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**

BRIGHTERGY, LLC REPLY BRIEF

COMES NOW Brightergy, LLC ("Brightergy") by and through counsel, states the following for its Reply Brief in response to the filings made in this docket by Kansas City Power & Light Company and KCP&L-Greater Missouri Operations Company (collectively, "KCP&L" or the "Company") in support of it application for programs under the Missouri Energy Efficiency and Investment Act ("MEEIA"):

I. Introduction

The Company states many times that it believes further negotiations will not be successful. KCP&L Initial Brief at 2, 3, 4. Instead, KCP&L asserts that Brightergy's Objection is an attempt to "hijack" the proceedings, and that the Commission should "ignore" Brightergy's concerns. KCP&L Initial Brief at 3, 4. Brightergy's objections are supported by competent evidence on the record, and the Company's suggestion that these concerns be dismissed without consideration is not warranted.

If Brightergy is correct, the programs proposed by KCP&L will be unsuccessful in persuading a significant level of new efficiency investment, running afoul of the MEEIA statute, and the variance it requests could be used as a bargaining chip if the Company wants to extract a concession from the Commission or the other stakeholders. These potential outcomes warrant serious Commission scrutiny.

II. Program Effectiveness and Negotiations

The Company's proposed MEEIA Cycle II program filed with the Commission on August 28, 2015 and modified by stipulation on November 23, 2015 (collectively, the "Proposal") is still in need of modification in order to properly incentivize markets and drive investment. Without modification, the Proposal cannot withstand statutory scrutiny.

Brightergy has been granted intervention in a number of dockets in several states, and has not objected until the present matter. In each other docket, Brightergy has found common ground with the utilities and other stakeholders. KCP&L tells the Commission that further discussions will not yield results, but also seeks to continue to exclude Brightergy, as well as all other trade allies and customers, from stakeholder groups which participate in the development of these programs. Tr. 105.

If the Commission orders further negotiations, that order in and of itself will inform parties of the Commission's concerns and provide proper motivation for these discussions. Brightergy believes that there is a middle ground between the Cycle I program and the Proposed Cycle II program that will drive investment and address the concerns of the objection. Tr. 319-320.

The Company states clearly in its Initial Brief that if the Commission adopts Brightergy's positions, it will decline to implement a MEEIA program. Initial Brief, 4. This outcome is highly unlikely. The freerider problem that has been raised and acknowledged in this docket is a real and persistent one. When a ratepayer invests in energy efficiency, the Company sells less product and collects less revenue. With a MEEIA program in place, the Company will realize recovery for those investments and load loss. If the Company declines to move forward with a MEEIA program, it will be forfeiting all of the funds it would have recouped for those ratepayers investing in energy efficiency.

Some efficiency investments are likely occurring now, which is why the Company would like approval of its application as quickly as possible. It is in the Company's interests, and the interests of its board and shareholders, to recoup as much of the revenue lost to efficiency as possible. It is likely, therefore, that the Company will move forward with a MEEIA program even if there are aspects it does not like in the final product.

The Company cites as evidence in its opposition to the continuance of the Cycle I program the associated cost increases. KCP&L Initial Brief at 10. The figures presented by the Company reflect percentage changes in costs associated only with C&I ratepayers' DSIM charges. The Company's witness was not able to provide an estimated cost impact at the hearing. Tr. 135-136. In real dollar terms, and even assuming a 15% increase in the DSIM rate, the typical C&I customer of KCP&L-GMO would see an increase of $0.00030/kWh monthly, and a similar customer of Kansas City Power & Light would see an increase of $0.00054/kWh monthly.[1]

---

[1] Data extrapolated from Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company Demand Side Investment Mechanism Rider tariffs.

Claims by the Company and Staff regarding the success of Ameren's program ignore two important considerations. First, and as Brightergy noted during the hearing, when efficiency targets are set low enough, there is little difficulty in reaching it. An aggressive program, on the other hand, would seek to drive investment by setting large, but reachable goals. As an example of an aggressive program, the Massachusetts Department of Public Utilities recently approved National Grid's proposal for an $850 million efficiency investment program over the next three years, for which it expects to realize savings of $8 billion.[2]

Regardless of the overall program budget, however, the freerider issue will exist at some level. There is no dispute that some level of efficiency investment will take place regardless of the program structure, or lack of program, in place at a given time. Tr. 170. A less ambitious program will attract fewer investors. Ex. 500, Blake Rebuttal at 3-4. It follows that a smaller program will recognize a higher proportion of freeriders. If we assume a freerider level of 10 out of 100 investors under the MEEIA I program and that 90 out of 100 of the MEEIA investors were incentivized by the rebate structure, and that there will be an overall reduction in efficiency investors, those 10 freeriders under Cycle I begin to make up a larger and larger percentage of the overall MEEIA program, reducing benefits to all customers.

Free ridership is a difficult phenomenon to measure accurately. Although the Company will implement an Evaluation, Measurement and Verification ("EM&V") program to verify savings, this process will not necessarily accurately identify those customers who would have invested in the absence of a program. The Commission can take action to reduce the proportion of freeriders by approving an aggressive program.

[2]http://www.utilitydive.com/news/massachusetts-approves-12b-national-grid-energy-efficiency-investment/413322/

The Company quite correctly notes that a higher initial rebate lowers the cost of an energy efficiency project. KCP&L Initial Brief at 9. The Company also notes that a higher rebate level allows Brightergy to assist more customers to install more efficiency projects. Id. The Company's Initial Brief leaves the impression that Brightergy is the sole beneficiary of that rebate structure, when in reality the beneficiaries will include all of KCP&L's ratepayers in the Commercial and Industrial ("C&I") rate class, as well as the hundreds of trade allies who participate in the MEEIA program in the Company's service territory.

The goals of the MEEIA statue, to provide benefits to all ratepayers through avoided supply side expenditures, are met when proposed MEEIA programs cause investment. More investment in efficiency will benefit all ratepayers and avoid more cost, and the Commission should encourage more aggressive programs.

III. A Variance Should not be Granted

The company and staff argue that the Commission should grant the variance because KCP&L has demanded it. In essence, the Company is telling the Commission that if it has to play by the rules, it does not want to play at all. Brightergy argued in testimony that one likely outcome of the Commission allowing this rule variance is that the Company could use the cancellation of the programs as a bargaining chip in other proceedings. That process has already begun, with the Company threatening to pull back all programs if the Commission does not cede its authority to review the cancellation.

Bear in mind that the Company indicated one reason it would pull the plug on MEEIA is if it does not realize the amount of recovery it would like:.

> Chairman Hall: In other words, if they were not compensated in a manner advantageous to the Company in Cycle 1, that might impact your -- your interest in eliminating Cycle 2?
>
> Mr. Steiner: That could be -- that could be an issue, yes. If we don't believe that this program makes good sense going forward because we can't recover performance incentive, yes. Tr. 42.

Thus, despite the assurances and safeguards Staff and the Company point to, KCP&L is still reserving the right to terminate MEEIA if it does not recover a sufficient amount of money from its ratepayers.

This option should not be necessary. If devastating market conditions came to pass, it would surely be sufficient cause for the Commission to permit cancellation of programs under the current rule. The only conclusion left is that the Company wants the authority to unilaterally cancel programs for some other reason, such as the one it noted at the hearing. In the event that the Company announces termination of the program due to market conditions and the other parties and the Commission disagree, there is no recourse other than a meeting, "during which the Company will explain its rationale for discontinuance...." KCP&L Initial Brief at 12. KCP&L's MEEIA program can still be cancelled, unilaterally and with no Commission review, despite disagreement over the Company's assessment of the market conditions.

Staff points to its ability to file a complaint in the event that the Company fails to sufficiently explain its rationale. Staff Initial Brief at 14. Regardless of whether Staff files a complaint, and regardless of how the Commission rules on that complaint, the Company would still have ended the MEEIA program on its own authority.

IV. Conclusion

The evidence has demonstrated that the Proposal runs the risk of a higher proportion of freeridership as a result of a lowered incentive structure and its failure to drive new investment. Additionally, the Company has requested an unnecessary and potentially disruptive variance from the Commission's regulations. The Commission should retain its authority to authorize or not authorize the cancellation of the programs.

Dated February 5, 2016

Respectfully submitted,

_/s/ *Andrew J. Zellers*_____________________

Andrew J. Zellers #57884
General Counsel/Vice President for Regulatory Affairs
Brightergy, LLC
1712 Main Street, 6th Floor
Kansas City, MO, 64108
(816) 866-0555 Telephone
(816) 511-0822 Fax
Email: andy.zellers@brightergy.com

David L. Woodsmall #40747
308 E. High Street, Suite 204
Jefferson City, MO, 65101
(573) 606-6006 Telephone
(573) 636-6007 Fax
david.woodsmall@woodsmalllaw.com

ATTORNEYS FOR BRIGHTERGY, LLC

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 5th day of February, 2016, to all parties on the Commission's service list in this docket.

/s/ *Andrew J. Zellers*