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	))))	File No. EO-2015-0240
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	))))	File No. EO-2015-0241

REPLY BRIEF OF KANSAS CITY POWER & LIGHT COMPANY AND KCP&L GREATER MISSOURI OPERATIONS COMPANY

Robert J. Hack MBN 36496
Roger W. Steiner MBN 39586
Kansas City Power & Light Company
1200 Main Street, 16th Floor
Kansas City, MO 64105
(816) 556-2785 (Phone)
(816) 556-2787 (Fax)
rob.hack@kcpl.com
roger.steiner@kcpl.com

James M. Fischer MBN 27543
Fischer & Dority, P.C.
101 Madison Street, Suite 400
Jefferson City, MO 65101
(573) 636-6758 (Phone)
(573) 636-0383 (Fax)
jfischerpc@aol.com

Attorneys for Kansas City Power & Light Company
and KCP&L Greater Missouri Operations Company

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Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO") (collectively, the "Company") submit this Reply Brief ("Brief") in accord with the Missouri Public Service Commission's ("Commission" or "PSC") Order Revising Procedural Schedule issued December 3, 2015.

I. Introduction.

Brightergy, LLC ("Brightergy") has not raised any issues in its Initial Brief that would prevent the Commission from approving the Non-Unanimous Stipulation and Agreement Resolving MEEIA Filings ("Stipulation"). Moreover, it appears that Brightergy is no longer requesting the Commission to reject the Missouri Energy Efficiency Investment Act ("MEEIA") Cycle 2 programs. Instead, Brightergy asks the Commission to withhold approval of the Stipulation "until such time as the Company has negotiated a rebate structure which will persuade Commercial and Industrial ("C&I") customers to invest in energy efficiency projects." Brightergy Initial Brief at p. 11. As indicated in its Initial Post-Hearing Brief, the Company believes that the Cycle 2 incentive structure will persuade C&I customers to invest in energy efficiency projects. The Company has already engaged in lengthy negotiations with the parties and Brightergy and does not believe that additional negotiations are warranted.

II. The Commission Should Approve the MEEIA Cycle 2 Programs and Demand-Side Investment Mechanism ("DSIM") As Set Forth in The Stipulation.

Brightergy does not provide any criticism for most of the elements of the Stipulation. The majority of Cycle 2's demand side portfolio, technical resource manual, Evaluation, Measurement and Verification ("EM&V") plan and DSIM are not discussed by Brightergy. All of these elements meet all requirements of the MEEIA statute. Ex. 202, Rogers Surrebuttal, p. 5, ll. 14-15.

III. C&I Custom Rebates.

A. The Cycle 2 C&I Custom Rebate Incentives Have the Goal of Achieving All Cost Effective Savings.

Brightergy's first claim is that the C&I Custom Rebate Cycle 2 incentives do "not meet the statutory standard of achieving all cost effective savings." Brightergy Initial Brief at 2. Brightergy goes on to argue that because the Cycle 1 incentives achieved savings and were cost effective, the Company must use those same incentives in Cycle 2 and the Commission will be violating MEEIA if it approves a MEEIA plan that does not contain those same incentives. The Commission is not obligated to approve the same MEEIA plan for every cycle. MEEIA is not a static program with the same programs and incentives offered during every cycle. Instead, parties are to learn from the previous cycle when proposing and evaluating MEEIA programs.

Brightergy's argument ignores the very language of the MEEIA statute. Section 393.1075.4, quoted at p. 2 of Brightergy's Initial Brief, states the Commission shall permit electric corporations to implement commission-approved demand side-side programs "with a **goal** of achieving all cost effective demand side savings." Section 393.1075.4 does not require the utility design programs to achieve all cost effective savings; the utility must balance many considerations, one of which is the rate impact to the customer of offering all cost effective programs. If the same C&I Custom Rebate structure were adopted from Cycle 1 to Cycle 2, customers would bear the $11 million cost with no additional benefit. Ex. 103, Winslow Surrebuttal, p. 10, l.3.

Brightergy claims at page 4 of its Initial Brief, that the Cycle 2 C&I Custom Rebate program will have free ridership problems and that because of the free ridership problems the program would result in ratepayers paying more for energy savings than the MEEIA plan actually causes. This is wrong on several levels. First, Ameren's C&I program for Cycle 1 is very similar to the Company's proposed Cycle 2 structure. In fact, the Company's proposal is based on a slightly higher flat rate incentive than Ameren. Ameren's net to gross ratio, which includes the impact of free ridership, achieved 93 percent in 2013 and 92 percent in 2014. This low level of free ridership has been validated through an EM&V, which was approved by the Commission. Ex. 103, Winslow Surrebuttal, p. 6, ll. 9-13. Brightergy does not provide any data to demonstrate its claim. Brightergy witness Blake did not provide any workpapers with his testimony or any modeling or program analysis to support his claim. Tr. 247. Second, the Company has an economic incentive to minimize the level of free ridership. The EM&V process will determine if free ridership existed and if it does exist, the Company's earnings opportunity will be adjusted downward. In addition, the Company's throughput disincentive will be adjusted. These potential adjustments mean that the Company will not be rewarded for energy savings that occur from free riders of programs.

Brightergy's argument that the Cycle 2 C&I program must achieve all cost effective demand-side savings before the programs have been implemented is illogical and not found in the MEEIA statute. At this point, the MEEIA 2 C&I program has not been implemented and we won't know the results of the EM&V for several years. What we do know is that the program is designed with the **goal** of achieving all cost effective demand savings as required by the MEEIA statute and that the program will be evaluated by a retrospective EM&V process which will ensure that the Company will not be paid for savings that it did not create.

B. The Cycle 2 C&I Program Is Expected to Drive Energy Efficiency Investment.

Brightergy argues that the payback times will increase under Cycle 2 due to the lower incentive levels and the increase payback times will mean that there will be fewer energy efficiency investments. The Company agrees that with lower incentives, the customer will have to pay more of the cost of the investment. However, the Company's data shows that customers are willing to make energy efficiency investments at paybacks ranging from two to ten years and some payback periods as high as fifteen years. Tr. 138. Brightergy admitted that it submitted projects under C&I Cycle 1 that had paybacks longer than two years and that some projects had paybacks longer than four years. Tr. 278, 304. The Company's position is also supported by Ameren's experience in its Cycle 1 C&I program which offered much lower flat rate incentives and hence higher payback times but still achieved high net to gross ratios.

Brightergy also ignores that under the Company's redesigned Cycle 2 incentive structure for the C&I Custom Rebate program, many lighting projects will actually qualify under the prescriptive program which offers an incentive up to 20 cents per kilowatt hour which is similar to the 22 cents level of Cycle 1. Tr. 130. In fact, the majority of the projects that would have been done under the Cycle 1 custom program will be prescriptive programs under Cycle 2 and qualify for the higher incentive. Tr. 131.

Brightergy asserts at page 6 of its Initial Brief that only its witness that has market experience concerning the importance of payback levels. However, at the hearing, Mr. Blake's market experience was demonstrated to be short on specifics. Mr. Blake did not know the average payback level of Brightergy's projects (Tr. 304), did not know if customers participating in Brightergy projects would own their equipment after their lease expired (Tr. 266), and what percentage of the Company's total projects were built in Missouri (Tr. 262). By contrast, the Company's decision to change its C&I incentive levels was not based on one person's opinion, but was undertaken with a very careful consideration, with expertise and analysis provided by the Company's program implementer (CLEAResult) and the Company's consultant (AEG). Ex. 103, Winslow Direct, p. 3, ll. 10-12.

Brightergy spends pages 7-8 of its Initial Brief addressing vendor support. Brightergy claims that only one vendor supports the Cycle 2 C&I program. While the Company did attach a letter of support from an important trade ally to its testimony, Company witness Winslow testified that other trade allies also expressed appreciation of the Cycle 2 C&I program due to the simplification of the incentive model. Tr. 140. Moreover, Brightergy is not the only trade ally that participates in MEEIA. Brightergy, with two other trade allies (FSG and Sarin), submitted projects that make up to 30 percent of the kwH savings experienced by the Company. Tr. 142. The Company did not receive any negative feedback from these two trade allies. In addition, the Company did not receive any negative feedback from any trade ally when it introduced the lower incentives at the July or December, 2015 trade ally forum attended by over 100 trade allies. Ex. 103, Winslow Surrebuttal, p. 7, ll. 2-6. This lack of negative response at these trade ally forum is consistent with Ex. 502 (cited on p. 8 of Brightergy's Initial Brief) which was discussing reaction to an April 2015 trade ally forum.

Brightergy argues on page 8 of its Initial Brief that the Company is unlikely to have any incentives to adjust rebates upward, as agreed upon by all signatories to the Stipulation, and that the Company will achieve its savings targets. This claim is in conflict with Brightergy's earlier claim that the lower rebate structure will encourage free ridership. In order to fully achieve its earnings opportunity of up to $35 million, the Company is incented to deliver the programs at the lowest free ridership that it can possibly achieve. The earnings opportunity is based on a full retrospective EM&V for this very reason. A high free ridership lowers the net to gross value. Therefore, the Company will be constantly evaluating free ridership and participation levels so that it can maximize its performance to achieve the earnings opportunity. Tr. 136.

C. <u>The Company's Cycle 2 Incentive Levels Are Comparable to Other Utilities.</u>

Brightergy claims at page 8 of its Initial Brief, that the Company's Cycle 1 incentive levels are comparable to other utilities in surrounding states. As shown in Company witness Winslow's Surrebuttal Testimony, the Company's Cycle 1 programs are not similar to other states. For example, the Empire District Electric Company's caps are much less than KCP&L's Cycle 1 caps which limits the amount of incentive that a customer would receive. Ex. 103, Winslow Surrebuttal, p. 2, ll. 18-20. Ameren's C&I incentive, as discussed above, is much lower than the Company's Cycle 1 C&I incentives. The table on pages 4 to 5 of Ex. 103 (Winslow Surrebuttal) shows that the Company's Cycle 1 program incentives are very different from other states programs. Moreover, an examination of the full details of the programs of other states shows that the Company's Cycle 2 incentives are more in line with other states' programs than Cycle 1 incentives. <u>Id</u>. at p. 2.

Brightergy next argues that comparisons with other utility's programs don't matter and the Commission can ignore what happens in other jurisdictions. This argument is not surprising, as Brightergy would like the Commission to ignore that the largest utility in Missouri had more success per invested dollar with its lower Cycle 1 C&I incentive than the Company did with its higher Cycle 1 C&I incentive. The Company agrees that the Commission is not required by the MEEIA statute to examine other utility's incentive levels, but it also is free to make this comparison, especially here when Brightergy is making the self-interested claim that incentive rates must be higher for energy efficient investment to occur. The Ameren data proves otherwise.

IV. Regulatory Flexibility.

Brightergy claims that the Company did not make any legal arguments why the Commission should grant this variance. These legal arguments are contained in the variance requests in Appendix H to the Stipulation. The MEEIA statute does not require Commission approval of the discontinuance of MEEIA programs. Since the statute is silent, approval of the Stipulation is consistent with the MEEIA statute. 4 CSR 240-20.094(5) does require Commission approval to terminate MEEIA programs and this is why the Company and the signatories to the Stipulation are seeking a waiver of this rule. Good cause exists for a variance from the rule.

The Company, should it decided to discontinue all MEEIA programs, will meet or exceed all of the requirements of the rule, except a hearing, under the conditions imposed under the Stipulation. Ex. 201, Rogers Direct, p. 9, ll. 8-9. MEEIA is permissive-a utility does not have to offer energy efficiency programs. The Company is not willing to offer energy efficiency programs without the Regulatory Flexibility provision. Therefore, good cause exists for the variance as the variance will enable MEEIA demand side programs and the substantial energy savings benefits that all customers will enjoy.

Brightergy next claims that certain signatories to the Stipulation do not like the Regulatory Flexibility provision. This claim is irrelevant, as the signatories have agreed to support the Stipulation and have agreed to be bound by it. Each signatory negotiated for provisions in the Stipulation that it considered important and no party got exactly what it wanted. There was give and take, as in any negotiation. It is the nature of a successful negotiation that each party is not completely satisfied with every aspect of a settlement agreement. The fact that certain signatories wish that the Regulatory Flexibility provision was not part of the Stipulation is not a reason why the Commission should reject the Stipulation.

Brightergy asserts at page 10 of its Initial Brief that the Company did not provide any specific outcomes that could cause the MEEIA program to become unsustainable. This argument ignores the fact that the outcomes are difficult to predict due to the uncertainty surrounding MEEIA, the MEEIA rules, the results of the Cycle 1 EM&V and the interplay between MEEIA and the Clean Power Plan. Tr. 146-147. This uncertainty is precisely why the Company believes that the Regulatory Flexibility provision is needed. However, the Company does give examples of potential scenarios in the Direct and Surrebuttal Testimony of Company witness Tim Rush. For example, if the Clean Power Plan gives a utility an advantage for establishing energy efficiency programs in a certain year, the Company needs the flexibility to terminate the programs so that they can be re-established in an optimal year. Ex. 100, Rush Direct, p. 13, ll. 7-9.

Brightergy next claims that because the Commission's rule requires a decision on termination in 30 days, the Company has the certainty it needs regarding program termination. Brightergy misses the point, as the Commission's rule also requires a hearing before termination. Parties opposing termination of the MEEIA programs can ask the Commission for a variance of the rule and if successful can extend the period of time that the Company will have to offer MEEIA programs. This docket is a good example of how a case can get extended due to a hearing requirement because one party cannot agree to provisions which are acceptable to all other parties.

Next Brightergy asserts that the threat of a 30 day cancellation would make customers reluctant to begin the process of evaluating energy efficiency investments, would make customers nervous about the program's viability and is too narrow of a window to evaluate a large investment decision. Whether these speculations are true or not, the fact remains that the Commission's rule provides the same 30 day cancellation period as the Stipulation. Brightergy's complaints concerning the narrowness of the 30 day cancellation period can also be said of the Commission's rule, under which its customers appear to have no trouble making energy efficiency investment decisions.

Brightergy argues that the Commission should not abdicate its authority because it will create a hostile environment that discourages trade allies from investing in the Company's service area. There are already over 200 trade allies in the Company's service area. Tr. 95. None of them, not even Brightergy, has threatened to discontinue its business due to the Regulatory Flexibility provision. In fact, Brightergy indicated that it would participate in MEEIA Cycle 2 if approved by the Commission. Tr. 252.

Finally, while the Company is seeking the unilateral discretion to discontinue its MEEIA programs under the very specific conditions and notice procedures specified in the Stipulation, this discretion is not absolute or arbitrary. If the Regulatory Flexibility provision is exercised by the Company, the Company forfeits its $35 million earnings opportunity. Tr. 153-154. Due to this significant financial consequence, the Company will not make the decision to terminate the programs for anything but a serious reason. The likelihood of the Company terminating its programs is very, very, very slim. Tr. 151. However, due to the uncertainty surrounding MEEIA, the Company must have the Regulatory Flexibility option so that it can effectively manage the risk it faces when offering voluntary energy efficiency programs.

V. **Conclusion.**

Approval of the Stipulation will enable the Company's MEEIA Cycle 2 portfolio of programs, which expired on December 31, 2015 to begin. The Stipulation should be approved by the Commission as is provides the Commission the opportunity to continue the progress the Company has made in energy efficiency in Missouri.

Respectfully submitted,

|s| Roger W. Steiner

Robert J. Hack MBN 36496
Roger W. Steiner MBN 39586
Kansas City Power & Light Company
1200 Main Street, 16th Floor
Kansas City, MO 64105
(816) 556-2785 (Phone)
(816) 556-2787 (Fax)
rob.hack@kcpl.com
roger.steiner@kcpl.com

James M. Fischer MBN 27543
Fischer & Dority, P.C.
101 Madison Street, Suite 400
Jefferson City, MO 65101
(573) 636-6758 (Phone)
(573) 636-0383 (Fax)
jfischerpc@aol.com

Attorneys for Kansas City Power & Light Company
and KCP&L Greater Missouri Operations Company

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 5th day of February, 2016, to all counsel of record.

|s| Roger W. Steiner

Roger W. Steiner