

Case No. EE-2006-0123

Effective Date: **October 28, 2005**

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

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Appearances

Shawn Stewart, The Stewart Law Firm, 4505 Madison Ave., Kansas City, Missouri 64111,
for WST, Inc.

Curtis Blanc, Attorney at Law, 1201 Walnut, Kansas City, Missouri 64111, for Kansas City
Power & Light Company

Nathan Williams, Senior Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission

REGULATORY LAW JUDGE: Morris L. Woodruff, Senior Regulatory Law Judge

REPORT AND ORDER

Syllabus: In this Report and Order, the Missouri Public Service Commission grants WST, Inc.'s request for a variance from the provisions of Kansas City Power & Light Company's tariffs so as to allow KCPL to provide electric service to a newly renovated building through the use of a master meter for the entire building rather than requiring individual metering for each of the condominium units within the building.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

WST is the developer of WallStreet Tower Condominiums located at 1101 Walnut Street in downtown Kansas City, Missouri. WST has renovated the 20-story former commercial office building into condominium units, which it is selling to the public. When the tower was constructed its electrical system was designed using a common power

distribution scheme. That central electrical system was retained as the building was converted to condominiums. That means that the individual condominium units are not individually metered.

Kansas City Power & Light provides electric service to the tower. On August 16, 2005, KCPL notified WST in writing that KCPL's tariffs would require individual metering to serve the individual condominium units. KCPL also informed WST that if it did not want to install individual meters in its building it would need to ask the Commission for a variance from KCPL's tariff.

WST filed its Application for Variance on September 21. At the same time, WST filed a Motion for Expedited Treatment. WST indicated that its renovation of the tower is in its final stages and that closing on the sale of the first condominium unit is set to occur on October 19. WST asked the Commission to grant its application by that date.

On September 22, the Commission issued an order making KCPL a party to this case. The Commission also directed KCPL and the Commission's Staff to file their responses to WST's application for variance by October 3.

KCPL filed its response on October 3. KCPL confirmed its belief that its tariff requires that electric service to the individual units of the WallStreet Tower Condominiums building be provided through separate meters for each individual unit. KCPL contended that it cannot undertake a practice that would be inconsistent with the requirements of its tariff. If it is to provide service to the tower through a master meter, KCPL argued that the Commission must grant it a variance from the requirements of its tariff. KCPL took no position on whether WST's application for such a variance should be granted.

Staff also filed a response on October 3. Staff indicated its belief that the Commission lacks the authority to waive KCPL's tariff to require KCPL to provide electric service to the tower by means of a master meter.

Because of the need for expedited consideration of WST's application, the Commission scheduled a prehearing conference for October 7, and an evidentiary hearing for October 12. WST, KCPL, and Staff participated in the hearing and presented evidence. Brian Freedock, the owner's representative and construction manager of the project, testified on behalf of WST; Tim Rush, director of regulatory affairs for KCPL, testified on behalf of KCPL; and James Watkins, manager of economic analysis for the Staff, testified on behalf of Staff. The parties gave closing arguments in lieu of post-hearing briefs.

The Project

WST is the owner and developer of the WallStreet Tower Condominiums project at 1101 Walnut Street in downtown Kansas City. The 20-story building is located in what has been designated as a blighted area, and its renovation is part of a plan designed to encourage the redevelopment of Kansas City's downtown urban core.¹ The building that has been renovated was originally built in 1973.² Before renovation it was a general commercial and office building.³ WST purchased the building for between \$12 and \$14 million, and will spend approximately \$20 million to renovate the building.⁴ When

¹ Transcript, page 16, lines 2-13.

² Transcript, page 32, lines 7-11.

³ Transcript, page 32, lines 1-6.

⁴ Transcript, page 27, lines 5-16.

renovation is complete, the building will contain approximately 143 residential condominium units with the potential of four commercial units.⁵ The average condominium unit will sell for approximately \$300,000.⁶

The building currently receives electric power from KCPL through a series of transformers located in a vault in the building. Power from the transformers is sent to a master meter owned by KCPL. It is at that point that KCPL measures and bills for the electricity used in the building.

From the master meter, the electricity is distributed through a switchboard and sent throughout the building on a series of bus ducts to the various floors of the building.⁷ The building's electrical distribution system is set up in such a way that the power to each individual unit cannot be separated without renovating the entire system by installing a new switch gear.⁸ The cost of purchasing the switch gear alone would exceed \$250,000.⁹ The cost of making the other revisions of the electrical system required to allow KCPL to install individual meters for each residential units within the building would likely approach \$1 million.¹⁰ Furthermore, the completion of the project would be delayed by approximately six months.¹¹

Rather than have KCPL install an individual meter for each condominium unit, WST proposes that the existing master meter remain in use. KCPL would then bill the WallStreet

⁵ Transcript, page 9, lines 1-3.

⁶ Transcript, page 21, lines 2-5.

⁷ Transcript, page 9, lines 4-15.

⁸ Transcript, page 9, lines 19-25.

⁹ Transcript, page 10, lines 1-7.

¹⁰ Transcript, page 14, lines 12-25.

¹¹ Transcript, page 17, lines 7-14.

Tower Condominiums Association, Inc., for all the electricity used in the building. In turn, the Association would bill its members for the electricity they use in their individual condominium units. The cost of electricity used in the common areas of the building would be assessed to the owners of the various condominium units as an expense of operating the condominium. The Association would be responsible for paying the entire bill from KCPL.

The Association is a corporation that has been registered with the Missouri Secretary of State.¹² At the moment, since no sale of a condominium units has yet closed, WST, the owner of the unsold units, is the only member of the Association.¹³ As the units are sold, their new owners will become members of the Association with equal voting privileges, one vote per member.¹⁴ Once it has sold all the condominium units, WST will no longer have any role in the ownership of the condominium or operation of the Association.¹⁵

The sale of the first condominium unit is scheduled to close on October 19.¹⁶ WST's witness testified that if its application for a master metering variance is not granted by October 19, the closing will proceed with WST retaining responsibility for paying the entire electric bill for the building. However, additional closings are scheduled for October 31 and November 4. At that time, the sale of all units in the upper four floors will have closed with

¹² Transcript, page 12, lines 1-4.

¹³ Transcript, page 34, lines 14-23.

¹⁴ Transcript, page 13, lines 1-4.

¹⁵ Transcript, page 35, lines 1-8.

¹⁶ Transcript, page 16, lines 21-24.

as many as thirty condominium owners ready to move in. At that point, WST would no longer be willing to accept responsibility for paying the electric bill for the entire building.¹⁷

KCPL's Tariff

KCPL contends that the provisions of its tariff will not allow it to provide service to the owners of the condominium units through the existing master meter. It points to a section of its tariff that states that, except in limited circumstances that do not apply here, the company will not supply electric service to a customer for resale or redistribution by the customer.¹⁸ KCPL interprets this provision of its tariff to forbid the sale of electricity to the Association in the manner that the Association has requested.¹⁹

Public Interest Concerns

KCPL's tariff forbidding the resale or redistribution of electricity is related to a federal statute enacted in 1978 and designed to encourage the conservation of energy. The Public Utility Regulatory Act of 1978,²⁰ known as PURPA, requires that individual meters be installed in new buildings to encourage the conservation of energy by the occupants of those buildings.²¹ The Commission promulgated a regulation – 4 CSR 240-20.050 – to implement the requirements of PURPA. That regulation requires that separate metering be installed in buildings constructed after June 1, 1981. However, by its express terms, that regulation does not apply to buildings constructed before June 1, 1981.²² Since it was

¹⁷ Transcript, pages 33-34, lines 23-25, 1-7.

¹⁸ Kansas City Power & Light Company, P.S.C. MO No. 2, Second Revised Sheet No. 1.19, Section 5.03. This section of the tariff was admitted into evidence as a part of Exhibit 1.

¹⁹ Transcript, page 65, lines 8-11.

²⁰ 16 U.S.C. 2601 et seq.

²¹ 16 U.S.C. 2625(d).

²² 4 CSR 240-20.050(2).

constructed before 1981, and before Congress passed PURPA, neither PURPA, nor the Commission's regulation would require that the WallStreet Tower Condominiums project be individually metered. However, KCPL's tariff is broader than either PURPA, or the Commission's regulation, in that it does not contain an explicit limitation on its applicability to older buildings.²³

While neither PURPA, nor the Commission's regulation, directly controls KCPL's ability to serve the condominium owners through a master meter, the public policy expressed in that statute and regulation is relevant to the Commission's decision concerning WST's application. Now, more than ever, the public interest is served by promoting the conservation of electricity.

In general, consumers of electricity are more likely to restrict their use of that resource if they are responsible for paying for the electricity that they use. That is the rationale for the restriction on master metering found in PURPA. If a landlord, or in this case a condominium owners association, is paying the bill, the electric consumers will have less incentive to conserve electricity. The Association's plan for allocating the cost of electricity to its members, however, alleviates that concern.

The Association will install monitoring devices to measure the amount of electricity that is actually used in each individual condominium unit. The owner of each unit would then be billed by the Association for the exact amount of electricity used in that unit.²⁴

²³ WST argues that there is an implicit limitation on KCPL's tariff. That argument will be addressed in the Conclusions of Law section of this Report and Order.

²⁴ Transcript, page 12, lines 12-17.

Staff's witness, James Watkins, conceded that the energy conservation goals of PURPA would be met through the use of the monitoring devices installed by the Association.²⁵

Conservation of energy is not the only concern that Staff has about the Association's plan to serve the residents of WallStreet Tower through a master meter. Staff also pointed out that when the residents of WallStreet Tower are separated from KCPL, the supplier of electricity, by a third party distributing electricity from a master meter, they are no longer customers of KCPL. That means that they are not entitled to receive the consumer protections afforded to KCPL's customers, including regulation by this Commission.²⁶

Staff's concerns about consumer protection are certainly a cause for concern. However, those concerns are alleviated in this case by the fact that the third party that would be redistributing the electricity is a condominium owners association that is subject to the direct control of its members. So long as the consumers who purchase the condominium units are aware of the situation that they are buying into, the Staff's concerns about consumer protection will not swing the balance against approving WST's application for a variance.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law:

KCPL is an "electric corporation" and a "public utility" as those terms are defined in Section 386.020 (15) and (42), RSMo 2000. As such, it is subject to the jurisdiction of this Commission pursuant to Section 386.250, RSMo 2000.

²⁵ Transcript, page 59, lines 6-16.

²⁶ Transcript, page 43, lines 12-23.

The Commission has a regulation that, in general, requires the use of individual electric meters in multiple occupancy buildings. However, that regulation, 4 CSR 240-20.050, applies only to multiple-occupancy buildings constructed after June 1, 1981. Since the WallStreet Tower was constructed before 1981, the Commission's regulation does not apply, and does not require KCPL to install individual meters in that building.

Two sections of KCPL's tariff relate to the master metering question. Section 5.01 of KCPL's Missouri Tariff No. 2 provides:

INDIVIDUAL METERING FOR SEPARATE PREMISES: Except as otherwise provided in this Rule 5, the occupant of each separate premises in or on any multiple occupancy premises will be individually metered and supplied electric service as the Customer of the Company, which electric service shall be utilized by the Customer only for the operation of the Customer's installation located in or on the separate premises for which such electric service is supplied pursuant to the Customer's service agreement.²⁷

Section 5.03 of KCPL's Missouri Tariff No. 2 provides:

RESALE AND DISTRIBUTION: Except as provided in Rules 5.05, 5.06 and 5.07²⁸ hereof, the Company will not supply electric service to a Customer for resale or redistribution by the Customer.

(a) "Resale" shall mean the furnishing of electric service by a Customer to another person under any arrangement whereby the Customer makes a specific or separate charge for the electric service so furnished, either in whole or in part, and whether the amount of such charge is determined by submetering, remetering, estimating or rebilling as an additional charge, flat, or excess charge, or otherwise.

(b) "Redistribution" shall mean the furnishing of electric service by the Customer (i) to another building occupied by the Customer and located on the same premises of the Customer but used by the Customer for a separate business enterprise, or (ii) to separate premises occupied by another person, whether or not such premises are owned, leased or controlled by the Customer, without making a specific or separate charge for the electric service so furnished. With respect to any multiple-occupancy premises, the Company will not supply (sic) electric service to the owner, lessee, or operator thereof, as the Customer of the Company, and permit redistribution by such

²⁷ Kansas City Power & Light Company, P.S.C. MO No. 2, Second Sheet No. 1.18.

²⁸ Rules 5.05, 5.06 and 5.07 apply only to parties that were reselling or redistributing electricity before January 10, 1966. They do not apply in this case.

Customer to his office or residential tenants therein, except for those premises being supplied such service on the effective date of this schedule. The restriction against “redistribution” may be waived by the Company where the operation of certain types of multiple occupancy premises, either in whole or in part, makes it impractical for the Company, in its judgment, to separately meter and supply electric service to each occupant as a Customer of the Company. Such exceptions may include:

(i) An operation catering predominately to transients, such as hotels, motels, and hospitals;

(ii) An operation where the individual dwelling quarters are not equipped with kitchen and bathroom facilities, such as recognized rooming houses, dormitories, old folks homes, orphanages and eleemosynary institutions;

(iii) An operation of a building used essentially for general office or commercial purposes where the separate premises leased to office or commercial tenants are adjustable and subject to rearrangement or relocation to conform to the needs of the tenants and the Company deems it would be impractical to rearrange wiring to conform to any such changes;

(iv) An operation of a transient mobile home court (see Rule 14.02) where electric service is supplied by the Company to the operator, as the Customer of the Company, pursuant to an applicable rule or rate schedule of the Company.

In cases where redistribution is permitted under this Rule 5.03, the Company will supply electric service to the owner, lessee, or operator of such multiple occupancy premises, as the Customer of the Company, under an applicable rate schedule, and the Customer may, by redistribution, furnish electric service to his tenants in or on such multiple occupancy premises on a rent inclusion basis; i.e. as an incident of the tenancy and without a specific or separate charge for the electric service so furnished by the Customer to his tenant, or a variable rental on account thereof.²⁹

By their terms, these two tariff provisions would prevent KCPL from providing electric service to the residents of the WallStreet Tower Condominiums project through the use of a master meter. Clearly, the Association’s plan to take electric service from KCPL through a master meter and then bill its members for the electricity they use in their individual

²⁹ Kansas City Power & Light Company, P.S.C. MO No. 2, Second Sheet No. 1.19 and Second Sheet No. 1.20.

condominium units would constitute the resale of electricity as that practice is defined in section 5.03 of KCPL's tariff.

WST points out that KCPL's separate tariff provision relating to the placing of electric meters in multiple-occupancy buildings – Section 6.03³⁰ – applies only to buildings constructed after June 1, 1981. From this fact, WST argues that Section 5.03 is ambiguous because it does not include a limitation for buildings constructed before 1981. WST would therefore imply a similar limitation in Section 5.03 based on the subsequent adoption of Section 6.03, including the 1981 limitation.

WST's argument is creative, but not persuasive. The plain language of Section 5.03 is clear and unambiguous. The Commission will not strain to create an ambiguity where none exists. KCPL's tariff clearly provides that KCPL may not serve the residents of the WallStreet Tower Condominiums through a master meter. Furthermore, the individual metering requirements promoted by the tariff generally serve the public interest in promoting conservation of energy and in providing protection to consumers. For that reason, the Commission does not want to limit the general applicability of the rule. However, there may be circumstances where adherence to the requirements of the tariff may not promote the public interest. The question then becomes, does the Commission have the authority to grant a variance from that regulation?

WST and KCPL agree that the Commission has the authority needed to grant the variance requested by WST. WST indicates that the Commission's authority is derived from Section 393.140(11), RSMo 2000, which gives the Commission the authority to require electric corporations to file tariffs. That statute specifically gives the Commission

³⁰ Kansas City Power & Light Company, P.S.C. MO No. 2, Fifth Sheet No. 1.22

the power to “prescribe the form of every such schedule, and from time to time prescribe by order such changes in the form thereof as may be deemed wise.”

It is also clear that the Commission has granted variances from the questioned provision of KCPL’s tariff in the past. In two recent cases, EE-2003-0199³¹ and EE-2003-0282,³² the Commission granted variances from Section 5.03 of KCPL’s tariff to allow for the master metering of service to apartment buildings in Kansas City. Since the Commission has granted such variances in the past, and since KCPL agrees that the Commission has the authority to grant such a variance from its tariff, the Commission finds that it has the authority to grant the variance requested by WST, if it is in the public interest to do so.

DECISION

Installation of separate meters for each condominium unit in the WallStreet Tower would cost approximately a million dollars and would substantially delay completion of a community redevelopment project that is very important to the future of Kansas City. Furthermore, the public interest in conservation of electrical energy expressed in PURPA and the Commission’s master metering regulation will be served by the monitoring of electrical use proposed by WST as an alternative to individual metering of the condominium units.

³¹ *In the Matter of the Application of Kansas City Power & Light Company for a Variance from the Separate Meter Requirement*, Order Granting Variance, March 27, 2003.

³² *In the Matter of the Application of Kansas City Power & Light Company for a Variance from the Commission’s Rule, and Kansas City Power & Light Company’s Tariff, that Require Separate Metering for a New Building Located at Bishop Spencer Place, 4301 Madison Avenue, Kansas City, Missouri*, Order Granting Variance, May 13, 2003.

The public interest in protecting consumers is also met in this case because the entity that will be reselling the electricity to the individual condominium owners will be an association that will include all of those owners. Each unit owner will have one vote in the Association and most of the units have already been sold. Once all the units have been sold, WST, as the developer will no longer be involved in the Association. Furthermore, WST has agreed to insert provisions into the condominium declarations that will incorporate the relevant consumer protections found in the Commission's regulations at 4 CSR 240-13. Presumably, the owners association will act in the best interest of its members. Provided that the individual owners are aware of the situation at the time they purchase their condominium units, they should be able to protect their own interests as consumers.

KCPL indicates that if a master meter is permitted for this building, it would be appropriate for KCPL to provide service to the condominium owners association under its commercial rate schedule, including the terms and conditions of service that apply to that rate. That would mean that the condominium owners association, and not any individual condominium unit owner, would be KCPL's customer. That also means that if the owners association failed to pay the electric bill, KCPL could shut off electric power at the master meter, in effect shutting off power to the owners of individual condominium units.

To assure that the purchasers of condominium units are aware that they will be customers of the condominium owners association rather than customers of KCPL, the Commission will require WST to insert warning language into the declarations of the condominium owners association, which must be recorded and made a part of the real estate record for each of the condominium units. Following the hearing, the Commission

directed the parties to submit suggested language to be included in that warning. The Commission will adopt the following language:

**Notice to Condominium Owners Concerning The Provision of
Electric Service at WallStreet Tower**

As a unit owner in the WallStreet Tower condominium project, you are not a customer of Kansas City Power & Light Company (“KCPL”). The consumer protection provisions of KCPL’s tariff on file with the Public Service Commission of the State of Missouri do not apply to the WallStreet Tower Condominiums Association, Inc.’s provision of your electric service. Furthermore, the Missouri Public Service Commission does not regulate the service that will be offered by the Association. The terms and conditions of your electric service are as set forth in your contractual agreement with the Association. In its declaration, the Association has agreed to abide by the relevant requirements of the Public Service Commission’s consumer protection rules regarding billing, notice, and denial of service. These protections do not apply if KCPL shuts off service to the Association. In the event of an interruption in electric service, please contact the Association which will, if necessary, contact KCPL.

Given the particular circumstances that exist in this case, the Commission finds that it would be in the public interest to grant a variance from KCPL’s tariff to allow the master metering plan proposed by WST to proceed.

This decision is limited to the circumstances as they exist in this case. KCPL suggested that there may be more condominium development projects underway that will request master metering under similar circumstances. KCPL requests that the Commission provide guidance on how such future developments should be handled. The Commission will not do so in this case, but suggests that KCPL carefully examine its own tariff to determine whether it wishes to make any modifications to that tariff.

IT IS THEREFORE ORDERED:

1. That Kansas City Power & Light Company is granted a variance from the separate meter requirements of its tariffs, including sections 5.01 and 5.03 of Missouri Tariff

No. 2, so as to permit the installation of a master meter for WallStreet Tower Condominiums, located at 1101 Walnut Street in Kansas City, Missouri.

2. That WST, Inc., shall insert the following language into the declarations of the WallStreet Tower Condominiums Association. Inc.:

**Notice to Condominium Owners Concerning The Provision of
Electric Service at WallStreet Tower**

As a unit owner in the WallStreet Tower condominium project, you are not a customer of Kansas City Power & Light Company ("KCPL"). The consumer protection provisions of KCPL's tariff on file with the Public Service Commission of the State of Missouri do not apply to the WallStreet Tower Condominiums Association, Inc.'s provision of your electric service. Furthermore, the Missouri Public Service Commission does not regulate the service that will be offered by the Association. The terms and conditions of your electric service are as set forth in your contractual agreement with the Association. In its declaration, the Association has agreed to abide by the relevant requirements of the Public Service Commission's consumer protection rules regarding billing, notice, and denial of service. These protections do not apply if KCPL shuts off service to the Association. In the event of an interruption in electric service, please contact the Association which will, if necessary, contact KCPL.

3. That, in addition, WST, Inc., shall insert into the declarations of the WallStreet Tower Condominiums Association. Inc., language regarding the relevant provisions of Commission Rule 4 CSR 240-13 that WST, Inc., shall submit in a pleading filed in this case no later than October 21, 2005.

4. That all other motions not specifically ruled upon by the Commission are denied and that any objections not specifically ruled upon are overruled.

5. That this Report and Order shall become effective October 28, 2005.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC.,
concur and certify compliance with the provisions
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 19th day of October, 2005.