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**

STAFF'S INITIAL BRIEF

Nicole Mers
Deputy Staff Counsel
Missouri Bar No. 66766
P.O. Box 360
Jefferson City, MO 65012
(573) 751-6651 (Telephone)
(573) 751-9285 (Fax)
Nicole.mers@psc.mo.gov

Travis J. Pringle
Missouri Bar No. 71128
Legal Counsel
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4140 (Telephone)
(573) 751-9265 (Fax)
Travis.Pringle@psc.mo.gov

Attorneys for the Staff of the
Missouri Public Service Commission

October 11, 2019

Table of Contents

Introduction to the Missouri Energy Efficiency Investment Act ("MEEIA") Section 393.1075 RSMo 1

Summary of Staff's Position 2

Legal Standards for Approval of MEEIA 2

1. Should the Commission approve, reject, or modify the Company's MEEIA Cycle 3 Plans ("MEEIA 3"), along with the waivers in the Company's application intended to enable its implementation? 4

a. If MEEIA 3 should be modified, how should the plans be modified? 5

Program Design 6

Cost-effectiveness 7

Measure-level TRC 11

Demand-side program design relating to energy efficiency 11

Demand response 14

b. Issue: Could the Commission approve GMO and reject KCP&L, or should the applications be viewed as one? 18

c. Issue: NRDC's position to modify low-income programs and whether the Company should adopt a PAYS program. 19

NRDC's position to increase the budget for the Company's low-income programs. 19

Should the Companies adopt a PAYS program? 21

2. When it developed MEEIA 3, did the Company value demand-side investments equal to traditional investments in supply and delivery infrastructure? 22

The Company's avoided capacity cost should be zero dollars, in all years that there is not a need for capacity. 23

The Company's alternative "market based" capacity cost value should be rejected. 27

Other avoided costs estimates are unquantified or uncertain to be actually avoided, and should not be used to show the program is cost effective or provides benefits to all customers. 27

The Cycle of Denial is a strawman, and should be rejected outright. 30

Avoided costs matter, as it is one of the primary ways non-participants see benefits. 32

The earnings opportunity must be linked to actual forgone investment. 34
3. Is the proposed MEEIA 3, as designed by the Company, expected to provide benefits to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers? 38
4. If the Commission approves or modifies MEEIA 3, what DSIM provisions should be approved to align recovery with the MEEIA statute? 42
5. Should Opt-out customers be eligible to participate in Business Demand Response programs, i.e., are the BDR programs as proposed by the Company interruptible or curtailable? 45
6. Issue: Variances.. 48
7. KCPL/GMO is not Ameren Missouri. 49
8. Conclusion 53

Introduction to the Missouri Energy Efficiency Investment Act (“MEEIA”) Section 393.1075 RSMo

All corporations, rate-regulated utilities amongst them, have an obligation to maximize shareholder earnings. For a rate-regulated utility, that obligation leads to a business model that relies on selling as much energy as possible in order to cover costs and realize its authorized rate of return on equity. In addition, Kansas City Power and Light Company (“KCPL”) and KCP&L Greater Missouri Operations Company (“GMO”) (collectively, “the Company”), are electrical companies with a fiduciary obligation to maximize rate of return on the equity investments made by its shareholders.

While customers have an interest in minimizing required investments, the Company has an interest in maximizing its investment opportunities. This is the problem that MEEIA was intended to fix. While demand-side programs do exist outside of MEEIA, the MEEIA statute offers Missouri utilities an opportunity to maintain and supplement earnings despite utility-sponsored demand-side programs. MEEIA does so by providing (1) real time program cost recovery, (2) a mechanism so the Company is indifferent as to whether it sells less energy in a given year because of the energy efficiency programs, and (3) an opportunity for earnings to make up for a reduction to its future supply-side investment opportunity. In exchange for that opportunity, MEEIA requires that a utility seeking to maintain and supplement its earnings meet certain parameters. Those parameters require an application to be cost-effective, and provide benefits to all customers in a customer class, regardless of participation.[1] In other words, if all ratepayers – regardless of whether or not they participate in demand-side programs - will be financially better off to pay some ratepayers to reduce the amount of energy they consume, than they would be paying for a supply-side investment, a utility can be eligible to receive those financial incentives under the MEEIA statute. In a good MEEIA application, all customers, regardless of participation, will primarily benefit from demand side programs reducing the amount of expensive generation capacity the utility will need to invest in to provide safe and adequate service to its customers.

But this is not a good MEEIA application. The Company's MEEIA application fails to meet many of the requirements of the MEEIA statute. Bad applications should not be approved simply out of a desire to provide energy efficiency programs; failure to conform to the statute demands rejection. The fatal flaws inherent in the Company's application, which will be described throughout this brief, demand that the application be rejected as is.

Summary of Staff's Position

Staff recommends that the Commission reject the Company's application because it fails to comply with the MEEIA statute, § 393.1075 RSMo.

Legal Standards for Approval of MEEIA

The Missouri Energy Efficiency Investment Act, § 393.1075 RSMo, establishes the state policy to value demand-side investments equal to traditional supply-side

[1] *Id.*

investments and delivery infrastructure and sets forth the following standards for approval of energy efficiency programs under MEEIA that are at issue in this case. Staff contends that the Company's application fails to meet all statutory requirements of MEEIA, because:

1. The proposed programs do not meet the statutory requirements to provide benefits to all customers, including those that do not participate;[2]
2. When utilizing the proper analysis, the majority of the programs proposed by the Company are not cost-effective;[3] and
3. The Company is not valuing demand-side investments equal to traditional investments in supply and delivery infrastructure.[4]

The above statutory requirements are also reflected in Commission Rule 20 CSR 4240-20.93(2)(D).

The MEEIA rules also grant the Commission broad discretion over the factors it may consider when deciding whether to reject, approve or modify a DSIM, especially when the DSIM may hugely affect utility earnings and revenues paid for by captive customers.[5]

Staff would like to remind the Commission that all MEEIA program-related costs are collected from customers in a separate line item on customer bills; this makes it ever more important that all customers benefit from the programs, regardless of

[2] § 393.1075.4 RSMo.
[3] § 393.1075.3(3) RSMo.
[4] § 393.1075.3 RSMo
[5] 20 CSR 4240-20.093(2)(F).

participation. And, like all utility charges approved by the Commission, § 393.130.1 RSMo requires this charge to be "just and reasonable." For the reasons outlined below, Staff does not believe the charge that would stem from this MEEIA Application to be just and reasonable, and therefore recommends the Commission deny the Application.

1. Should the Commission approve, reject, or modify the Company's MEEIA Cycle 3 Plans ("MEEIA 3"), along with the waivers in the Company's application intended to enable its implementation?

The Commission should not approve KCPL's and GMO's applications as filed. At a high level, the Company's MEEIA 3 fails to produce any avoided capacity costs, as there is no supply side investment being deferred during the 20 year planning horizon as a result of its programs.[6] Staff's analysis shows that when correctly taking into account the lack of avoided capacity costs, MEEIA Cycle 3 does not pass the total resource cost test, meaning it is not cost-effective.[7] On a combined basis, MEEIA Cycle 3 results in a net cost to all customers of $5.7 million.[8] This net cost to all customers highlights the striking lack of benefits to all customers, contrary to the statutory mandate in MEEIA to provide benefits to all customers.[9] As shown in Staff's Rebuttal Report, Staff's detailed analysis of the Company's capacity needs, avoided cost calculations, other potential avoided costs, calculations of net costs and benefits to all customers, and program design, Staff must recommend rejection of the

[6] Staff Rebuttal Report, p. 17, l. 11-22.
[7] *Id.* at p. 32, l. 1-9.
[8] *Id.*
[9] *Id.*

Company's MEEIA 3, as non-participants will pay more in increased DSM charges than they would receive in offsetting benefits.

a. If MEEIA 3 should be modified, how should the plans be modified?

If the Commission determines it is appropriate to approve the proposed MEEIA Cycle 3, Staff recommends the Commission modify the Application, subject to certain conditions,[10] as recommended in Staff's rebuttal report. Of the upmost concern, Staff recommends that the Commission 1) determine appropriate values of avoided capacity costs; and 2) only allow earnings opportunities for programs that are cost-effective and defer supply-side resources.

Staff also recommends the following modifications and conditions, as explained in more detail in Staff's Rebuttal Report.

- Remove the Residential Level 2 Charging Station Charging Program Pilot
- Remove the Home Energy Reports, including the Income Eligible portion.
- For Demand Response
    - Only allow an earning opportunity on Cycle 3 demand response that exceeds the incremental peak demand savings in Cycle 2, or defers or avoids an investment in necessary infrastructure investments.
    - Only allow customers that have not opted out to participate in business demand response.
    - Redesign the Residential Demand Response program in a manner that would lean on the sunk cost of investments made in thermostats in MEEIA Cycle 2 and DERMS, provide clear monetary incentives for meaningful participation areas that will benefit customers as a whole, minimize cost, focus on calling events based on location specific needs, target events that could decrease peak load coincident with the SPP zonal monthly peak, and maximize tangible savings to provide benefits

[10] Modifications are changes that the Commission would determine are appropriate and the conditions stated require action by KCPL/GMO.

to customers regardless of participation in the program.

- Redesign the Business Demand Response program to minimize cost, focus on calling events based on location specific needs, target events that could decrease peak load coincident with the SPP zonal monthly peak, maximize tangible savings to provide benefits to customers regardless of participation in the program.

- The costs from Business Demand Response related to MEEIA participants should be allocated to each non-residential rate class based upon participation, except, if opt outs are allowed to participate, then those costs should be allocated to all non-lighting classes based on kWh sales.

- Require demand response to pass the UCT, to ensure non-participants are benefiting from the program, as well as ensuring incentive payments are cost-effective.

- Require the Company to file a complete TRM, with the 2020 IRP annual update, that provides an explanation for why each estimation is appropriate and specific citations for each and every assumption utilized to estimate savings from measures.

Below, Staff addresses its concerns with program design in more detail, supporting why the programs should be denied, or at the very least, modified as suggested by Staff.

Program Design

KCPL has proposed five Residential programs, six Business programs, and two low-income programs, with a proposed budget of $43.9 million; GMO has proposed five Residential programs, six Business programs, and one Low Income program, with a proposed budget of $52.4 million.[11] As noted in Staff's Rebuttal report, there are four primary concerns with program design arising from these proposals: (1) cost-effectiveness; (2) measure-level Total Resource Cost test (TRC); (3) demand-side program design relating to energy efficiency; and (4) the demand response aspects

[11] Ex. 101, Staff Rebuttal Report, p. 40:17-19.

of the programs. The Company has yet to address or provide Staff the necessary information to address these problems.

Cost-effectiveness

As discussed earlier, the Company's lack of avoided costs causes all the programs to not contribute any supply-side investment deferral for over 20 years.[12] When applying Staff's analysis to the preferred cost-effectiveness test, the TRC,[13] every program proposed by the Company, excluding low income, sees a distinct drop in TRC, and in most cases, drops the programs below the 1.00 needed to pass the TRC. These TRCs can be seen in the tables below:[14]

KCPL Residential			
	Using KCPL's avoided costs	Using Staff's updated avoided costs	% Change
Energy Savings Products	2.20	1.78	-19%
Heating, Cooling & Weatherization	2.37	0.56	-76%
Home Energy Report	0.96	0.66	-31%
Income Eligible Home Energy Report	0.98	0.67	-32%
Income Eligible Multi-Family	0.67	0.43	-36%
Residential Demand Response	2.20	0.09	-96%
Online Home Energy Audit	0.00	0.00	
Portfolio	1.92	0.58	-70%
KCPL Business			
	Using KCPL's avoided costs	Using Staff's updated avoided costs	% Change

[12] *Id*, p. 40:23-24.
[13] Commission Rule 20 CSR 4240-20.094(4)(I).
[14] Ex. 101, Staff Rebuttal Report, p. 41-42.

Business Standard	1.37	0.90	-34%
Business Custom	2.20	1.46	-34%
Business Process Efficiency	1.33	1.26	-5%
Demand Response Incentive	6.69	0.00	-100%
Business Smart Thermostat	1.70	0.07	-96%
Online Business Energy Audit	0.00	0.00	
Portfolio	1.70	1.01	-41%

GMO Residential			
	Using GMO's avoided costs	Using Staff's updated avoided costs	% Change
Energy Savings Products	2.17	1.77	-18%
Heating, Cooling & Weatherization	2.29	0.55	-76%
Home Energy Report	1.16	0.80	-31%
Income Eligible Multi-Family	0.59	0.38	-36%
Residential Demand Response	2.13	0.09	-96%
Online Home Energy Audit	0.00	0.00	
Portfolio	1.92	0.57	-70%
GMO Business			
	Using GMO's avoided costs	Using Staff's updated avoided costs	% Change
Business Standard	1.30	0.84	-35%
Business Custom	2.21	1.47	-33%
Business Process Efficiency	1.34	1.27	-5%
Demand Response Incentive	6.61	0.00	-100%
Business Smart Thermostat	1.58	0.07	-96%
Online Business Energy Audit	0.00	0.00	
Portfolio	1.70	0.83	-51%

Not only do the majority of the programs proposed drop below the necessary 1.00 TRC, but both Residential portfolios and the Business portfolio for GMO as a whole drop below 1.00. Even though the Business portfolio proposed by KCPL passes with a TRC of 1.01, it leaves little room for error and "could easily end up not being cost-effective during the cycle."[15]

Further, while Staff recognizes that a handful of programs do pass the TRC under Staff's analysis, "the programs still fail to provide benefits to all customers."[16]

However, if the Commission were to approve the Company's Application, including the above programs, "Staff recommends that the Commission only allow recovery of program costs, throughput disincentive costs, and earnings opportunities from programs that are ultimately deemed cost effective by the Commission based upon retrospective evaluation, measurement, and verification,"[17] in order to better align the Application with Section 393.1075.3(3).

The Company argues that Staff is too strictly interpreting the statute, and argues that the Commission's rules gives the Company an opportunity to "fix" a program in order to improve its cost-effectiveness throughout the cycle.[18] The Company hinges this argument on the potential "negative impact on Company earnings and value."[19] While it is true that the Company could turn a program that is initially not cost effective into a cost effective program, Staff argues that "it makes little sense to reward a company for savings associated with programs that are ultimately deemed to not be cost-effective."[20]

---

[15] *Id*, p. 43:6-7.
[16] *Id*, p. 43:13.
[17] *Id*, p. 43:16-18.
[18] Ex. 3, Surrebuttal Report (Confidential), p. 31:15-16.
[19] *Id*, p. 32:28-33:1.
[20] Ex. 101, Staff Rebuttal Report, p. 43:22-23.

The Company does not dispute that programs should be cost-effective. However, the Company states that the statute does not specify over what period of time cost-effectiveness must be measured and the rules contemplate that programs may need to be tweaked to improve cost-effectiveness.[21] Staff agrees that the rules allow for a utility to "present possible demand-side program modifications that could make the demand-side program cost-effective."[22] However, the statute does specify to "allow **recovery** of all reasonable and prudent costs of delivering **cost-effective** demand-side programs"[23] [emphasis added] and "provide **timely earnings opportunities associated with cost-effective** measurable and verifiable efficiency savings."[24] [emphasis added] The Company states it "would suffer significant harm for reasonably and prudently operating a program that was approved based on cost-effective design which ultimately proved not to be cost effective as a result of any number of factors which may not have been within the Company's control, even if such a shortfall were minimal."[25] However, the Company completely disregards the harm customers receive for paying for demand-side programs that are not cost-effective. Customers would suffer significant harm for reasonably and prudently operated programs that were approved based on cost-effective design which ultimately proved not to be cost-effective as a result of any number of factors which were not within the customers control, even if such shortfall were minimal. In short, why put the customers at risk for a program that isn't cost-effective?

---

[21] *Id,* p. 31:9-12.
[22] 20 CSR 4240-20.094(6)(B).
[23] 393.1075.3.
[24] 393.1075.3(3).
[25] *Id.* P. 32:20-23.

Measure-level TRC

As discussed above, the majority of the Company's programs do not pass the TRC, and thus are not cost-effective. There are a number of measures included in the Company's portfolio that are also not cost-effective. While the number drops from 37 to 33 over the three-year life of Cycle 3,[26] these measures should still be removed due to the simple reason that they are not cost-effective. Leaving these measures in would only work to "minimiz[e] potential benefits of the overall portfolio."[27] The removal of these measures would also help to "maximize the probability that actual benefits outweigh the actual costs."[28]

Demand-side program design relating to energy efficiency

With today's changing energy landscape, and the progress of energy efficiency measures through the years, Staff has a number of concerns with the Company taking credit for naturally occurring energy savings that feign the appearance of energy and demand savings. Staff is worried that these savings instead "could potentially be saved absent energy efficiency programs."[29] These concerns include:

a) The Technical Resource Manual ("TRM") proposed by the Company is woefully inadequate. There is an astounding lack of citations within the manual, with what little information that does contain citations being inappropriately generic.[30] Without a complete TRM, it's impossible for Staff or other parties to fairly judge the accuracy of any purported savings. If the Commission decides to approve the Application, approval should be

[26] *Id*, p. 44:1-2.
[27] *Id*, p. 44:13.
[28] *Id*, p. 44:16-17.
[29] *Id*, p. 44:24-27.
[30] *Id*, p. 46:1-2.

conditioned on the Company filing a more complete and detailed TRM alongside the 2020 IRP annual update.[31] In its Surrebuttal Report, the Company indicated they were willing to make the additional changes suggested by Staff, and are already in the process of doing just that.[32]

b) The program tariff sheets suffer from the same lack of detail.[33] The sheets are often too vague to enforce or follow.[34] When detail was included, Staff found the sheets to be "overly intricate and complex where as an average individual…would not have a basic understanding of the tariff."[35] Staff is willing to work with the Company on the additional details necessary to make the program tariff sheets complete if the Commission were to approve the Application.

c) No program best exemplifies Staff's concern regarding naturally occurring energy savings than the Home Energy Report Program ("HER") and Income Eligible Home Energy Report ("Income Eligible HER"). KCPL's own calculations have the HER program failing the TRC test, which goes against Commission Rule 20 CSR 4240-20.094(4)(I).[36] Company witness Brian File admitted that the Company has no way of determining how many people even open the report in total.[37] Most distressing is the fact that the HER program is a duplicative relic of a much superior program offered by the Company, the Energy Analyzer tool offered on its website. Both are

[31] *Id*, p. 46:6-9.
[32] Ex. 3, Surrebuttal Report (Confidential), p. 40:4-5.
[33] Ex. 101, Staff Rebuttal Report, p. 46:24-25.
[34] *Id*, p. 46:28-47:10.
[35] *Id*, p. 47:18-19.
[36] *Id*, p. 49:6-8.
[37] Tr. Vol. 1, pg. 163:8-11.

intended to inform customers of how to save energy, but only one is a trackable, voluntary and proactive response on the part of the customer: the Energy Analyzer.[38] Staff recommends that the Commission reject both HER programs in Cycle 3.

d) The Company has also overstated savings regarding SMART home products that are well in excess of an average month of usage for an average Residential customer, and, even if accepting the savings figure, would appear to only be possible "if the smart devices are connected to multiple high energy consuming smart appliances. Absent that could simply be used for playing music or answering random questions."[39] There's no justification to offer these as stand-alone measures, and they should be rejected.

e) The Company is requesting a throughput disincentive and an earnings opportunity for a pilot program involving energy efficient trees. The Company assumes "energy savings in years 1-5 from the trees offered in this program."[40] There's nothing to support that claim, and Staff recommends the Commission reject the program.

f) Regarding the Business Process Efficiency ("BPE") program the Company plans on introducing in Cycle 3, Staff has concern over the risk of free-ridership. Staff recommends that "customer eligibility requirements for participation in BPE be clearly stated in the tariff and the

---

38 *Id*, p. 162:14-25.
39 Ex. 101, Staff Rebuttal Report, p. 51:22-23.
40 Id, p. 52:8-9.

evaluation…improved to be more objective," and to better prevent free-ridership.[41] The Company argues that "the nature of BPE program precludes free-ridership because the participants must identify [energy efficiency measures] that they are not engaging already;"[42] however, this method is not objective or clear enough to properly minimize free-ridership. Without adequate modifications to prevent free-ridership, Staff recommends that the program be rejected.

g) Staff points out that there is already sufficient information showing that Level 2 Electric Vehicle (EV) charging is faster than Level 1.[43] The Company has not even decided on a method for program requirements;[44] this program should also be rejected as a MEEIA program for poor design.

Demand response

The Company has proposed two demand response programs. The programs are Business Demand Response ("BDR") and Residential and Small Business Demand Response ("RSBDR"). While both programs are meant to incentivize participating customers to reduce or shift load during Company events, "[t]here are many flaws in the program design and in the assumptions used to evaluate the programs"[45] that appear to cause the programs to not incentivize or reduce anything. As is the problem with much of the Application, the biggest concern stems from the inflated avoided cost data that improperly skews the cost-

[41] Id, p. 53:12-15.
[42] Ex. 3, Surrebuttal Report (Confidential), p. 61:10-11.
[43] Ex. 101, Staff Rebuttal Report, p. 55:16-18.
[44] Ex. 3, Surrebuttal Report (Confidential), p. 72:1-3.
[45] Ex. 101, Staff Rebuttal Report, p. 59:16-20.

effectiveness of the programs. In addition to these fundamental flaws, the Company has failed to properly target areas of congestion, which would be one of the major benefits of a properly designed demand response program.[46] It is Staff's recommendation that both the BDR and RSBDR programs be rejected as proposed; Staff's reasoning is more fully explained below.

Residential and Small Business Demand Response

The Company's RSBDR program is a continuation of that from Cycle 2, with a continued emphasis on smart thermostats. The Company assumes "effective lives of energy and demand savings attributed to smart thermostats equal to 10 years."[47] The idea of these smart thermostats providing 10 years of benefits is unrealistic because customers need only take part for three years in order to own the thermostat; why would they continue for seven more years if there are no further incentives? Even before the three years are over, "there is a big concern with the giving of thermostats and the minimal use of events called."[48] This concern was confirmed when Company witness Brian File admitted that, throughout Cycle 2, as the number of thermostats given out to customers went up, the number of events called went down.[49] In fact, when including Cycle 1, Mr. File admitted that the Company has never reached the agreed upon maximum number of events for either RSBDR or BDR.[50]

---

[46] Id, p. 60:3-4.
[47] Id, p. 60:17-18.
[48] Tr. Vol. II, p. 420:22-24.
[49] Tr. Vol. I, p. 148:4-14.
[50] *Id*, p. 150:19-151:6.

The Company places a lot of faith in its belief that "customers want to be a part of this program because they know they're helping out"[51] and that if the Company "phrase[s] that right and communicate[s] it right," customers will continue to take part long after the initial three year commitment has ended.[52] However, when asked for any kind of documentation or data to support that belief, the Company has been unable to provide anything.[53]

To improve the program, Staff recommends that the RSBDR program be redesigned to "provide clear monetary incentives for meaningful participation in areas that will benefit customers as a whole, minimize cost, focus on calling events…target events that could decrease peak…and maximize tangible savings to provide benefits to customers regardless of participation in the program."[54] In short, make the program specific enough to actually capture real savings. This enhancement of the programs can better help the Company "understand the potential capabilities of the assets each utility has invested in thus far and propose to continue to invest in through the MEEIA Cycle 3 Application."[55]

Business Demand Response

Again, due to the lack of avoided costs, the Company "does not have a capacity shortfall and therefore there is little value in system peak load reduction through programs such as the Business Demand Response programs at this time."[56] The Company could

---

[51] *Id*, p. 154:17-19.
[52] *Id*, p. 154:21-24.
[53] *Id*, p. 154:25-155:4.
[54] Ex. 101, Staff Rebuttal Report, p. 64:20-24.
[55] *Id*, p. 65:5-6.
[56] Id, p. 65:13-15.

attempt to target stressed areas of the distribution system, or attempt avoid SPP fees by minimizing peak load coincident with SPP zonal monthly peaks, but the programs as currently designed achieve neither.[57]

The Company claimed that Staff was mistaken in regard to avoiding SPP fees.[58] However, Staff's conclusion arose directly from the Company's own response to DRs, in which Staff asked for all gross and net peak savings attributable in the Company's view to MEEIA Cycle 3.[59] If reductions attributable to demand response were not included, the Company either failed to include those reductions, or its analysis in response to the data request did not show any such attributable reductions.

In reality, the Company's proposed savings are nothing more than a continuation of the demand savings the Company planned to achieve in Cycle 2, "without any incremental peak savings attributable to Cycle 3."[60] With extensive modification, these programs could be designed to actually avoid distribution system upgrades or avoid SPP fees, and actually provide benefits to all customers regardless of participation.[61]

With that in mind, Staff recommends that, in order for BDR to continue, "it should be redesigned to minimize cost, focus on calling events based on locations specific needs, target events that could decrease peak load coincident with the SPP zonal monthly peak, maximize tangible savings to provide benefits to customers regardless of participation in the program, and only allow opt-out participation if the program is clearly

---

[57] Id, p. 65:15-22.
[58] Ex. 3, Surrebuttal Report (Confidential), p. 24:5-7.
[59] Tr. Vol. I, p. 156:8-159:11.
[60] Ex. 101, Staff Rebuttal Report, p. 68:12-14.
[61] Id, p. 68:16-19.

designed as a curtailable rate schedule or tariff."[62] Opt-outs, as well as whether a program is interruptible or curtailable, is further explained under Issue 5.

b. Issue: Could the Commission approve GMO and reject KCP&L, or should the applications be viewed as one?

As discussed by Staff witness John Rogers, the Company's MEEIA Application "is a wonderful program for GMO."[63] Mr. Rogers goes on to state that as a standalone utility, GMO "needs additional [supply-side] resources right now."[64]

While it is true that GMO and KCP&L are regulated as two different utilities, for the purposes of the MEEIA Application, it's simply not that simple. GMO and KCP&L now have a joint network integrated transmission service agreement with SPP, which has led to the two utilities "operat[ing] differently than they've operated prior to that agreement."[65]

In the past, Staff has analyzed, and the Commission has approved, the MEEIA Applications from GMO and KCP&L separately.[66] However, because of the joint network integrated transmission service agreement with SPP, Staff must now analyze them as one, and through that analysis, "the benefits to GMO go away in this case because on a combined basis now the combined utilities does[sic] not need any new generation for 20 years at least."[67]

Now, the Applications have been presented as separate; it is within the Commission's discretion to approve GMO and to reject KCP&L. However, due to the voluntary nature of MEEIA, there is no way to force the Company to only execute a MEEIA

---

[62] *Id*, p. 68:20-25.
[63] Hrg. Tr. Vol. 2, p. 395:5-6.
[64] *Id*, p. 396:4-5.
[65] *Id*, p. 388:8-12.
[66] *Id*, p. 388:13-15; see also EO-2012-0008, EO-2012-0009, EO-2015-0240, and EO-2015-0241.
[67] *Id*, pg. 388:15-21.

program for GMO. Staff also recommends the Commission reject both applications, because on a combined basis, as SPP treats the Company, the Application does not meet the statutory requirements of MEEIA.

c. Issue: NRDC's position to modify low-income programs and whether the Company should adopt a PAYS program.

<u>NRDC's position to increase the budget for the Company's low-income programs.</u>

The Natural Resource Defense Council ("NRDC") and the National Housing Trust both put forward modifications to the Company's Application that would substantially increase the budget for the low-income programs, with NRDC wishing to see a renewed focus on single-family income-eligible programs.[68]

While Staff would like to restructure the Company's Application to only include low-income programs, education programs except HER, and restructured demand response programs,[69] increasing what can already be described as a bloated budget would raise further concerns from Staff. It is Staff's position that "simply making the budget and programs larger will not resolve the issues identified by Staff in its Rebuttal Report, but will likely serve to exacerbate the impacts to customers (both participating and non-participating) that staff identified."[70] And while the statute is clear that low-income programs do not need to be cost-effective,[71] it doesn't make sense to make these

[68] Hrg. Tr. Vol. 1, p. 71:12-21; see also Ex. 400, Rebuttal Testimony of Philip Mosenthal, p. 16:3-6 and 18:15-18.
[69] Ex. 101, Staff Rebuttal Report, p. 88:19-20.
[70] Ex. 102, Surrebuttal Testimony of Brad J. Fortson, p. 2:13-16.
[71] Section 393.1075.4: "Programs targeted to low-income customers or general education campaigns do not need to meet a cost-effectiveness test, so long as the commission determines that the program or campaign is in the public interest."

programs even less cost-effective by increasing the budget.[72] Staff would also like to note that Mr. Mosenthal was unable to provide any workpapers to support his claims regarding the benefits of the Application in its entirety, or the justification for an increased low-income component because he "has no workpapers."[73]

OPC witness Dr. Geoff Marke best summarized the flaws in NRDC's position. In his surrebuttal testimony, Dr. Marke posits that the most direct cost-effective way to implement energy efficiency measures with qualified low income households is through low-income weatherization programs that can be accomplished outside of MEEIA.[74] Dr. Marke further stated "a MEEIA low income direct install program is not a cost effective way of doing things…Weatherization does that. It does a better job than the direct install method."[75] Further, Dr. Marke goes on to state that:

> instead of having to pay third-party contractors a throughput and an earnings opportunity to go ahead and put in light bulbs in a low income home, we can have money go through traditional rates, through weatherization and they can do a whole home approach through a nonprofit that does not tie to MEEIA. And our basic argument was this, and the Commission agreed ultimately in the MEEIA rules, is that if a MEEIA didn't exist, then KCPL wouldn't have weatherization dollars. There wouldn't be weatherization in place because it would be going through MEEIA. So we wanted to make sure that weatherization was always in place. That's why [it's] in rates.[76]

Staff would like to see the Company focus on improving its low-income programs; however, the proposal put forth by NRDC does nothing except throw more dollars at an already bloated and inefficient Application. Staff is willing to work with the Company and other stakeholders to improve the low-income programs, but NRDC's proposal is not the

[72] Ex. 102, Surrebuttal Testimony of Brad J. Fortson, p. 2:18-20.
[73] Ex. 105, Date Request 0153 (Confidential).
[74] Ex. 201, Surrebuttal Testimony of Geoff Marke, p. 12:4-6.
[75] Hrg. Tr. Vol. 2, p. 492:5-9.
[76] *Id*, p. 492:10-22.

answer, and Staff recommends that the Income-Eligible Multi-family program as proposed be approved, with the exception of the Income-Eligible HER program, as discussed earlier

Should the Companies adopt a PAYS program?

Pays As You Save ("PAYS") is a program that has been heavily promoted by Renew MO, with support provided by OPC and NHT. As described by Renew MO witness Mark Cayce, PAYS is:

> [A]n optional energy efficiency program available to any member…we provide funding to participating members for approved energy efficiency projects. That funding is paid back by the person paying the bill on the structure that receives the improvement. Funding for each project is capped at a level that will result in a monthly pay-back service charge or fee…Importantly, this is not a loan program.[77]

Staff has yet to fully analyze the implementation of a PAYS element to MEEIA because the Company has expressed reservations on committing to such a program. As stated in the Company's Surrebuttal Report, "the Company does not have interest in being a financial institution that holds loans or liens on equipment on the customer's side of the meter."[78] Despite the claims of PAYS supporters to the contrary, the Company continues to view the program as centered around loans, of which they want no part.

Due to the voluntary nature of MEEIA, if the Company does not want to institute a MEEIA program, the Commission cannot force one upon them. However, Staff is open to exploring the feasibility of a PAYS program in the Company's territories through a pilot program or some other study as part of a limited Research and Development portfolio.

---

[77] Ex. 450, Rebuttal Testimony of Mark Cayce, p. 1:23-2:5.
[78] Ex. 3, Surrebuttal Report, p. 74:8-10.

2. When it developed MEEIA 3, did the Company value demand-side investments equal to traditional investments in supply and delivery infrastructure?

No, the Company's MEEIA 3 application does not value demand-side investments equal to traditional investments in supply and delivery infrastructure, as mandated by 393.1075, RSMo. The Company has indicated it will not invest in supply-side resources unless it has a capacity need relative to the Southwest Power Pool (SPP) reserve margin requirements.[79] Yet, KCPL/GMO 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.[80] The Company has also failed to value demand-side investment equal to traditional investments in supply and delivery infrastructure by utilizing an inflated avoided capacity cost and requesting an inflated earnings opportunity. The issues of avoided cost and the earnings opportunity are closely linked, and in this case, the Company's failure stems from not valuing its avoided capacity costs and its earning opportunity based on what traditional supply-side investments will be actually avoided and the actual forgone supply-side investment opportunity value. Based on the modeling analysis performed by KCPL the Company will not be avoiding any supply-side investments or need to incur costs to meet the SPP resource adequacy requirements during the 20 year planning horizon due to MEEIA Cycle 3.[81] As there is no lost supply-side investment opportunity,

[79] Ex. 101C, Staff's Rebuttal Report, p. 22, l. 18-22.
[80] *Id.*
[81] Ex. 101C, Staff's Rebuttal Report, p. 14, l. 24-27.

the Company is not forgoing any return on investment where an earnings opportunity is necessary to make the Company whole or to induce the Company to invest in demand-side resources instead of supply-side resources.[82]

The Company's avoided capacity cost should be zero dollars, in all years that there is not a need for capacity.

As defined in 20 CSR 4240-20.092 (1)(C), avoided costs are:

> (C) Avoided costs or avoided utility costs means the **cost savings obtained by substituting demand-side programs for existing and new supply-side resources**. Avoided costs include avoided utility costs resulting from demand-side programs' **energy savings and demand savings associated with generation, transmission, and distribution facilities including avoided probable environmental compliance costs**. The utility shall use the integrated resource plan and risk analysis used in its most recently adopted preferred resource plan to calculate its avoided costs; [Emphasis added.]

This definition presumes that absent another investment, a cost would actually be incurred by the utility.[83] Avoided cost is a critical issue as it has a major role in four different calculations related to MEEIA. First, the avoided cost assumptions drive the benefits for all of the cost-effectiveness tests for all of the programs that have been proposed in the Application.[84] Second, the avoided cost assumption is used during the utility's demand-side market potential study which screens demand-side measures and demand-side programs and which identifies realistic achievable potential ("RAP") and maximum achievable potential ("MAP") levels of demand-side resources.

---

[82] *Id.*at p. 31, l. 1-8.
[83] *Id.* at. p. 12, l. 16-17.
[84] *Id.* at l. 20-21.

RAP and MAP are used when developing a robust range of alternative resource plans for the integrated resource planning (IRP) process.[85] Thus, an inflated avoided cost assumption would cause an unreasonably high level of demand-side measure installation in those scenarios which would lead to a greater impact on the net present value of revenue requirement due to demand-side resources than is actually warranted.[86] Third, avoided cost assumptions are used when assessing the timing and amount of net benefits for all customers, including those customers who do not participate directly in utility-provided demand-side programs.[87] Finally, when a utility avoids a supply side investment, the utility forgoes an opportunity to earn a return on that investment. The earnings opportunity should be developed based on the value of the investment that was actually avoided. It's clear that the success of a MEEIA program depends on getting avoided costs correct at the outset.[88]

Because Staff does not believe that the Company has gotten avoided costs correct in its application, Staff recommends rejection of the Company's MEEIA Cycle 3 proposal. For the 2018 Resource Adequacy Reporting Requirements, SPP approved a Joint Network Integrated Transmission Service agreement, which results in SPP treating KCPL and GMO as a single load serving entity.[89] For this reason, Staff analyzed the proposed KCPL and GMO MEEIA Cycle 3 portfolios based on an aggregated capacity position.[90] Due to this aggregation of assets, KCPL/GMO does not

[85] Ex. 1, MEEIA Cycle 3, p. 69.
[86] Tr. Vol. I, p. 351, l. 4-17.
[87] Ex. 101C, Staff Rebuttal Report, p. 31, l. – p. 32 l. 9.
[88] Tr. Vol. I, p. 309, l. 13-17.
[89] Ex. 101C, Staff Rebuttal Report, p. 16, l. 5-29 and p. 29, l. 4-5.
[90] *Id.* at p. 14, l. 26 – p. 15, l. 1.

need to invest in additional supply-side resources until 2033 and 2036 on a combined basis.[91] When looking at the Company's analysis in Appendix 8.11, Alternative Resource Plan 9 (a plan including MEEIA Cycle 3) and Alternative Resource Plan 7 (a plan that does not have MEEIA programs after Cycle 2), both result in the same combustion turbine (CT) additions in years 2033 and 2036.[92] In other words, KCPL/GMO only projects to have capacity needs beginning in 2032 which would need to be met through investment in a combustion turbine in 2033 and another CT in 2036 regardless of implementation of MEEIA Cycle 3; therefore, KCPL/GMO will not avoid an investment in supply-side resources during the 20-year planning horizon as a result of its proposed MEEIA Cycle 3 on a combined basis.[93] Since KCPL/GMO will need to invest in a new supply-side resource in 2033 and 2036 regardless of the MEEIA Cycle 3 programs being implemented, MEEIA Cycle 3 will not yield any benefits to customers from avoided capacity costs with the exception of minimal potential avoided capacity purchases in 2032.[94] Based off this modeling analysis provided by the Company, the avoided capacity costs in every year until 2032 is zero dollars.

There could be a minimal avoided capacity cost in 2032, but afterwards the avoided capacity cost for the rest of the evaluation should be zero.[95] For an overall cost, over the next 3 years, of over $97 million, KCPL/GMO customers could potentially realize a minimal avoided capacity cost equal to the market value of capacity for 14.8 MW in 2032.[96] Recent responses to GMO's request for proposals for capacity

---

[91] *Id.* at p. 15, l. 1-3.
[92] Tr. Vol. I, p. 304, l. 16-21 and p. 323, l. 8-13.
[93] Ex. 101C, Staff Rebuttal Report, p. 17, l. 17-22.
[94] *Id.* at p. 18, l. 6-9.
[95] *Id.* at p. 21, l. 1-3.
[96] *Id.* at p. 18, l.10-12.

contracts indicated that short term capacity purchase prices range from ** ________________________ ** which would be much less expensive than the proposed MEEIA programs especially considering the net present value of the cost to purchase capacity in 2032.[97] If the market for capacity remains stable, the cost to purchase 15.5 MW of capacity necessary to meet SPP resource adequacy requirements in 2032 could be as low as ** _______ . **[98] It is clear customers would be better off if the Company went to the market to purchase capacity in 2032, instead of investing in the Company's bloated MEEIA programs.[99]

Because the Company is not avoiding or deferring any supply side investment as a result of MEEIA Cycle 3, the appropriate avoided capacity cost figure is zero. The Company's utilization of a CT as its avoided capacity cost is thus inappropriate, because it's just the cost of a new CT.[100] It is not a capacity cost that the Company would have incurred, but for MEEIA.[101] In fact, it is a cost that the Company, *even with MEEIA Cycle 3*, will still incur in 2033 and 2036. What using the value of a CT for avoided capacity costs does in this application is over-inflate the amount of cost-effective energy efficiency that can be implemented.[102] In reality, when a CT is not being deferred, the programs are not actually cost effective.[103]

---

[97] *Id.* at l. 12-15.
[98] *Id.* at l. 15-17.
[99] Tr. Vol. I, p. 350, l. 6-21.
[100] Tr. Vol. I, p. 303, l. 17-23.
[101] *Id.*
[102] Tr. Vol. I, p. 327, l. 23- p. 328, l. 3.
[103] *Id.*

<u>The Company's alternative "market based" capacity cost value should be rejected.</u>

In its surrebuttal, the Company proposed using what it claimed was a market based approach to determining avoided capacity cost values.[104] The Company utilized an average of seven offers, ranging from ** ___ **/kW-month to ** ___ **/kW-month, with an overall average of ** ___ **/kW-month, or ** ___ **/KW-year.[105] But, an average approach is not a market based approach.[106] In fact, a company may face questions of reasonableness or prudency if it utilized a capacity purchase amount for greater than the least cost offer.[107] Currently, with the exception of 2032, the Company does not have a need to purchase capacity to meet SPP resource adequacy needs during the 20-year planning horizon.[108] Therefore, even the Company's alternative avoided capacity cost is flawed.

Other avoided costs estimates are unquantified or uncertain to be actually avoided, and should not be used to show the program is cost effective or provides benefits to all customers.

The Company also tried to claim avoided costs other than capacity in testimony, such as SPP fees, avoided transmission expense, and avoided operation and maintenance costs.[109] However, there are two glaring issues with utilizing these other avoided costs to justify the MEEIA Cycle 3 Application. First, these avoided costs have not been fully quantified, or are minimal at best. Second, these avoided costs may not

---

[104] Ex. 3, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company's Surrebuttal Report, p. 18, l. 7-19.
[105] *Id.*
[106] Tr. Vol. 3, p. 427, l. 10-12.
[107] Tr. Vol. 3, p. 427, l. 6-9.
[108] Ex. 101C, Staff Rebuttal Report, p. 17, l. 17-22.
[109] *See* Ex. 3, p. 22, l. 4- p. 24, l. 9 and Tr. Vol. I, p. 212, l. 20-25.

actually be avoided, as the MEEIA Cycle 3 programs are not targeted to avoid these costs.

In examining these other potential avoided costs, much like in its examination of avoided capacity costs, Staff is looking for, and advocating that, there is a demonstration of a cost that can actually be avoided.[110] Staff could not find any identified distribution costs that would be avoided due to MEEIA Cycle 3. Staff asked the Company to identify and quantify any distribution costs that would be avoided, and the Company responded it had no such quantification for MEEIA Cycle 3, nor could it quantify any distribution savings attributable to MEEIA Cycle 2.[111] In fact, due to Senate Bill 564, the Company has announced intentions to *increase* spending in distribution and transmission to the tune of 1 billion dollars.[112]

The avoided SPP fees that Staff could quantify, based on information provided by the Company,[113] were minimal, totaling less than $478,000 company-wide over a nine year period.[114] The Company in surrebuttal found the calculation to be valid, but took issue with the exclusion of demand response from the calculation, although the Company itself had excluded demand response when it provided the information to Staff.[115] Even with the minimal value calculated by Staff, the benefits to customers are uncertain, as the programs are not targeted in a way to reduce these fees.[116] For instance, the demand

---

110 Tr. Vol. I, p. 302, l. 1-3.
111 Tr. Vol. I, p. 306, l. 25 – p. 307, l. 4.
112 Tr. Vol. I, p. 307, l. 5-16.
113 Ex. 103, Data Request Response.
114 Ex. 101C, Staff Rebuttal Report, Schedule JLR-1.
115 Ex. 3, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company's Surrebuttal Report, p. 24, l. 3-9 and Ex. 103, Data Request Response.
116 Ex. 101C, Staff Rebuttal Report at p. 24, l. 6 – p. 26, l. 2.

response program is not targeted to avoid the SPP zonal monthly peak, but doing so would maximize avoided transmission costs.[117] The Company has simply not designed its programs with the intention to avoid transmission, distribution or SPP costs.[118]

The Company at hearing also claimed it would run plants less as a result of this MEEIA Cycle 3, and that would reduce operation and maintenance expense.[119] Although Company witness Darrin Ives admitted he "would not feel comfortable standing on that math" and that it was not factored into how benefits were valued, the Company certainly felt comfortable touting it as a justification for the MEEIA Cycle 3 and how all customers could benefit.[120] Although not something the Company could "stand on from a mathematical call", it is apparently "very intuitive", and justification for customers expending nearly 100 million dollars on the MEEIA Cycle 3 Application.[121] However, it is very likely that plants would not run less based on MEEIA Cycle 3, as SPP controls dispatch of units, and will dispatch a unit if it's economical to do so, regardless of if a utility is "substituting" demand side resources for supply side resources.[122] That means that there would not be decreased operation and maintenance expense and decreased outages.[123] However, if the Company was correct and plants did run less, lowered generation yields less energy available to sell into the market. That would decrease off

---

[117] Tr. Vol. I, p. 305, l. 14-25.
[118] Tr. Vol. I, p. 305, l. 9-12.
[119] Tr. Vol. I, p. 231, l. 1-25.
[120] *Id.*
[121] *Id.*
[122] Tr. Vol. I, p. 347, l. 12-19.
[123] Tr. Vol. I, p. 348, l. 1-3.

system sale revenues, which is one of the primary benefits that non-participants receive, along with avoided investment in supply side resources.[124]

The Company's argument that it does not need to defer or avoid capacity costs, just substitute existing supply-side resources for demand-side resources to meet the statutory requirement also fails to recognize that, even if substituting resources, customers still pay for both demand-side and supply-side resources under this Application. As the Company candidly admitted, customers will pay for the return on and of the existing supply-side resources and operation and maintenance expense for the existing supply-side resources, 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.[125]

The Cycle of Denial is a strawman, and should be rejected outright.

The Company in surrebuttal bemoans Staff and OPC falling into a cycle of denial, which the Company explains as such:

> 1) the Company is not currently short capacity and will not need new capacity for several years, therefore DSM programs are not needed;2) sometime in the future a capacity need will arise; 3) at this point it is too late to implement new demand-side programs in time to meet the capacity need; 4) thus a new supply-side resource is constructed to meet the capacity need; 5) after the supply-side resource is constructed there is no longer a capacity need and demand-side programs are again not needed.[126]

[124] Tr. Vol. I, p. 349, l. 1-9.
[125] Tr. Vol. I, p. 203, 1-25, and p. 228, l. 10-14.
[126] Ex. 3, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company's Surrebuttal Report, p. 13, l. 11-17.

But as Staff testified, Staff is rejecting the Application as it stands today.[127] Staff witness J Luebbert testified, it could be likely that a MEEIA Cycle 3 that began in 2026 could yield cost effective programs.[128] A portfolio could be designed that would be cost effective, and allow programs prior to the capacity need, but ramps up closer to the time the capacity is needed to allow the Company to actually avoid the CT.[129] There have been historical examples of this ramping, OPC witness Dr. Geoff Marke explained that Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) is one such example. Ameren Missouri had energy efficiency programs in place for years without a MEEIA.[130] Ameren Missouri eventually discontinued the programs, but began them again, and ramped so efficiently Ameren Missouri exceed its saving target within one year.[131] For this reason, Dr. Marke testified credibly that the Commission should not put much stock in the "cycle of denial" catch phrase.[132]

Staff has clearly indicated to the Company that an appropriate MEEIA Cycle 3 would be one that invested in high-impact, long-lived measures, but at a lower amount than present currently in the Application, and then as it became more cost-effective due to the level of a need for increased capacity, ramp the programs in a cost-effective manner to avoid the supply side resource.[133] This could be accomplished by delaying the start of MEEIA Cycle 3 to a future year where the avoided capacity costs justify the program, or by structuring an application for the years 2019-2022 as Staff has recommended, that

[127] Tr. Vol. I, p. 320, l. 3.
[128] Tr. Vol. I, p. 331, l. 15-17.
[129] Tr. Vol. I, p. 320, l. 3-13.
[130] Tr. Vol. II, p. 481, l. 6-7.
[131] Tr. Vol. II, p. 481, l. 7-11.
[132] Tr. Vol. II, p. 481, l. 17-18.
[133] Tr. Vol. I, p. 332, l. 3-16.

focuses on low-income programs, educational programs, excluding the Home Energy Report (HER), and restructured demand response programs.[134] However, Staff can only work with the Application as submitted, so Staff recommends rejection, or a utilization of zero capacity costs in years 2019-2031, the estimated market cost of capacity to serve the capacity deficit in 2032, and zero dollars from that point on based on the Application and analysis provided.[135]

Avoided costs matter, as it is one of the primary ways non-participants see benefits.

Avoided costs are vitally important to get right to be able to fairly evaluate a MEEIA. The MEEIA statute requires that all customers benefit from a MEEIA application, regardless of whether or not those customers participate in said application. The largest benefit that non-participants receive is the benefit of either a forgoing of or a delay in the construction of a supply side investment.[136] Staff is not alone in its belief. In fact, when the Commission updated its MEEIA rule,[137] 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. [138] The Commission amended its rules thusly.-side

[134] Ex. 101C, Staff Rebuttal Report at p. 5, l. 5 - 9.
[135] Tr. Vol. I, p. 332, l. 18-23.
[136] Tr. Vol. I, p. 308, l. 1-6.
[137] Now located at 20 CSR 4240-20.094.
[138] *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.

investment.[139] OPC also believes that one of the most important evaluation metrics for a MEEIA application is the avoided cost, and that avoided capacity costs should be tied to the deferral of a supply-side investment.[140] And that's because the other most important evaluation metric for a MEEIA application, benefits to all customers regardless of participation, is driven by eliminating or deferring supply-side investment.[141] The Staff of the Kansas Corporation Commission, as well as Kansas' Public Counsel have also opposed the Company's efforts in Kansas for a MEEIA like program for the same reasons as the Missouri Staff and OPC. The Company is long on capacity, not deferring any identifying supply-side investment, and without that, there is no value or benefit to an expenditure of this magnitude.[142] The Missouri Commission has also linked the deferral of a supply-side investment to the success of a MEEIA application. In Ameren Missouri's MEEIA Cycle 2 application, several parties, including Staff and OPC, challenged the Company's Application as not providing sufficient benefits to all customers.[143] The Commission rejected Ameren Missouri's application.[144] The Commission stated

> Even if thousands of kWh were saved, if the summer peak demands are the same with and without a MEEIA Cycle 2, then Ameren Missouri would likely require the same capacity. Thus, it would not forego a future supply-side investment opportunity.
>
> In other words, such a performance incentive would compensate Ameren Missouri for foregone earnings opportunities that are not actually foregone. For example, unless Ameren Missouri's MEEIA portfolio results in energy and demand reductions such that construction of a power plant would be

[139] Tr. Vol. I, p. 308, l. 1-6.
[140] Tr. Vol. II, p. 487, l. 9-16.
[141] Tr. Vol. II, p. 487, l. 17-24.
[142] Tr. Vol. I, p. 107, l. 5-9 and Tr. Vol. II, p. 491, l. 2-5.
[143] *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.
[144] *Id.* at p. 19.

> cancelled or materially postponed, the shareholders will not have experienced a foregone supply-side earnings opportunity.[145]

The Commission went on to say:

> But, if an electric utility successfully reduces its future capacity requirements by reducing customer electricity usage, it may be able to avoid or postpone installation of additional costly generation. It is those demand savings that actually reduce investments necessary for the utility to meet its peak demand requirements. That, in turn, reduces future revenue requirements paid by customers, as well as future earnings opportunities made available to investors.[146]

The Commission itself has very clearly noted the importance of actually avoiding a supply-side investment with the goals and intent of MEEIA. It is not to say that without deferring or avoiding a supply-side investment that there can be no MEEIA programs going forward. Simply put, a successful MEEIA application will be built around properly calculated avoided costs, and have program expenses aligned with the actual benefit provided. Instead, the Commission has in front of it a proposed avoided cost built around a MEEIA application, designed to allow as many measures to pass the TRC without aligning that avoided costs with the actual operational reality of the utility.

The earnings opportunity must be linked to actual forgone investment.

It also clear from Commission decision quoted above that the earnings opportunity must be linked to forgone investments to accomplish the policy goal of valuing equally supply-side and demand-side investments.[147] 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.

[145] *Id.* at p. 12.
[146] *Id.* at p. 13.
[147] *Id.* at p. 11.

> 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.[148]

Thus, the Commission explained what the purpose of an earnings opportunity under MEEIA was designed to compensate for foregone supply-side investment opportunities, as opposed to the throughput disincentive or the program cost recovery mechanisms.[149] The Commission then went on to explain the importance of linking the earnings opportunity to the forgone investment, stating:

> 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.
>
> But, if an electric utility successfully reduces its future capacity requirements by reducing customer electricity usage, it may be able to avoid or postpone installation of additional costly generation. It is those demand savings that actually reduce investments necessary for the utility to meet its peak demand requirements. That, in turn, reduces future revenue requirements paid by customers, as well as future earnings opportunities made available to investors.[150]

As discussed earlier, the reason this link is so vitally important is that, as the Company admits, customers are currently paying a return on and of all supply-side investment in rates, in addition to the earnings opportunity requested in this case.[151]

Missouri Courts have also emphasized this link. For instance, when the Commission’s promulgation of the MEEIA rules was challenged, the Court stated

[148] *Id.* at p. 11.
[149] *Id.* at p. 11.
[150] *Id.* at p. 13.
[151] Tr. Vol. I, p. 203, 1-25, and p. 228, l. 10-14.

> The dictionary defines the term "cost" as "the amount or equivalent paid or given or charged or engaged to be paid or given for anything bought or taken in barter of for services rendered" or "whatever must be given, sacrificed, suffered or forgone to secure a benefit or accomplish a result." Under the MEEIA's plain language, therefore, the phrase "recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs" refers to all amounts charged or paid in delivering cost-effective demand-side programs as well as whatever a utility sacrifices or forgoes in delivering cost-effective demand-side programs.[152]

Case law is clear that what the Company should be allowed to recover for an earnings opportunity must be based on what it will forgo in future investment.

This is consistent with the purposes of MEEIA. MEEIA states: "It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs."[153] The statute continues with,

> In support of this policy, the commission shall:
> (1) Provide timely cost recovery for utilities;
> (2) 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; and
> (3) Provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.

So, to value demand-side investment equally to supply-side investment, the utilities are given the opportunity to recover three distinct types of costs. The first type is program costs, and allows those program costs to run through a rate adjustment mechanism, that can be adjusted outside of a general rate proceeding. The second type is costs relating to the alignment of the utility incentive to sell more energy versus the customers' incentive to use less. This component is the throughput disincentive, designed to compensate the utility for lower sales due to MEEIA. Finally, the third type is the earnings opportunity,

---

[152] State ex rel. Pub. Counsel v. Pub. Serv. Comm'n of State, 397 S.W.3d 441, 452 (Mo. Ct. App. 2013).
[153] 393.1075.3, RSMo.

which case law has linked to the forgone investment, as an opportunity to make a utility whole for lost investment opportunities. Staff witness Dana Eaves explained how, even with an earnings opportunity of zero, the Company can be made whole. He testified that the costs for cost-effective programs will be recovered on a timely basis through the MEEIA charge on the customer's bill.[154] There are true up methods in place, and ways to change the rate, so any over or under recovery the Company may experience is captured, making the Company whole for all cost-effective program expenses.[155] Mr. Eaves also explained that the Application includes approximately $42 million in a throughput disincentive, to recover lost sales.[156] Finally, there is the earnings opportunity, to make the Company shareholders whole for lost investment. As no investment is forgone, there is no lost future earnings opportunity that the utility will forgo.[157] The Company is already whole, and does not need additional reparations.

Throughout this proceeding the Company has implied that it is entitled to an earnings opportunity as a reward for doing a good job with energy efficiency.[158] However, the sole purpose of an earnings opportunity under the MEEIA statute is to provide the company with an earnings opportunity to place shareholders in a financial position comparable to the earnings opportunity they would have had available had those shareholders made a future supply-side investment, which would equally value supply-side and demand-side investments.[159] Important to note is that a future supply-side investment earnings opportunity is only foregone if the Company no longer needs to make

[154] Tr. Vol. II, p. 460, l. 1-7.
[155] Tr. Vol. II, p. 460, l. 7-10.
[156] Tr. Vol. II, p. 460, l. 11-15.
[157] Tr. Vol. II, p. 392, l. 1-8.
[158] *See*, e.g., Tr. Vol. II, p. 437, l. 1-19.
[159] See Section 393.1075.3, RSMo.

a supply-side investment, due to a measured and verified reduction in the utility's load as a result of the energy efficiency measures installed under MEEIA. Customers should only pay for the value of services or benefits they actually receive. Utilities are not entitled to a gold star in the form of customer funds for participating in what is a voluntary program, and not an obligation.

The Company has not appropriately taken into account the lack of supply-side investment being forgone when structuring its earnings opportunity.[160] This is contrary to its own analysis, which shows that there are no lost earnings, on a combined basis, from postponement of new supply side resources under MEEIA Cycle 3 and its adopted preferred plan.[161] Therefore, the Company's requested earnings opportunity should be rejected.

3. Is the proposed MEEIA 3, as designed by the Company, expected to provide benefits to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers?

No, the Company's MEEIA 3 application does not provide benefits to all customers in the customer class, regardless of participation. Benefits to all customers, regardless of participation, is one of the most important goals for a MEEIA application to achieve.[162]

[160] Tr. Vol. II, p. 490, l. 12-16.
[161] Ex. 1, MEEIA Cycle 3, Appendix 8.11, p. 7.
[162] Tr. Vol. II, p. 487, l. 21-24.

This is the guiding statutory purpose of MEEIA. The Commission concisely articulated this principle in the Ameren Missouri MEEIA Cycle 2 case.

> 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. The evidence in this case shows that most Ameren Missouri customers will likely receive very little, if any, overall net benefits from the Utility Plan. Approximately 87% of Ameren Missouri's customers are residential customers. And a vast majority of those do not participate in MEEIA.
>
> Staff's analysis estimates that residential customers who are non-participants will pay $112 million with the expectation that they will receive benefits of $119 million as a result of the programs and DSIM in the Utility Stipulation. Thus, the net benefits nonparticipating residential customers are expected to receive are only worth an estimated $7 million and the costs/benefit ratio is only 1.06. This benefit is down from a 2.07 benefits to cost ratio from the Cycle I Plan.[163]

The Commission is confronted with a similar situation in this case. Customers who do not participate in the programs are not better off paying other customers to reduce usage than they would be paying a utility to build a power plant. In this case, customers would be paying for both.[164]

The Commission in the Ameren Missouri MEEIA Cycle 2 case rejected a plan that provided non-participants with a potential for $7 million dollars in benefits. The application at hand is even worse for customers. Staff's analysis shows that KCPL/GMO customers will pay $71.0 million in 2019 – 2022, will never break even and can expect to have cumulative net **cost** of $5.7 million after 20 years.[165] Under the Company's analysis,

---

[163] *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.
[164] Ex. 101C, Staff Rebuttal Report, p. 17, l. 17-22.
[165] *Id.* at p. 35, l. 18-19.

customers receive $98.1 million in benefits over the next 20 years by investing $96.1 million.[166] If $7 million in potential benefits was not enough in Ameren Missouri's MEEIA Cycle 2 application to clear the Commission's benefits to all customers threshold, it does not seem that a net cost of $5.7 million would either.

The Company, throughout its testimony, tried to argue that a lower net present value of revenue requirement (NPVRR) shown in its analysis meant that all customers benefited.[167] KCPL's and GMO's basis for these decreases to their respective revenue requirements contain several fundamental flaws that attempt to artificially attribute avoided capacity cost savings for all demand-side measures even when there will not be actual avoided capacity cost savings for many years.[168] Staff witness J Luebbert explained that a lower NPVRR depends on the screening tool utilized to decide which measures to invest in and at what level.[169] Utilizing the value of a CT, as the Company did, over-inflated the amount of what would be deemed to be cost-effective energy efficiency, which wouldn't be cost-effective since there's not a CT being avoided.[170] What this means is that more programs will screen as cost-effective, and an application will have an artificially high total resource cost (TRC) result.[171] And if the level of demand savings are thus artificially inflated, there appears to be a higher decrease to purchase power than if only actually cost-effective programs under a reasonable avoided cost figure

[166] Ex. 3, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company's Surrebuttal Report, p. 44, l. 12-13.
[167] *Id.* at p. 26, l. 18 - p. 27, l. 9.
[168] Ex. 101C, Staff Rebuttal Report at p. 12, l. 22 – p. 13, l. 1.
[169] Tr. Vol. I, p. 327, l. 17-22.
[170] Tr. Vol. I, p. 327, l. 23 – p. 328, l. 3.
[171] Tr. Vol. I, p. 351, l. 4-9.

had been examined.[172] This would appear to reduce the NPVRR, but the benefits would only be in the hands of the participants,[173] violating the MEEIA statute.

Staff's analysis also showed that even assuming a lowered NPVRR, it is not likely that non-participants will benefit from MEEIA Cycle 3, or that the expected energy and demands benefits that flow through the FAC – subject to a 95% sharing mechanism, meaning 5% of those benefits are retained by the Company – would offset the MEEIA Cycle 3 charge.[174] Staff's analysis shows that the average customer would pay approximately $86 dollars more in MEEIA Cycle 3 charges than it would receive in energy and demand benefits.[175] This is a detriment to non-participant customers. Furthermore, if statements made by the Company regarding plants running less are taken into account,[176] this detriment could be higher. Running plants less will reduce off-system sales, as the Company admits.[177] Off system sales revenue (OSSR) is calculated as one benefit to non-participants, as was included in the workpaper Staff witness John Rogers utilized to calculated Staff's estimation of the net benefit/detriment analysis for customers.[178] Net benefits would decrease further, especially for non-participants, who, absent an actual deferral of a supply-side investment, would primarily benefit from increased OSSR.[179] Non-participants, at the *very least*, should be no worse off with a MEEIA cycle in place, than if it was not in place.[180]

---

[172] Tr. Vol. I, p. 351, l. 10-17.
[173] Tr. Vol. I, p. 328, l. 15-17.
[174] Ex. 101C, Staff Rebuttal Report at p. 36, l. 1- p. 40, l. 13.
[175] Ex. 101C, Staff Rebuttal Report at p. 39, l. 18 – p. 40, l. 2 and Tr. Vol. II, p. 446, l. 8-9.
[176] Tr. Vol. I, p. 233, l. 1-4.
[177] Tr. Vol. I, p. 233, l. 8-13.
[178] Tr. Vol. II, p. 405, l. 19-22.
[179] Tr. Vol. I, p. 349, l. 14-19.
[180] Tr. Vol. II, p. 447, l. 20-21.

All customers, excluding opt outs, pay a MEEIA charge, regardless of participation.[181] This is why it is imperative to provide benefits to all customers, regardless of participation. Staff did review non-energy benefits in a good faith effort to attribute value to the Application,[182] but there was not enough to justify the Application as providing benefits to all customers, regardless of participation. Furthermore, as Staff witness J Luebbert explained in the hearing, there's been no demonstration that any units are running less due to MEEIA cycles, which means that there's not anything specifically attributable to the Company in this case.[183] As it stands, Staff analysis shows that customers that do not participate in programs will not receive net benefits through the implementation of MEEIA Cycle 3 programs. As the Commission has noted, the justification behind approval of a MEEIA plan depends on 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.[184] The Company's MEEIA 3 fails that standard.

4. If the Commission approves or modifies MEEIA 3, what DSIM provisions should be approved to align recovery with the MEEIA statute?

If the Commission were to approve or modify the Company's MEEIA Application as is, Staff has a number of recommendations that would better align recovery with the

[181] Tr. Vol. II, p. 446, l. 13-15.
[182] Ex. 101C, Staff Rebuttal Report at p. 10, l. 3 – p. 12, l. 11.
[183] Tr. Vol. I, p. 348, l. 21-23.
[184] *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.

MEEIA statute. As noted in Staff's opening[185], as well as the Company's Surrebuttal report[186], the Company has agreed to work with Staff on the following recommendations if the Commission were to approve or modify the Application.

a. Use of 0.85 Net to Gross (NTG) factor for TD recovery

Staff recommends that the NTG factor for TD recovery be locked in at 0.85. Staff notes that "[a]lthough it is important to have a reasonably accurate NTG, it is also important to be able to adjust for an EM&V result lower than expected."[187] Staff recommends the use of the 0.85 factor because it "provides a reasonably accurate NTG factor and still provides the ability to adjust for an EM&V result lower than .85."[188] As noted in the Company's Surrebuttal Report, "the Company is prepared to work with Staff to modify tariffs to incorporate Staff's recommended use of the 0.85 NTG factor."[189]

b. Retain Cycle 2 tariff sheets for GMO similar to KCP&L

Due to the long lead projects, reconciliations, and EO calculations persisting beyond the end of MEEIA Cycle 2, Staff believes it to be necessary to retain the MEEIA Cycle 2 tariffs in both GMO and KCP&L's tariff books.[190] Staff "recommends the MEEIA Cycle 2 tariff sheets remain in the tariff books for both utilities until they are no longer necessary."[191] As noted in the Company's Surrebuttal Report, it will "commit[s] to work with Staff to modify the

---

185 Hrg. Tr. Vol. 1, p. 49:11-15.
186 Ex. 4, Surrebuttal Report (Confidential), p. 46-47.
187 Ex. 101, Staff Rebuttal Report, p. 76:4-5
188 *Id*, p. 76:7-9.
189 Ex. 4, Surrebuttal Report (Confidential), p. 46:18-19.
190 Ex. 101, Staff Rebuttal Report, p. 73:13-15.
191 *Id*, p. 73:19-20.

Cycle 2 tariff sheets for both utilities until they are no longer necessary."[192]

c. Reconciliation of remaining Cycle 1 costs

It is Staff's recommendation that "any remaining reconciliations related to recovery and true-up of MEEIA Cycle 1 Program Costs Reconciliation, Throughput Disincentive Reconciliation, and Performance Incentive Reconciliation will be incorporated into the initial period MEEIA Cycle 3 PC, TD, and Earnings Opportunity to fully reconcile MEEIA Cycle 1, so that additional calculations related to MEEIA Cycle 1 do not need to continue."[193] In the Company's Surrebuttal Report, the Company committed itself to "work with Staff to modify the tariff sheets for [the Company] to incorporate any remaining balances from Cycle 1 as recommended by Staff."[194]

d. Margin rates

The Company's Application "does not specify the method in which margin rates for purposes of calculating the TD are to be calculated."[195] To correct this oversight, Staff recommended that the Company use the same margin rates that took effect on December 6, 2018, subject to update in future rate cases.[196] The Company has committed itself to doing exactly that.[197]

[192] Ex. 4, Surrebuttal Report (Confidential), p. 47:1-2.
[193] Ex. 101, Staff Rebuttal Report, p. 74:13-16.
[194] Ex. 4, Surrebuttal Report (Confidential), p. 47:14-15.
[195] Ex. 101, Staff Rebuttal Report, p. 76:11-14.
[196] *Id*, pg. 76:12-14.
[197] Ex. 4, Surrebuttal Report, p. 47:22-24.

5. Should Opt-out customers be eligible to participate in Business Demand Response programs, i.e., are the BDR programs as proposed by the Company interruptible or curtailable?

The MEEIA statute is very specific when it comes to opt-out customers, and whether they may participate in interruptible or curtailable programs. Section 393.1075.10 RSMo states:

> Customers electing not to participate in an electric corporation's demand-side programs under this section shall still be allowed to participate in interruptible or curtailable rate schedules or tariffs offered by the electric corporation.

As the statute clearly states, opt-out customers shall be allowed to participate in interruptible or curtailable programs. However, Staff has been unable to verify whether or not the Company's proposed programs are actually interruptible or curtailable.[198] Staff had concerns over the Company's enforcement of event performance, as well as the consequences of non-performance. When Staff reached out to the Company, the Company had no established specific steps because the Company was awaiting responses to a RFP.[199]

The Company never did inform Staff of any responses to the RFP, or of any specific steps taken to ensure programs were interruptible or curtailable; instead, in the Company's Surrebuttal Report, the Company misinterpreted Staff's position as being "only those customers who have not opted out of MEEIA programs should be eligible to receive the incentives of pursuant to Section 393.1075.10 RSMo."[200]

---

[198] Ex. 101, Staff Rebuttal Report, p. 71:24-25.
[199] *Id*, p. 71:26-72:2.
[200] Ex. 4, Surrebuttal Report (Confidential), p. 57:13-15.

That is, simply put, not Staff's position at all. The statute is very clear that opt-out customers "shall be allowed to participate in interruptible or curtailable" programs. Staff has consistently allowed opt-out customers to take part in interruptible or curtailable programs in previous Company MEEIA cycles;[201] the problem here is that the Company's application, as is, has a program that "does not clearly establish itself as an interruptible or curtailable rate schedule or tariff."[202]

Staff suggested in its Rebuttal Report that a good benchmark to determine if a program was interruptible or curtailable was the Curtailable Demand Rider within GMO's current tariff.[203] The rates at which the customer was to be compensated, as well as the level of penalties imposed for subpar performance, are explicitly included in the tariff. The various requirements that must be met to receive compensation, as well as restrictions on participation, are also all laid out in the tariff. This is the kind of proposal that Staff could support regarding a curtailable rate schedule or tariff.[204]

The above are all missing from the Company's proposal. It is due to this lack of clarity that Staff has been unable to determine if the programs as proposed are interruptible or curtailable.

Throughout the hearing, Judge Clark made it a priority to determine if these programs were in alignment with the statute. When he asked Company witness Brian File as to whether the Company believed the programs were interruptible or curtailable,

[201] See EO-2012-0008, EO-2012-0009, EO-2015-0240, and EO-2015-0241.
[202] Ex. 101, Staff Rebuttal Report, p. 72:4-5.
[203] *Id*, p. 72:6-7.
[204] *Id*, p. 72:11-13.

Mr. File simply answered, “We do.”[205] Just like the Company’s application, there was no explanation of why or how; just a reliance on the past cycles’ programs having been deemed interruptible or curtailable, so this cycle must be, too.[206]

In addition to Mr. File, Company witness Darren Ives was extensively questioned by MECG over the proposed business demand response programs and whether they complied with the statute. However, rather than focus on the details of the Company’s Application, Mr. Ives instead chose to speak how past programs had been implemented; not once did he address the proposal currently before the Commission.[207]

Throughout this entire process, from Application to hearing, the Company has been unable to justify how the proposed business demand response programs are interruptible or curtailable. This stems entirely from an inadequate application, and a refusal on the Company’s part to cure its obvious deficiencies. Nothing from the hearing helped Staff to better understand whether these programs are interruptible or curtailable. With that said, Staff must continue to recommend that, if the Company’s application is approved, only customers that have chosen not to opt-out should be allowed to receive the benefits of the business demand response programs, unless Staff’s recommendations are implemented to better identify the programs as interruptible or curtailable.[208]

---

[205] Hrg. Tr. Vol. 1, p. 173:15-19.
[206] Ex. 4, Surrebuttal Report (Confidential), p. 58:13-19.
[207] *Id*, p.219:1-223:15.
[208] Ex. 101, Staff Rebuttal Report, p. 72:14-16.

6. Issue: Variances

The Company's Application requests approval of the following variances from Commission rules:

1. Variances related to the incentive to be implemented and based on prospective analysis rather than achieved performance verified by EM&V, the proposed utilization of a TRM for purposes of calculating TD;[209]
2. Variances related to allowing adjustments to DSIM rates for the TD DSIM utility incentive revenue requirement as well as the DSIM cost recovery;[210]
3. Variances related to "revenue requirement" where the TD is excluded from the cost recovery revenue requirement;[211]
4. Variances related to allowing flexibility in setting the incentives and changing measures within a program;[212] and
5. Variance for 20 CSR 4240-20.092(1)(C).

The granting of these variances is all dependent upon the Commission choosing to approve the Company's Application. While Staff's position continues to be that the Application should be rejected, if the Commission were to approve it, Staff recommends only the first four variance requests be approved in their entirety.

[209] Commission Rules 20 CSR 4240-20.092(1)(HH); (1)(M); (1)(R); 20.093(2)(I); (2)(I)3; and (1)(N).
[210] Commission Rules 20 CSR 4240-20.093(4); (4)(C).
[211] Commission Rules 20 CSR 4240-20.092(1)(Q); (1)(UU); (1)(P); (1)(R); (1)(F); 20.093(2)(J).
[212] Commission Rule 20 CSR 240-14.030.

As for the fifth variance regarding 20 CSR 424020.092(1)(C), the Company and Staff agreed to waive this provision on August 7, 2019 in order to postpone the filing of the Company's most recent integrated resource plan until this case has been resolved.[213]

The Company is continuing to request that 20 CSR 4240-20.092(1)(C) be waived due to their avoided cost methodology;[214] Staff is resolute in its opposition to that methodology, and recommends denying the variance. Staff's concerns with the Company's calculated avoided costs are better explained in the previous section regarding Issue 2. .

7. KCPL/GMO is not Ameren Missouri.

Throughout the proceeding, the Company suggested that if the Company's previous MEEIA applications were approved, and if Ameren Missouri's MEEIA Cycle 3 was approved, then the Commission must approve the Company's application. In fact, the word "Ameren" appears nearly 300 times in the transcript, which without the case caption, could lead some to confusion about who's application is being reviewed in this proceeding. Staff does not view KCPL and GMO as fungible with Ameren Missouri. It does not view the two applications as equal.[215] And, it does not compare the companies or their applications when considering a proposal. Staff views each application as a separate and distinct application (except for the need to review KCPL and GMO together as explained more fully in under Issue I, subissue b, of this brief.) However, due to the repeated comparisons by the Companies of the two applications, Staff feels compelled to

[213] Hrg. Tr. Vol. 1, p. 45:6-7.
[214] Ex. 3, Surrebuttal Report (Confidential), p. 81:9-11.
[215] Tr. Vol. I, p. 290, l. 11-13.

point out that there are key differences between the two applications which led Staff to feeling comfortable stipulating to one, and comfortable recommending rejection of the other. One of the largest differences concerns avoided cost. First, Ameren Missouri was able to demonstrate the deferral of a generation facility for approximately two years.[216] Although longer deferrals provide higher value to customers, in context some appropriately weighted value can be assigned for each year a supply-side investment is delayed. Second, Ameren Missouri operates in a different regional transmission organization (RTO) than KCPL/GMO does. Ameren Missouri operates in the Midcontinent Independent System Operator (MISO), KCPL/GMO operates in SPP. MISO has a transparent capacity market.[217] Staff witness J Luebbert explained that one of the significant reasons Staff was able to see value in the Ameren MEEIA Cycle 3 application was due to Ameren Missouri witness Matt Michael's testimony, which explained the capacity market in a way that was clear from previous testimony or even IRP cases.[218] In MISO, a utility must bid all of its resources into a capacity auction, and then purchase back enough capacity to meet customer demand.[219] Ameren Missouri's capacity purchases are then entirely dependent on its level of [its native] load.[220] This means a reduction in demand will allow Ameren Missouri to potentially receive additional revenues through the sale of additional capacity, and reduced expense from decreased capacity purchases, which allows additional net benefits to flow to all customers through the fuel

[216] Tr. Vol. II, p. 462, l. 21-23.
[217] Tr. Vol. II, p. 467, l. 8-9.
[218] Tr. Vol. I, p. 341, l. 10-11 and p. 342, l. 23- p. 343, l. 3.
[219] Tr. Vol. I, p. 341, l. 13-16.
[220] Tr. Vol. I, p. 341, l. 16-18.

adjustment clause.[221] KCPL/GMO does not have this additional revenue stream available to provide additional net benefits to all customers. SPP does not have a capacity market, and there is not a plan on the horizon for one.[222] Therefore, KCPL/GMO would need to not only reduce capacity needs, but also seek another entity willing to purchase that capacity.[223] In response to data requests, KCPL/GMO has not expressed an appetite for seeking out entities willing to purchase capacity for the additional revenue stream.[224] Ameren Missouri also modeled its avoided cost more thoroughly. Ameren Missouri utilized MIDAS to model its avoided capacity costs.[225] All of the utilities have utilized MIDAS in the last few IRPs to model avoided energy cost, in Ameren Missouri's case, it also utilized it to model the avoided capacity costs.[226] MIDAS simulates additions, retirements, and dispatching of resources to determine what the market clearing price might be in a given year.[227] Then Ameren Missouri utilized that information and MIDAS to develop several different probability weighted capacity cost curves depending on if there was low, mid-level or high load.[228] In contrast, KCPL/GMO only utilized the avoided cost of a CT, plus inflation each year.[229]

Program design also differs between the Ameren Missouri application and KCPL/GMO's. For example, Ameren Missouri does not have advanced metering infrastructure (AMI), or a robust, detailed Energy Analyzer program, so a home energy

[221] Tr. Vol. I, p. 344, l. 4-11.
[222] Tr. Vol. II, p. 467, l. 12-14.
[223] Tr. Vol. I, p. 344, l. 22- p. 345, l. 1.
[224] Tr. Vol. I, p. 345, l. 3-7.
[225] Tr. Vol. I, p. 341, l. 19-21.
[226] Tr. Vol. I, p. 341, l. 22- 25.
[227] Tr. Vol. I, p. 342, l. 1-4.
[228] Tr. Vol. I, p. 342, l. 4-9.
[229] Tr. Vol. I, p. 342, l. 12-16.

report (HER) offering is more appropriate in Ameren Missouri's case because it is not duplicative.[230] KCPL/GMO does have an Energy Analyzer and AMI, which means that customers are paying for similar information in multiple ways.[231] Ameren Missouri's HER is done in house at a ¼ of the cost of KCPL/GMO's program.[232] As another example, Ameren Missouri's demand response programs are new, so there has not been the same history of non-utilization of the program as seen with KCPL/GMO's.[233] Details like this matter when comparing applications.

Finally, the other significant difference between KCPL/GMO and Ameren Missouri is the earnings opportunity. The Commission-approved stipulation and agreement for Ameren Missouri MEEIA Cycle 3 tiered its earning opportunity approach, with a higher earning opportunity for longer life programs.[234] Longer life measures provide value over a longer time than shorter life measures.[235] By placing a larger emphasis on measures that have a large megawatt reduction in years 10-14, and an even larger emphasis on measures with a 15-year plus life, Ameren Missouri has a compelling financial interest in targeting those long lived measures.[236] This drives megawatt savings in years when a supply side resource could be deferred.[237] Ameren Missouri's modified application, as a result of settlement, ultimately provided enough benefits to all customers in a class regardless of participation that Staff could agree to the modified program. KCPL/GMO's application does not provide benefits to all customers in a class regardless of

[230] Tr. Vol. I, p. 274, l. 11-16.
[231] Tr. Vol. I, p. 274, l. 19-22.
[232] Tr. Vol. II, p. 494, l. 15-18.
[233] Tr. Vol. I, p. 274, l. 7-10.
[234] Tr. Vol. I, p. 292, l. 4-9.
[235] *Id.*
[236] Tr. Vol. I, p. 345, l. 14-22.
[237] Tr. Vol. I, p. 345, l. 24- p. 346, l. 1.

participation, so Staff recommends the Commission reject the Application, or modify it as outlined in its Rebuttal Report.

8. Conclusion

The Company's Application fails to meet the statutory requirements of MEEIA. MEEIA is a privilege, not a right. To receive the atypical rate treatment afforded under MEEIA, the Company must meet those statutory requirements. That is the regulatory compact under MEEIA. In exchange for timely program cost recovery, a throughput disincentive, and an earnings opportunity, the Company must put forth cost-effective programs and provide benefits to all customers in a class, regardless of participation. The Company must value demand-side resources on an equivalent basis as supply side resources, which requires appropriate evaluation of avoided capacity costs. That requires parties to review the value of *the* supply side resource that is being deferred or delayed by the demand-side resources, not simply consider what the value of *a* supply side resource is.

The Company's Application is a bad application. That does not mean that energy efficiency is bad, or that the Company is bad, or even that all of the underlying measures in the Application are bad. This is a tough conversation to have. There is public policy that supports energy efficiency programs. However, the public interest is not served when customers as a whole suffer a net detriment of $5.7 million for those programs.[238] And the conversation is tougher when the Company conflates the ability to offer energy

[238] Ex. 101C, Staff Rebuttal Report at p. 32, l. 1-9.

efficiency programs and receive MEEIA incentives with the ability to offer energy efficiency programs.[239] Nearly every investor owned utility in the state offers energy efficiency,[240] and Ameren Missouri and the Company are the only ones to do so under MEEIA. As OPC witness Dr. Marke noted, suggestions that a rejection of this Application means there would be no energy efficiency offered by the Company, both goes against what has happened historically with MEEIA applications, and does a disservice to having an open and honest conversation about the shortcomings of the Application, and how it can be improved.[241]

Staff does not take lightly its recommendation to reject the Application. It is the reason for Staff's alternative suggestion for a pared down MEEIA portfolio,[242] alternative method to derive an earnings opportunity,[243] and the list of modifications and conditions crafted to improve the current Application.[244] However, for all the forgoing reasons set forth in this brief, Staff recommends the Commission reject the as filed Application.

Respectfully submitted,

/s/ Nicole Mers
Nicole Mers
Deputy Staff Counsel
Missouri Bar No. 66766
P.O. Box 360
Jefferson City, MO 65012
(573) 751-6651 (Telephone)
(573) 751-9285 (Fax)
Nicole.mers@psc.mo.gov

[239] Tr. Vol. I, p. 104, l. 1-6.
[240] The Empire District Electric Company, the Empire District Gas Company, Ameren Missouri Gas, Spire, Summit Natural Gas, and Liberty Utilities all offer energy efficiency programs outside of MEEIA. Tr. Vol. II, p. 455, l. 5-20.
[241] Tr. Vol. II, p. 485, l. 19 – p. 486, l. 3.
[242] Ex. 101C, Staff Rebuttal Report at p. 5, l. 5 - 9.
[243] *Id.* at p. 86, l. 16 - 27.
[244] *Id.* at p. 88, l. 22 – p. 92, l. 19.

/s/ Travis J. Pringle
Missouri Bar No. 71128
Legal Counsel
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4140 (Telephone)
(573) 751-9265 (Fax)
Travis.Pringle@psc.mo.gov

Attorneys for the Staff of the
Missouri Public Service Commission

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 11th day of October 2019, to all counsel of record.

/s/ Nicole Mers