

**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
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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
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INITIAL BRIEF OF UNITED FOR MISSOURI, INC.

I. INTRODUCTION

On August 8, 2015, Kansas City Power & Light Company and KCP&L Greater Missouri Operations (jointly "KCPL") filed two applications for authority to implement MEEIA Cycle 2 2016 – 2018 programs. These two applications for the MEEIA Cycle 2 2016 – 2018 programs, referred to together as KCPL's MEEIA Cycle 2, sought the Commission's approval of certain demand-side programs. They also sought approval of a TRM, a DSIM as proposed in the MEEIA filing, certain variances from the Commission's rule, and other relief as is appropriate in this case. After extensive negotiation with all parties, KCPL filed a Non-Unanimous Stipulation and Agreement ("KCPL's Stipulation") on November 23, 2015.

On November 30, 2015, Brightergy, Inc. filed its Brightergy Objection to the Non-Unanimous Stipulation and Agreement ("Objection"). In its Objection, Brightergy raised two points of contention with the terms of KCPL's Stipulation: first, that the KCPL's proposal to change the Custom Rebate Program to a flat \$/kWh incentive rate will result in higher payback times for potential investors, and thereby drastically lower participation, resulting in lost opportunities to generate efficiency savings in KCPL MEEIA Cycle 2 and an inability to meet

overall savings goals, and, second, that KCPL’s request for the ability to discontinue all approved programs during the KCPL MEEIA Cycle 2 will have a detrimental effects on its ratepayers and the businesses operating in the KCPL footprint. Based on these two contentions, Brightergy suggests that the KCPL MEEIA Cycle 2 does not make meaningful movement toward the goal of achieving all cost effective demand side savings.

II. LEGAL STANDARD

There are two legal standards for the approval of this application. First, the Commission “shall permit electric corporations to implement commission-approved demand-side programs proposed . . . with a goal of achieving all cost-effective demand-side savings.”¹ Second, the Commission may not permit cost recovery for such programs, “unless the programs . . . result in energy or demand savings and are beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers.”²

While the legal standard is expressed in the statute as two separate standards, one for the programs and one for the cost recover, they must be addressed together as a practical matter. This is so for three reasons. First, KCPL’s Stipulation requires the stipulation to be approved in its entirety. Approval with modification or condition will make KCPL’s Stipulation voidable by any party that objects to the modification or condition. Second, the policy of the Missouri Energy Efficiency Investment Act (“MEEIA”) is to “allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs.”³ It is inconceivable that the Legislature could have anticipated that the Commission would permit the programs and not

¹ Section 393.1075.4 RSMo.

² *Id.*

³ Section 393.1075.3 RSMo.

permit cost recovery or vice a versa. Finally, inasmuch as MEEIA is permissive, it is inconceivable that an electric corporation would undertake these programs without cost recovery for its shareholders.

This, then, is the single standard. There is a tension, on the one hand, that the programs must have a goal of achieving all cost-effective demand-side savings, and on the other hand, that there must be energy or demand savings that are beneficial to all customers in the class in which the programs are offered. As *United for Missouri, Inc.* (“UFM”) has previously discussed, the “goal of achieving all cost-effective demand-side savings” is simply that, a goal.⁴ The programs need not actually achieve all cost-effective demand-side savings. It is enough if there is a sustainable movement in that direction. And on the other hand, there must be some showing that the programs are at least as cost effective as the next unit of generation in order for the investment to be beneficial to all customers in a class regardless of whether they participate in a program.

There is another aspect of the MEEIA that this case highlights, and that is an obligation of the Commission. “The Commission shall . . . Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers’ incentives to use energy more efficiently”⁵ This is an element of MEEIA that the Commission must explore in the light of this case.

⁴ See *United for Missouri’s Initial Brief*, File No. EO-2015-0055, filed August 13, 2015, p.6.

⁵ Section 393.1075.3(2) RSMo.

III. DISCUSSION

a. Custom Rebate Program

The simple question before the Commission is do the two concerns raised by Brightergy outweigh the benefits of the rest of KCPL's MEEIA Cycle 2. It is abundantly clear from the evidence in this case that, in toto, KCPL's MEEIA Cycle 2 has a goal of achieving all cost-effective demand-side savings and at the same time is beneficial to all customers of KCPL. Both Staff and KCPL witnesses support this proposition.⁶ There is no evidence that counters these conclusions. Should Brightergy's concerns outweigh this overall conclusion and countermand the Commission's approval of KCPL's application?

In order to assess these concerns, it is important to understand the posture of both KCPL and Brightergy. It is also abundantly clear from the evidence in this case that KCPL and Brightergy have different motivations in serving customers. Brightergy is motivated to provide services to customers. Brightergy's market development department "pounds the phones" to make sales.⁷ Brightergy is concerned that the change in the rebate level for the Custom Rebate Program will increase payback time and reduce customers' incentive to enter into transactions.⁸ But whereas Brightergy is motivated by sales, KCPL is motivated to meet targets.⁹ KCPL also wants to make the most efficient use of its customers' money to achieve the set targets.¹⁰

In this discussion, an analogy to supply side investments is apt. MEEIA declares that the policy of the state is to value demand side investments equal to traditional investments in supply

⁶ Ex. 201, p. 7. Ex. 100, p. 9.

⁷ Tr. Vol 3, pp. 296-297.

⁸ *Brightergy Objection to Non-Unanimous Stipulation and Agreement*, p. 2.

⁹ Tr. Vol 3, pp. 61, 69, 121, 191, 202.

¹⁰ Tr. Vol 3., p. 121.

and delivery infrastructure.¹¹ Therefore, the Commission should consider both types of investments similarly. For the Commission, the paramount consideration for a supply side investment is the prudence of that investment. The Missouri Supreme Court has declared that, “The utility must be able to recover its proper expenses and also a reasonable return on its prudent investment.”¹² The Indiana Supreme Court has similarly recognized, “As a quid pro quo for being granted a monopoly in a geographical area for the provision of a particular good or service, the utility is subject to regulation by the state to ensure that it is prudently investing its revenues in order to provide the best and most efficient service possible to the consumer.”¹³ The best result comes from a seller of energy efficiency services that prudently invests its resources for its shareholders in a service that provides value to its customers. This is a critical principle in a free market as well as this regulated industry. And it is a principle that should drive the Commission in this case.

In this case, neither KCPL’s nor Brightergy’s motivations are best aligned with serving KCPL’s customers in achieving their energy efficiency goals. KCPL’s motivations are not correctly aligned since they are driven by targets. As Mr. Rogers adeptly discussed at the hearing, targets distort markets. According to Mr. Rogers, other states have mandatory targets. Utilities in those states are motivated to meet those targets and that is all. “They have a target that [they] have to meet. Whether it's cost effective or not is irrelevant.”¹⁴ So targets distort

¹¹ 393,1075.3 RSMo.

¹² *State ex rel. Union Elec. Co. v. Public Service Com'n.*, 687 S.W.2d 162, 166 (Mo., 1985)

¹³ *Indiana Gas Co., Inc. v. Office of Utility Consumer Counselor ("Indiana Gas I")*, 575 N.E.2d 1044, 1046 (Ind.Ct.App.1991). Quoted with approval in, *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 797 (Ind., 2000).

¹⁴ Tr. Vol. 3, pp. 202.

markets, but as Mr. Rogers also pointed out, the Staff has done its best to align the targets in KCPL's MEEIA Cycle 2 properly.

Because to the extent that incentives are higher for a program, that will reduce the net benefits, all else equal. And that was part of what we did through this settlement process here was to design the -- the throughput disincentive and the earnings opportunity so that they aligned with the statutory requirements. And in the process, the -- the amount of money that all customers will be paying for those two components of the program costs were reduced. And through that effort, net benefits were increased for all customers.¹⁵

And, yet, these "designed" targets are still targets. They do not precisely align KCPL's incentive with the actual customers' incentive to use energy more efficiently. The targets are a distortion of what the market place would dictate if driven by actual transactions.

On the other hand, Brightergy's motivations do not properly align with the policy of the state either. Brightergy is motivated to provide a service, but it is not motivated to spend the resources devoted to the Custom Rebate Program prudently. The rebates for the Custom Rebate Program will not come from Brightergy. They will come from KCPL's ratepayers. There is no incentive for Brightergy to conserve these funds. There is every incentive for Brightergy to be extravagant. In free markets, every business has the motive to obtain goods and services of the greatest value at the most reasonable price because it is expending its own resources to procure those goods or services. In this context, Brightergy does not have that motivation. KCPL does, as should the Commission.

On balance, it is up to the Commission to determine whether the change to the Custom Rebate Program will foster the goals of MEEIA or thwart the goals of MEEIA to an extent that the entire KCPL MEEIA Cycle 2 should be rejected. UFM contends that the Custom Rebate Program changes actually improve the KCPL MEEIA Cycle 2 and foster the goals of MEEIA.

¹⁵ Tr. Vol. 3, p. 193.

KCPL has tried the Custom Rebate Program Brightergy's way and found the rebates too high.¹⁶ As Mr. Rogers testified, excessive rebates simply mean more money to free riders.¹⁷ This is an extravagance that would be undesirable for a prudent investor. For that reason, the Commission should find that the change to the Custom Rebate Program is an improvement in the KCPL MEEIA Cycle 2 over Cycle 1.

Certainly, KCPL's motivations to serve its customers could be brought more in line with its customers' incentives to use energy more efficiently. In order to do this, KCPL's motivations should be made similar to those of Brightergy's. Its earnings opportunities should be tied to transactions and not just meeting targets. In KCPL's Stipulation, there is a provision for the exploration of exactly that, "Identification of Additional Energy Savings."¹⁸ Among these provisions is a commitment by KCPL to assess "evaluating charging participants for programs services at just and reasonable rates to be approved by the Commission" and "evaluating earnings opportunity in relationship to participant payments." UFM suggests the Commission highlight these commitments in its order in order to encourage KCPL to follow through on these commitments. Tying earnings opportunities to participant payments and not just targets will move MEEIA programs in the right direction for achieving the state policy of aligning the utility's incentives with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently.

¹⁶ Ex. 102, pp. 5, 6.

¹⁷ Tr. Vol. 3, p. 190.

¹⁸ Paragraph 6, page 7 et seq.

b. Regulatory Flexibility

The so called regulatory flexibility issue is relatively straight forward from UFM's perspective. The Commission has recognized that MEEIA programs are permissive for electric corporations. UFM sees no statutory reason that once these permissive programs are offered the programs should become mandatory. Private business enterprises should be free to offer and not offer their services in a way that is beneficial to their shareholders. Rather, the Commission should limit its regulation to those actions which will prevent an abuse of the MEEIA programs. In this case, KCPL has agreed to forgo all earnings opportunities in the event it terminates the KCPL MEEIA Cycle 2 and follow through with all commitments made under the programs prior to termination. This removes the opportunity for abuse from KCPL. This change is an improvement over KCPL MEEIA Cycle 1.

WHEREFORE, United for Missouri, Inc. respectfully requests the Commission accept this Initial Brief of United for Missouri, Inc. and approve the KCPL MEEIA Cycle 2. The Commission should also highlight and encourage the development of earning opportunities that are tied to transactions with customers and customer payments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email to all parties by their attorneys of record as provided by the Secretary of the Commission on the 29th day of January, 2015.

/s/ David C. Linton

David C. Linton