -- what was implied previously  
18 was that they pay some full cost of service.

19 If you remember in the Veolia case, I believe  
20 they filed saying we only asked for half of what we need, and  
21 that's not what we said is -- we did not come out and say  
22 they needed to recover their full -- the rates should go up  
23 higher. We just simply said we need to address appropriate  
24 cost of service.

25 Q. But the last sentence of that paragraph does,

1 in fact, state: "It is, therefore, important to KCP&L that  
2 Veolia's rates appropriately reflect its cost of service."

3 A. Yes.

4 Q. Did I read that correctly?

5 A. You did.

6 Q. Thank you. In the sense that KCP&L is  
7 referring to class -- I'm sorry, that is -- in the sense that  
8 KCP&L refers to cost of service, would that include a rate of  
9 return as it was used in that sentence?

10 A. I would think so, yes.

11 Q. And you need a class cost of service study to  
12 examine class contributions to rate of return, correct?

13 A. If you're looking at class cost of service as  
14 a component of rate design, yes.

15 Q. Does KCP&L look at class cost of service as a  
16 component of rate design?

17 A. We have in recent cases. It's not always been  
18 the case.

19 Q. And referring to the rate case for which KCP&L  
20 filed its notice, when KCP&L files that rate case, will it  
21 file a class cost of service study?

22 MR. FISCHER: Calls for speculation, Judge.

23 MR. FINNEGAN: Irrelevant, Judge.

24 JUDGE BUSHMANN: Sustained.

25 MS. KLIETHERMES: I've got nothing further.

1                   MR. FINNEGAN: This is a complaint case by  
2 Briarcliff.

3                   MS. KLIETHERMES: I stated nothing further.  
4 I'm not sure if you heard me over opposing counsel.

5                   JUDGE BUSHMANN: Cross-examination by  
6 Briarcliff?

7                   MR. FINNEGAN: Thank you.

8                   RE CROSS-EXAMINATION

9                   QUESTIONS BY MR. FINNEGAN:

10                  Q.       Mr. Rush, if you could start on page 5 of your  
11 rebuttal testimony.

12                  A.       I'm there.

13                  Q.       Line 16, your answer: "As of January 1st,  
14 2008, KCP&L froze the rate to customers of record as of that  
15 date. Any change of customer resulted in the rate reverting  
16 to the applicable standard electric tariffs."

17                            You stated that, right?

18                  A.       Yes.

19                  Q.       You use the term "customers of record" here  
20 and then you continue using it many, many times throughout  
21 this.

22                            What is KCP&L's definition in their tariff of  
23 customers of record?

24                  A.       Well, I would -- you want me to go to the  
25 tariff part -- provision? Is that what you're saying?

1 Q. Well, you said that you froze the customers of  
2 record. I'm trying to find out what a "customer of record"  
3 is.

4 A. I believe it is the customer.

5 Q. The customer?

6 A. Yes.

7 Q. And under your -- KCP&L's definition of  
8 customer, Rule 1.04 --

9 A. Uh-huh.

10 Q. -- customer is any person applying for,  
11 receiving, using, or agreeing to take a class electric  
12 service supply by the company?

13 A. That's right.

14 Q. So a customer is not just the person applying  
15 for it, but it's the person who receives it, who uses it, or  
16 agrees to take a service, right?

17 A. I think the word "or" is the key, but I mean,  
18 it is one of those pieces.

19 Q. Yeah, the word "or" is in there.

20 A. Yes. I think you have to also look at who the  
21 person is.

22 Q. I will look at that.

23 A. I mean, and then you need to look at who the  
24 responsible party is.

25 Q. Yeah, we can look at that, too. A person is

1 any individual, partnership, co-partnership, firm, company,  
2 public or private corporation, association, joint stock  
3 company, trust, estate, political subdivision, government  
4 agency or other legal entity recognized by law; is that  
5 correct?

6 A. That's what we have in our definition -- in  
7 our -- yes.

8 Q. And responsible party -- I'm sorry, that was  
9 your Rule 1.03?

10 A. That's correct.

11 Q. Rule 1.21 is your definition of responsible  
12 party, correct?

13 A. It is.

14 Q. And that would be any adult, landlord,  
15 property management company, or owner applying for, agreeing  
16 to take and/or receiving substantial use and benefit of  
17 electric service at a given premise; is that correct?

18 A. That is correct.

19 Q. If you had not been paid by Winbury Realty or  
20 Winbury Group, would you look at Briarcliff Development as  
21 a -- as the owner of the building and as the landlord of the  
22 building --

23 A. I would not.

24 Q. -- as a responsible party? You would not?

25 A. I would not.

1 Q. If you've not gotten paid by them?

2 A. That's correct.

3 Q. You would violate your own rules?

4 A. I would -- I mean, if Winbury Group did not  
5 pay the bill and refused to pay the bill, they would be  
6 disconnected from service, and the service would be  
7 disconnected.

8 Q. So it would also affect --

9 A. If Briarcliff came in later on and said they  
10 wanted to be connected to service, they want service  
11 connected in their name, I believe we would connect them.

12 Q. Under this rule, you're not saying that --

13 A. I believe, then, that if Briarcliff wanted to  
14 pay Winbury Group, that would be great, and we would take the  
15 money, but I don't think we would have a legal claim  
16 whatsoever for Winbury to pay -- or for Briarcliff to pay  
17 Winbury's payment. And that's the standards of how our  
18 company operates.

19 Q. That's how you operate. That's not what your  
20 rule says, though, is it?

21 A. I believe it is what our rule says.

22 Q. Your rule says that an owner and a landlord  
23 are the responsible party.

24 A. It says property management company is the  
25 responsible --



1 Q. It's an "or."

2 A. I'm -- well --

3 Q. Okay. Does it not also say landlord?

4 A. Those are potential responsible parties.

5 Q. Or owner, it says. Any adult, landlord,  
6 property management company or owner is the responsible  
7 party.

8 A. So I would give you an example, then. If I'm  
9 a -- if I'm renting a facility and I run up a large electric  
10 bill, and I decide to default on it, should the owner of that  
11 property pay for the bill?

12 Q. I'm not on the stand.

13 A. That's the interpretation that you're trying  
14 to use here.

15 Q. No, I'm not. The owner of this building, the  
16 landlord of this building is Briarcliff Development. They're  
17 receiving the benefit of the electricity. You can sue them  
18 if they don't -- if the people don't pay it.

19 A. I cannot sue them if Winbury does not pay.

20 Q. Yes, you can. I'm sorry.

21 A. I guess I could, but I don't think I would  
22 receive any payment.

23 Q. There's a principle of law known as quantum  
24 meruit. They are receiving the benefit of the electricity.

25 MS. KLIETHERMES: Judge, is there a question

1 pending?

2 MR. FINNEGAN: I just did a question, yes.

3 JUDGE BUSHMANN: Your objection is?

4 MR. FISCHER: Calling for a legal conclusion.

5 JUDGE BUSHMANN: I'll sustain the objection.

6 Mr. Finnegan, do you have any additional questions?

7 MR. FINNEGAN: Yes, I do.

8 BY MR. FINNEGAN:

9 Q. In -- on page 6, line 13, and I guess you do  
10 this again in your surrebuttal testimony, page 2, line 18,  
11 you cite a service and billing practices for residential  
12 customers of electric, gas, and water utilities, rules of the  
13 Commission; is that correct?

14 A. I do.

15 Q. And is the Briarcliff Development office  
16 building a residential customer?

17 A. No.

18 Q. Okay. And to define your customer means a  
19 person or legal entity responsible for payment.

20 Well, don't your regular rules also do that,  
21 Rule 1.04 and Rule 1.21?

22 A. I think we just went over those.

23 Q. Okay. On page 7, your answer on line 4: "No,  
24 Winbury Realty was the customer of record for the property.  
25 The company billed Winbury Realty and received payment from

1 Winbury."

2 A. Uh-huh.

3 Q. That last Winbury, who did you receive payment  
4 from?

5 A. As I understand it, it came from Winbury  
6 Group.

7 Q. What Winbury group?

8 A. I mean, that was what the check had written at  
9 the top of it. That's as far as I know.

10 Q. Uh-huh. So when you use the word Winbury  
11 throughout here, line 8 you've got Winbury, provided this  
12 service for Briarcliff Management Service, which Winbury is  
13 that?

14 A. Say that again.

15 Q. I said Winbury -- okay. The question was:  
16 These companies agree to take service so they could manage  
17 the properties for a fee paid by the property owner. Winbury  
18 provided this service for Briarcliff.

19 A. You're trying to make a distinction. I'm  
20 really not --

21 Q. Who was the property manager? Winbury Group  
22 was the property manager, wasn't it?

23 A. Well, I find that -- I understand that now,  
24 but I -- at that time, Winbury Realty was the customer of  
25 record.

1 Q. Uh-huh.

2 A. And it was -- an account was paid from 19- --  
3 from whatever dates they were for ten years. The checks came  
4 in from Winbury Group. They were the responsible customer.

5 Q. But they're not the name on the account,  
6 though, were they?

7 A. I mean, I would -- I guess I'm not going to  
8 characterize -- I don't know how that particular issue is  
9 addressed. My account for my electric service may be in my  
10 name, but the check comes in under my wife's name. I don't  
11 know if that's a violation or not.

12 I think that's -- the responsible party is  
13 paying -- making payment. The way they pay it is they say  
14 this is the check for this account, and we have a match to  
15 that, and that is the responsible party that's paying for it.  
16 They get a bill every month that says Winbury Realty, the  
17 customer decides this is the check I'm paying it from, this  
18 is the account, and this is the account it's going to, and  
19 they provide us that information. It's posted and it's  
20 received.

21 Q. It's received from the Winbury Group?

22 A. It's received from the billing that went to  
23 that address for Winbury Realty. If they decided to change  
24 that name, that's their prerogative. But they are the  
25 responsible entity.

1 Q. Did you review Mr. Hagedorn's direct testimony  
2 before you -- before you testified in this case?

3 A. I have.

4 Q. Did you note that his Schedule NH-5 is the  
5 management agreement between Briarcliff West which later  
6 became Briarcliff Development with the Winbury Group of  
7 Kansas City or not?

8 A. Did I review it?

9 Q. Did you see it?

10 A. I've seen it.

11 Q. You saw it. So who is the property manager?

12 A. Who's the property manager? The property  
13 manager -- the property -- the customer -- the customer of  
14 record was Winbury Group -- or Winbury Realty. The checks  
15 may have come through Winbury Group.

16 Q. From the property manager, right?

17 A. That's correct. That's the customer.

18 Q. The property manager was the Winbury Group.

19 A. I understand you're trying to make a  
20 distinction.

21 Q. Yes, I am.

22 A. The company doesn't try to address it that  
23 way.

24 Q. The e-mail from Mr. Sutphin -- who was a  
25 commercial sales consultant with KCP&L; is that correct,

1 A. That's right.

2 Q. He's not an attorney, is he?

3 A. No, he is not.

4 Q. When he sent this e-mail out advising on  
5 February the 8th, 2008, after -- a month and eight days after  
6 the rule went into effect, advising them that this action  
7 freezes these rates to existing customers for so long as they  
8 remain on the all-electric or space heating rates.

9 And then he says, "This also means that if the  
10 customer name changes an account served by these tariffs or  
11 an existing heat rate customer requests the rate to be  
12 changed due to changes in building usage or load, the account  
13 must be changed to a standard electric tariff."

14 Do you see that?

15 A. I do -- well, I mean, I don't have it in front  
16 of me, but I know.

17 Q. But that's your testimony?

18 A. Yeah.

19 Q. Did he make that determination, or do you  
20 know?

21 A. There was a group of people involved with  
22 making that determination and deciding to send that out.

23 MR. FINNEGAN: That's all the questions.

24 JUDGE BUSHMANN: Any questions from the  
25 Commissioners?

1 COMMISSIONER JARRETT: Yes. Thank you, Judge.

2 EXAMINATION

3 QUESTIONS BY COMMISSIONER JARRETT:

4 Q. Good morning, Mr. Rush.

5 A. Good morning. How are you doing today?

6 Q. Good, good. How are you?

7 A. Fine.

8 Q. Good to see you back in Jeff City.

9 A. It's been three days.

10 Q. You were here earlier when Ms. Kliethermes was  
11 giving her opening statement, were you not?

12 A. I was.

13 Q. And you remember I asked her a few  
14 hypothetical questions?

15 A. Right.

16 Q. I'd like to ask you the same hypothetical  
17 questions.

18 A. Okay.

19 Q. Let's assume I'm -- my name is Briarcliff  
20 Development and I'm the original customer on the -- on the  
21 bill, and I am the original user of the electricity. And I  
22 decide I -- for any -- really any business reason, I decide  
23 that, you know, I want my name listed first in the Yellow  
24 Pages, so I want to be -- I file a fictitious name change at  
25 the Secretary of State saying that I want to use the

1 fictitious name Acme Company.

2 A. Right.

3 Q. And so I call KCP&L and say I want to change  
4 the name on the account to Acme.

5 A. Uh-huh.

6 Q. Is it KCP&L's position that that is a customer  
7 change that would then disqualify me from receiving that  
8 all-electric rate?

9 A. No. We would keep you on that rate.

10 Q. Okay. So you disagree with Ms. Kliethermes on  
11 a name change?

12 A. I do.

13 Q. What about the situation where I gave about  
14 I'm the owner, it's my name, Terry Jarrett Company and I die,  
15 my widow calls up and says change the name on the account to  
16 my name. Would your answer be the same? No, my wife -- my  
17 widow would still qualify for the -- if she was the  
18 half-owner?

19 A. That's a little trickier, but I would say that  
20 we would not change the rate either. You would still qualify  
21 for the rate.

22 Q. All right. So a simple name change is not --  
23 does not trigger --

24 A. No.

25 Q. Okay.



1           A.       It's the customer change, the name of the  
2       customer -- the customer responsibility. It is the customer  
3       change.

4           Q.       Okay. I'm trying to understand that because  
5       there's no doubt that the same person that was actually in  
6       the building and using the electricity was -- was the same  
7       entity the whole time here, right?

8           A.       Uh-huh.

9           Q.       We're just talking about some different people  
10      who might have been responsible for paying for it.

11          A.       Which is the customer. I mean, it's like if  
12      you're a tenant of a place and you're paying, you know, and  
13      you don't pay electricity --

14          Q.       Uh-huh.

15          A.       -- but the ownership changes, there's a  
16      responsibility change. Well, this is a change of  
17      responsibility. We -- we could not go after Briarcliff to  
18      pay Winbury's bill. We cannot -- I mean, that's part of what  
19      we cannot do as a utility.

20          Q.       Okay.

21          A.       And that's pretty clear when all the work we  
22      do with the Commission.

23          Q.       I mean, if that's the case, then how could  
24      somebody that is not Briarcliff change the name on the  
25      account?

1           A.       Because they've taken responsibility and  
2 Briarcliff's accepted it by receiving a final bill in 1999 or  
3 whatever year that was, and they said final bill and they  
4 paid it off, and Winbury accepting responsibility to pay that  
5 bill for ten years.

6           Q.       Well -- and I know you're not a lawyer, are  
7 you?

8           A.       No, I'm not.

9           Q.       So what you're basically saying is that,  
10 because Briarcliff didn't respond to that thing that said  
11 final bill, that they basically accepted that they were no  
12 longer the customer; is that what your testimony is? I know  
13 there's a legal concept there.

14          A.       I think there's a lot more than that, but  
15 essentially, that's what I'm saying, because that happens --  
16 we turn our system over -- we have 800,000 customers, and we  
17 turn over about 250,000 customers a year that change names,  
18 change locations, move, whatever.

19          Q.       Right.

20          A.       And that is something that we take very dearly  
21 is we're -- who is the one responsible for that bill. So you  
22 can imagine all the different permutations that could occur  
23 from a customer moving in and moving out, from ownership  
24 changing hands, from somebody selling something.

25                   We are not -- in all of those businesses of

1 all those different transactions, we don't review his  
2 management agreement to say, okay, the bill should be in your  
3 name even though you want it in this name it says here. I  
4 mean, I can't imagine trying to do that.

5 Q. Okay.

6 A. That would be an incredible task of finding  
7 that information out. So we have positions that the  
8 Commission has accepted for -- since the beginning of time  
9 that talks about who is responsible, how that responsibility  
10 changes hands, all of the changes that take place. We work  
11 with the Staff to make sure that we're following rules.

12 I mean, we've -- obviously, we've challenged  
13 this issue. I mean, this is one that we're not necessarily  
14 saying we agree with. But that's what the Commission rule  
15 is, and we've had to follow that.

16 Q. Well, let me give you another hypothetical  
17 then. Let's say I work for Briarcliff. I'm a disgruntled  
18 employee. I don't like them, they've been mean to me, and so  
19 I want to -- I want to create some mischief. So I call and  
20 say to KCP&L and say: Change the name on the account to  
21 Wyndham Realty.

22 A. Uh-huh.

23 Q. And it gets changed, and you send the final  
24 bill out to Briarcliff and they pay it, but then Wyndham  
25 Realty never pays a bill because they get a bill and say we

1       never agreed to this, we -- we don't know what this is, so  
2       they just ignore it.

3                   Is it your contention, then, you couldn't go  
4       back to Briarcliff and collect on that because the name's  
5       been changed? Wyndham's a responsible party.

6           A.       First of all, you said that Briarcliff -- an  
7       employee of Briarcliff called and wanted it changed to  
8       somebody else.

9           Q.       Right. They're disgruntled.

10          A.       So we would have to have the information of  
11       the somebody else. We'd have to have tax ID. I mean, we  
12       have a process that we would make -- I think the company's  
13       called Experian. We would go through and validate tax  
14       information, is this a valid customer. We would go through a  
15       process, who is the contact person. Somewhere in there that  
16       process this would probably be a stumbling block, and so that  
17       probably would not happen.

18                   But it could be somebody calling up and saying  
19       I'm going to take over responsible -- responsibility, and if  
20       they had all those valid components that would allow us to  
21       establish them as a customer, we could do it.

22          Q.       Okay.

23          A.       And then they didn't pay, you bet we could  
24       have mischief. But what you're characterizing probably can't  
25       happen.

1           Q.       All right. Well, let's use your example then.  
2       Let's say all that happens, and it turns out to be somebody  
3       that's on a list that seems to be able to make that change.

4           A.       Sure.

5           Q.       But they were told by Briarcliff don't you  
6       ever do this because you don't have any authority to do it.

7           A.       Uh-huh.

8           Q.       But they do it anyway.

9           A.       But they do it anyway.

10          Q.       Because they're disgruntled, and they want to  
11       do it. And you change the name, Briarcliff pays the final  
12       bill --

13          A.       Right.

14          Q.       -- and then Wyndham says, well, we never -- we  
15       knew we didn't -- this employee didn't have the authority to  
16       make the change, so we're not going to pay the bill.

17                   Are you saying then in that instance, you  
18       couldn't go after Briarcliff for the --

19          A.       For the difference from the meter point?

20          Q.       Right.

21          A.       I'd have to check with a lawyer, but I don't  
22       know. I don't think so.

23          Q.       Okay.

24          A.       I mean, I think if somebody has the valid  
25       ability to set some account up and take responsibility and

1 all those components, that's what happens.

2 Q. Okay.

3 COMMISSIONER JARRETT: Well, I don't have any  
4 more questions, Mr. Rush. I thank you for your testimony.  
5 Thank you for being here today.

6 JUDGE BUSHMANN: Recross by Staff?

7 MS. KLIETHERMES: Just for clarification.

8 RECROSS-EXAMINATION

9 QUESTIONS BY MS. KLIETHERMES:

10 Q. What you were just discussing with  
11 Commissioner Jarrett is different from the benefit of service  
12 rules contained in Chapter 13; is that correct?

13 A. Yes, it is.

14 Q. And does Chapter 13 deal only with residential  
15 customers?

16 A. It does.

17 MS. KLIETHERMES: That's all. Thank you.

18 JUDGE BUSHMANN: Recross by Briarcliff?

19 MR. FINNEGAN: I have no more questions.

20 JUDGE BUSHMANN: Mr. Fischer, any redirect?

21 MR. FISCHER: Just briefly.

22 REDIRECT EXAMINATION

23 QUESTIONS BY MR. FISCHER:

24 Q. Mr. Rush, just following up on Commissioner  
25 Jarrett's questions there, was there any evidence of fraud

1       that Briarcliff requested a change of account from Winbury in  
2       this case?

3             A.       There was not.

4             Q.       Okay. Now, I'm a little confused. Maybe we  
5       can go through this. As far as if -- let's just assume that  
6       we have an account that's listed as Briarcliff Development.

7             A.       Uh-huh.

8             Q.       That's the customer of record. And you would  
9       assume they are responsible for payment of the Briarcliff  
10      bill; is that right?

11            A.       Yes, that's correct.

12            Q.       Now, if some third party, Mr. Fischer,  
13      Mr. Finnegan or whatever, sends a check in on -- on to their  
14      account, would you accept that money?

15            A.       If it was linked to it, you bet, yes.

16            Q.       Well, if you sent a bill to Mr. Finnegan or  
17      Mr. Fischer for that account and those gentlemen refused to  
18      pay, would you -- would you be able to go after those folks?

19            A.       If the account was still under Briarcliff?

20            Q.       Yes.

21            A.       No.

22            Q.       Okay. Now, if -- if -- if Winbury called and  
23      said we want to take over responsibility for paying on this  
24      account, change our customer account --

25            A.       Uh-huh.

1 Q. -- would you do that?

2 A. If we had all the characteristics to create a  
3 customer account, meaning there was validity to it, we could  
4 do that, yes.

5 Q. And even if their affiliate paid the bill, you  
6 would continue to accept that money?

7 A. Yes.

8 Q. Okay. And is that essentially what happened  
9 here?

10 A. To me, that's what appears.

11 MR. FINNEGAN: Objection. This calls for a  
12 legal conclusion.

13 JUDGE BUSHMANN: Overruled.

14 THE WITNESS: To me, that's exactly what  
15 happened in this case.

16 BY MR. FISCHER:

17 Q. Mr. Finnegan asked you about your testimony  
18 where you quoted the Commission's Chapter 13 rules on the  
19 bottom of page 2.

20 A. Right.

21 Q. And you recognize that Chapter 13 applies to  
22 residential customers?

23 A. That's correct.

24 Q. Is there any comparable chapter in any PSC  
25 rules that apply to commercial industrial customers?



1           A.       I don't think there are, no.

2           Q.       From your perspective, because it's a  
3 commercial customer rather than residential customer, does  
4 that change the definition of customer and make that  
5 incorrect?

6           A.       I don't think it makes it incorrect. If you  
7 go to our provisions of our tariffs, we outline components  
8 that talk about responsible parties.

9                   MR. FINNEGAN: Objection. He's asking him a  
10 legal question, and he's not a lawyer. He already said that.

11                  JUDGE BUSHMANN: I'll overrule the objection.

12                  THE WITNESS: I was just going to say that our  
13 tariffs outline how we address commercial and residential  
14 customers.

15 BY MR. FISCHER:

16           Q.       And on page 3, you do quote from your tariff  
17 on who is a responsible party; is that right?

18           A.       That's correct, yes.

19           Q.       Does that include a property management  
20 company?

21           A.       It does.

22           Q.       Ms. Kliethermes took you down a road on  
23 talking about fully distributed costs and discounts on  
24 all-electric rates, and I'd like to ask you, why -- you at  
25 one point said that you didn't consider it a discount, and I

1 wanted to ask you, why not?

2 A. Well, the design that we have of our rates is  
3 to -- is essentially to address cost of service. What we're  
4 trying to address is the components that would say how we  
5 recover our revenues and how the returns are -- are from  
6 those charges that we make.

7 It's not required that you have a levelized  
8 return on your investment. I know there are a kazillion ways  
9 of looking at cost of service and components. You're  
10 essentially, in any rate design, attempting to minimally  
11 cover your variable cost and any contribution you receive  
12 beyond that goes to your recovery of your fixed costs.

13 And so rate design is a very, very specific  
14 art and not necessarily dictated by looking at a single point  
15 in time, taking a return based on an assumption that has  
16 hundreds and hundreds of assumptions to it and saying that is  
17 a discount or not a discount. I mean, if you have any  
18 return, that is not a discount, if you have a return on your  
19 investment, if you're covering your variable costs.

20 I just -- I don't like the term of discount.  
21 I think that we try to address cost of service.

22 Q. Ms. Kliethermes referred you to that cost of  
23 service study in that case.

24 Do you recall if the all-electric rates that  
25 covered their variable or incremental costs made a

1 contribution towards fixed?

2 A. They did.

3 Q. Fixed plan?

4 A. Yes, they did.

5 Q. And is the all-electric rate essentially

6 designed for space heating customers in the winter?

7 A. It is. In fact, it's designed to deal with  
8 the load characteristics, which are very, very different than  
9 a general use customer, and that's why there's a specific  
10 rate design for it.

11 Now, the Commission hasn't necessarily bought  
12 into that in recent years because of people protesting it,  
13 particularly the gas company and the steam business, but  
14 there are very specific load characteristics that would  
15 dictate different prices and different cost elements that we  
16 try to address in our cost of service.

17 Q. Is KCP&L a summer- or a winter-peaking  
18 company?

19 A. We're a summer-peaking company.

20 Q. Do you still have a summer and a winter  
21 differential?

22 A. We do, yes.

23 Q. Is the winter differential less than the  
24 summer rate?

25 A. The winter price is a lower price per kilowatt

1 hour than the summer price.

2 Q. Is that winter rate a discount then?

3 A. No, it is not. That's what I'm trying to say.  
4 It is based on cost of service and design looking at trying  
5 to recover your variable and a contribution to your fixed  
6 costs.

7 Q. So your off-peak rates could be less than your  
8 on-peak rates and still cover its costs?

9 A. Yes.

10 MR. FISCHER: I think that's all I have.  
11 Thank you, Judge.

12 JUDGE BUSHMANN: Thank you, Mr. Rush. You may  
13 step down, sir.

14 We do have one more witness today, and I  
15 wanted to check with the parties if you have -- anticipate  
16 lengthy questioning from this witness. We're getting close  
17 to noon. If there is -- if the parties anticipate a lot of  
18 questions, we can break for lunch and come back afterwards;  
19 otherwise, we can just push on.

20 MR. FISCHER: We will have little, Judge, if  
21 any.

22 MR. FINNEGAN: We will have little, if any,  
23 also.

24 MR. FISCHER: I can waive him right now.

25 JUDGE BUSHMANN: Why don't we go ahead, then,

1 and proceed. Michael Scheperle.

2 (The witness was sworn.)

3 JUDGE BUSHMANN: Please be seated. You may  
4 proceed.

5 DIRECT EXAMINATION

6 QUESTIONS BY MS. KLIETHERMES:

7 Q. Good very late morning, Mr. Scheperle. Could  
8 you state and spell your name for the record.

9 A. My name is Michael Scheperle, and the spelling  
10 is M-i-c-h-a-e-l, S-c-h-e-p-e-r-l-e.

11 Q. And by whom and how are you employed?

12 A. I'm employed by the Missouri Public Service  
13 Commission, and my title is manager of economic analysis.

14 Q. And are you the same Mike Scheperle who  
15 submitted direct and surrebuttal testimony in this matter?

16 A. Yes.

17 Q. Do you have any corrections to make to any of  
18 those documents?

19 A. Yes. I have three corrections on the direct  
20 testimony. The first one would be on page 5. It would be  
21 line 22, and its reference is Appendix A. It should be  
22 Appendix 1.

23 Q. Okay.

24 A. The second correction would be on page  
25 Appendix 1.3, about a third of the way from the top. The

1 definition of person, the second line there, I misspelled  
2 private. I forgot the "R" there.

3 And the -- the third correction is  
4 Appendix 1.5, and it's on the conclusion and recommendation,  
5 and it's part of the last sentence there. I would like for  
6 it to read: "From its electric service that started in the  
7 summer of 1999, the electric service at 4100 North Mulberry  
8 Street was served under the medium general service  
9 all-electric rate schedule until January 24, 2001, and  
10 commencing January 25, 2001," and then just continuing with  
11 the rest of that sentence.

12 Q. Did you also prepare a Staff's recommendation  
13 in this docket, in conjunction with myself?

14 A. Yes.

15 Q. And would those changes that you just  
16 indicated to the appendix to your direct testimony also be  
17 applicable to the recommendation document?

18 A. Yes.

19 Q. As corrected, would those documents represent  
20 your testimony here today?

21 A. Yes.

22 Q. And if I were to ask you today to answer the  
23 same questions or to draft the same variety of  
24 recommendations, would the product be the same?

25 A. Yes.

1 MS. KLIETHERMES: I offer Mr. Scheperle's  
2 direct and surrebuttal testimony and tender the witness for  
3 cross.

4 JUDGE BUSHMANN: Staff Exhibits 1 and 2 have  
5 been offered. Any objections?

6 MR. FINNEGAN: No objection.

7 JUDGE BUSHMANN: Hearing none, Staff Exhibits  
8 1 and 2 are admitted into the record.

9 (STAFF EXHIBIT NUMBERS 1 AND 2 WERE RECEIVED  
10 INTO EVIDENCE BY JUDGE BUSHMANN.)

11 JUDGE BUSHMANN: Cross-examination by KCP&L?

12 MR. FISCHER: No, thank you, Judge.

13 JUDGE BUSHMANN: Cross-examination by  
14 Briarcliff?

15 MR. FINNEGAN: I don't have any questions  
16 either, Judge.

17 JUDGE BUSHMANN: Any questions from the  
18 Commissioners?

19 COMMISSIONER JARRETT: No questions from me.

20 JUDGE BUSHMANN: No recross, then. No  
21 redirect. Thank you, Mr. Scheperle. You may step down, sir.

22 Would any parties like to make a closing  
23 statement today?

24 MR. FINNEGAN: Not at this time.

25 MR. FISCHER: Judge, are you anticipating

1       waiving briefs?

2                   JUDGE BUSHMANN:  I was not.  What I was  
3       anticipating to do and was staying with Judge Stearley's  
4       original procedural schedule, which would call for expedited  
5       transcript on January 26th, first briefs February 6th,  
6       postfindings and conclusions on February 8th, and then reply  
7       briefs on February 17th.

8                   That was in the original -- I think that was  
9       in Judge Stearley's amended procedural schedule.

10                  MR. FINNEGAN:  Yes.

11                  JUDGE BUSHMANN:  Any parties have any  
12       objection to that?

13                  MR. FISCHER:  With the briefing schedule, I  
14       have no need to make a closing then.

15                  JUDGE BUSHMANN:  All right.  In that case, are  
16       there any other matters that need to be addressed before we  
17       adjourn?

18                  In that case, the evidentiary hearing in  
19       Briarcliff Development Company vs. Kansas City Power & Light  
20       Company, File Number EC-2011-0383 is hereby adjourned.  We're  
21       off the record.

22                               (End of Proceedings.)  
23  
24  
25



## 1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI )

) ss:

3 COUNTY OF GASCONADE )

4

5 I, JENNIFER L. LEIBACH, Registered Professional

6 Reporter, Certified Court Reporter, CCR #1108, and Certified

7 Realtime Reporter, the officer before whom the foregoing

8 matter was taken, do hereby certify that the witness/es whose

9 testimony appears in the foregoing matter was duly sworn;

10 that the testimony of said witness/es was taken by me to the

11 best of my ability and thereafter reduced to typewriting

12 under my direction; that I am neither counsel for, related

13 to, nor employed by any of the parties to the action in which

14 this matter was taken, and further that I am not a relative

15 or employee of any attorney or counsel employed by the

16 parties thereto, nor financially or otherwise interested in

17 the outcome of the action.

18

19 \_\_\_\_\_

20 Court Reporter

21

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23

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Highly Confidential		
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