

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

In the Matter of Kansas City Power & Light)
Company’s Demand Side Investment Mechanism) **File No. ER-2016-0325**
Rider Rate Adjustment and True-Up Required)
by 4 CSR 240-3.163(8))

PUBLIC COUNSEL’S RESPONSE TO KCPL

COMES NOW the Office of the Public Counsel (“OPC” of “Public Counsel”) and in response to Kansas City Power & Light Company’s (“KCPL” or “Company” depending on context) *Application for Rehearing and/or Motion for Reconsideration*, respectfully states:

1. Whether or not the Commission grants KCPL’s motion, customers lose. They either pay very high rates now or higher rates (presumably including unnecessary carrying costs) later. But KCPL should not be permitted to feign surprise by these events. To be clear, this foreseeable situation results directly from KCPL’s past actions that were, unfortunately, sanctioned by this Commission.
2. The precipitating actions are chronicled in File No. E0-2014-0095. KCPL informed stakeholders its MEEIA spending would exceed the budget around which the cycle 1 plan was developed. After unfruitful discussions with the company, OPC requested the Commission direct KCPL to cease MEEIA program spending because KCPL would exceed the budget by more than 120%. KCPL made clear it would continue to spend whatever it wanted without seeking prior Commission approval or making the filing required by Commission Rule 4 CSR 240-20.094(4).
3. In defense of its actions at the time, KCPL explained “the Company plans to file its application under the terms of the rule [4 CSR 240-20.094(4)], that is, **when** there is a 20% variance, the Company will make its filing” File No. EO-2014-0095, Doc. No. 101, p. 2. OPC pointed out the company’s argument attempting to distinguish seeking Commission approval

when it collects 120% of its program costs and seeking approval *after* it has exceeded 120% of Commission-approved program costs was wrong and made no difference. OPC explained:

There is no difference because the company does not plan to cease collecting program costs or cease conducting program activity once it exceeds 120% of the Commission-approved budget. Instead, the company plans to continue to spend unlimited money and seek Commission approval after-the-fact. This is an attempt to force the Commission into accepting the company's modifications because the money has already been spent, thus, divesting the Commission of its statutory oversight.

See File No. EO-2014-0095, *Public Counsel's Reply to KCPL*, Doc. No. 104.

4. KCPL explained "applications for rebates have already been approved (but not yet paid) and need time to be fully processed and honored by KCP&L." File No. EO-2014-0095, Doc. No. 101, p. 3). The Company further added it "should not have to deny payment of an already approved project that occurred sometime prior to when the portfolio budget was well below the 120% level." *Id.* OPC pointed out the Company should never have approved rebates that would cause program costs to exceed the Commission-approved budget:

[a]ppropriate management of a budget includes accounting for on-going and projected cost levels. The fact that the company has over-committed money in excess of the dollars approved by the Commission is a problem of KCPL's own creation.

File No. EO-2014-0095, *Public Counsel's Reply to KCPL*, Doc. No. 104.

5. The Commission permitted KCPL to continue spending in excess of the Commission-approved plan. File No. E0-2014-0095, *Order Denying Public Counsel's Request for Order*, Iss'd Nov. 4, 2015, Doc. No. 105.

6. Eventually, KCPL applied for Commission approval to exceed the cycle 1 budget. In its petition the Company, despite being a sophisticated utility, offered meekly:

MEEIA is new to KCP&L, its customers and its trade allies in addition to being new to the Commission. All stakeholders are learning immensely from MEEIA cycle 1 and, as a result, MEEIA cycle 2 will be the better for it. But in order for the MEEIA process to be workable and credible, there must be a reasonable degree of continuity and follow-through. Terminating KCP&L's MEEIA cycle 1 programs early, especially when planned termination is so near, is not reasonable under current circumstances.

See File No. EO-2014-0095, *Application For Approval of Modifications of Demand-side Programs*, Doc. No. 108. KCPL's credibility (or lack thereof) either then, or now, regarding MEEIA spending is the result of the company's own actions.

7. The Commission permitted the Company to continue spending. File No. EO-2014-0095, *Order Approving Application For Approval Of Modifications Of Demand-Side Programs*, Iss'd Dec. 2, 2015, Doc. No. 114.

8. On December 11, 2015, KCPL and the Commission's Staff filed a non-unanimous stipulation and agreement establishing:

The last day to submit an application for the Cycle 1 Business Energy Efficiency Rebate – Custom program is December 15, 2015. The last day for approval of an application for the Cycle 1 Business Energy Efficiency Rebate – Custom program

is January 31, 2016. The last day for completion of customer projects and submission of complete paperwork by customers is June 30, 2016.

File No. EO-2014-0095, Doc. No. 118. The Commission approved that agreement. File No. EO-2014-0095, *Order Approving Stipulation and Agreement*, Doc. No. 115.

9. On March 3, 2016, KCPL filed another application to modify its budget wherein it explained:

KCP&L therefore files this Budget Modification Application to inform the Commission of the budget overage. The Company stopped accepting applications for new cycle 1 projects for its Business Energy Efficiency Rebates-Custom program as of December 15, 2015. Thus, while the cycle 1 programs do not need to be modified, the budget for those programs needs to be increased. As its specific request for relief, KCP&L asks that the Commission take any action the Commission deems necessary to permit KCP&L to continue paying for completion of Business Energy Efficiency Rebates-Custom program applications received by December 15, 2015 and paying for completion of all other cycle 1 program applications by December 31, 2015.

File No. EO-2014-0095, Doc. No. 121.

10. The Commission, again, sanctioned KCPL's expenditures that exceeded the original budget by approximately 260%. *See* File No. EO-2014-0095, *Order Approving Demand-side Programs Budget Modifications, Iss'd* April 6, 2016, Doc. 126.

11. Having explained the precipitating actions, OPC turns to the DSIM rider adjustment controversy in this case. Now that it is time for KCPL to collect, KCPL feigns lament explaining "[c]ustomers will have less than one week to plan for an increase of over 5 percent that will last

for a 6 month period. This large increase is unprecedented under MEEIA.” Doc. No. 14. Because of this sharp increase, KCPL seeks to spread the cost recovery over an 18-month period. It was KCPL that continued taking applications when it was clear the Commission-approved budget would be exceeded. It was KCPL that then sought Commission approval to exceed the budget (in order to save face). Importantly, it was KCPL that – fully aware it was spending well over 100% of its budget (260 %) – agreed to recover the money over six months. The Company should have told customers earlier.

12. Public Counsel does not want customers to experience this exorbitant increase. However, this increase is the direct result of KCPL actions. Those actions were approved by the Commission, and so, this is the amount the law requires customers to pay. KCPL *chose* to put its customers in this position. The Commission chose to sanction the excessive spending. Now the Commission must decide if customers will lose now or lose in the future because of the Company’s decisions.

13. If the Commission grants KCPL’s request for rehearing it should do so in a way designed to protect customers. Under no circumstances should KCPL be permitted to recover carrying costs for that period. The Commission should require KCPL to mail notice, approved by the commission, to each customer impacted. Such notice should explain the reasons it did not adhere to its original budget when accepting and approving applications under the programs.

14. In addition to requiring the Company to provide notice and forego carrying costs, the Commission should require KCPL to complete and file a detailed report addressing how the Company will monitor applications and budget levels for its MEEIA cycle 2 programs to ensure this situation is avoided in the future.

WHEREFORE Public Counsel submits this *Response to KCPL*.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 25th day of July 2016:

/s/ Tim Opitz
