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BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

October 7, 2005  
Jefferson City, Missouri  
Volume 1

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

MORRIS WOODRUFF, Presiding,  
Senior Regulatory Law Judge

REPORTED BY:  
Jennifer L. Leibach, RPR, CCR(T)  
MIDWEST LITIGATION SERVICES

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A P P E A R A N C E S

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PROCEEDINGS

JUDGE WOODRUFF: Well, good afternoon everyone, and welcome to the prehearing conference in Case No. EE-2006-0123, which is the application of WST, Incorporated for a Variance from Kansas City Power & Light Company's General Rules and Regulations Concerning [sic] Individual Metering. We're going to start out today by taking entries of appearance, beginning with KCP&L.

MR. BLANC: Curtis Blanc, B-L-A-N-C, Kansas City Power & Light, 1201 Walnut, Kansas City, Missouri.

JUDGE WOODRUFF: Thank you. And for WST?

MR. STEWART: Shawn Stewart with the Stewart Law Firm, LC, with offices at 4505 Madison Avenue, Kansas City, Missouri, 64111.

JUDGE WOODRUFF: Thank you. And for Staff?

MR. WILLIAMS: Dana K. Joyce and Nathan Williams, PO Box 360, Jefferson City, Missouri, 65102.

JUDGE WOODRUFF: Thank you. And the other party would be the Office of Public Counsel, and I did not see anyone here from Public Counsel. All right. Well, I scheduled this prehearing conference simply because we've got a situation that needs to be resolved, and fairly quickly. It's my understanding that the deadline for action is the 19th of October. Is that still correct?

MR. STEWART: Yeah, that is correct. That's

1 the date that WST, Inc. expects to close on its first unit of  
2 the condominium.

3 JUDGE WOODRUFF: Was that Mr. Stewart  
4 speaking?

5 MR. STEWART: This is Mr. Stewart.

6 JUDGE WOODRUFF: Thank you.

7 MR. STEWART: And can I ask, on a  
8 going-forward basis, each time we speak, should we indicate  
9 who we are?

10 JUDGE WOODRUFF: Yes, if you would, please.

11 MR. STEWART: Okay.

12 JUDGE WOODRUFF: I've noticed, too, Mr. Blanc  
13 and Mr. Stewart, your voices sound very similar.

14 MR. STEWART: Okay. And that's one of the  
15 drawbacks of these telephone conferences.

16 MR. BLANC: Right.

17 JUDGE WOODRUFF: All right. Well, as I  
18 indicated, we need to resolve this, then, before the 19th,  
19 which is coming up very quickly. And if we can't reach any  
20 sort of resolution overall today, I'm looking at scheduling a  
21 hearing for next Wednesday. And we just have to bring you  
22 into Jefferson City and take your evidence --

23 MR. STEWART: Okay.

24 JUDGE WOODRUFF: -- and make a decision very,  
25 very quickly. Obviously, the preferable method would be to

1 have some sort of agreement amongst the parties.

2 MR. STEWART: Right.

3 JUDGE WOODRUFF: And I'm sure you prefer that  
4 as well as to coming up here to do a hearing. I have a  
5 question for Mr. Blanc, for KCP&L. Is there anything in  
6 KCP&L's current tariff that allows the Commission to grant a  
7 variance from a provision of the tariff?

8 MR. BLANC: I'm trying to recall offhand. I  
9 know different provisions have specific variance clauses --  
10 variance or waiver clauses, and I don't offhand recall if  
11 there's a general variance or waiver provision that would  
12 apply to the whole tariff. I know -- I guess -- I believe  
13 such a provision is there, but I don't have the exact cite.  
14 I know the Commission's regs provide for how to apply for  
15 variance to a tariff provision.

16 MR. STEWART: This is Shawn Stewart, if I  
17 could jump in.

18 JUDGE WOODRUFF: Yes, please do.

19 MR. STEWART: Pursuant to Section 5.03,  
20 Subsection B, of the general rules and regulations of KCP&L's  
21 tariffs, with respect to redistribution, it does provide that  
22 there's a clause stating, except for those premises being  
23 supplied, such service --

24 COURT REPORTER: Slow down.

25 MR. STEWART: Okay. I'll restate that.

1                   JUDGE WOODRUFF: Just what you were reading,  
2 you need to slow down.

3                   MR. STEWART: Okay.

4                   JUDGE WOODRUFF: Start over with it again.

5                   MR. STEWART: Section 5.03, Subsection B,  
6 states, except for those premises being supplied such service  
7 on the effective date of the schedule, the restriction  
8 against redistribution may be waived by the company where the  
9 operation of certain types of multiple occupancy premises,  
10 either in whole or in part, makes it impractical for the  
11 company and its judgment to separately meter and supply  
12 electric service to each occupant of the customer of the  
13 company. That provision goes on to state what some  
14 exceptions may include.

15                   I do want to mention that there may be another  
16 legal issue here, that at this point, I do not know if it's  
17 been raised or addressed. With respect to 4 CSR 240-20.050  
18 (6), specifically states that the Commission, in its  
19 discretion, may approve tariffs filed by electric  
20 corporations, which are more restrictive of master metering  
21 than the provisions of this rule.

22                   Now, the provisions of the rule that we are  
23 speaking about, with respect to 240-20.050, is the June 1st,  
24 1981, construction rule, meaning that buildings of which  
25 footings have been poured after June 1st of 1981, shall

1 comply with the rule, and the rule being that each unit shall  
2 have its own separate utility meter.

3                   And in the situation of KCP&L, its rules and  
4 regulations do not specifically seek the approval from the  
5 Commission of any tariff that would be more restrictive than  
6 that rule, which would be required by 4 CSR 240-20.050, with  
7 respect to 5.03, that in nowhere in that section does it  
8 refer to seeking a request and approval from the Commission  
9 for a more restrictive tariff on master metering than is put  
10 forth in that section. And that is an issue that has to be  
11 addressed as to whether or not 5.03 is even applicable in  
12 this situation.

13                   If that's the case, which we would -- I will  
14 file -- to step back, I have not had an opportunity to file a  
15 response to the Staff's position on this matter regarding the  
16 authority of the Commission, but in connection with my  
17 response that I have drafted and just haven't had an  
18 opportunity to file, I will address this issue that 5.03  
19 does not even apply to this situation because Subsection 6 of  
20 CSR 240-20.050 has not been complied with.

21                   JUDGE WOODRUFF: Okay. I will add that  
22 Chairman Davis has joined us in the room here in Jefferson  
23 City, just to listen in on this prehearing.

24                   MR. BLANC: Okay.

25                   JUDGE WOODRUFF: Mr. Williams for Staff, you

1 indicated that in Staff's -- in Staff's opinion, the  
2 Commission doesn't have the authority to -- to waive a tariff  
3 in general; is that correct?

4 MR. WILLIAMS: In general, I mean, there may  
5 be specific instances where it may, and I think it depends on  
6 the nature of the tariff you're dealing with.

7 MR. BLANC: We couldn't hear you over the  
8 phone.

9 JUDGE WOODRUFF: You need to speak up a little  
10 bit, Mr. Williams.

11 MR. WILLIAMS:. Staff's taken the position,  
12 generally, but I think it also depends on the nature of the  
13 tariff provision you're talking about waiving. You have  
14 discrimination issues and other factors that need to be taken  
15 into consideration.

16 JUDGE WOODRUFF: Okay. Mr. Blanc for KCP&L,  
17 do you know if KCP&L is willing to waive its tariff in this  
18 circumstance?

19 MR. BLANC: I think it's our position was --  
20 or I guess our concern was, rather, when we were presented  
21 with this request for service, we understood it to be a  
22 resale or redistribution, and we wouldn't -- if the  
23 Commission grants a waiver of the application, we would be  
24 happy to provide service to the building under whatever  
25 arrangement the Commission allows, but we were just concerned

1 that it sounded to us like it was a prohibited resale or  
2 redistribution, and we couldn't provide service under that  
3 circumstance without some kind of approval by the Commission.

4 JUDGE WOODRUFF: Okay. Does your tariff have  
5 a provision that would allow for the Commission to grant that  
6 waiver?

7 MR. BLANC: It is our position that the  
8 Commission can grant such waivers.

9 JUDGE WOODRUFF: But is there a specific  
10 provision in your tariff that allows that, or are you relying  
11 on a general power of the Commission?

12 MR. BLANC: It would be a general power of the  
13 Commission.

14 JUDGE WOODRUFF: Okay.

15 MR. STEWART: This is Shawn Stewart, if I  
16 could --

17 JUDGE WOODRUFF: Yes.

18 MR. STEWART: -- refer the individuals  
19 involved in this to provide Statute of Missouri 339.140(11),  
20 that is where I believe Mr. Blanc would be able to obtain the  
21 authority to cite that the Commission does have the power and  
22 authority to change or grant a variance to KCP&L's rules and  
23 regulations.

24 JUDGE WOODRUFF: Okay. Chairman Davis, were  
25 there any questions you wanted to ask these people?

1                   CHAIRMAN DAVIS: I'm thinking and collecting  
2 my thoughts here. Give me just a second. Mr. Blanc, is  
3 Mr. Rush there with you?

4                   MR. BLANC: Yes, he is, sir.

5                   JUDGE WOODRUFF: I know one of the issues that  
6 came up or that was -- was noted in your pleading was if the  
7 bill doesn't get paid, how do you collect.

8                   MR. RUSH: Right.

9                   MR. BLANC: Yes.

10                  CHAIRMAN DAVIS: And do you have a proposed  
11 solution for that?

12                  MR. BLANC: No, and basically that comes out  
13 of a proceeding we were involved with involving a trailer  
14 park, that, unknown to us, a resale or redistribution was  
15 occurring, and it only came to our attention when the  
16 landlord in that instance stopped paying his electric bill,  
17 and when we went through our steps to discontinue service, we  
18 realized the problem that we would essentially be cutting off  
19 service to a bunch of tenants that didn't have control over  
20 whether their bill was paid or not. And we worked with the  
21 Staff and came to a resolution in that, but it puts us in a  
22 strange spot. I guess it's just a scenario that isn't  
23 contemplated in the requirements for discontinuing service,  
24 and we weren't sure how the Commission would want us to treat  
25 the ultimate end users there.

1                   MR. RUSH: Usually, when you have an instance  
2 of a landlord not paying the bill for a set of master metered  
3 tenants, you typically have the pressure of the tenants not  
4 paying the bill, and therefore, it puts pressure on the  
5 landlord to try to make sure that bill is paid.

6                   In this case, we will have the actual  
7 people -- residents living in these places being the owners  
8 of the facility, you know, at each location, and so there's a  
9 little complication addressed in there, because they have no  
10 pressure, and they really don't have any ability to -- to  
11 address, you know, what the situation is. They're the ones  
12 that are not paying the bill, the summation of all those  
13 tenants -- they're not tenants, they're owners.

14                   CHAIRMAN DAVIS: Okay. And obviously this  
15 case has much -- could have much larger implications in terms  
16 of mass metering -- I'm sorry, master metering in other parts  
17 of the state. I would definitely suggest that you might want  
18 to discuss that issue with Ameren, because obviously in  
19 St. Louis, they have a lot of buildings that were constructed  
20 prior to 1981 that might be master metered.

21                   I don't know that there's a lot of -- maybe in  
22 Joplin, as well as Springfield, you might also have some of  
23 those issues. I just don't see them in southeast Missouri or  
24 elsewhere, but that's just an initial thought that, you know,  
25 you may want to have some conversations with the rest of the

1 industry about that.

2 MR. WILLIAMS: Chairman Davis?

3 CHAIRMAN DAVIS: Yes.

4 MR. WILLIAMS: UE has put into place tariff  
5 provisions that says for buildings built before 1981, where  
6 there's sufficient changes, that it's going to impact how  
7 service is provided.

8 CHAIRMAN DAVIS: Uh-huh.

9 MR. WILLIAMS: That it's to be treated as if  
10 it were built after June 1, 1981, so the tariff makes it  
11 applicable to buildings that were built earlier under certain  
12 circumstances.

13 JUDGE WOODRUFF: All right.

14 MR. STEWART: If I could interject, it is  
15 still almost nearly impossible to hear anything that's coming  
16 from Mr. Williams.

17 CHAIRMAN DAVIS: Mr. Williams, come on down,  
18 please approach the bench.

19 MR. WILLIAMS: I was letting the Commission  
20 know that UE has put in a tariff provision that incorporates  
21 the rule by reference, and makes it applicable to buildings  
22 that were constructed before June 1 of 1981, in certain  
23 circumstances where there's sufficient renovation or changes  
24 going to the building that effects how service is provided.  
25 And as part of incorporating the rule, it also incorporates

1 the variance aspect through the Commission.

2 CHAIRMAN DAVIS: That you could come to the  
3 Commission and apply for a waiver?

4 MR. WILLIAMS: Yes.

5 CHAIRMAN DAVIS: Okay.

6 JUDGE WOODRUFF: All right.

7 CHAIRMAN DAVIS: Okay. Mr. Stewart, can I ask  
8 you a couple of questions here?

9 MR. STEWART: Okay.

10 CHAIRMAN DAVIS: Do you have any proposed  
11 solution to Mr. Rush and Mr. Blanc's concerns about if we did  
12 approve -- if we were to approve a variance in this case, how  
13 could they be sure that they're going to get paid?

14 MR. STEWART: Well, the -- the general set-up  
15 and structure of a condominium is through a condominium  
16 association. And all of the common areas -- all of the other  
17 utilities are run through that association, and every unit  
18 owner owns a percentage of the common element --

19 CHAIRMAN DAVIS: Right.

20 MR. STEWART: -- and has a vote in the  
21 association. If the association, who consists of the very  
22 unit owners that we're talking about here, refuses to pay the  
23 bill, the very unit owners are going to have a say, and  
24 it's -- it's provided for in the declaration that is pursuant  
25 to the Missouri Condominium Act. The declaration that will

1 be recorded to effectively commence this condominium will  
2 also provide, and we can -- whatever KCP&L would like to have  
3 inserted in addition to what we already have in the  
4 declaration, that would provide protection and assurances  
5 that the bill gets paid.

6 But every unit owner will have the ability to  
7 seek an immediate meeting of the association regarding this  
8 issue. And it's no different with respect to any other  
9 utility, with respect to any other maintenance item  
10 respecting the condominium. Every unit owner has a vote, and  
11 it is within the ability of the -- as authorized by the  
12 declaration, they can take steps to ensure that it gets paid.

13 CHAIRMAN DAVIS: Well, but -- I mean,  
14 hypothetically speaking, Mr. Stewart, what if they all vote  
15 not to pay the electric bill next month?

16 MR. STEWART: Well, then they shut off the  
17 electric. I mean, and I could put in a -- and again, to  
18 address that extreme hypothetical, we could put in a  
19 provision in the declaration indicating that there shall be  
20 no vote regarding whether the electrical bills can get paid  
21 or not, that it always shall be paid. And that's assuming  
22 that 60 percent vote that it not get paid, and 40 percent  
23 vote that it get paid; therefore, it shuts off everybody's  
24 electricity, but this would prevent such a vote from  
25 occurring.

1                   CHAIRMAN DAVIS: Okay. Mr. Blanc, I'm going  
2 to go back to you for just a second. Do you think PURPA  
3 [ph. sp.] applies here.

4                   MR. BLANC: I think the policies underlying  
5 PURPA are applicable, and I guess, a federal national  
6 statement of energy policy.

7                   CHAIRMAN DAVIS: Right.

8                   MR. BLANC: I would say its policies are  
9 applicable, yes.

10                  CHAIRMAN DAVIS: Okay. Mr. Williams, do you  
11 have an opinion as to whether PURPA applies here or not?

12                  MR. WILLIAMS: I don't disagree with  
13 Mr. Blanc's characterization that the policy is similar, but  
14 I don't think there's a legal requirement that there be  
15 compliance.

16                  CHAIRMAN DAVIS: Uh-huh.

17                  MR. WILLIAMS: And that's based on the date  
18 that the building was constructed.

19                  CHAIRMAN DAVIS: Right. Let me ask you this,  
20 Mr. Stewart. I mean, I know we're dealing with a condominium  
21 association group that doesn't even exist yet, but just  
22 hypothetically speaking, if this Commission were to somehow  
23 want to encourage the condominium owners oh, to, you know,  
24 undertake conservation methods -- measures of, you know, some  
25 kind or whatever, to maybe make this a pilot project or

1 something like that to where, you know, we could say that,  
2 you know, this would be an instance of master metering being  
3 used in a way to, you know, actually encourage conservation,  
4 I mean, would you be amenable to something like that?

5 MR. STEWART: We -- Commissioner, we would.  
6 And in fact, WST, Inc. has taken steps and has planned, if  
7 not already commenced those steps, to install a monitoring  
8 device on each unit's use of their electricity and the  
9 association will, on a monthly basis, upon receipt of the  
10 entire bill from KCP&L, will allocate the bill on a basis of  
11 use. And there will not be any excess charges or surcharges  
12 in any shape or form, and therefore, it will encourage  
13 conservation of electricity on the part of the unit owners.

14 CHAIRMAN DAVIS: Okay. So there wouldn't be  
15 master metering, but under your plan, there would be an  
16 apportionment of the bill based on usage?

17 MR. STEWART: That's right, and there would be  
18 master metering.

19 CHAIRMAN DAVIS: Right. So yes, there would  
20 be master metering, but how the bill would be apportioned  
21 would be based on customer usage?

22 MR. STEWART: That's right.

23 CHAIRMAN DAVIS: Does anyone for KCP&L want to  
24 respond to that?

25 MR. RUSH: Can you help me understand what you

1 mean by the monitoring device?

2 JUDGE WOODRUFF: Who was that that was  
3 speaking?

4 MR. RUSH: I'm sorry, this is Tim Rush.

5 MR. STEWART: Sure, and with me, who has just  
6 entered the room, is Brian Fredock on behalf of WST, Inc.,  
7 and he can comment on the -- the single-faced KWH meters for  
8 monitoring electrical use that will be installed. And you'd  
9 like to comment on that, Brian?

10 MR. FREDOCK: This is Brian Fredock. The --  
11 the metering devices that we're going to be using, gentlemen,  
12 are revenue-grade accuracy. They have been approved in New  
13 York City, they've complied with California's metering  
14 standards, Tom Edison has approved these, they're UL listed.  
15 They're one of the most accurate meters available, and we're  
16 not going to let everyone kind of go haphazard and pay for  
17 square footage uses and everything. This is going to be the  
18 most accurate meter that we can supply for the individual  
19 condominium users, and then the bill from KCP&L will be  
20 adjusted accordingly to each condominium's use. And then the  
21 remainder of the bill will be taken care of out of the  
22 homeowner's association dues for the common area elements.

23 CHAIRMAN DAVIS: And Brian, I have -- I just  
24 want to ask one, I believe, follow-up question, but I think  
25 you may get some more questions from here in the room as

1 well, and I'm sorry. So the bill would be apportioned,  
2 everyone would pay the fees for the common areas, that would  
3 be an equal distribution amongst all 153, or however many  
4 condominium owners, so everyone would pay a fixed portion of  
5 the bill. And then based on their residential space, that  
6 would be a variable bill based on customer usage, correct?

7 MR. FREDOCK: Well, the variable usage is  
8 definitely correct, that they would pay that according to --  
9 to their own usage. Now, the other remaining portion of the  
10 bill would be -- it would be disbursed accordingly, either by  
11 an area of square footage represented by each individual  
12 unit, or just an equal base of, you know, the 145 units that  
13 are going to be there.

14 CHAIRMAN DAVIS: Okay. I heard someone  
15 whispering that we can't do it that way, but I don't know if  
16 they could identify themselves, and somebody give me a  
17 restatement for the record. I would appreciate that.

18 MR. NICKELSON: Doug Nickelson. It was a side  
19 conversation in the background with a person that walked in.

20 CHAIRMAN DAVIS: Okay. Okay. So let me --  
21 I'm just trying to pin this down here in my own mind. So if  
22 I understand it correctly, then let's say that there are 153  
23 units in the building, and I buy the biggest one, it's the  
24 top floor, whatever. Then -- so my portion of the bill for  
25 the common areas would be more than -- than those of other

1 people just because I own more square footage in the  
2 building, correct?

3 MR. FREDOCK: Yes, that would be correct. It  
4 should be -- it should be based on the square footage that's  
5 owned as far as the other additional common area element  
6 billing.

7 JUDGE WOODRUFF: Okay. Well, I'm not going to  
8 make you negotiate all afternoon on the record here. What  
9 I'm going to do is, I'm going to issue an order setting a  
10 hearing for next Wednesday, 8:30, here in Jefferson City. If  
11 you can all reach an agreement as to what you want the  
12 Commission to do, file it on Tuesday. Monday is a state  
13 holiday, so there won't be anyone here. File it on Tuesday  
14 and let us know, and we can cancel the hearing, if we can.  
15 And we have this phone connection for another half hour. You  
16 can continue to negotiate over that with the Staff members.  
17 The Commission and I will be leaving as soon as we go off the  
18 record.

19 MR. BLANC: If I could just interject one  
20 point there. We are happy to work out whatever we can with  
21 Wall Street Tower, but I guess our concern is what initiated  
22 this whole proceeding is we didn't think it was within our  
23 ability to just come to an arrangement with them.

24 JUDGE WOODRUFF: Uh-huh. And I agree, the  
25 Commission may need to approve whatever. I'm looking for a

1 stipulation and agreement for the Commission to approve, if  
2 you can reach some such agreement.

3 MR. BLANC: Yeah, and I guess to that extent,  
4 it might sound like Staff would be a primary negotiator there  
5 as opposed to us. Frankly, it seems more likely that if  
6 Staff and WST can come to an arrangement that the Commission  
7 would approve, I can't imagine us having a problem with that.

8 CHAIRMAN DAVIS: Well, counsel for Staff is  
9 here, and I'm sure they'll be willing to talk to you.

10 JUDGE WOODRUFF: Yes.

11 CHAIRMAN DAVIS: I did just want to say, you  
12 know, while we're still on the record here, that  
13 hypothetically speaking, if there were a unanimous stip and  
14 agreement that were worked out in this case, you know, the  
15 judge is going to have this thing set for a hearing on  
16 Wednesday. We may need to go ahead and have that hearing on  
17 Wednesday to review the stip with the Commission, so  
18 Commissioners will have the opportunity to ask questions of  
19 the parties on the report or whatever. And you know, so you  
20 know, to keep people from incurring expenses, we may even  
21 entertain if someone wanted to appear by phone or whatever,  
22 but --

23 JUDGE WOODRUFF: Certainly.

24 CHAIRMAN DAVIS: -- just wanted to be aware of  
25 that, that just because if you -- hypothetically speaking, if

1 you did reach an agreement, we may not necessarily want to  
2 cancel that, because I'm sure my other fellow Commissioners  
3 and I will probably have a lot more questions, because this  
4 is sort of a -- not necessarily a case of first impression,  
5 but one of a series of cases of first impressions.

6 MR. WILLIAMS: If I may?

7 JUDGE WOODRUFF: Yes, Nathan.

8 MR. WILLIAMS: I wanted to point out that  
9 there's been a prior instance where KCP&L had asked for a  
10 variance from EE-2005-0185, and they were seeking to provide  
11 three-phase residential service, and their tariffs did not  
12 permit so, so they requested a waiver. Ultimately, that  
13 application was withdrawn, and the way the matter was  
14 resolved was by a revision to KCP&L's tariff to permit that  
15 type of activity.

16 JUDGE WOODRUFF: Okay. Anything else anyone  
17 wants to add while we're on the record? All right. With  
18 that then, this prehearing conference is adjourned, and we're  
19 off the record.

20 WHEREUPON, the recorded portion of the  
21 prehearing conference was concluded.

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25