

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

In the Matter of the Application of)	
The Cathedral Square Corporation,)	
A Missouri Non-Profit Corporation, For a)	<u>Case No. EO-2012-0141</u>
Variance from Kansas City Power & Light)	
Company's General Rules and Regulations)	
Requiring Individual Metering)	

STAFF'S STATEMENT OF POSITION

COME NOW the Staff of the Missouri Public Service Commission ("Staff"), pursuant to the Commission's *Order Setting Procedural Schedule* dated January 19, 2012, and hereby states Staff's position regarding the *List of Issues* filed April 6, 2012:

Issue One: Does Missouri law, i.e. Section 393.140(11), RSMo, give the Commission the authority to grant variances to provisions of KCPL's tariffs?

No. Staff's position is that Section 393.140(11) does not authorize the Missouri Public Service Commission ("Commission") to grant variances to provisions of Kansas City Power & Light Company's ("KCPL") tariffs because the "filed rate doctrine" prohibits a company from collecting a different compensation other than the rates and charges specified in its filed-and-effective tariff.¹

¹ Section 393.140(11) RSMo: "No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time..." See also *State ex rel. Ag Processing v. Public Service Commission*, 311 S.W.3d 361, 365 (Mo. App. 2010).

Staff's position is that the Commission has the authority to order a utility to change its tariff if the public interest so requires.²

Issue Two: Does 4 CSR 240-20.050(2) of the Commission's regulations, which provides that "each residential and commercial unit in a multiple-occupancy building construction of which has begun after June 1, 1981 shall have installed a separate electric meter for each residential or "commercial unit," require the Cathedral Square Towers building located at 444 W. 12th Street in Kansas City, Missouri to have installed a separate electric meter for each residential or commercial unit?

No. Staff's position is that Rule 4 CSR 240-20.050(2) does not apply to the Cathedral Square Tower ("CST") building, because it was constructed before 1981. Therefore, separate meters are not required for CST pursuant to this rule.³

Issue Three: If (a) the Commission does have the authority to grant variances to provisions of KCPL's tariffs, and (b) 4 CSR 240-20.050(2) does not require the Cathedral Square Towers building to have installed a separate electric meter for each unit, then should the Commission grant CSC its requested variance to the pertinent provisions of KCPL's tariffs requiring separate metering, i.e. 5.01 and 5.03 of its General Rules and Regulations Applying to Electric Service, and permit the installation of a master electric meter for the Cathedral Square Towers?

No, unless the Commission orders KCPL to amend its tariff to allow variances such as the variance CSC requests.

Staff's position is that it is in the public interest to allow master metering service to CST so long as CST is being operated by an Internal Revenue Code ("IRC") § 501(c)(3) qualified organization and used to provide subsidized housing to low-income

² "A schedule of rates and charges filed and published in accordance with the foregoing provisions acquires the force and effect of law; and as such it is binding upon both the corporation filing it and the public which it serves. It may be modified or changed only by a new or supplementary schedule, filed voluntarily, or by order of the commission." *State ex rel. St. Louis Gas Co. v. Public Service Commission*, 286 S.W. 84, 86 (1926). See also *State ex rel. Kennedy v. Public Service Commission*, 42 S.W.2d (Mo. 1931).

³ See *Staff's Recommendation to Grant Relief and Memorandum of the Electric Meter Variance Committee*, p.3 filed December 7, 2011.

elderly and/or disabled individuals who pay fixed rent inclusive of utilities.⁴ To implement this finding, the Commission should order KCPL to amend Tariff 5.01.⁵ Then, the Commission should order KCPL to grant CSC a variance from the separate metering requirement, after the tariff has been amended.

Issue Four: *If the Commission grants CSC the variance from the separate meter requirements of the KCPL tariffs, would the Cathedral Square Towers building qualify for KCPL's Residential Service rate schedule or its General Service rate schedule?*

The Commission cannot grant a “variance” from a filed and effective tariff. If the Commission grants the relief described in Staff’s position on Issue Three above, then CST would qualify for KCPL’s General Service rate schedule, because KCPL tariff provisions for the General Service rate schedules (Small, Medium, and Large) define “rate applicability” as “Applicable to multiple-occupancy buildings when the tenants or occupants of the building are furnished with electric service on a rent inclusion basis.”⁶ CST is a multiple-occupancy building, tenants are furnished electric service, and the tenants pay fixed rent, inclusive of utilities.

WHEREFORE, Staff hereby submits its Statement of Position on the List of Issues filed April 6, 2012.

⁴ See *Rebuttal Testimony of Michael S. Schepeler*, p. 5, ln. 5- p. 7 ln. 8. Variance Committee Memo p. 7-11.

⁵ Staff’s Recommendation, pg. 5. The Company should change its tariff to add the emphasized language, or similar language: “5.01 INDIVIDUAL METERING FOR SEPARATE PREMISIS: Except as otherwise provided in this Rule 5 or if the Commission has granted a variance permitting otherwise, the occupant of each separate premises in or on any multiple occupancy premises will be individually metered ...”

⁶ P.S.C. MO. No. 7, Sheet Nos. 9, 10, and 11.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 9th day of April, 2012.

/s/ John D. Borgmeyer