

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

In the Matter of Kansas City Power & Light)
Company's Notice of Intent to File an)
Application for Authority to Establish a)
Demand-Side Programs Investment)
Mechanism)

Case No: EO-2019-0132

In the Matter of KCP&L Greater Missouri)
Operations Company's Notice of Intent)
to File an Application for Authority to)
Establish a Demand-Side Programs)
Investment Mechanism)

Case No: EO-2019-0133

**PUBLIC COUNSEL'S
REPLY BRIEF**

Respectfully submitted,

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PUBLIC COUNSEL'S REPLY BRIEF

I. Introduction

The Office of the Public Counsel (OPC) opposes Kansas City Power & Light Company (KCPL) and KCP&L Greater Missouri Operations Company's (GMO) (collectively KCP&L or the Company)¹ Application under the Missouri Energy Efficiency Investment Act (MEEIA) because the Company's proposal does not comply with statute. KCP&L's Application is noncompliant because it fails to avoid supply-side costs while benefiting all customers. KCP&L fails to meet its hurdle as the applicant, and its supporting intervenors are also unable to help carry the Company's burden. The OPC notes several key deficiencies on the part of KCP&L and its supporters in this reply brief. Accordingly, the Public Service Commission (Commission) should reject KCP&L's Application.

¹ Since the evidentiary hearing, KCPL and GMO changed their names to Evergy Missouri Metro and Evergy Missouri West, respectively. The OPC will continue to refer to the applicants by the fictitious name used throughout this case to minimize confusion.

II. Reply to Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company.

KCP&L's brief is unpersuasive because it asks this Commission to depart from previous practice, and invokes misleading customer metrics.

A. The Company Asks the Commission to Depart from Established Practice of Valuing MEEIA Applications Based on Avoided Costs.

KCP&L asks this Commission to abandon all previous understandings of the MEEIA. Case law and Commission instructions on how to value MEEIA programs and judge applications is relatively scant.² However, this Commission four years ago did explain that successful MEEIA programs must insure against a “double-recovery windfall” for the applicant utility by guaranteeing that a MEEIA application produces avoided costs.³ The foundational requirement of avoiding costs means that KCP&L Application's must defer specific supply-side investments or other cost-of-service costs. Requiring a showing of avoided costs places “shareholders in a financial position comparable to the earnings opportunity they would have had if those shareholders made a future supply-side investment,”⁴ and thus follows MEEIA policy of equally valuing supply-side and demand-side resources.⁵ Unfortunately, the Application does no such thing.

KCP&L's Application does not defer any identifiable supply-side asset or expense. The Company does not even truly dispute this fact. KCP&L instead maintains that MEEIA “does not

² OPC's research found only four published judicial opinions citing to the MEEIA statute. None of the opinions analyze the necessity of avoided costs in depth. *See, e.g., Pub. Serv. Comm'n v. Union Elec. Co.*, 552 S.W.3d 532 (Mo. 2018); *see also Kan. City Power & Light Co. v. Pub. Serv. Comm'n*, 557 S.W.3d 460 (Mo. App. 2018); *Pub. Serv. Comm'n v. Union Elec. Co.*, 2016 Mo. App. LEXIS 1252 (Mo. App. 2016); *State of Mo. ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 397 S.W.3d 441 (Mo. App. 2012).

³ *Report and Order*, EO-2015-0055 p. 12 (Oct. 22, 2015).

⁴ *Id.* at 11.

⁵ Mo. Rev. Stat. § 393.1075.3.

require that a supply-side resource be retired or removed from service.”⁶ Alternatively, the Company also argues that “existing supply-side resources are deferred because “every kWh of energy saved through a demand-side measure is offsetting (i.e. “substituting”) a kWh that would have otherwise been generated by an existing supply-side resource.”⁷ The problems with the Company’s first position is that it is irreconcilable with Staff and the OPC’s current position, and that of the Commission.⁸ The problem with the second position is that KCP&L provides no evidence to support its assertion that there must be avoided costs so long as demand-side programs are implemented. Instead there is actually evidence that the Company is undermining the savings value of demand-side programs. KCP&L is undermining its own energy efficiency programs with concurrent load building through its commitment to spend \$1 billion in supply-side investments through plant-in-service accounting.⁹

Consider also how KCP&L’s recent history with residential demand response has been spending ever more money on thermostats, while calling fewer curtailment events.¹⁰ With little to no curtailment events, there is no guarantee that there were any demand savings. No demand savings mean that energy efficiency is not used as a resource, and consequentially the utility is not deferring any supply-side costs. The only guarantee is that KCP&L expended ratepayer money. This is why KCP&L misses the point when it claims that Staff and the OPC are ignoring that “existing supply-side resources will be used less” or that a “fossil-fueled power plant *may* be retired” with the Company’s proposal.¹¹ Staff and the OPC are not ignoring that potential. We are

⁶ *Kansas City Power and Light Company and KCP&L Greater Missouri Operations Company’s Initial Post-Hearing Brief*, EO-2019-0132 p. 19 (Oct. 11, 2019).

⁷ *Id.*

⁸ *See Report and Order*, EO-2015-0055 p. 12.

⁹ *See Transcript of Proceedings, Evidentiary Hearing*, EO-2019-0132 p. 307 (Sep. 23-24, 2019) (Staff witness Jay Luebbert discusses the Company’s plant-in-service accounting election).

¹⁰ *Id.* at 148.

¹¹ *Kansas City Power and Light Company and KCP&L Greater Missouri Operations Company’s Initial Post-Hearing Brief*, EO-2019-0132 p. 4 (Oct. 11, 2019) (emphasis added).

merely asking that the Applicant with the burden of proof provide evidence thereof. KCP&L cannot provide that evidence though because its “most recent IRP does not show a substitution of new supply-side resources by the proposed MEEIA programs.”¹² Without addressing this fundamental absence of avoided costs within its Application, the Company’s ancillary claims of benefits, reduced revenue requirements, and cost-effectiveness are mere speculation.

B. The Company Uses Misleading Customer Survey Data.

The Company attempts to salvage its Application by appealing to customer support for energy efficiency. This point is a distraction and neglects true customer priorities. KCP&L ties energy efficiency to customer satisfaction, and argues that therefore its MEEIA Application is worthwhile.¹³ KCP&L relies primarily on its witness Charles Caisley for this point.¹⁴ What Mr. Caisley overlooks though is that general approval for energy efficiency in the abstract does not necessarily translate to customer endorsement of any particular MEEIA proposal. Mr. Caisley’s argument also neglects that KCP&L’s customers have voiced recent dissatisfaction with the Company’s cost of service in both JD Power Surveys and online petitions.¹⁵ Mr. Caisley even acknowledges that the Company’s lowest JD Power score is in the price category.¹⁶ Approving a MEEIA proposal with no avoided costs on the pretense of abstract customer approval of energy efficiency will only exacerbate customer dissatisfaction by further increasing costs.

¹² *KCP&L Brief*, p. 19-20.

¹³ *Id.* at 25.

¹⁴ *Id.*

¹⁵ Exhibit 200, *Rebuttal Testimony of Geoff Marke*, EO-2019-0132 p. 13 (Aug. 19, 2019).

¹⁶ Transcript, p. 117.

III. Reply to the Natural Resources Defense Council and National Housing Trust.

The Natural Resources Defense Council (NRDC), and the National Housing Trust (NHT) try to inflate the non-existent avoided cost benefits in order to justify KCP&L's proposal. The NRDC and NHT are unpersuasive in this endeavor due to the lack of foundation for their claims.

A. The NRDC and NHT's Reliance Upon Conjecture and Non-Energy Benefits does not Support KCP&L's Application, and Actually Undermines Energy Efficiency.

Similar to KCP&L, the NRDC and NHT note that KCP&L does not identify the deferral of a supply-side investment to justify the Company's MEEIA Application¹⁷. Noting the lack of specific benefits that can be used to determine cost-effectiveness, the NRDC and NHT turn elsewhere to prop up KCP&L's argument.

The NRDC takes the tactic of accusing Staff and the OPC of ignoring other benefits such as "the avoided marginal costs of generating more electricity from existing plants and the avoidance of generation from the plants with the highest marginal cost such as peakers."¹⁸ The NRDC's support for those benefits is the testimony of Philip Mosenthal, but Mr. Mosenthal's testimony does not say that those benefits are actually attributable to KCP&L's filing. Mr. Mosenthal presents those as hypothetical benefits to energy efficiency itself.¹⁹ Mr. Mosenthal's musings are then more useful to an undergraduate lecture on the abstract benefits of energy efficiency. His testimony is not relevant here because no one is contesting the abstract benefits of energy efficiency. Rather, KCP&L fails to show concrete benefits, avoided costs or otherwise.

¹⁷ *Initial Post-Hearing Brief of NHT*, EO-2019-0132 p. 10 (Oct. 11, 2019); *Initial Brief of Natural Resources Defense Council*, EO-2019-0132 p. 2-3 (Oct. 11, 2019).

¹⁸ *Initial Brief of Natural Resources Defense Council*, p. 3.

¹⁹ Exhibit 400, *Rebuttal Testimony of Phillip Mosenthal*, EO-2019-0192 p.9-10 (Jan. 28, 2018).

NRDC also argues that lowering peak demand “can” enable KCP&L to retire a power plant sooner than expected.²⁰ Which power plant? NRDC does not say, and “can” is not the same as “will.” The NRDC also claims that “the probability is high that in the next IRP Evergy will project other supply-side option” as a result of MEEIA savings.²¹ There is nothing in the record to support this conjecture that the Company will change its resource needs over the twenty-year planning horizon. The NRDC is essentially invoking speculation of possible benefits to justify spending actual ratepayer dollars.

Similar to the NRDC, the NHT addresses the lack of avoided cost benefits by quibbling with definitions. The NHT relies upon “beneficial” not being “defined by statute” to argue that “the Missouri General Assembly intended to grant the Commission wide latitude in approving utility energy efficiency programs.”²² Paying no mind to avoided costs being explicitly listed within the statutorily preferred cost-effectiveness test,²³ the NHT argues that the Commission should justify KCP&L’s Application on non-energy benefits.²⁴ The NHT recites the Commission rule that non-energy benefits that are “calculated with a reasonable degree of confidence” may be used, and then assumes that “while quantifying the exact [non-energy benefits] that will result from specific [demand-side management] programs is difficult, there is little doubt they exist.”²⁵ What is the basis for this “little doubt”? The NHT does not explain.

Restated, the NHT’s position is that although it cannot prove any amount of non-energy benefits, they surely exist and therefore KCP&L’s Application is good. This logic fails for two crucial reasons. First, there is nothing in the record substantiating the value of the non-energy

²⁰ *Initial Brief of Natural Resources Defense Council*, p. 3.

²¹ *Id.* at 7.

²² *Initial Post-Hearing Brief of NHT*, p. 4.

²³ Mo. Rev. Stat. § 393.1075.1(6).

²⁴ *Initial Post-Hearing Brief of NHT*, p. 7.

²⁵ *Id.*

benefits NHT relies upon. The NHT should have realized this when reading that the Commission requires non-energy benefits to be calculated to a “reasonable degree of confidence.”²⁶

Second, NHT’s logic invites any speculative benefit to justify any energy efficiency program. All one needs to do to justify an ineffective MEEIA program is consider the immeasurable benefits of public health. Such logic would endorse spending millions on energy efficient toasters simply for the illusive promise of some benefit. This reasoning threatens energy efficiency by diverting limited funds away from cost-effective programs to speculative ventures. The risk of spending ratepayer dollars on programs with no measurable benefits is precisely why the Staff and the OPC are demanding KCP&L demonstrate actual benefits. If the NHT and the NRDC truly support energy efficiency they should likewise expect concrete evidence in the record rather than vaguely gesturing towards unquantified considerations.

B. The NRDC and NHT’s Proposal to House Low-Income Weatherization Programs Imperils Low-Income Assistance Programs.

Both the NRDC and NHT insist that low-income weatherization programs should be intensified within the Company’s MEEIA proposal. They do so under the auspices that low-income weatherization programs outside of MEEIA are not reaching as many people as possible.²⁷ Although the OPC appreciates their motives, it is frustrating to see these parties not understand why low-income multi-family weatherization programs were moved outside of MEEIA. The NRDC complains that KCP&L “has no stand-alone single-family program although it used to in Cycle 1 and to a limited extent in Cycle 2.”²⁸ What the NRDC should have considered while

²⁶ 20 CSR 4240-20.092(1)(II)4.

²⁷ *Initial Brief of Natural Resources Defense Council*, p. 10; *Initial Post-Hearing Brief of NHT*, p. 8.

²⁸ *Initial Brief of Natural Resources Defense Council*, p. 9.

complaining is that there is a logical reason why low-income weatherization programs were moved outside of the MEEIA sphere.

Tying low-income assistance to voluntary MEEIA programs that may be encumbered by the regulatory approval process imperils low-income assistance and hampers the goals that the NRDC and NHT claim to support. Furthermore, the low-income assistance programs outside of MEEIA focus on whole-home weatherization, whereas KCP&L's MEEIA programs would be direct install energy efficiency measures. Whole-home weatherization outside of MEEIA is a far more efficient use of ratepayer dollars and avoids the expense of for-profit implementers that would be tied to a MEEIA program.²⁹ When one has a finite amount of resources to address low-income concerns, fidelity demands those dollars to be used in the most efficient way possible to serve the greatest number of people. Simply "ramping up" the budget in KCP&L's programs, as NRDC proposes, will not alleviate these limitations but rather intensify existing problems.

C. The NRDC Confuses the Division of Energy's Position.

As a side note, it appears that the NRDC is confusing low-income weatherization assistance programs (LIWAP) administered by the Missouri Division of Energy (DE) with the Company's proposed residential "Heating, Cooling and Weatherization" programs. The OPC uses the phraseology "appears" because it is actually unclear what the NRDC is trying to communicate. The NRDC's counsel claims that DE supports "this position," when referring to a disagreement between the NRDC and the OPC but does not specify what "this" refers to: OPC's position or NRDC's.³⁰ It seems that the NRDC believes that DE supports an expansion of LIWAP dollars into utility administered MEEIA programs, just as the NRDC does. If that is the case, then this

²⁹ Exhibit 201, *Surrebuttal Testimony of Geoff Marke*, EO-2019-0132 p. 12 (Sep. 16, 2019).

³⁰ *Initial Brief of Natural Resources Defense Council*, p. 9.

Commission should understand that the DE's position is actually that the Company rename its "weatherization" program so as to not be confused with LIWAP programs.³¹ DE administers LIWAP programs and has not indicated a desire to incorporate them within the Company's portfolio as the NRDC appears to be advocating for. The confusion in NRDC's language actually highlights the merit in DE's recommendation.

IV. Reply to Midwest Energy Consumers Group

The legal disagreement between the OPC and the Midwest Energy Consumers Group (MECG) should be decided on the law as written, not individual preferences. The OPC and MECG disagree as to whether large commercial and industrial customers who elect to not financially contribute to a utility's MEEIA programs may nonetheless still participate in MEEIA programs. The OPC maintains that the general "schedules or tariffs" phrasing within the MEEIA statute does not refer to the specific interruptible or curtailable rate MEEIA tariffs.³² The OPC's initial brief speaks to this argument, and Public Counsel only replies to the extent that MECG couples its legal position with an argument that opt-out customers "should also be actively invited to participate in [the Business Demand Response] program for policy reasons."³³ As tempting as policy rationales may be, the MEEIA statute speaks for itself, and the Commission should not use preferences to justify diverting from the legal path. If anything, public policy actually endorses the OPC's position. Permitting opt-out customers to receive MEEIA benefits while relying on other customers to pay for them endorses discrimination. Since undue discrimination is barred in utility regulation,

³¹ *Missouri Division of Energy Post-Hearing Brief*, EO-2019-0132 p. 3 (Oct. 11, 2019); Exhibit 350, *Rebuttal Testimony of Martin R. Hyman*, EO-2019-0132 p. 7 (Aug. 19, 2019).

³² See Mo. Rev. Stat. § 393.1075.10.

³³ *Initial Brief of the Midwest Energy Consumers Group*, EO-2019-0132 p. 4 (Oct. 11, 2019).

this Commission should instead support the public policy of equity before the law and support the OPC's reading of the MEEIA statute.³⁴

V. Conclusion

WHEREFORE, the OPC replies to various parties and renews its request that the Commission deny KCP&L's Application and associated variances with recommendations as to how KCP&L should modify its Application.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 21st day of October, 2019, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall

³⁴ See, e.g., Mo. Rev. Stat. § 393.140(5).