

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Kansas City Power & Light)
Company's Request for Authority to)
Implement a General Rate Increase for)
Electric Service) **File No. ER-2016-0285**

**MISSOURI DIVISION OF ENERGY'S
INITIAL POST-HEARING BRIEF**

COMES NOW the Missouri Division of Energy ("DE"), by and through the undersigned counsel, and for its *Initial Post-Hearing Brief* in the above-styled matter, states:

1. Commission-Raised Issues

A. Installation of AMI smart meters for residential and commercial customers

DE supports advanced metering infrastructure ("AMI," sometimes called "smart meter") deployment for residential and commercial customers conditioned on consideration of the associated costs and technological and financial barriers. Grid modernization, discussed at length in the Comprehensive State Energy Plan ("CSEP"), provides many benefits. Deploying AMI is crucial to recognizing the benefits associated with grid modernization, particularly the ability of customers and authorized third parties to have greater access to their utility usage data. So long as the benefits of AMI outweigh its costs – and to the extent that customer AMI data can be adequately protected from unauthorized disclosure – DE views AMI deployment as vital to enabling utilities to serve evolving customer needs and interests.

B. Plug-in Electric Vehicle Rate

DE does not support an off-peak electric rate exclusive to plug-in electric vehicle ("PEV") charging. While DE supports other demand response rates that can encourage charging during off-peak hours, DE is concerned that the application of such rates to PEV charging alone

may a) inappropriately target a single end use and b) be impractical from an infrastructure perspective.

C. Optional Residential Time-of-Use (hourly) and Time-of-Day Rates

DE supports the development of appropriately designed optional Time-of-Use rates (hourly) and Time-of-Day rates (sometimes also called “demand response rates” or “time-varying rates”). In its Report and Order in ER-2014-0370, the Public Service Commission (“Commission”) allowed Kansas City Power & Light Company (“KCP&L” or “Company”) to freeze the availability of its residential time-of-use, two-part time-of-use, and real time pricing tariffs; the Commission also ordered that a study of these rates be completed, “... within two years of the effective date of this order.”¹ The effective date of the Report and Order was September 15, 2015, so KCP&L is required to complete this study by September 15, 2017. DE recommends that the Commission require the Company to file with the Commission both the aforementioned study and supporting documentation no later than September 15, 2017. The recommendation to require the Company to file the study upon its completion is consistent with the Commission’s Order in ER-2016-0156 (the recently concluded rate case of KCP&L Greater Missouri Operations Company).²

D. PACE-Property Assessed Clean Energy Programs

DE recommended in testimony that KCP&L guide potential demand-side management (“DSM”) program participants toward information on the Property Assessed Clean Energy

¹ Missouri Public Service Commission Case No. ER-2014-0370, *In the Matter of Kansas City Power & Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service*, Report and Order, September 2, 2015, page 92.

² Missouri Public Service Commission Case No. ER-2016-0156, *In the Matter of KCP&L Greater Missouri Operations Company’s Request for Authority to Implement a General Rate Increase for Electric Service*, Order Approving Stipulation and Agreements, Rejecting Tariffs, Cancelling True-Up Hearing, and Ordering Filing of Compliance Tariffs, September 28, 2016, page 7.

(“PACE”) financing option.³ The Company already has information on its website related to PACE financing for businesses.⁴ The Company should expand its outreach efforts by linking to PACE financing-related information for businesses and residents on its homepage, sending a mailer to customers on financing options, and notifying customers of their financing options during interactions with customer service representatives and energy efficiency contractors. Based on a communication received from the Company, it is DE’s understanding that the Company will increase its promotion of PACE financing.⁵

E. PAYS-Pay As You Save Programs

Pay As You Save (“PAYS®”) is a specific type of on-bill financing option. Under PAYS®, a customer receives a loan for an energy-related improvement to his or her property, which is then repaid on the customer’s utility bill. While PAYS® may meet the financing needs of certain customers, PAYS® restricts qualifying improvements to only those for which the customer will save more than the cost of the investment plus financing. Given Missouri’s low energy prices, this aspect of PAYS® limits qualifying investments, hampering a customer’s ability to finance desired improvements and to fully participate in utility efficiency rebate programs. Customers should have access to additional on-bill financing options that allow greater choice and flexibility. Examples of other on-bill financing program designs include those of the Tennessee Valley Authority, Manitoba Hydro, and Alliant Energy; differing aspects of these programs include various funding sources and eligible measures.⁶ DE recommends that KCP&L offer some form of on-bill financing, either as a DSM program or as a method to both

³ Exhibit No. 800, p. 10, ll. 6-10.

⁴ Kansas City Power & Light Company. 2016. “Energy Efficiency Upgrade Funding.” <http://www.kcpl.com/~media/Files/Save%20Energy%20and%20Money/2016%20MEEIA%20Documents/Business%20Energy%20Saving%20Tips/0516KCPLBEER396513PACEUpgradeFundingFactSheetR1.pdf>.

⁵ Exhibit No. 802, p. 14, ll. 15-16.

⁶ Missouri Public Service Commission Case No. EW-2013-0519, *In the Matter of a Working Docket for the State-Wide Advisory Collaborative to Address the Requirements of Commission Rule 4 CSR 240-20.094(8)(B)*, Kristy Manning, “Financing Tools,” November 22, 2016, slide 6.

boost participation in its DSM programs and increase the adoption of customer-owned distributed energy resources. This recommendation is consistent with the CSEP.⁷

2. Rate Design/Class Cost of Service

A. What interclass shifts in revenue responsibility, if any should the Commission order in this case?

DE did not submit testimony on the issue of interclass shifts in revenue responsibility and takes no position at this time. DE reserves the right to take a position in its reply brief.

B. How should any increase ordered in this case be applied to each class?

With regards to the residential class, the customer charge should not be increased (see 2.C. below), and DE's block rate design proposal should be implemented (see 2.D. below); following these changes, any increase to the residential class should be applied to the energy charges only on an equal percentage basis. DE did not submit testimony on rate design or class cost of service with regards to classes other than the residential class and takes no position on applying any increase in this case to the rates for non-residential classes at this time. DE reserves the right to take a position on these other classes in its reply brief.

C. Should KCPL be permitted to increase the fixed customer charge on residential customers?

No. Increasing the customer charge sends a poor price signal from the perspective of inducing efficient consumption, even if energy charges also increase. Compared to a higher energy charge, a higher customer charge would discourage new or additional investments in efficiency and reduce the potential value received by customers who have already invested in efficiency. Energy charges send the best price signal for the purposes of encouraging energy

⁷ Missouri Department of Economic Development – Division of Energy. 2015. "Missouri Comprehensive Statewide Energy Plan." <https://energy.mo.gov/energy/docs/MCSEP.pdf>. Page 240.

efficiency. Under the Company's proposal, customers would be faced with an increase of nearly 11 percent in a billing component which, absent total disconnection from the utility's system, cannot be avoided. This virtually unavoidable rate hike is particularly burdensome for low-use customers and fixed-income customers, and especially for low-income customers (who tend to use less than average).⁸

D. Should KCPL be required to implement the block rate structure proposed by the Division of Energy for residential customers?

Yes. As a step toward rates that send improved price signals for efficiency, DE recommends that the Commission order the Company move towards the adoption of flat volumetric rates for residential general use customers during the winter, and that the Company implement an inclining block rate for residential general use customers during the summer, as described in the testimonies of DE witness Mr. Hyman⁹ and Renew Missouri Advocates d/b/a Renew Missouri ("Renew Missouri") and Sierra Club witness Mr. Jester.¹⁰

The test for determining the propriety of a rate design is whether the rates are just, reasonable, and in the public interest. (See State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n, 600 S.W.2d 222, 223 (Mo.App. W.D. 1980.) With regard to just and reasonable rates, Missouri's courts have held that, "Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. It is not theory but the impact of the rate order which counts." State ex rel. Missouri Water Co. v. Pub. Serv. Comm'n, 308 S.W.2d 704, 714 (Mo. 1957), citing Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333. The Commission has previously concluded that a utility has the burden of proof to show that its proposed tariffs are just and reasonable, including the reasonableness of

⁸ Tr. Vol. 11, pp. 908-909, ll. 9-25 and 1-19.

⁹ Exhibit No. 800, pp. 19-22, ll. 2-16, 1-18, 1-18, and 1-16.

¹⁰ Exhibit No. 400, pp. 13-18, ll. 1-22, 1-21, 1-14, 1-12, 1-21, and 1-16; Exhibit No. 401, pp. 1-2, ll. 17-22 and 1-10.

its rate design. In the Matter of Missouri Gas Energy & Its Tariff Filing to Implement A Gen. Rate Increase for Nat. Gas Serv., 280 P.U.R.4th 107 (Mo. P.S.C. Feb. 10, 2010), citing State ex rel. Monsanto Company v. Public Service Commission, 716 S.W.2d 791 (Mo. 1986).

With regard to the public interest, Missouri's courts have held that the public interest is a matter of policy to be determined by the Commission. State ex rel. Public Water Supply District v. Public Service Commission, 600 S.W.2d 147, 154 (Mo. App.1980). It is within the discretion of the Commission to determine when the evidence indicates the public interest would be served. State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri, 848 S.W.2d 593, 597-598 (Mo. App.1993). The Commission has previously held that determining what is in the interest of the public is a balancing process. In the Matter of Sho-Me Power Electric Cooperative's Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative, Case No. EO-93-0259, Report and Order issued September 17, 1993, 1993 WL 719871 (Mo. P.S.C.). In making such a determination, the total interests of the public served must be assessed. Id.

Although DE supports movement towards inclining block rates in the summer and flat rates in the winter in this case, this movement does not necessitate an increase to the customer charge. Renew Missouri and Sierra Club witness Mr. Douglas B. Jester testified that the increased volatility in annual revenues resulting from DE's proposal will be only about 0.1 percent of the Company's Missouri revenue;¹¹ as noted by DE witness Mr. Martin R. Hyman, a change of 0.1 percent in the affected residential class's pre-increase revenues would only amount to a change of approximately \$0.10 per customer per month.¹² If the Commission is still concerned about the revenue impacts of DE's proposal, the Commission could order the Company to adjust its new rate design to account for the price elasticity of demand, i.e., the

¹¹ Exhibit No. 401, p. 7, ll. 12-13.

¹² Tr. Vol. 12, p. 1255, ll. 6-21.

change in consumption which would be expected with a change in price.¹³ To the extent that no acceptably applicable data can be found regarding elasticity, the Commission could also require an analysis of the changes in consumption resulting from the implementation of DE's proposal, with the resulting data used to adjust rates in a subsequent case.¹⁴

Some of the concerns which have been raised regarding DE's rate design include impacts on space heating customers and the sample size used in DE's bill impact analysis. Regarding the space heating concern, DE is only proposing this rate design for the residential general use customer class – not for any of the Company's residential space heating classes.¹⁵ Additionally, given the general need to consider gradualism, the avoidance of rate shock, and other concerns, DE moderated its non-summer rate design proposal by only flattening non-summer rates such that the highest single-month, revenue-neutral bill impact would be five percent (and not moving immediately to inclining block rates during the non-summer months).¹⁶ This gradual approach benefits space heating customers, who would be expected to have higher usage during the winter. As to the size of the sample provided to DE by the Company, it should be noted that the percentage of residential general use customers in the sample is less relevant than the statistical inferences which may be drawn from the sample; as Mr. Hyman testified at the evidentiary hearing, his sample of over 790 customers allows for reasonable statistical inferences at the 95 percent confidence level.¹⁷ It should also be noted that the Company used a smaller sample in its survey of customer perceptions,¹⁸ and that KCP&L witness Mr. Charles A. Caisley testified at the hearing that this smaller sample was statistically acceptable.¹⁹

¹³ Exhibit No. 800, p. 22, ll. 8-9.

¹⁴ Tr. Vol. 12, p. 1253, ll. 7-23, and pp. 1254-1255, ll. 19-25 and 1-5.

¹⁵ Exhibit No. 800, p. 19, ll. 2-10.

¹⁶ Exhibit No. 800, pp. 19-20, ll. 11-16 and 1-4, and p. 22, ll. 1-5; Exhibit No. 802, p. 7, ll. 10-13.

¹⁷ Tr. Vol. 12, p. 1240, ll. 10-25.

¹⁸ *Id.*, p. 1526, ll. 14-16.

¹⁹ *Id.*, pp. 1526-1527, ll. 17-25 and 1.

In the present case, DE and Sierra Club have provided competent and substantial evidence that moving towards the adoption of flat volumetric rates for residential general use customers during the winter and implementing an inclining block rate for residential general use customers during the summer is just and reasonable in that it would have the desired impacts of sending an efficiency-inducing price signal to high use customers and would provide bill reductions for the majority of low-income customers and low-use customers. DE's block rate design proposal is also in the public interest in that it results in bill savings to all customers in the long run by reducing peak-demand, with minimal short-term impact on the Company's earnings.²⁰

E. Should KCPL be required to propose time-varying rate offerings for residential customers in future cases?

Yes. As discussed above, in its Report and Order in ER-2014-0370, the Commission ordered that a study of these rates be completed by KCP&L no later than September 15, 2017. Additionally, several parties have provided evidence in this case on the benefits of time-varying rates for customers, which include increasing customer control over electricity bills and shifting load to off-peak hours. It is therefore appropriate for the Commission to order KCP&L to propose optional time-varying rate offerings for residential customers in its next general rate case. In the interim – and for those customers who might not choose to opt into time-varying rates – the Commission should order the implementation of DE's rate design proposal for residential general use customers. This proposal will encourage customers to consume energy in an efficient manner, even in the absence of the full implementation of the technology necessary

²⁰ Exhibit No. 401, p. 4, ll. 12-16 and p. 7, ll. 9-13.

for time-varying rates. Time-varying rates can still be implemented to reduce or shift peak demand if flat or inclining block rates are in place.²¹

F. How should any increase to Rates LGS and LPS be distributed?

DE did not submit testimony on how any increase to Rates LGS and LPS should be distributed and takes no position on this issue at this time. DE reserves the right to take a position in its reply brief.

3. Clean Charge Network

A. Is the Clean Charge Network a regulated public utility service?

Yes, the Clean Charge Network (“CCN”) is a regulated public utility service. The legal standard to determine whether a service is a public utility service was memorialized by the Missouri Supreme Court in State ex rel. M.O. Danciger & Co. v. Pub. Serv. Comm'n of Missouri, 275 Mo. 483, 205 S.W. 36, 39 (1918), where the Court stated:

For the operation of the electric plant must of necessity be for a public use, and therefore be coupled with a public interest; otherwise the Commission can have no authority whatever over it. The electric plant must, in short, be devoted to a public use before it is subject to public regulation. Munn v. Illinois, 94 U. S. 113, 24 L. Ed. 77. Since the sole right of regulation depends upon the public interest, the subdivisions quoted above, and which define an electric plant and an electric corporation, mean the same, whether the idea of a public use is expressly written therein or not; it is, nevertheless, of necessity connoted and to be understood therein.

To determine “public use,” the Court relied on the following test:

²¹ Exhibit No. 802, p. 8, ll. 3-10.

The fundamental characteristic of a public calling is indiscriminate dealing with the general public. As Baron Alderson said in the leading case: “Everybody who undertakes to carry for any one who asks him is a common carrier. The criterion is whether he carries for particular persons only, or whether he carries for every one. If a man holds himself out to do it for every one who asks him, he is a common carrier; but if he does not do it for every one, but carries for you and me only, that is a matter of special contract.” State ex rel. M.O. Danciger & Co. v. Pub. Serv. Comm'n of Missouri, 275 Mo. 483, 205 S.W. 36, 42 (1918).

The CCN is a public utility service as the proposed tariff service passes both elements of the Danciger test: (1) KCP&L will be operating electric vehicle charging stations, which constitute electric plant; and, (2) KCP&L will be devoting the electric vehicle charging stations to a public use.

B. Should capital and O&M expenses associated with the Clean Charge Network be recovered from ratepayers?

Yes, similar to recovery of the prudently incurred capital and operations and maintenance (“O&M”) expenses associated with other regulated utility services,²² the capital and O&M expenses associated with the Clean Charge Network should be recovered through cost based rates collected from those ratepayers using the Clean Charge Network services. However, to the extent that revenues from this service do not cover its incremental cost, any shortfall should be recovered from the general body of ratepayers, as would be true for other services.

“... [A] utility need not demonstrate in its case-in-chief that all expenditures are prudent.” In Re Missouri Gas Energy, GR-2002-348, 2007 WL 4386053 (Mo. P.S.C. Oct. 2, 2007). When another party raises a serious doubt regarding an expenditure, the burden shifts to the utility to

²² Tr. Vol. 12, p. 1275, ll. 4-7.

prove the prudence of the expenditure. Associated Natural Gas Company, 954 S.W.2d at 528, citing State ex rel. Pub. Counsel v. Pub. Serv. Comm'n, 274 S.W.3d 569, 586 (Mo.App. W.D. 2009). “In ratemaking cases, a utility receives the benefit of a presumption of prudence with regard to its costs until another party raises a serious doubt regarding the prudence of its expenditure.” Associated Natural Gas Company, 954 S.W.2d at 528.

The Commission has previously held that mere speculation does not create a serious doubt about the prudence of expenditures. State ex rel. Pub. Counsel v. Pub. Serv. Comm'n, 274 S.W.3d 569, 587 (Mo.App. W.D. 2009). In order to disallow a utility's recovery of costs from its ratepayers, the PSC must find both that “(1) the utility acted imprudently, [and] (2) such imprudence resulted in harm to the utility's ratepayers.” State ex rel. KCP&L Greater Missouri Operations Co. v. Missouri Pub. Serv. Comm'n, 408 S.W.3d 153, 163 (Mo.App. W.D. 2013), citing State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n, 954 S.W.2d 520, 529 (Mo.App. W.D.1997).

In the present case, the Company is entitled to the opportunity to recover the capital and O&M expenses associated with the CCN from ratepayers to the extent the revenues from customers charging on the CCN do not recover the incremental costs of providing electric vehicle charging service, given that KCP&L enjoys a presumption of prudence with regard to expenses. Since no party has filed testimony raising a serious doubt regarding the prudence of the expenses associated with the CCN, the Company may recover the associated capital and O&M expenses from ratepayers.

C. Should KCPL develop a PEV-TOU rate to be considered in its next general rate case?

DE recommends that KCP&L develop a residential general time-of-use rate which can be utilized by PEV drivers and other customers. DE is concerned that the application of such rates to EV charging alone may a) inappropriately target a single end use, and b) be impractical from an infrastructure perspective. As stated above, several parties have provided evidence in this case on the benefits of time-varying rates for customers, which include increasing customer control over electricity bills and shifting load to off-peak hours. It is therefore appropriate for the Commission to order KCP&L to propose time-varying rate offerings for all residential customers in its next general rate case.

D. Should the session charge be removed from the tariff?

Yes. The Session Charges have no basis in cost causation. The charges are not based on the cost of any equipment used to provide electric service, since this cost is already covered in the average energy prices used to set the CCN tariff's energy charges.²³ Additionally, no demonstration has been made that there is a need for Session Charges; no evidence has been provided that EV drivers linger at EVCSs for a significant amount of time past charging completion. Finally, it should be noted that EVs do not all charge at the same speed.²⁴ As a result, some EV drivers will spend longer at charging stations than others. It is not fair to penalize drivers who have to spend longer at charging stations purely based on the technological capabilities of their vehicles.

²³ Exhibit No. 142, p. 22, ll. 6-10.

²⁴ Missouri Public Service Commission Case No. ET-2016-0246, *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval of a Tariff Setting a Rate for Electric Vehicle Charging Stations*, Exhibit No. 500, p. 6, ll. 11-14.

WHEREFORE, the Missouri Division of Energy respectfully files its *Initial Post-Hearing Brief*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 22nd day of March, 2017.

/s/ Brian Bear

Brian Bear