
**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

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-2019-0133

REPLY BRIEF OF STAFF

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STAFF’S REPLY BRIEF

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through the undersigned counsel, and respectfully submits its *Reply Brief* in this matter.

The purpose of a *Reply Brief* is to respond to the arguments made by parties’ opponents. Rather than replying to every argument other parties make in their initial briefs, having presented and argued its positions in its initial brief, Staff is limiting its replies to where it views further explanation will most aid the Commission in its deliberations.

Argument

Avoided Costs

Avoided costs are a foundational issue in Missouri Energy Efficiency Investment Act (MEEIA) cases. Avoided costs impact everything from the cost-effectiveness of the programs,¹ to whether customers in a class are expected to benefit from the programs

¹ Ex. 101C, Staff’s Rebuttal Report, p. 12, l. 20-21.

regardless of participation,² to the appropriate earnings opportunity a utility should receive.³ As the Office of the Public Counsel (OPC) witness Dr. Geoff Marke noted at hearing, achieving avoided cost is one of the most important end goals of a successful MEEIA, along with producing benefits to all customers.⁴ As OPC noted in its' *Initial Post-Hearing Brief* "a MEEIA application with no avoided costs produces a "double-recovery windfall" for the applicant utility, and does not equally value demand-side and supply-side measures."⁵ Staff and OPC have taken cues on the importance of avoided capacity costs from the Commission. As noted in Staff's *Initial Brief*, the Commission in its rejection of Union Electric Company d/b/a Ameren Missouri's ("Ameren Missouri") MEEIA Cycle 2 application focused on avoided supply-side investment as the primary way to benefit all customers, as well as necessary to ensure a utility did not receive a double recovery windfall.⁶ However, other parties, throughout their initial briefs, fault Staff and OPC for recognizing the importance avoided capacity costs have in a MEEIA application.⁷

² *Id.* at p. 31, l. – p. 32 l. 9.

³ *In the Matter of Union Electric Company d/b/a Ameren Missouri's 2nd Filing to Implement Regulatory Changes in Furtherance of Energy Efficiency as Allowed by MEEIA*, File No. EO-2015-0055, *Report and Order* at p. 11.

⁴ Tr. Vol. II, p. 487, l. 9-16.

⁵ OPC's *Initial Post-Hearing Brief* at p. 5.

⁶ *In the Matter of Union Electric Company d/b/a Ameren Missouri's 2nd Filing to Implement Regulatory Changes in Furtherance of Energy Efficiency as Allowed by MEEIA*, File No. EO-2015-0055, *Report and Order* at p. 11 -13.

⁷ See, e.g., Renew Missouri's *Initial Brief* p. 8, the Natural Resources Defense Council's (NRDC) *Initial Brief of the Natural Resources Defense Council* p. 1, Kansas City Power and Light Company (KCPL) and KCP&L Greater Missouri Operations Company's (GMO) (collectively, the "Company") *Initial Post-Hearing Brief* p. 3.

For instance, the Company's *Initial Post-Hearing Brief* argues that although it might not be avoiding any supply-side investment, it is instead substituting existing supply-side resources, which provides value.⁸ However, for customers, they will not be substituting MEEIA costs for existing supply-side costs. Customers, as acknowledged by Company witnesses Tim Nelson and Darrin Ives, will be paying the return on and of the existing supply-side resources, along with the associated operation and maintenance expense, at the same time that these same customers, excluding opt-out customers, will be paying for the earnings opportunity, the throughput disincentive and the program costs of MEEIA Cycle 3.⁹ Furthermore, Staff's analysis demonstrates that for the average residential customer who does not participate in the programs energy savings due to the Application will be less than the demand-side programs investment mechanism (DSIM) charge resulting from the cost of the Application.¹⁰ In other words, the average residential non-participant customer will pay more in MEEIA charges than it will receive in MEEIA benefits. As the Commission has stated, "Simply put, the Commission would approve a MEEIA plan if non-participating ratepayers would be better off paying to help some ratepayers reduce usage than they would be paying a utility to build a power plant. Unfortunately, that is not the case here."¹¹ It is also not the case here, and the Commission should reject the Application.

⁸ Company's *Initial Post-Hearing Brief*, p. 19.

⁹ Tr. Vol. I, p. 203, 1-25, and p. 228, l. 10-14.

¹⁰ Ex. 101C, Staff Rebuttal Report at p. 39, l. 18 – p. 40, l. 2 and Tr. Vol. II, p. 446, l. 8-9.

¹¹ *In the Matter of Union Electric Company d/b/a Ameren Missouri's 2nd Filing to Implement Regulatory Changes in Furtherance of Energy Efficiency as Allowed by MEEIA*, File No. EO-2015-0055, *Report and Order* at p. 17.

NRDC also chastises Staff and OPC for not considering that the retirement of an old plant can be a beneficial alternative to the deferral or cancellation of a new one.¹² However, the integrated resource analysis conducted by the company does not demonstrate that implementation of MEEIA cycle 3 will make early retirement of existing plants the most economically feasible decision.¹³ The lack of economic feasibility is apparent when comparing the NPVRR delta of ARP9¹⁴ and ARP5.¹⁵ It is important to note that Staff's position has not discounted the benefits of demand-side investments, but Staff criticizes the timing, investment, and planned implementation proposed by the company.¹⁶

Although the MEEIA statute does not require that a supply-side resource be retired, the statute requires the programs to be cost-effective.¹⁷ In addition, avoiding a supply-side resource, delaying a supply-side resource, or retiring a supply-side resource plays a huge role in determining cost-effectiveness. Staff, contrary to the Company's statement,¹⁸ has never asserted that new capacity must be deferred or eliminated before programs may be approved; Staff's position is that capacity must be deferred or avoided before there can be any avoided cost of capacity.¹⁹ Staff's position is that because there is no deferred or avoided capacity costs in this case, or at best minimal avoided cost

¹² NRDC's *Initial Brief*, p. 3.

¹³ Page 4 of Appendix 8.11 of Company's Direct filing.

¹⁴ Implementation of MEEIA Cycle 3 without early retirements.

¹⁵ Implementation of MEEIA Cycle 3 with early retirements.

¹⁶ Tr. Vol. I, p. 331, l. 8 – p. 332, l. 23.

¹⁷ 393.1075 RSMo,

¹⁸ Company's *Initial Post-Hearing Brief*, p. 15.

¹⁹ Ex. 101C, Staff's Rebuttal Report, p. 17, l. 10-27.

of SPP transmission fees²⁰, the Company's programs are not cost-effective.²¹ There may be a lower level of programs in the Application,²² or other programs not contemplated in the Application, which, even without the deferral of supply-side resource, could be cost-effective; however, that is not the Application before the Commission.²³

In parties' haste to promote their special interests, some parties made several fundamental misstatements about Staff's testimony and position in this case. A recurring theme is that Staff has claimed that avoided capacity costs are the only avoided costs that should be examined. Staff is the only party that provided verifiable, independent analysis, including workpapers, of the Company's MEEIA Cycle 3 Application ("Application"). As part of that analysis, Staff requested information from the Company regarding other potential avoided costs, as well as provided its own calculation of avoided transmission costs.²⁴ This makes NRDC's statements,²⁵ which are either not cited or cite to testimony that does not contain those statements, that Staff said no other avoided costs count patently false. Instead, Staff performed an analysis, based on the Company's information, finding avoided transmission fees totaled less than \$478,000 company-wide over a nine year period.²⁶ As for distribution costs, if NRDC faults Staff for valuing those at zero, it must first confront the Company for doing the same. Staff asked the Company to identify and quantify any distribution costs that it would avoid, and the Company responded it had no such quantification for MEEIA Cycle 3, nor could it quantify

²⁰ Ex. 101C, Staff's Rebuttal Report, p. 24 l. 13-24.

²¹ Ex. 101C, Staff Rebuttal Report, p. 41-42.

²² *Id.* at p. 5, l. 5 - 9.

²³ Tr. Vol. I, p. 320, l. 3.

²⁴ Ex. 101C, Staff's Rebuttal Report, p. 24, l. 6 – p. 26, l. 2.

²⁵ NRDC's *Initial Brief* p. 1 – 3.

²⁶ Ex. 101C, Staff Rebuttal Report, Schedule JLR-1.

any distribution savings attributable to MEEIA Cycle 2.²⁷ Staff has consistently stated it would consider benefits from other avoided costs, as long as the Company can demonstrate it is actually avoiding a cost.²⁸ In this case, the avoided capacity costs are either zero, in all years except in 2032, (capacity), not demonstrated (distribution) or minimal (transmission). Therefore, the Application is not cost-effective, and the Commission should reject it.

The granting of the Company's MEEIA Cycle 2 does not prevent the Commission from rejecting MEEIA Cycle 3.

The Company in its *Initial Post-Hearing Brief* implies that because Staff supported the Company's Cycle 2 application, which it claims had a similar capacity situation, means the Staff should not be recommending rejection of this Application.²⁹ At the outset, it is important that all parties, including Staff, can refine positions through the process of going through cases. At hearing, OPC witness Dr. Marke explained how going through the MEEIA cases has been a learning experience, from realizing the lost revenue adjustment mechanism from the first cycles overstated lost revenues, to the impact that a rate design change had on the benefits participants in a commercial lighting program saw.³⁰ Dr. Marke concluded by stating:

We've learned it through experience. That fed into Cycle 2 and the applications that we experience there and the rules. And quite honestly, it's informing what's gone on to this case as well when we're looking at avoided costs and the programs that we should approve. It's been a learning experience.³¹

²⁷ Tr. Vol. I, p. 306, l. 25 – p. 307, l. 4.

²⁸ Tr. Vol. I, p. 302, l. 1-3.

²⁹ P. 3.

³⁰ Tr. Vol. II, p. 482, l. 16 – p. 484, l. 13.

³¹ Tr. Vol. II, p. 484, l. 15 – 21.

From Staff's side, Mr. J Luebbert explained the experience at hearing. "This is only the third cycle and Staff continues to learn from and understand better what these programs do and how they function and how they can attribute benefits to customers. And I'd say that this is an outcome of that."³² The regulatory process requires this evolution and learning from experience. It would be a poor outcome if Staff or OPC could not prevent harm to ratepayers by identifying new issues or tweaking old positions.

Staff also put a heavier emphasis on avoided capacity costs than in previous cycles as a result of the Commission updating its MEEIA rule.³³ The Commission found that a new paragraph requiring electric utilities to include a description of the impact on annual earnings opportunity of postponement of new supply side resources and the early retirement of existing supply side resources as a result of all demand-side programs included in the application would be helpful.³⁴ Since this impact was specifically called out as something utilities needed to analyze for applications, Staff placed greater emphasis on the impact of this analysis than in previous cycles.

Furthermore, the Company's assertion that it is in the same capacity position as it was in the MEEIA Cycle 2 case is false. To start, for the first time ever, there is a joint network integrated transmission service agreement, so GMO no longer operates as a standalone utility in SPP.³⁵ On a combined basis, the Company has no need for capacity until 2032.³⁶ This impacts the analysis of avoided capacity costs. More importantly,

³² Tr. Vol. I, p. 316, l. 15 – 20.

³³ Tr. Vol. I, p. 264, l. 15 – 23.

³⁴ *In the Matter of the Proposed Amendments to the Missouri Public Service Commission's Rules Relating to the Missouri Energy Efficiency Investment Act*, Case No. EX-2016-0334, *Order of Rulemaking*, filed June 30, 2017.

³⁵ Ex. 101C, Staff Rebuttal Report, p. 29, l. 4 – 10.

³⁶ *Id.*

the Company is not currently in the same capacity situation it was in 2015. In Case No. EO-2015-0254, KCPL filed its 2015 integrated resource plan.³⁷ In compliance with 20 CSR 4240-22.060(3), Volume 6 of that filing contains the description of each alternative resource plan, including the type and size of each demand-side resource and supply-side resource addition and a listing of the sequence and schedule for the end of life of existing resources and for the acquisition of each new resource. KCPL's adopted preferred resource plan in the 2015 IRP was Plan KAACA.³⁸ When reviewing the alternative plans, if one examines Plan KAADA, which is the alternative resource plan with NO DSM³⁹ the only differences between Plan KAACA and Plan KAADA is that Plan KAADA has 1) no new DSM after Cycle 1, and 2) the addition of a 207 MW combustion turbine ("CT") in each of the following years 2021, 2025 and 2031; while Plan KAACA has 1) Option C DSM, and 2) the addition of one 207 MW CT in year 2029.⁴⁰ Option C DSM is the DSM portfolio that was initially proposed for KCPL's MEEIA Cycle 2.⁴¹ It is clear from comparing the plans that the addition of the Option C DSM avoided the addition of two CTs during the 20-year planning horizon of the 2015 IRP, and deferred when the remaining CT was first needed by eight years, from 2021 to 2029. Therefore, it is not accurate to say that the Company was in the same capacity position when its MEEIA Cycle 2 was proposed as it is today. If the Company was able

³⁷ *In the Matter of the Resource Plan of Kansas City Power & Light Company Pursuant to 4 CSR 240-22*, Case No. EO-2015-0254.

³⁸ *Id.* at Volume 1, p. 19.

³⁹ *Id.* at Volume 6, p. 19.

⁴⁰ *Id.*

⁴¹ The Commission-approved DSM portfolio for KCPL's Cycle 2 was a modified version of Option C.

to defer two combustion turbines with MEEIA Cycle 3, as it did in MEEIA Cycle 2, Staff would not be raising avoided capacity cost as such a critical issue in this case.

The Company's net present value of revenue requirement ("NPVRR") results does not equate to benefits for all customers.

Benefits to all customers, regardless of participation, is one of the most important goals for a MEEIA application to achieve.⁴² In fact, the MEEIA statute states "Recovery for such programs shall not be permitted unless...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."⁴³ Staff recommends the Commission reject the Application, as it does not meet this standard.

In an attempt to justify the Application, several parties point to the Company's claims of a lowered NPVRR as support.⁴⁴ As Staff noted in its *Initial Brief*, there are several flaws with using the Company's NPVRR calculation for MEEIA Cycle 3 as a demonstration of benefits for all customers including non-participating customers as a group.

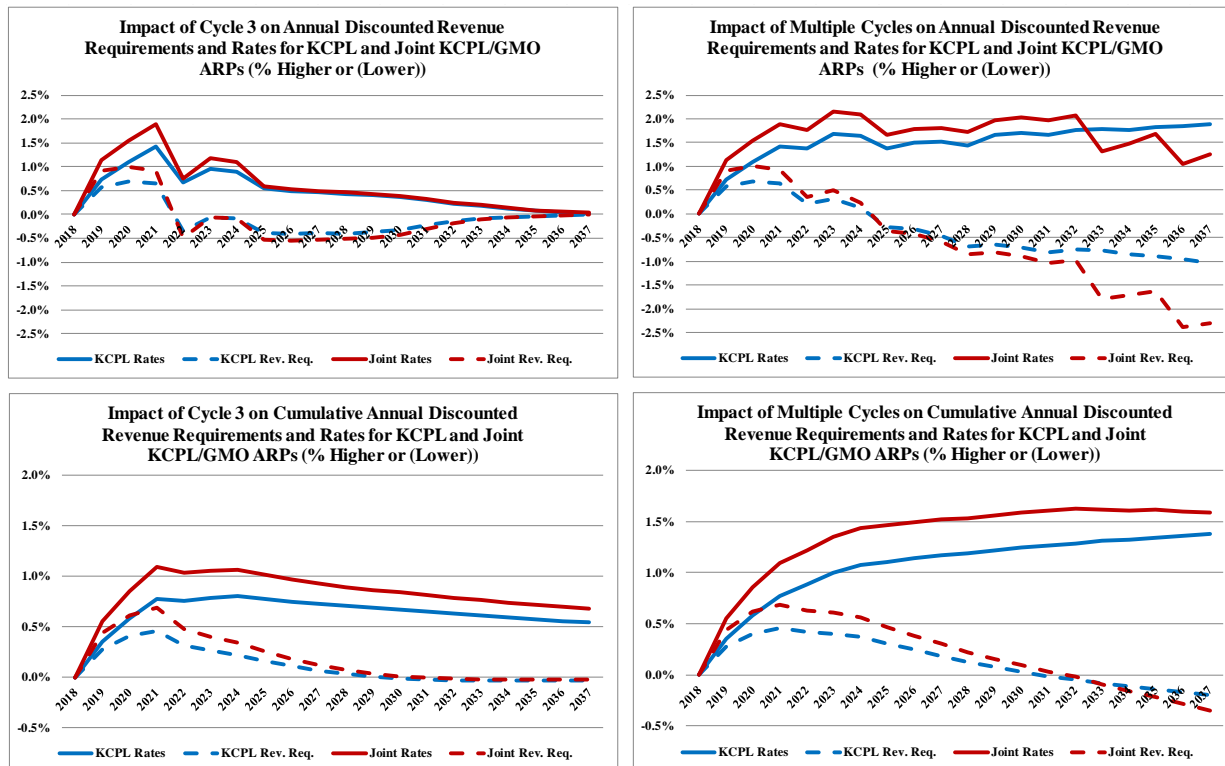
Staff's independent analysis regarding the 20-year NPVRR for KCPL and KCPL/GMO as a result of MEEIA Cycle 3 and as a result of multiple MEEIA cycles is discussed at length in its *Rebuttal Report*. Staff's analysis of MEEIA Cycle 3's impact on the change in annual and cumulative annual revenue requirements and average rates concluded that the Application was likely to result in only program participants receiving net benefits, while non-participants pay higher rates for the same energy usage and pay

⁴² Tr. Vol. II, p. 487, l. 21-24.

⁴³ 393.1075.4, RSMo.

⁴⁴ See, e.g., Renew's *Initial Brief* p. 5, NRDC's *Initial Brief* p. 7, and the Company's *Initial Post-Hearing Brief*, p. 5.

the DSIM charge with no benefit of deferred supply-side investments.⁴⁵ It is likely that trend will continue for multiple MEEIA cycles, according to Staff's analysis.⁴⁶ These analyses are shown in the below tables.⁴⁷



The lower left chart illustrates that MEEIA Cycle 3 is expected to have a very minor improvement on cumulative annual discounted revenue requirements for KCPL and KCPL/GMO (0.03% and 0.02%, respectively) and a much larger increase in cumulative annual discounted rates (0.54% and 0.67%, respectively). Further, the lower right chart illustrates that multiple MEEIA cycles over the entire 20-year planning horizon are expected to have very minor improvement in cumulative annual discounted revenue

⁴⁵ *Id.* at p. 36, l. 11 – 16.

⁴⁶ *Id.* at l. 20 – 22.

⁴⁷ *Id.* at p. 37.

requirements (0.19% and 0.35%, respectively) and a much larger increase in cumulative annual discounted rates (1.37% and 1.58%, respectively). Simply put, the programs are not cost effective, because all customers will pay the program costs plus throughput disincentive plus earnings opportunity, but only those customers that meaningfully participate in the programs will receive benefits which exceed those costs.

The Company also posits in its *Initial Post-Hearing Brief*, that customers will receive energy benefits from the Application, as the Company believes the lower demand will lower market prices.⁴⁸ Staff's analysis shows that, on average, residential customers who do not participate in programs would pay approximately \$86 dollars more in MEEIA Cycle 3 charges than they would receive in energy and demand benefits through the fuel adjustment clause (FAC).⁴⁹ OPC also does not believe the sale of excess energy would be enough to justify the Company's Application.⁵⁰ This could be due to the Company not providing any analysis regarding how this Application or previous MEEIA Cycles have impacted Southwest Power Pool (SPP) market prices.⁵¹

Furthermore, the underlying analysis performed during the integrated resource planning (IRP) process failed to value demand-side investment equal to traditional investment. In response to a Staff Data Request, KCPL⁵² stated, "KCP&L did not model Alternative Resource Plans (ARPs) that delayed implementation of DSM resources."⁵³

⁴⁸ Company's *Initial Post-Hearing Brief*, p. 31 – 32.

⁴⁹ Ex. 101C, Staff Rebuttal Report at p. 39, l. 18 – p. 40, l. 2 and Tr. Vol. II, p. 446, l. 8-9.

⁵⁰ Ex. 200C, Rebuttal Testimony of Geoff Marke, p. 10, l. 16 – 18.

⁵¹ Tr. Vol. II, p. 495, l. 14 – 22.

⁵² Given SPP treatment of KCPL/GMO for resource adequacy requirements, the statement should be applied to both KCPL and GMO.

⁵³ Delayed implementation of DSM resources would model MEEIA Cycle 3 starting in later years than currently proposed.

The capacity position (reserve balance) wasn't a factor in modeling the ten DSM options utilized in the fourteen ARPs."⁵⁴ Meanwhile, KCPL and GMO stated:

If the reserve balance doesn't result in dropping below the [SPP] 12% reserve margin minimum, neither a PPA or other supply-side resource (i.e., CT's) are added.⁵⁵

In other words, although the SPP views the Company as a single load serving entity due to the joint network integrated transmission service agreement,⁵⁶ KCPL and GMO constrained supply-resources in the integrated analysis based upon their respective stand-alone capacity positions in relation to the SPP reserve margin.⁵⁷ The Company has indicated it will not invest in supply-side resources unless it has a capacity need relative to the SPP reserve margin requirements; yet proposes demand-side portfolios at a point in time when the combined utility does not need any capacity to meet the needs of customers or SPP resource adequacy requirements for more than 13 years.⁵⁸ This shows the Company has not valued demand-side investment equal to traditional investment.

Renew Missouri and the Company claim that the NPVRR and the IRP are not impacted by what avoided costs are used.⁵⁹ The Company goes as far to say "[f]or a given set of DSM programs, the NPVRR results would be the same whether the avoided capacity cost assumption was \$0 or the levelized cost of a CT."⁶⁰ As Staff noted in its *Initial Brief*, this is misleading. Staff witness J Luebbert explained that the screening tool utilized to decide which measures to invest in and at what level does impact what NPVRR

⁵⁴ Ex. 101C, Staff Rebuttal Report, p. 22, l. 7 - 10.

⁵⁵ *Id.* at l. 14 - 16.

⁵⁶ *Id.* at p. 29, l. 4 - 5.

⁵⁷ *Id.* at p. 22, l. 10 - 13.

⁵⁸ *Id.* at l. 18 - 22.

⁵⁹ See, e.g., Renew's *Initial Brief*, p. 6 and the Company's *Initial Post-Hearing Brief*, p. 22.

⁶⁰ Company's *Initial Post-Hearing Brief*, p. 22.

results.⁶¹ Therefore, it does matter if the capacity cost assumption was \$0 or the levelized cost of a Combustion Turbine (CT). Using the levelized cost of a CT, when the Company is not avoiding a CT, overstates the amount of what would be deemed as cost-effective energy efficiency.⁶² This allows the Company to show more programs screening as cost-effective, and an application will have an artificially high total resource cost (TRC) result.⁶³ If more programs can be shown as cost-effective, based on the exaggerated avoided cost figure, it allows the Company to claim a higher level of demand savings. With that artificially inflated level of demand savings, there appears to be a higher decrease to purchase power than if the IRP had examined only actual cost-effective programs under a reasonable avoided cost figure.⁶⁴ This would appear to reduce the NPVRR, but the benefits would only be in the hands of the participants,⁶⁵ violating the MEEIA statute.

Parties' attempts to bypass the avoided cost issue by pointing to the NPVRR should be ignored. The Company implores the Commission to remember the primary test of DSM cost-effectiveness is based on the impact on the long-term revenue requirements, citing 20 CSR 4240-22.010 (2) (B).⁶⁶ 20 CSR 4240-22.010 (2) states

The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies. The fundamental objective requires that the utility shall—

⁶¹ Tr. Vol. I, p. 327, l. 17-22.

⁶² Tr. Vol. I, p. 327, l. 23 – p. 328, l. 3.

⁶³ Tr. Vol. I, p. 351, l. 4-9.

⁶⁴ Tr. Vol. I, p. 351, l. 10-17.

⁶⁵ Tr. Vol. I, p. 328, l. 15-17.

⁶⁶ Company's *Initial Post-Hearing Brief*, p. 21.

(A) Consider and analyze demand-side resources, renewable energy, and supply-side resources on an equivalent basis, subject to compliance with all legal mandates that may affect the selection of utility electric energy resources, in the resource planning process;

(B) Use minimization of the present worth of long-run utility costs as the primary selection criterion in choosing the preferred resource plan, subject to the constraints in subsection (2)(C);

(C) Explicitly identify and, where possible, quantitatively analyze any other considerations which are critical to meeting the fundamental objective of the resource planning process, but which may constrain or limit the minimization of the present value of expected utility costs. The utility shall describe and document the process and rationale used by decision-makers to assess the tradeoffs and determine the appropriate balance between minimization of expected utility cost and these other considerations in selecting the preferred resource plan and developing the resource acquisition strategy. These considerations shall include, but are not necessarily limited to, mitigation of:

1. Risks associated with critical uncertain factors that will affect the actual costs associated with alternative resource plans;
2. Risks associated with new or more stringent legal mandates that may be imposed at some point within the planning horizon; and
3. Rate increases associated with alternative resource plans.

The Company fails to mention: 1) 20 CSR 4240-22.010(2)(A), where Chapter 22 requires each alternative resource plan, including the adopted preferred resource plan, comply with Missouri energy policy, including MEEIA, or 2) 20 CSR 4240-22.0101(2)(C)3, where Chapter 22 requires consideration of rate increases as a constraint to using minimization of NPVRR as the primary selection criteria when choosing the adopted preferred resource plan. Staff's independent quantitative analysis of the impact on the change in annual and cumulative annual revenue requirements and average rates concluded that the Application is likely to result in only program participants receiving net benefits, while non-participants pay higher rates for the same energy usage and pay the DSIM charge with no benefit of deferred supply-side investments.⁶⁷

⁶⁷ *Id.* at p. 36, l. 11 – 16.

Staff has previously outlined the concerns and deficiencies with the Company's latest IRP, some of which involves the adopted preferred resource plan not complying with all legal mandates. Staff noted:

- KCPL's use of \$116 per kW year (2015 dollars) drastically overstates KCPL's avoided capacity cost of generation, transmission, and distribution facilities adjusted to reflect reliability reserve margins and capacity losses on the transmission and distribution systems, because Plan KAAHA (No DSM) includes no new non-renewable supply-side resources during the entire 20-years of the planning horizon. KCPL's use of \$116 per kW year (2015 dollars) to value avoided capacity cost benefits is in violation of rule 4 CSR 240-20.092(1)(C);
- Because KCPL considered and analyzed alternative resource plans with demand side resources when it is not in need of any new non-renewable supply-side resources for the entire 20-year planning horizon and did not consider nor analyze alternative resource plans with new low cost supply-side resources to compete with the new demand-side resources on an equivalent basis, KCPL did not comply with 4 CSR 240-22.060(1) and 4 CSR 240-22.010(2) (A);
- Because KCPL has used drastically overstated avoided capacity cost benefits when calculating the total resource cost test (TRC) results for its demand side programs and portfolio, the programs may not comply with 393.1075.3, RSMo.;
- Because KCP&L's demand-side programs do not defer any non-renewable supply-side resources during the 20-year planning horizon, it is expected that there will be little, if any, benefits for customers who do not participate in the programs, resulting in programs which may be in violation of Section 393.1075.3 and .4, RSMo.;
- Because KCPL did not include any analysis required by 4 CSR 240-20.094(4)(C)4 in its 2018 IRP, Staff is concerned that the earning opportunity component of a DSIM included in the IRP and in the anticipated KCPL MEEIA Cycle 3 application may not be as well informed as it should be; and
- KCPL's decision makers may have selected an adopted preferred resource plan which includes a MEEIA RAP portfolio of demand side programs which does not comply with the legal mandate in 393.1075. 4., because the RAP programs may not provide benefits to all customers, including those customers who do not participate in the programs.⁶⁸

⁶⁸ Ex. 200C, Rebuttal Testimony of Geoff Marke, p. 7, l. 25 – p. 9, l. 5.

In its *Order Regarding 2018 Integrated Resources Plans*, the Commission gave the Company the opportunity to address the deficiencies and concerns raised by parties in its MEEIA application.⁶⁹ The Company did not do so. Staff does not find the Application to comply with the legal mandate of 393.1075, the MEEIA statute, or the Chapter 20 MEEIA rules, therefore the Commission should reject Application.

No other party verified the Company's numbers outside of Staff and OPC

While the majority of the parties have signaled that they recommend the Commission approve the Company's Application,⁷⁰ that fact should be given little weight due to the lack of any analysis.

The majority of the parties, in addition to recommending the Commission approve the Application, also advocate that the Company's program budget should be increased.⁷¹ Besides the robust analysis contained within Staff's Rebuttal Report, Mr. Fortson noted that:

[S]imply making the budget and programs larger will not resolve the issues identified by Staff...but will likely serve to exacerbate the impacts to customers (both participating and non-participating) that Staff identified.⁷²

Increasing the budgets of programs that are not cost-effective would do nothing more than cause these programs to be even less cost-effective.⁷³ The parties that are recommending approval could better defend their positions if they had done their own independent analysis of the Company's underlying analysis supporting the application;

⁶⁹ *In the Matter of Kansas City Power & Light Company's 2018 Triennial Compliance Filing Pursuant to 4 CSR 240-22*, File No. EO-2018-0268 and *In the Matter of KCP&L Greater Missouri Operations Company's 2018 Triennial Compliance Filing Pursuant to 4 CSR 240-22*, File No. EO-2018-0269.

⁷⁰ See *Initial Briefs of Natural Resources Defense Council, Renew Missouri, Missouri Division of Energy, and National Housing Trust and Tower Grove*.

⁷¹ Ex. 102, Surrebuttal Testimony of Brad J. Fortson, p. 2:10-11.

⁷² *Id.*, p. 2:13-16.

⁷³ *Id.*, p. 2:18-20.

none of them did that, and some even provided analysis that seemed to not understand the state of energy efficiency in Missouri. Nowhere is this failure better reflected than in the testimony of NRDC witness Mr. Philip Mosenthal.

First, Mr. Mosenthal claims that the Company should be able to achieve most cost-effective supply-side savings similar to the leading jurisdictions in the country, which effectively claim double the savings.⁷⁴ Upon further analysis, the leading jurisdictions are all states with energy efficiency resource standards (“EERS”), “which is a legal mandate to achieve specified annual energy savings targets as a percentage of annual retail energy sales.”⁷⁵ MEEIA is a voluntary program, unlike EERS, and does not provide a legal mandate to achieve all cost-effective demand-side savings.⁷⁶ Rather, “MEEIA has a stated goal of achieving all cost-effective demand-side savings.”⁷⁷

In addition to the misunderstanding about energy efficiency in Missouri, Mr. Mosenthal also repeatedly states that the Company is a member of MISO;⁷⁸ apparently not realizing the Company is a part of SPP, which does not have a transparent capacity market, which impacted Staff’s analysis.

The parties recommending approval are focused more on their own projects rather than the quality of the Company’s Application. Turning a blind eye to the obvious deficiencies in the Application in exchange for preferred programs would not be a benefit to customers. The Application as a whole does not meet the statutory requirements of MEEIA.

⁷⁴ Ex. 400, Rebuttal Testimony of Philip Mosenthal, p. 7:1-2.

⁷⁵ Ex. 102, Surrebuttal Testimony of Brad J. Fortson, p. 3:8-10.

⁷⁶ Id, p. 3:11-14 and 4:17-19.

⁷⁷ Id, p. 5:3-4.

⁷⁸ Ex. 400, Rebuttal Testimony of Philip Mosenthal, p. 10:13 and 11:15.

The public interest is served by a MEEIA application that meets the statutory requirements; the public interest is not served with this Application.

One of the goals of MEEIA was to change the financial incentive of a utility in order to align a company's financial interests with the public interest.⁷⁹ This goal was outlined in the Commission's Order regarding GMO's MEEIA Cycle 2. The Company relied upon this order both during the hearing⁸⁰ and in the Company's initial brief.⁸¹

Despite these assurances that the Company's Application is in the public interest, there was no testimony about what exactly that means. The only guidance we have is what is stated within the Commission's Cycle 2 order: align the financial interest with the public interest. Following months of investigation and analysis, a two-day hearing, and one round of briefs, the Company has only reiterated how MEEIA is in the public interest; the Company has ***failed to show how this*** Application is in the public interest, and thus leaves the Application out of compliance with Commission Rule 20 CSR 4240-22.010(2). The Company's issues with complying with Commission Rule 20 CSR 4240-22.010(2) has been further detailed in the NPVRR portion of this brief.

The only part of the MEEIA statute that contains language pertaining to the public interest concerns low-income programs.⁸² Because low income programs do not need to be cost effective, the commanding factor is that such programs be in the public interest. The statute is silent about how best to measure the public interest as to any other programs. Staff has taken the approach that the best way to serve the public interest is

⁷⁹ Order Approving the Non-Unanimous Stipulation and Agreement Resolving KCP&L Greater Missouri Operations Company's MEEIA Filing, File No. EO-2012-0009.

⁸⁰ Tr. Vol. 1, p. 17:21-24.

⁸¹ Company's Initial Post-Hearing Brief, p. 2.

⁸² Section 393.1075.4 RSMo.

to ensure that all that programs are cost effective, excluding low income programs, and produce benefits to all customers in class, regardless of participation.

This is where the Company's argument that the Application is in the public interest begins to fall apart. Staff has come to the conclusion that the vast majority of the Company's proposed programs are not cost effective.⁸³ As Staff witness Ms. Natelle Dietrich stated during hearing, putting forth programs that are not cost effective would not be serving the public interest.⁸⁴ Further, "the public interest is not served when customers as a whole suffer a net detriment of \$5.7 million for those programs,"⁸⁵ due to the fact that these programs are not cost effective.

The Company also attempted to portray Staff's position as being:

it's good public policy to better align the utility's financial interest with the public interest of encouraging the efficient use of energy, but that's only true if the utility needs to build new capacity in the near future.⁸⁶

That is not Staff's position; as described by Staff witness Natelle Dietrich:

[W]hat I'm saying is since once(sic) of the requirements of MEEIA is to look at valuing demand-side versus supply-side, that's part of the analysis. And so it's not necessarily is(sic) deferring the building or the building the actual policy. It's the—meeting the statutory requirements that's the policy.⁸⁷

Staff is not saying that the only time in which it is good public policy to align the utility's financial interest with the public interest of encouraging the efficient use of energy is when the Company has shown a need to build new capacity; it's simply part of the analysis in determining if the public benefits from a MEEIA Application. The public interest

⁸³ Staff's *Initial Brief*, p. 7-10.

⁸⁴ Tr. Vol. 1, p. 289:24-290:7.

⁸⁵ Staff's *Initial Brief*, p. 53.

⁸⁶ Tr. Vol. 1, p. 260:16-20.

⁸⁷ *Id.*, pg. 261:7-13.

is met with cost-effective programs that produce benefits to all customers in a class, regardless of participation. The public interest is not met when it suffers a financial detriment from investing in the Application, with no avoided capacity cost benefits, *such* as the deferral of supply-side investment, resulting in many of the programs not being cost-effective. These are ways in which the Company can conform with the language of the statute, which states:

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.⁸⁸

The Company's Application fails to address this because it's simply a bad application. Rather than align the Company's financial interest with the public interest, the Company is seeking approval of an application that enhances its own financial interest through the implementation of programs that are not cost effective which is detrimental to the interest of the public. A properly structured MEEIA is in the public interest. However, the Company's Application simply is not that.

Non-energy benefits (NEB)

The calculation of non-energy benefits (NEBs) can be tough in a good application. Staff does not contend to be an expert on all benefits that could be associated with energy efficiency programs, and "non-energy benefits are difficult to quantify."⁸⁹ In this situation, with the Company submitting a bad application for analysis, it becomes impossible to properly quantify, especially since the Company is vastly overestimating the potential

⁸⁸ Section 393.1075.2 RSMo.

⁸⁹ Ex. 101, Staff's Rebuttal Report, p. 10:11-12.

NEBs that could arise from some of the proposed programs, particularly its Energy Efficient Trees Pilot Program.⁹⁰

In fact, there's very little the Company has provided that could help Staff or any of the parties better calculate NEBs. The Company's initial filing contained one page addressing any potential NEBs,⁹¹ the only party to bring NEBs up at all during the hearing was NHT, and they failed to provide any kind of analysis to back up the Company's claim.⁹² Any talk of potential NEBs is far too vague to be taken seriously, and should not play a role in the Commission's decision.

It is not Staff's position that every individual customer must benefit under MEEIA

Starting with the Company's surrebuttal report, there has been constant mischaracterization of Staff's position.⁹³ Staff is not, and never has, advocated that every individual customer must benefit under MEEIA. It is Staff's position that all customers, as a whole, should benefit. This includes non-participants.

...Staff's position based on the statutory language is that non-participants as a whole should benefit, not each individual customer or each individual participant or non-participant.⁹⁴

Staff's position was best summarized by the Commission in their order for Ameren's Cycle 2 programs in EO-2015-0055. As stated by the Commission, "[s]imply put, the Commission would approve a MEEIA plan if non-participating ratepayers would be better off paying to help some ratepayers reduce usage than they would be paying a

⁹⁰ *Id.*, p. 52:13-15.

⁹¹ Company's Direct Filing, Section 2.2.2, p. 25.

⁹² Tr. Vol. 1, p. 80:1.

⁹³ Ex. 3, Surrebuttal Report (Confidential), p. 24:15-16.

⁹⁴ Tr. Vol. 1, p. 290:23-291:1.

utility to build a power plant.”⁹⁵ And that is the crux of Staff’s position; are non-participants better off with MEEIA? In the case of the Company’s Application, the answer is a resounding no. In fact, the Company’s Application is in violation of Section 3 of the MEEIA statute “[b]ecause KCP&L has used drastically overstated avoided capacity cost benefits when calculating the total resource cost test results for its demand-side programs and portfolio.”⁹⁶ In addition, the “demand-side programs do not defer any non-renewable supply-side resources during the 20-year planning horizon, it is expected that there will be little, if any, benefits for customers who do not participate in the programs, resulting in violations of MEEIA statute Sections 3 and 4.”⁹⁷ This all contributes to what can only be described as an earnings opportunity component that “may not be as well informed as it should be.”⁹⁸ In fact, it’s more beneficial for ratepayers that MEEIA 2 simply expires than to approve the Company’s Application.⁹⁹ As Staff witness Dana Eaves testified, the Company’s Application doesn’t provide benefits to all ratepayers in part due to the deficiencies in the Application, making it unclear if non-participants are receiving anything from paying the MEEIA charge.¹⁰⁰ Mr. Eaves goes on to clarify that benefits to non-participants need not be the same as participants; there simply needs to be “some level of benefits to all customers.”¹⁰¹

⁹⁵ *In the Matter of Union Electric Company d/b/a Ameren Missouri’s 2nd Filing to Implement Regulatory Changes in Furtherance of Energy Efficiency as Allowed by MEEIA*, File No. EO-2015-0055, *Report and Order* at p. 17.

⁹⁶ Tr. Vol. 2, p. 381:2-6.

⁹⁷ Id, p. 381:7-12.

⁹⁸ Id, p. 381:16-18.

⁹⁹ Id, p. 445, 19-24.

¹⁰⁰ Id, p. 446:2-15.

¹⁰¹ Id, p. 447:5-9.

It again comes down to the Company submitting a bad application. If the Company really wanted to provide benefits to all customers as defined in the MEEIA statute, then there would be an actual demonstration of avoided or deferred costs actually driving benefits to all customers, regardless of participation.¹⁰²

The Company is not forgoing any supply-side investment; this fact must be reflected for an appropriate earnings opportunity.

Through their briefs, special interest parties and the Company seem perturbed that Staff does not want to utilize ratepayer funds to give a gold star, in the form of cash, for merely offering energy efficiency programs. NRDC goes as far as to state, “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.”¹⁰³ As evidenced by the lack of citations to the record for that statement, this is in fact not an idea espoused by Staff. Although the position that Staff is advocating the Company build supply-side investment even if MEEIA programs could supplant them is perhaps an easier strawman to tilt at,¹⁰⁴ it is not reflective of the record, Staff’s testimony, or even the Company’s analysis. That analysis shows that there are no lost earnings, on a combined basis, from postponement of new supply side resources under MEEIA Cycle 3.¹⁰⁵ That is because the Application is not postponing any supply-side resources.

¹⁰² Id, p. 487:17-20.

¹⁰³ NRDC’s *Initial Brief*, p. 8.

¹⁰⁴ NRDC’s *Initial Brief*, p. 7.

¹⁰⁵ Ex. 1, MEEIA Cycle 3, Updated Appendix 8.11, p. 7, Lost Earnings from Postponement of New Supply-Side Resources as a result of MEEIA Cycle 3, no new retirements and no new load is \$0 for Joint (KCPL/GMO) and \$0 for KCPL.

Staff has simply taken the Commission's *Report and Order*¹⁰⁶ in Ameren Missouri's MEEIA Cycle 2 case, and applied it here. When the Commission said,

This is not a matter of Ameren Missouri's ability to predict the future; this is a matter of building in a double-recovery windfall for Ameren Missouri. That double-recovery comes from ratepayers paying depreciation and return on equity on supply side investments and then paying again for performance incentives on demand-side programs.¹⁰⁷

Staff took note. Double-recovery is not in the public interest. Double-recovery does not benefit all customers in a class, regardless of participation. Even participants are better off if double-recovery is avoided.

Instead, the Company has ignored what the Commission has stated the purpose of an earnings opportunity (EO) is, and focused too literally on EO as a "performance incentive." The Company claims that the real purpose of an EO to incentivize the Company to do a good job in the implementing the programs, and to align the Company's financial interest with the public's interest in energy and demand savings.¹⁰⁸ First, the Company is conflating EO with the throughput disincentive. As the Commission stated,

Electric utilities make money by selling energy. Consequently, a utility has a natural disincentive to promote energy efficiency programs that would reduce its sales. This is known as a throughput disincentive. To combat this disincentive and fulfill the MEEIA directive that utility financial incentives be aligned with helping customers use energy more efficiently, DSIM must have some sort of mechanism to compensate utilities for the lost sales that result from implementing MEEIA programs.¹⁰⁹

¹⁰⁶ *In the Matter of Union Electric Company d/b/a Ameren Missouri's 2nd Filing to Implement Regulatory Changes in Furtherance of Energy Efficiency as Allowed by MEEIA*, File No. EO-2015-0055, *Report and Order*.

¹⁰⁷ *Id.* at p. 11.

¹⁰⁸ Company's *Initial Post-Hearing Brief*, p. 35.

¹⁰⁹ *In the Matter of Union Electric Company d/b/a Ameren Missouri's 2nd Filing to Implement Regulatory Changes in Furtherance of Energy Efficiency as Allowed by MEEIA*, File No. EO-2015-0055, *Report and Order*, p. 9.

Staff has not opposed the Application having a throughput disincentive component for cost-effective programs that produce results, and therefore cause lost sales, after verification through EM&V. Second, the EO is not designed as a reward for a good job, but as a replacement for the forgone earnings a utility would experience by utilizing demand-side resources to meet a capacity need, instead of steel in the ground.

As the Commission explained,

As noted above, under MEEIA, the Commission shall “[p]rovide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.” This gives Ameren Missouri’s shareholders an earnings opportunity to compensate for foregone supply-side investment opportunity. This earnings opportunity is a performance incentive.

The sole purpose of a “performance incentive” under MEEIA is to give the company an earnings opportunity to place shareholders in a financial position comparable to the earnings opportunity they would have had if those shareholders made a future supply-side investment.

A successfully implemented performance incentive would accomplish the policy goal of valuing equally supply-side and demand-side investments.¹¹⁰

The sole purpose of the EO is to ensure that if faced with the choice between (A) generation plant that earns a return on equity investment under traditional regulation, and (B) cost-effective demand-side measures that benefit all customers in a class, regardless of participation, that the Company is incentivized to choose (B). If there is no (A), or (A) is built regardless, the Company has not forgone anything, and will not need an incentive not to choose (A). In this case, the Company will not forgo an investment opportunity. Therefore, the Company is not experiencing a loss that ratepayers, via the MEEIA charge, need to reimburse. The Company is made whole, under the Staff position. As Staff witness Dana Eaves testified, the costs for cost-effective

¹¹⁰ *Id.* at p. 11.

programs will be recovered on a timely basis through the MEEIA charge on the customer's bill.¹¹¹ That is an additional benefit to the Company from a cash flow standpoint.¹¹² These costs are also trued up, so any over or under recovery is captured in order to keep the Company whole for all cost-effective program expenses.¹¹³ Mr. Eaves also explained that the Application includes approximately \$42 million in a throughput disincentive, to recover lost sales and accomplish the task of aligning the Company's financial incentives with the public interest in cost-effective, verifiable energy and demand savings.¹¹⁴ Staff has even outlined a way to make the Company whole for tangible avoidance of necessary investments in infrastructure, based upon demonstration.¹¹⁵ If the Company actually avoids such investments, then the projected return on investment ("ROI"), based upon an ROI that the Commission deems appropriate,¹¹⁶ that KCPL or GMO would have received from such investments in infrastructure upgrades but for the MEEIA programs may be appropriate.¹¹⁷ Examples of such avoidance may be avoided distribution system upgrades achieved through targeted demand side programs or deferral of a supply-side resource that can be directly attributed to MEEIA Cycle 3 programs.¹¹⁸ What Staff's position doesn't do, however, is make the Company more than whole. For this reason, Staff recommends rejection of the Company's EO matrix.

The Company states, "[i]f the Commission approved the Company's proposed portfolio of DSM programs, but declined to give it an Earnings Opportunity, then the

¹¹¹ Tr. Vol. II, p. 460, l. 1 - 7.

¹¹² Tr. Vol. II, p. 450, l. 11 - 17.

¹¹³ Tr. Vol. II, p. 460, l. 7 - 10.

¹¹⁴ Tr. Vol. II, p. 460, l. 11 - 15.

¹¹⁵ Ex. 101C, Staff Rebuttal Report, p. 86, l. 17 - 19.

¹¹⁶ If the Commission has not already approved an ROI in the most recent rate case.

¹¹⁷ Ex. 101C, Staff Rebuttal Report, p. 86, l. 19 - 22.

¹¹⁸ *Id.* at l. 22 - 24.

Company would not go forward with implementing MEEIA programs.”¹¹⁹ This is the Company’s right; it does not have to have a MEEIA portfolio. Nevertheless, if it chooses to have a MEEIA portfolio, it must meet the statutory requirements. It is disingenuous to suggest the future of energy efficiency in Missouri hinges upon the Commission granting the Company its bloated EO. The Empire District Electric Company offers energy efficiency programs, without an EO.¹²⁰ Empire’s gas operations offer energy efficiency programs, without an EO.¹²¹ Ameren Missouri’s gas operations offer energy efficiency programs, without an EO.¹²² Summit Gas offers energy efficiency programs, without an EO.¹²³ Liberty Utilities’ gas operations offer energy efficiency programs, without an EO.¹²⁴ Spire Missouri offers energy efficiency programs, some of which are co-delivered with the Company, without an EO.¹²⁵ The Company even points out in its *Initial Post-Hearing Brief* that it invested \$93.5 million dollars, pre-MEEIA, pre-EO, and achieved 159 MW in capacity reduction and over 268 GWh energy savings.¹²⁶ It seems that the Company’s current position is the outlier, a position that clearly signals the value of MEEIA to the Company is the shareholder profits, not the energy efficiency.

Home Energy Reports (HER) should not be approved as a measure.

No program better exemplifies Staff’s concerns with the Company’s Application than the Home Energy Reports (“HER”).¹²⁷ A relic of the Company’s first foray into energy

¹¹⁹ Company’s *Initial Post-Hearing Brief*, p. 35 – 36.

¹²⁰ Tr. Vol. II, p. 454, l. 17 – p. 456, l. 4.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ P. 6.

¹²⁷ Staff’s Initial Brief, p. 12-13.

efficiency, Staff has already detailed the myriad problems posed by including the program within MEEIA, including its continued failure to pass the Total Resource Cost test (“TRC”)¹²⁸ and the Company’s inability to actually track how many customers take advantage of the program.¹²⁹

Staff would like to point out a few additional knocks against the HER program as detailed in the Company’s brief. First, the Company indicates that it has worked with its implementation partner, Oracle, “to provide a redesign...for Cycle 3 to rely more on digital communications than the legacy program design...”¹³⁰ Staff would like to point out that the Company already has a digitized HER: the Energy Analyzer tool.¹³¹ An attempt to digitize HER would only serve to exacerbate the similarities with the Energy Analyzer tool, and further show just how redundant the HER program truly is.

The Company also continues to stress that the HER program is cost-effective, and showcases a TRC greater than 1.0.¹³² This isn’t true; as shown in Staff’s Rebuttal Report, the HER has a TRC far lower than 1.0.¹³³ The Company’s proposed HER program is duplicative of the far superior Energy Analyzer tool offered on the Company’s website, and isn’t cost-effective. It’s just another bad program in a bad application.

¹²⁸ Ex. 101, Staff Rebuttal Report, p. 49:6-8; see also Staff’s *Initial Brief*, p. 12.

¹²⁹ Tr. Vol. 1, pg. 163:8-11; see also Staff’s *Initial Brief*, p. 12.

¹³⁰ Company’s *Initial Brief*, p. 11.

¹³¹ Staff’s *Initial Brief*, p. 12.

¹³² Company’s *Initial Brief*, p. 12.

¹³³ Staff’s *Initial Brief*, p. 7-8.

The Company's Demand Response programs should be rejected, or modified as recommended in Staff's *Rebuttal Report*.

The Company's demand response programs cannot be approved because of "inflated avoided cost data that improperly skews the cost-effectiveness of the programs."¹³⁴

The Company's continued insistence on smart thermostats being the backbone of its Residential and Small Business Demand Response programs ("RSBDR"), with over 35, 000 thermostats across its Missouri jurisdictions,¹³⁵ is an unrealistic proposition. It's simply not realistic to assume 10 years of savings to smart thermostats, especially without any kind of requirement to take part in events called.¹³⁶ Further, the Company has no documentation or data to back up the claim that "customers want to be a part of this program because they know they're helping out" to justify assuming savings after the completion of Cycle 3.¹³⁷ The Company substitutes data for faith in these programs, and that is simply not the proper reasoning for approving a MEEIA Application. Without specific guidelines for participants, there's no way to quantify actual savings.

The same lack of avoided costs also serves to sink the Company's proposed Business Demand Response programs ("BDR").¹³⁸ Rather than working to improve from previous MEEIA cycles, the Company is proposing savings that "are nothing more than a continuation of the demand savings the Company planned to achieve in Cycle 2."¹³⁹ As explained in more depth in Staff's Initial Brief,¹⁴⁰ the flaws in the

¹³⁴ Id, p. 14-15.

¹³⁵ Company's Initial Brief, p. 28.

¹³⁶ Staff's Initial Brief, p. 15.

¹³⁷ Tr. Vol. 1, p. 154:17-19 and 154:25-155:4..

¹³⁸ Staff's Initial Brief, p. 16.

¹³⁹ Id, p. 17.

¹⁴⁰ Id, p. 14-18.

Company's Application are holding back what could potentially be efficient demand response programs. However, this Application does not address those flaws, and therefore, the Application should be rejected.

Conclusion

A utility must meet the statutory requirements of MEEIA with cost-effective programs, and those programs must provide benefits to all customers in a class, regardless of participation. A utility must value demand-side resources on an equivalent basis as supply side resources, which requires appropriate evaluation of avoided capacity costs. If a utility does these things, and meets its side of the regulatory compact, Staff is not opposed to a utility receiving timely program cost recovery, a throughput disincentive, and an earnings opportunity. Staff does not oppose MEEIA. Staff simply opposes this Application. This Application fails to meet the statutory requirements of MEEIA. However, Staff remains open to an Application that incorporates Staff's recommendations, as outlined in its *Rebuttal Report*.

WHEREFORE, on the basis of all the foregoing, Staff prays that the Commission will resolve all contested issues as recommended herein by Staff by rejecting the Application, and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 21st day of October 2019, to all counsel of record.

/s/ Nicole Mers