

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Kansas City)	
Power & Light Company for Approval to)	
Make Certain Changes in its Charges for)	<u>File No. ER-2010-0355</u>
Electric Service to Implement its Regulatory)	Tariff No. JE-2010-0692
Plan.)	
)	
In the Matter of the Application of KCP&L)	
Greater Missouri Operations Company for)	<u>File No. ER-2010-0356</u>
Approval to Make Certain Changes in its)	Tariff No. JE-2010-0693
Charges for Electric Service.)	

MISSOURI DEPARTMENT OF NATURAL RESOURCES' INITIAL BRIEF

COMES NOW the Missouri Department of Natural Resources (MDNR) and for its initial brief in these cases states as follows:

MDNR's participation in these cases is focused on the Demand-Side Management and Low Income Weatherization Program issues. Energy efficiency programs represent good energy policy, and the elimination of barriers and disincentives to the continuation of the successful, cost-effective and productive demand side management (DSM) programs of Kansas City Power & Light (KCPL) and further development and expansion of KCP&L Greater Missouri Operations' (GMO) DSM programs is in the public interest. It is also consistent with the Missouri Energy Efficiency Investment Act (MEEIA). Instead of being on track to continue and expand, those programs are at risk of curtailment, ramping down and interruption. As a matter of public policy, the Commission should take steps to ensure that all cost effective energy efficiency measures are implemented, especially in light of the potential gap that may occur in DSM programs between the end of the regulatory plan (for KCPL) and the end of this rate case (for GMO) and implementation of MEEIA rules.

I. Demand Side Management

- A. **Should the companies be required to continue their current demand-side programs and, if so, at what level? Should the Commission require KCPL and GMO to expand their DSM programs if the current DSM portfolios do not meet the Act's goal of achieving all cost-effective demand-side savings?**

Section 393.1075.4, RSMo., states, “The Commission shall permit electric corporations to implement commission-approved demand-side programs pursuant to this section with a goal of achieving all cost-effective demand-side savings.” However, the timing of the conclusion of these rate cases and the anticipated implementation of the rules resulting from the Missouri Energy Efficiency Investment Act (MEEIA) creates a period of time in which KCP&L and GMO will not have guidance from the Commission with regard to appropriate DSM investment or energy savings targets, underscoring the need for the Commission to address the companies’ continued implementation of their respective DSM portfolios during that gap (Bickford Direct, Ex. KCPL 601, p. 2). The Company acknowledged the uncertainty of this gap, first in counsel’s opening statement on DSM issues “From the Company’s perspective, the primary issue related to DSM in this case is to establish a bridge or a temporary framework for going forward on the Company’s demand-side management programs until the Commission finalizes its rulemaking related to the Missouri Energy Efficiency Investment Act...” (Vol. 32, Tr. 3501). Company witness Rush’s response to cross examination also acknowledged “...we are in a period of a bridge. That bridge being the time of completion of the regulatory plan, between when these rules may become effective to address very specific issues outlined in the legislation.” (Vol. 32, Tr. 3542).

The urgency of addressing this gap/bridge period is pointed up by this exchange on cross examination of Mr. Rush by MDNR Counsel

Q. Do the companies plan on continuing their DSM programs and its tariffs at their current levels between the end of this rate case and the implementation of the MEEIA rules?

A. That's a very tough question right now that's being evaluated by the Company. And I don't -- as -- when you say "at the same level," it's our intent to continue the tariffs, and it's -- we have a lot of issues because of the conclusion of this regulatory plan for KCP&L and what actions will happen, because I don't believe at this time that we have a recovery mechanism to address the expenditures that may be incurred after this -- well, in fact, after the True-up period, which -- So starting January 1, 2011, we really do not have a -- in my mind, a recovery mechanism. And so a lot of it is contingent on those kind of elements.

Q. So are the companies willing to commit to anything concrete during this period of time?

A. Without the certainty of understanding what the recovery mechanism is, I do not believe we are willing to commit to anything. (Vol. 32, Tr. 3539 - 3540).

Mr. Rush's statement above that "it's our intent to continue the tariffs," provides limited assurance in light of the fact that DSM programs introduced in the early years of KCPL's 5-year regulatory plan are nearing their expiration dates (reference Bickford Rebuttal, KCPL Ex. 603, Schedule AB2010-1R). In addition, on redirect examination, Mr. Rush stated flatly: "If we don't get a plan to address this, we're going to have to ramp down our programs and reduce them." (Vol. 32, Tr. 3571). It would be most unfortunate and contrary to the public interest if KCPL's DSM programs were allowed to expire or be cancelled or ramped down, especially since many of the programs "have met or are exceeding their five-year savings goals" and in some cases "have met or exceeded their performance and participation goals" (Bickford Rebuttal, KCPL Ex. 603, page 5 and as shown on Mr. Bickford's HC rebuttal schedule AB2010-2R (KCPL Ex. 604HC). KCP&L saw its Home Performance with Energy Star program "participation increase from 27 homes in the second quarter of 2009 to 718 homes by the end of the third quarter of 2010". "[A]ll of the evidence suggests that customer interest in these

programs has increased since 2005, and there is no evidence to suggest that customers will become less interested in realizing the benefits that these programs offer.. KCPL’s customers should continue to have the opportunity to benefit from these programs...” (Bickford Rebuttal, KCPL Ex. 603, p. 6). The Commission should also require KCPL to expand the funding available for its current successful programs to serve existing demand for energy efficiency (Id.).

If the Commission does not act and a ramp-down or discontinuance of programs occurs, it would damage the momentum that has been achieved with the programs. DSM programs need time to raise customer awareness through promotional campaigns and develop partnerships with trade allies (Bickford direct, Ex. 603, p. 6-7). If programs are curtailed, there would be a loss of experience developed by KCP&L and GMO over the past five years. Therefore, the Commission should require KCP&L and GMO to continue their current DSM programs and not suspend the programs at the conclusion of these rate cases.

KCPL witness Rush acknowledged the companies’ obligation to comply with MEEIA regardless of whether rules are in place (Vol. 32, Tr. 3546-7). The Commission should direct KCPL and GMO to follow the intent of the MEEIA goal of achieving all cost-effective demand-side savings, and should further require KCP&L and GMO to expand their DSM programs toward the MEEIA goal of achieving all cost-effective demand-side savings during the period between the end of these current rate cases and the establishment of the MEEIA rules.

B. Customer Program Advisory Group

Also, the Customer Program Advisory Group (CPAG) should be continued after the end of the KCPL regulatory plan and these rate cases either as currently existing or new separate advisory groups for both companies. KCPL witness Rush indicated that KCPL was willing to continue the CPAG through the bridge periods and to extend CPAG or a similar collaborative to

GMO through the same period. (Vol. 32, Tr. 3543). The Commission should address the advisory group issue in its Report and Order.

C How should DSM expense recovery be determined in these cases?

In the absence of a cost recovery mechanism proposed by either KCP&L or GMO in their respective case, the Commission should order the companies to book their DSM program costs in regulatory asset accounts. In addition, the Commission should set an amortization period of 6 years for DSM expenses incurred by the Companies after these rate cases, in conjunction with requiring continuation and consideration of expansion of DSM programs. To apply a 10-year amortization to DSM expenses incurred after the end of the regulatory plan for KCPL and after the test year in GMO's rate case would be a clear disincentive to KCPL and GMO to invest in demand side programs. A temporary adjustment from 10 years to 6 years amortization for new and ongoing DSM expenses incurred during the "gap period" until MEEIA rules are fully implemented would reduce the disincentive. In addition, it would put the companies' cost recovery opportunities on par with Ameren Missouri's DSM program cost recovery agreed to by the parties and approved by the Commission in Case No. ER-2010-0036 (Bickford Direct, Ex. GMO 601, p. 10).

Regarding the ratemaking treatment of DSM costs incurred during the course of the regulatory plan by KCPL, MDNR does not support either the Staff's netting of off-system sales margins against KCPL's DSM deferrals (Staff Report Revenue Requirement Cost of Service, KCPL Ex. 210, page 133) nor KCPL's proposed application of a 6 year amortization to Vintage 4 DSM expenditures proposed by KCPL (Rush Rebuttal, Ex. KCPL 56, page 7).

II. Low Income Weatherization Program

A. Should the companies continue to fund their low-income weatherization programs at the current levels of funding, and if so, should the funds continue to be administered under current procedures, or should the Commission order they be deposited into an account with the Environmental Improvement and Energy Resource Authority (EIERA) to be administered by MDNR and EIERA?

The Commission should 1) require KCP&L and GMO to continue their respective low-income weatherization programs at their current levels of funding, 2) permit the companies to continue working with local community action agencies for the time being, and 3) instruct the companies to evaluate transition of the low income weatherization funds to the EIERA and administration of the programs to DNR and present that evaluation to the CPAG for consideration.

MDNR cautions that simply ordering KCPL and GMO to deposit funds with EIERA to be administered by MDNR and EIERA may not be feasible. While MDNR recognizes and supports the benefit of placing annual funds into an EIERA account to make unspent funds, including interest, available to local weatherization agencies after American Recovery and Reinvestment Act funds are expended, no other public utility--gas or electric--has been ordered to deposit weatherization funds with EIERA; in every other case it has been the utility that requested such an arrangement. Furthermore, payment of funds could not be effectuated prior to execution of an agreement with EIERA (Vol.34, Tr. 3605) (which in all other cases has taken the form of a Cooperation and Funding Agreement entered into voluntarily by EIERA, MDNR, the Missouri Public Service Commission and the public utility).

There may be significant program design differences between the federal low-income weatherization program and the companies' current low-income weatherization programs that would make program management and monitoring more difficult for MDNR. As described in MDNR witness Bickford's testimony, there are a number of administrative burdens for MDNR

and EIERA that must be considered and for MDNR to consider administration of the funds, KCPL and GMO would need to commit to annual low-income weatherization program funding (Bickford Surrebuttal, Ex KCPL 605, p. 3). These issues demonstrate the need for ample time to evaluate the appropriateness of and, if so, to plan and execute transition of the program. In light of these concerns, the better approach may be for the Commission to instruct the CPAG (or other energy efficiency collaborative/s for KCPL and GMO that emerge from this case) to explore the appropriateness of and logistics required for transition to funding through EIERA and to do so in a timely manner that would permit the transition to occur by the next program year for weatherization assistance (Fall 2011) if possible, but no later than March 31, 2012, when ARRA weatherization funding ends. If the CPAG determines that DNR administration of funds to be provided to EIERA is appropriate, a Cooperative Funding Agreement will be presented to the Commission, consistent with the method of funding other utility weatherization programs.

MDNR supports the recovery in rates of low-income weatherization funds, consistent with ratemaking treatment of such costs for other utilities, to insure continuation of this important program for low-income customers; however, because of a lack of resolution on the details of program administration, it may be better addressed in DSIM filings rather than in these cases.

WHEREFORE, the Missouri Department of Natural Resources submits this Initial Brief

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, electronically,
this 10th day of March, 2011, to counsel for the parties to this case.

/s/ Sarah Mangelsdorf
Assistant Attorney General