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-2019-0132

INITIAL BRIEF OF NATURAL RESOURCES DEFENSE COUNCIL

The Natural Resources Defense Council (NRDC) offers this brief in support of KCP&L's MEEIA Cycle 3 plan with recommended modifications to the income-eligible programs.

The Commission's primary duty in this case is to reject the erroneous theory of Staff and OPC that no portfolio of MEEIA programs can be cost-effective, or benefit non-participant customers, unless it avoids or defers an immediate need for a specific capacity addition.[1] If it does not, they say, the avoided cost is zero; no other avoided costs count.[2]

The only programs Staff and OPC can approve are low-income programs that don't need to be cost-effective; educational programs minus Home Energy Reports; and demand response.[3] This vestigial portfolio gives no value to energy savings despite MEEIA's goal of pursuing "all cost-effective demand-side savings," which includes energy as well as demand savings.[4] Such an approach is also totally contradictory to what the Commission recently decided in the case of Ameren.[5]

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[1] Dietrich T. 257–60; Luebbert, T. 323–4; Ex. 200, Marke Rebuttal, pp. 5, 7–10.
[2] Ex. 101, p. 27 lines 1–10.
[3] Ex. 101, Staff Rebuttal Report, p. 88 lines 17–21.
[4] Section 393.1075.4, RSMo.
[5] EO-2018-0211, Order Approving Stipulation, Dec. 5, 2018.

Excess capacity is a separate issue and should be dealt with by retirement of power plants that are rendered obsolete by the lower-cost resource of energy efficiency.

Part I of this brief addresses Staff and OPC's misunderstanding of avoided costs, earnings opportunity and benefit to all customers, with some related issues. Part II addresses the company's inadequate low-income programs.[6]

PART I

THE PLAN AVOIDS UTILTY COSTS AND BENEFITS ALL CUSTOMERS.

The Commission must consider all avoided costs under MEEIA.

"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**." Missouri Energy Efficiency Investment Act, § 393.1075.4, RSMo (emphasis added). To be approved, programs must "result in energy or demand savings," *id.,* and of course a program could result in both.

Avoided costs enter the statute in the definition in § 393.1075.2(6), "'Total resource cost test', a test that compares the sum of avoided utility costs and avoided probable environmental compliance costs to the sum of all incremental costs of end-use measures that are implemented due to the program, as defined by the commission in rules."

Staff and OPC do not sum avoided costs but cancel out all of them except short-term deferral of a new supply-side unit. To ignore other avoided costs is to ignore the

[6] NRDC addresses the avoided cost and earnings opportunity issues raised by Judge Clark (T. 531–2) but has no position on the other issues raised by the judge.

statute and prior decisions by the Commission. Energy benefits, even in a situation of excess capacity, include the avoided marginal costs of generating more electricity from existing plants and the avoidance of generation from the plants with the highest marginal costs such as peakers.[7] Witnesses for Staff[8] and OPC[9] admitted that there are other benefits such as avoided transmission and distribution costs and energy benefits, but proceeded to ignore them and set the overall avoided cost at zero.

In addition to energy benefits, NRDC's witness Philip Mosenthal enumerated demand benefits that accrue from MEEIA programs even in a position of excess capacity. By reducing system peak load, a MEEIA plan can avoid power purchases at times of high prices.[10] It can avoid T&D costs by reducing stress on substations and wires at times of peak load.[11]

Speaking more directly to the case of a utility that is "long" on capacity, Mr. Mosenthal testified that "lower peak demand can allow KCP&L to retire any existing and expensive plants earlier than they otherwise could. This can avoid possible future expensive plant retrofits and maintenance, and further benefit customers."[12] Staff and OPC seem not to have considered that retirement of an old plant can be a beneficial alternative to deferral or cancellation of a new one.

By definition, efficiency programs are cost-effective if their benefits, defined as avoided costs, outweigh their costs. Staff and OPC are ignoring the total resource cost

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[7] Ex. 400, Mosenthal rebuttal, 9 line15–10 line 6.
[8] Luebbert T. 304–5, 307–8; Rogers, T. 400
[9] Ex. 200, Marke Rebuttal 10 lines 16–8, avoided energy costs alone do not justify MEEIA investment.
[10] Ex. 400 p. 10 line 18–p. 11 line 6.
[11] Ex. 400 p. 11 lines 10–19.
[12] Ex. 400 p. 11 lines 7–9.

test, the statutory measure of cost-effectiveness. It is a fallacy to think that energy and demand savings do not defer supply-side additions.

The 2017 rule revisions could not and did not change the meaning of avoided cost.

Staff witnesses credited the MEEIA rule revisions of 2017, particularly 20 CSR 4240-20.092(1)(C) with changing their thinking about avoided costs.[13]

A regulation must be consistent with the statute that delegated the rulemaking authority. *Crescent Plumbing Supply Co. v. Director of Revenue,* 565 S.W.3d 665, 669 (Mo. banc 2018). The rule revisions could not have amended the statute, and they did not attempt to.

The original definition, 4 CSR 240-20.093(1)(F), read: "Avoided cost or avoided utility cost means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs. The utility shall use the same methodology used in its most recently adopted preferred resource plan to calculate its avoided costs."

The new version 20.093(1)(C) reads: "Avoided costs or avoided utility costs means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental

[13] Dietrich T. 272; Rogers T. 391 lines 8–22.

compliance costs. The utility shall use the integrated resource plan and risk analysis used in its most recently adopted preferred resource plan to calculate its avoided costs."

Nothing in these changes or in the Order of Rulemaking, response to comment #6, gives any inkling of an intention to make any such momentous change.[14] The revision only made avoided cost plural and changed "methodology" to "integrated resource plan and risk analysis."

Staff also referred to what should be cited as 20 CSR 4240.094(4)(C)4, which requires utilities to demonstrate in their MEEIA applications "The impacts from all demand-side programs included in the application on any postponement of new supply-side resources and the early retirement of existing supply-side resources, including annual and net present value of any lost utility earnings related thereto."[15] The Order of Rulemaking, comment 24 and response, merely says that this information will be "helpful" concerning the earnings opportunity.[16]

These changes do not make avoidance of a hypothetical IRP capacity addition the be-all and end-all of MEEIA cost-effectiveness.

KCP&L's MEEIA plan benefits all customers.

Staff and OPC's other major contention is that the plan does not benefit all customers as required by § 393.1075.4 ("beneficial to all customers in the customer class

[14] Order of Rulemaking, Case EX-2016-0334; 42 Mo. Reg. p. 1245, Sept. 1, 2017.
[15] Dietrich, T. 272 lines 10–11.
[16] *Id.;* 42 Mo. Reg. at 1262.

in which the programs are proposed, regardless of whether the programs are utilized by all customers") because non-participants are not benefiting from any capacity deferral.[17]

Efficiency is the least-cost resource whenever the benefit-cost ratio is greater than one. It then displaces supply-side alternatives since costs and therefore revenue requirements are lower, and all customers benefit.[18] The TRC ratios for the KCP&L and GMO portfolios respectively are 1.81 and 1.90.[19]

The best way to reduce the impacts on non-participants is to minimize the number of non-participants.[20] KCP&L is already doing this. "Through things like its upstream products program, the vast majority of KCP&L customers will participate in some way and typically not even be aware they are participating, even if just to buy a few discounted lightbulbs, which by itself will likely offset their rate impacts and still provide them with a lower overall bill."[21]

Non-participant customers benefit from lower bills even if there is a short-term increase in rates. OPC's argument is a continued denial that cost-effective programs can reduce load and defer supply-side investments.[22] "Higher rates will translate to larger bills for customers, all else being equal."[23] But all else is not equal if the programs pass the TRC. Despite his denial, Marke is applying the Ratepayer Impact Measure (RIM test) instead of the TRC since he sees rates going up but not costs going down. Under the RIM test, lost revenue (reduced sales due to efficiency) is a cost. Under MEEIA lost revenue is

[17] Ex. 101, Staff report 28 lines 3–7; Ex. 200, Marke rebuttal p. 49 lines 2–5.
[18] Ex. 400, Mosenthal, p. 9.
[19] *Id.,* p. 6 lines 7–8.
[20] *Id.* p. 14 lines 8–9.
[21] *Id.* lines 13–16.
[22] Ex. 201 Marke Surrebuttal p. 10 lines 9–21.
[23] *Id.* line 10.

not an added cost but a reallocation to MEEIA of fixed costs that are already embedded in rates.[24]

Staff and OPC do not value demand- and supply-side resources equally.

MEEIA says, “It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure,” § 393.1075.3. Staff and OPC do not value them equally but subordinate demand-side to supply-side by insisting that future supply-side resources must be built even if cost-effective MEEIA programs could be implemented. Supply is not just capacity, it is capacity, energy, and other investments necessary to deliver electricity to customers.

To be treated equally, efficiency must be treated as a **resource.** That’s how it is done in the IRP rule, where demand-side and supply-side options are compared on the basis of long-run utility costs as measured by the net present value of revenue requirements. 20 CSR 4240-22.010(2)(A–B). MEEIA does it by pursuing “all cost-effective demand-side savings.” That means that benefits exceed costs, and lower costs then result for all customers.

The company’s IRP analysis shows that NPVRR will be lower with MEEIA.[25] Staff and OPC look past this and take it as immutable truth that Evergy will be building combustion turbines in 2033 and 2036.[26] The probability is high that in its next IRP Evergy will project some other supply-side option, or a different timing or capacity. In

[24] Ex. 400 Mosenthal p. 14 lines 1–6.
[25] Ex. 4 Surrebuttal Report pp. 14–6, 26–7.
[26] Ex. 101 p. 15 lines 1–14.

the near term the safer bet is that EM&V will reveal that this MEEIA portfolio will have saved energy and money for all customers.

Staff erroneously seeks to deny an earnings opportunity.

Staff maintains that KCP&L should be denied an earnings opportunity because there is no capacity addition being deferred and therefore no earnings being foregone.[27]

However, MEEIA says that in support of the policy of equally valuing supply-side and demand-side investments "the commission shall…(3) Provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings." § 393.1075.3. The earnings opportunity may only be based on the energy and demand savings achieved by the programs, or denied for failing to achieve savings.

In the equal valuation of demand-side and supply-side investments, the earnings opportunity is the counterpart to the utility's opportunity to earn a return on its capital investments. Staff says the company should be denied earnings on efficiency if there is a prospect for future supply-side earnings; efficiency must yield to new capacity. This is not equal treatment. Staff again ignores the fundamental thrust of MEEIA, to promote and reward energy and demand savings that out-compete supply-side investments as the lower cost resource.

[27] Ex. 101 pp. 84–6; Rogers, T. 391 line 23–392 line 8.

PART II

KCP&L SHOULD IMPROVE ITS LOW-INCOME PROGRAMS.

NRDC finds that KCP&L has enhanced its low-income multi-family (LIMF) program, but "the goals lag far behind where they should be."[28] The company has no stand-alone single-family program although it used to in Cycle 1 and to a limited extent in Cycle 2.[29] The company should do more to alleviate the high energy burden on impoverished families.[30]

An income-eligible single-family program

"The Company should partner with local community action agencies, community-based organizations, and non-profit organizations to help with program delivery - including marketing of the program, signing-up customers, and implementation of the program."[31] In addition to tapping into existing delivery channels, this could lead to new funding sources.[32]

The program should include energy assessments and:

> direct installation of all appropriate and cost-effective measures at no-cost to the participant. These should include: low-flow faucet aerators, low-flow showerheads, advanced power strips, hot water pipe insulation and LEDs, HVAC tune-ups, blower-door-guided air and duct sealing, and ceiling, duct, and/or wall insulation, at no cost to the participant. Finally, the Company should offer rebates

[28] Ex. 400 Mosenthal p. 15 lines 10–17.
[29] *Id.* p. 16 lines 9–14, p. 17 lines 3–8.
[30] *Id.* p. 17 line 11 –p. 18 line 11.
[31] *Id.* p.19 lines 17–20.
[32] *Id*. p. 20 lines 3–5.

for prescriptive and/or custom capital intensive measures at no or low-cost to participants. These measures may include but are not limited to: early retirement of inefficient HVAC systems and appliances.[33]

OPC objects to including weatherization as a measure because a low-income weatherization assistance program (LIWAP) already exists.[34] But Mr. Mosenthal explained that LIWAP only serves a small number of those in need.[35] The Division of Energy supports this position; while they ask that the word weatherization be removed from the name of the company's program, this is so eligible customers will go to the more affordable program first.[36] There is still room for the company to offer this measure.

LIMF program

The low-income multifamily program is faced with the loss of lighting-measure savings due to the elimination of LED distribution by food banks and the pending impacts of the Energy Independence and Security Act.[37] Nevertheless, the potential and need exist for much more comprehensive measures with an emphasis on custom programs with deeper energy savings rather than direct installation.[38]

NRDC recommends that the company ramp up its budgets over the six-year cycle, starting with the current year 1 budget, while it builds relationships with building owners.[39] Budget details are in the confidential version of Mr. Mosenthal's testimony.

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[33] *Id.* p. 19 lines 4–14.
[34] Ex. 201 Marke Surrebuttal p. 12 lines 4–6.
[35] Ex. 400 p. 18 line 21–19 line 2.
[36] Ex. 350 Hyman Rebuttal p. 6.
[37] *Id.* pp. 20–2.
[38] *Id.* p. 22 lines 1-2, 13–15; p. 24 lines 3–4.
[39] *Id.* pp. 22 lines 15–19, 23 lines 10–11.

NRDC supports the budget and program design recommendations of National Housing Trust and Westside Housing.[40]

The company responded that it will "continue to explore opportunities" in the single-family sector and that it "has actively collaborated with stakeholders" on multifamily programs.[41] But too much in savings is being left on the table for a six-year period.

CONCLUSION

NRDC asks the Commission to approve the Company's MEEIA Cycle 3 portfolio with increased budget and improved program design for the income-eligible multifamily program, and in addition offering an income-eligible single family program.

Respectfully submitted,

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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.

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[40] *Id.* pp. 24 line 15–25 line 2; Exhibits 550 and 551, Annika Brink Rebuttal and Surrebuttal.
[41] Ex. 4, KCP&L Surrebuttal, pp. 68–9.