

**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) File No. EO-2019-0132
Application for Authority to Establish a Demand-)
Side Programs Investment Mechanism)

In the Matter of KCP&L Greater Missouri)
Operations Company's Notice of Intent to File an) File No. EO-2019-0133
Application for Authority to Establish a Demand-)
Side Programs Investment Mechanism)

**INITIAL POST-HEARING BRIEF
OF NHT AND TOWER GROVE**

Andrew J. Linhares, #63973
Renew Missouri Advocates
3115 South Grand Blvd, Suite 600
St. Louis, MO 63118
andrew@renewmo.org
(314) 471-9973 (T)

COUNSEL FOR THE NATIONAL
HOUSING TRUST

October 11, 2019

COMES NOW the National Housing Trust (“NHT”), pursuant to the Commission’s August 7th 2019 *Order Granting Variance Setting Procedural Schedule And Other Procedural Requirements*, and for its Initial Post-Hearing Brief states the following:

INTRODUCTION

Kansas City Power & Light Company and KCP&L-Greater Missouri Operations (collectively “KCP&L” or “the Company”) submitted concurrent applications for energy efficiency portfolios under the Missouri Energy Efficiency Investment Act (“MEEIA”) in November 2018. These applications (combined into File No. EO-2019-0132) proposed a portfolio of energy efficiency and demand response programs developed after extensive input from regulators and stakeholders. Following a series of technical conferences and settlement talks, the parties agreed to extend KCP&L’s current portfolio of MEEIA programs while the Company worked on adjustments to its application to satisfy various concerns of parties. The Commission granted the parties’ Motion to Suspend Procedural Schedule on January 28, 2019.

Upon a grant motion, the Company filed revised program tariffs on June 14 and June 20, 2019. Rebuttal and Surrebuttal Testimonies of the parties followed, along with an on-the-record hearing on September 23 and 24, 2019. It is these programs and associated tariffs which KCP&L now seeks approval.

DISCUSSION

Below, the National Housing Trust addresses the List of Issues submitted in this case on September 17, 2019, along with the additional issues posed by Judge Clark in the hearing on September 24, 2019. From the initial stakeholder meetings through the evidentiary hearing, NHT’s primary interest in this case relates to programs serving affordable multifamily housing in the Company’s territory. Accordingly, NHT offers no briefing on some issues. However, NHT has an

interest in energy efficiency portfolios more broadly as well, and our briefing is intended to reflect that interest.

1. *Should the Commission approve, reject, or modify the Company's MEEIA Cycle 3 Plans ("MEEIA 3"), along with the waivers in the Company's application intended to enable its implementation?*

It is NHT's position in this case that the Commission should approve the Company's MEEIA 3 application, with modifications to the Income-Eligible Multifamily ("IEMF") program as agreed by the parties. The MEEIA statute grants the Commission the authority to permit electric utilities to implement energy efficiency programs, but offers some guidance as to when such programs should be approved:¹ (emphasis added)

The commission shall permit electric corporations to implement commission-approved demand-side programs proposed pursuant to this section with a goal of achieving all cost-effective demand-side savings. *Recovery for such programs shall not be permitted unless the programs are approved by the commission, result in energy or demand savings and are beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers.* The commission shall consider the total resource cost test a preferred cost-effectiveness test. Programs targeted to low-income customers or general education campaigns do not need to meet a cost-effectiveness test, so long as the commission determines that the program or campaign is in the public interest. Nothing herein shall preclude the approval of demand-side programs that do not meet the test if the costs of the program above the level determined to be cost-effective are funded by the customers participating in the program or through tax or other governmental credits or incentives specifically designed for that purpose.

The Commission's authority to approve program cost recovery is thus constrained by a finding that programs: 1) result in energy and demand savings, and 2) are beneficial to all customers in the class in which programs are proposed. In this case, no party asserts that the

¹ Section 393.1075.4, RSMo.

proposed programs do not result in energy or demand savings, so this case primarily turns on whether the Commission determines that programs are “beneficial” for customers.

The term “beneficial” is not defined by the statute. However, it is implied that cost-effectiveness is relevant. The statute states that the total resource cost test (“TRC”) is the preferred cost-effectiveness test, but that programs targeted to general education or low-income customers (such as the IEMF program) do not need to meet any cost-effectiveness test if the Commission determines they are in the “public interest.” In terms of cost-effectiveness, the Company’s proposed programs all meet the preferred TRC cost-effectiveness test, as shown in the Company’s November 2018.^{2 3}

Based on the limited guidance from the statute, it is clear that the Missouri General Assembly intended to grant the Commission wide latitude in approving utility energy efficiency programs under MEEIA. The Commission should not consider its authority to approve a MEEIA portfolio to be tightly constrained by some notion of avoided costs, immediate rate reduction for certain customer classes, deferment of specific generation assets, or any other rigorous metric. Rather, the Commission’s decision is one of policy and preference.

This brief further addresses whether programs are “beneficial” for all customers in Issue 3 below.

- a. *If MEEIA 3 should be modified, how should the plans be modified?*

NHT recommends that the Company’s IEMF program be modified to reflect the agreements reached by the parties. NHT and KCP&L have been engaged in discussions regarding how to improve the delivery of the IEMF program over the past months. Many of

² Kansas City Power & Light Company, KCP&L-Greater Missouri Operations, *MEEIA Cycle 3 2019-2022 Filing*, EO-2019-0132, November 29, 2019, p. 15.

³ With the exception of programs targeted to low-income customers, as permitted by statute.

these discussed improvements can be found in NHT witness Annika Brink's Rebuttal Testimony in this case.⁴

NHT and KCP&L will make best efforts to come to an agreement with the rest of the parties regarding the IEMF program and present such agreement in the form of a Stipulation prior to the Commission's Order in this case. NHT respectfully requests that the Commission approve KCP&L's application, with the modifications to the IEMF program reflected in such Stipulation.

2. *When it developed MEEIA 3, did the Company value demand-side investments equal to traditional investments in supply and delivery infrastructure?*

Yes. The MEEIA statute states:⁵

3. It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs. In support of this policy, the commission shall:

- (1) Provide timely cost recovery for utilities;
- (2) Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and
- (3) Provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.

Effectively, the statute articulates three components necessary for accomplishing the policy of MEEIA (i.e. valuing demand-side investments equal to traditional investments). Those three components (the "three legs of the stool") can be restated as: 1) program cost recovery, 2) recovery of the so-called "throughput disincentive," and 3) allowance for an earnings opportunity or return on investment based on verified savings. KCP&L's MEEIA 3 application proposes a cost-recovery framework that addresses all three components.

⁴ The National Housing Trust, *Rebuttal Testimony of Annika Brink*, EO-2019-0132, January 28, 2019.

⁵ §393.1075.3, RSMo.

3. *Is the proposed MEEIA 3, as designed by the Company, expected to provide benefits to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers?*

As stated above, the MEEIA statute grants the Commission wide latitude to approve an electric utility's MEEIA application, based on whether the Commission finds the programs to be "*beneficial* to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers." (emphasis added) The term "beneficial" is not defined, but is guided by the concept of cost-effectiveness. The General Assembly chose not to constrain the Commission's approval authority by some rigorous metric of avoided costs or generation deferment; rather, the Commission's authority is left as a policy decision or preference.

NHT notes that the MEEIA statute clearly articulates a policy for the State of Missouri regarding energy efficiency: "it shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs." Furthermore, the statute recognizes that applications under MEEIA should be approved "with the goal of achieving all cost-effective demand-side savings." These two statements in the statute indicate a strong policy reason for approving cost-effective demand-side programs.

There are strong economic policy arguments for approving KCP&L's application. Based on KCP&L's most recent Integrated Resource Plan ("IRP") analysis, the scenarios with a DSM portfolio in the range of those proposed in this case represent the lowest net present value revenue requirement.⁶ This represents a clear benefit to customers over the long-term, even

⁶ Exhibit No. 4, EO-2019-0132, p. 15.

without assuming an accelerated timeline for plant retirements and a national carbon pricing program. The Commission may also decide to approve KCP&L's application based on the substantial non-energy benefits ("NEBs") associated with the proposed programs. These benefits may include reductions in utility arrearages and bad debt, reduced transmission and distribution costs system-wide, reductions in utilities' environmental liability from operating power plants, and many others. The Commission's rules implementing MEEIA define NEBs⁷ and allow for them to be included in cost-effectiveness testing: "Non-Energy Benefits may be included in the total resource cost test (TRC) only if they result in avoided utility costs that may be calculated with a reasonable degree of confidence. Non-energy benefits may always be considered in the societal cost test."⁸ While quantifying the exact NEBs that will result from specific DSM programs is difficult, there is little doubt that they exist and will inure to the benefit of utilities and customers.

Furthermore, there are future policy considerations for why utility customers may benefit from maintaining an energy efficiency portfolio in the marketplace. Programs being interrupted or stopping and starting erratically can disrupt customer expectations and drastically reduce participation in programs. Successful energy efficiency programs require sustained customer education and market signals. There is good reason to believe that energy efficiency and demand response will be indispensable tools for meeting customer demand in the future, and interruption of programs damages the Company's ability to count on energy savings and demand reduction at a later date.

This brief further addresses the benefits and the policy reasons for KCP&L having an approved MEEIA portfolio below in the discussion of Avoided Costs.

⁷ 4 CSR 240-20.092(1)(II)

⁸ 4 CSR 240-20.092(1)(II)4.

4. *If the Commission approves or modifies MEEIA 3, what DSIM provisions should be approved to align recovery with the MEEIA statute?*

NHT recommends that the DSIM include an earnings opportunity with special criteria for the Company's performance in serving customers in affordable multifamily buildings (the IEMF program).

In drafting and passing MEEIA, the General Assembly went out of its way to expressly recognize the importance of serving low-income customers with energy efficiency programs.⁹ In order to properly serve low-income multifamily housing, KCP&L should be specifically incentivized to deliver savings to building owners and residents of such buildings, which experience many barriers to program participation. Providing for a specific IEMF criteria in the Earnings Opportunity within the DSIM will more closely serve the aims of the MEEIA statute.

The Company's application proposes a specific low-income criterion for its Earnings Opportunity, which sets goals of an average percent-savings-per-property in each program year. NHT witness Annika Brink's Rebuttal Testimony in this case recommends an improved approach to this criterion. NHT and the Company continue to discuss the proper percent savings goals, and intend to reflect their agreement in a forthcoming Stipulation.

The MEEIA statute allows for this type of creative design for cost-recovery mechanisms, including a DSIM mechanism:¹⁰ (emphasis added)

To comply with this section the commission may develop cost recovery mechanisms to further encourage investments in demand-side programs including, in combination and *without limitation*: capitalization of investments in and expenditures for demand-side programs, rate design modifications, accelerated depreciation on demand-side investments, and allowing the utility to retain a portion of the net benefits of a demand-side program for its shareholders.

⁹ See §393.1075.4, RSMo. See also §393.1075.6, RSMo., which allows the Commission to reduce or exempt allocation of demand-side expenditures to low-income classes.

¹⁰ §393.1075.5, RSMo.

As evidenced by the phrase “without limitation,” the General Assembly made it clear that the Commission yet again has wide latitude in designing cost recovery mechanisms to encourage energy efficiency investments under MEEIA.

5. *Should Opt-Out Customers be eligible to participate in Business Demand Response programs?*

NHT offers no briefing on this issue.

a. *MECG sub-issue: “Should GMO be required to publish in its tariff the participation payment to customers that participate in the Business Demand Response programs?”*

NHT offers no briefing on this issue.

Additional Briefing Areas Requested by Judge Clark.

1. *Why are avoided costs important, if in fact they are?*

Avoided Costs are a relevant concept in determining the short and long-term economic benefits for customers, the relative merits of various IRP scenarios, and other future effects of utility-sponsored energy efficiency programs. However, avoided costs are based on assumptions regarding future conditions (e.g. investments in generation, plant retirements, market conditions, customer demand, etc.). Such assumptions can quickly change based on new emergent technologies, shifts in state and national political leadership, and other conditions. Furthermore, avoided costs should not be seen as the sole determinative factor for whether an application under MEEIA should be approved.

In this case, Staff contends that the Company’s avoided costs should be at or near zero, since no supply-side generation is deferred as a result of the expected energy and demand savings over the 20-year planning horizon. This is a matter of great dispute between the parties.

To decide this case purely upon the Staff's view on avoided costs would be to constrain the MEEIA statute to such a narrow degree as to nearly erase the Commission's authority under MEEIA. As stated above, the Commission's standard for approving a MEEIA application (i.e. whether it "benefits" all customers) should be seen as broad and can include a range of economic and policy considerations. There are many metrics outside of avoided costs by which the Commission may choose to evaluate the Company's application in this case. As noted above, KCP&L and GMO's most recent Integrated Resource Plans show that scenarios with a DSM portfolio represent the lowest net present value revenue requirement.¹¹

To choose to curtail the Company's energy efficiency offerings due to a current excess of supply-side generation may run counter to the policy put in place by MEEIA. One can read MEEIA as creating a policy presumption for permitting utilities to pursue all cost-effective energy efficiency programs.¹² Since energy efficiency is almost always the least cost investment utilities can make to meet customer demand, one can further argue that utilities should maximize efficiency savings first, and instead curtail the more expensive existing supply-side resources.

2. *Should the Company receive an Earnings Opportunity? Why or why not?*

Based on the language of the MEEIA statute, the Company should be provided the opportunity to earn a return on its demand-side investments. Staff is the only party to propose that the Company receive no earnings opportunity at all. To adopt Staff's approach to the earnings opportunity in this case would be contrary to the stated policy of the statute, which is to value demand-side investments equal to traditional supply-side investments.¹³

¹¹ Exhibit No. 4, EO-2019-0132, p. 15.

¹² §393.1075.3, RSMo.

¹³ §393.1075.3, RSMo.

3. *Is Business Demand Response an interruptible or curtailable program? Why or why not?*

NHT offers no briefing on this issue.

4. *Should the Company be required to adopt a PAYS program (with specific concern for low income issues)?*

The Commission has the authority under MEEIA to condition or modify an electric utility's application. However, an electrical corporation is also free to withdraw its application or refrain from offering modified or conditioned programs as a result of a Commission Order. This is what is meant when MEEIA is referred to as a "voluntary" statute. Accordingly, NHT does not offer a legal opinion on whether the Commission should require the Company to adopt a Pay As You Save ("PAYS") program. Instead, NHT offers its policy opinion on PAYS, and the connection to energy efficiency for low-income customers and affordable multifamily buildings.

In her Surrebuttal Testimony, NHT witness Annika Brink articulates NHT's position on PAYS, stating:¹⁴

NHT supports the proposal of OPC for a PAYS program, provided that a multi-stakeholder table is convened to discuss and mutually agree to robust consumer protections in the program's design. It is NHT's understanding that the PAYS model proposed by OPC – such as the one delivered by EEtility and the Energy Efficiency Institute, Inc. (EEI) – is compatible with strong consumer protections for low-to-moderate income renters (e.g. no charges or tariffs may be added to tenant bills without explicit tenant consent, monthly charges are substantially greater than repayment, etc.).

For income-eligible customers, it is crucial that PAYS or any other OBF approach only be used for capital costs not otherwise covered by generous income-eligible program incentives. No financing program should replace traditional incentives, DSM programs, or utility contributions toward weatherization or result in a decrease in the generosity and quality of these offerings.

¹⁴ National Housing Trust, *Surrebuttal Testimony of Annika Brink*, EO-2019-0132, September 16, 2019, pp. 4-5.

Further, NHT agrees with the policy considerations and potential benefits of a PAYS program, as articulated by Renew Missouri and the Office of Public Counsel (“OPC”) in this case.

5. *(Optional) Should the Commission approve KCP&L’s application and deny KCP&L-GMO’s, or vice versa, or make various different modifications between the two utilities? Should the Commission address the applications together or separately?*

NHT sees no reason to give different treatment to KCP&L and KCP&L-GMO. Rather, NHT sees substantial value in having similar programs within the two companies’ service territories.

6. *Should the Commission adopt the variances requested by the Company? (address individually)*

NHT offers no briefing on this issue.

CONCLUSION

The National Housing Trust supports approval of KCP&L’s application for energy efficiency programs in this case, and recommends that the Commission approve the application with modifications including: changes to the Income-Eligible Multifamily program as reflected in a forthcoming Stipulation and Agreement by the parties; and a Pay As You Save program as proposed by Renew Missouri and the Office of Public Counsel. The Commission has broad authority under the MEEIA statute to permit electric utilities to offer demand-side programs if they will result in energy and demand savings, and if they will create benefits for all customers. In this case, “benefits” should not be limited to avoided costs, but should include non-energy benefits and economic concerns, as well as other policy considerations. Approval of the Company’s application should include approval of an earnings opportunity that properly incentivizes KCP&L to serve low-income customers in affordable multifamily buildings.

WHEREFORE, the National Housing Trust submits this Initial Post-Hearing Brief, and requests that it be made part of Commission's record for decision in this case.

/s/ Andrew J. Linhares

Andrew J. Linhares (Mo. Bar No. 63973)

Renew Missouri

3115 South Grand Ave, Suite 600

St. Louis, Missouri 63118

(314) 471-9973

andrew@renewmo.org

COUNSEL FOR THE NATIONAL
HOUSING TRUST

CERTIFICATE OF SERVICE

I hereby certify that a true and correct PDF version of the foregoing was filed on EFIS and sent by email on this 11th day of October, 2019, to all counsel of record.

/s/ Andrew J. Linhares _____

Andrew J. Linhares