BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light Company's Notice of Intent to File an Application for Authority to Establish a Demand-Side Programs Investment Mechanism	))))	**File No. EO-2015-0240**
In the Matter of KCP&L Greater Missouri Operations Company's Notice of Intent to File an Application for Authority to Establish a Demand-Side Programs Investment Mechanism	))))	**File No. EO-2015-0241**

STAFF'S REPLY BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by and through undersigned counsel, and files its reply brief addressing certain points in the Brightergy, LLC Initial Brief and renewing Staff's support for Commission approval of the jointly proposed MEEIA Cycle 2 portfolio of demand-side energy efficiency programs and demand-side investment mechanism sought to be implemented by Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO")(collectively the "Company").

Brightergy fails to provide evidence supporting higher incentive rebate payouts and wrongly includes a lighting program in the Custom Rebate program.

Brightergy's brief focuses narrowly on self-serving arguments and on small portions of documents and statutes, while ignoring the bigger picture that both the Stipulation and MEEIA statute address: cost effective programs that provide actual benefits for **all** customers. The Stipulation and the MEEIA statute are not designed to bolster one entity's (such as Brightergy) bottom line. Both work together to provide real

benefits for program participants *and non-participants* alike.[1] Staff and the Company produced solid evidence and real analysis, based on data from the Company, Ameren Missouri's MEEIA Cycle 1 Custom Rebate program, and other data to show that the Stipulation's:

> "programs are expected to result in energy and demand savings and are beneficial to all customers in the customer class in which the programs are proposed, **regardless of whether the programs are utilized by all customers**"[2]

The joint proposed MEEIA Cycle 2 Plan set forth in the Stipulation and agreed to by the Signatories meets all statutory requirements for approval under MEEIA. Brightergy fails to make any showing, through real evidence of record or through cross-examination on hypothetical scenarios, that the Stipulation does not meet the MEEIA standards necessary for approval.

Brightergy weakly argues that each word in a statute must be given meaning.[3] Noting each word in a statute needs consideration and meaning, Brightergy fails to do exactly that by ignoring MEEIA's clear command that programs must be beneficial to all customers regardless of whether or not they participate, and programs must be cost-effective. (Sect. 393.1075.4 RSMo) Staff and the Company demonstrated that both requirements are expected to be met. Brightergy, in turn, makes the hollow argument that a previous program - one that provided demand side savings at a significantly higher cost and lower benefit-to-cost ratio for all customers - must be continued. This argument is absurd on its face. Merely because Brightergy approved of the higher incentive levels does not mean that the Company is bound to maintain them without

[1] *See* Tr., page 250, lines 13-20
[2] 4 CSR 240-20.093 (2) (C)
[3] *See* Brightergy, LLC Initial Brief, page 3

opportunity to change them once it puts a program in place. Following such a misbegotten course of action to its conclusion would create stagnation and ignore learning from experience and EM&V results from prior Cycles. The Company must be allowed to learn and improve upon programs with each continuing MEEIA Cycle. The Company must be a responsible steward of ratepayer money and should be encouraged to pursue the most cost-effective methods of achieving real energy savings and benefits for all customers through performance of its programs and through evaluation of and comparison to industry best practices.

Brightergy cites to select portions of the Commission's Report and Order in the recent Ameren MEEIA case as justification for its position.[4] But in doing so, Brightergy ignores the analyses of the Company's Custom Rebate Cycle 1 results which support the need to make a downward adjustment of the existing rebate levels and to move to a new incentive rebate structure. Nor should the Company or its ratepayers pay more for energy efficiency savings than necessary. Yet, this is exactly what happened in the Company's MEEIA Cycle 1. Ratepayers incurred Custom Rebate program costs of $24,601,687, double the planned program costs, but experienced a decrease of $5,082,317 in net benefits, a decrease of over 10% of planned net benefits.[5] The Company resolved this issue with a change in rebate structure, one that directly ties energy savings to incentive levels. Bloated third party implementer costs are removed from the equation, so ratepayer dollars go towards actual energy savings.

Brightergy miscasts much of the evidence it claims to have provided on the record. The record shows a solitary page from a 240 page report of a 40-participant

[4] *See* Brightergy, LLC Initial Brief, page 4
[5] *See* Surrebuttal Testimony of John A. Rogers, Schedule JAR-SR-2

study in a different state, and then hypotheticals. Reliance on hypotheticals does not take the place of actual evaluation or analysis. Mr. Blake provided no relevant evaluations or analyses in his testimony.[6] Brightergy's brief wrongly asserts that Mr. Blake is the only witness with market experience, ignoring both the Company's experience with its own program and analyzing the results of EM&V. More troubling is that Mr. Blake showed a startling lack of knowledge about his own company, being unable to recite how many Missouri customers Brightergy had or how many Brightergy proposals were solar, energy efficiency, or combined heat and power.

In addition, as an expert, Mr. Blake and Brightergy should be able to understand the programs proposed in the Stipulation. However, in its brief, Brightergy claims to limit its objection to the custom lighting program, and refers to the program as such.[7] Brightergy's brief ignores the fact that the Company has removed lighting from the Cycle 2 Custom Rebate program and put lighting in the Cycle 2 Prescriptive or Standard Rebate Program. At best, Brightergy's brief shows its confusion about the programs and what the programs offer. At worst, Brightergy has surprised the other parties by changing its objection after hearing. Brightergy did not raise an issue of custom lighting in its *Objection to Non-Unanimous Stipulation and Agreement* or in its *Statement of Positions*. The hearing itself was over the Custom Rebate program in its entirety and not about lighting.

Also, Brightergy wrongly argues that similar programs in surrounding states should guide the Commission.[8] Company witness Kimberly Winslow addressed the mistakes made by Mr. Blake in his testimony about his conflation of maximum caps and

[6] Tr. 247, lines 6-16
[7] *See* Brightergy, LLC Initial Brief, page 1, 7.
[8] Id., page 8-9

the actual incentive.[9] Furthermore, Mr. Rogers testified that Mr. Blake's comparison to other states programs fails because no other state but Missouri has a statutory requirement to achieve cost effective measures that benefits all customers.[10] That Missouri requires there be benefits for non-participants must be remembered when comparing Missouri's energy efficiency programs to utility programs in other states.

Brightergy's failure to provide meaningful evidence to support its assertions is further evidenced by the fact that none of the other 200 trade allies that work with the Company intervened in this case, nor did any nonprofits, hospitals or schools, despite Brightergy's claims of a "drastically weakened market for energy efficiency" and "stark" impacts.[11]

Brightergy fails to refute the ample evidence supporting the proposed MEEIA Cycle 2 Plan that was provided by Staff and Company witnesses in their prefiled testimonies and at hearing. The evidence clearly shows that the proposed MEEIA Cycle 2 Plan will provide benefits to all customers, that the Custom Rebate program passes the Total Resource Cost (TRC) test with benefits to all customers, and that based on the example from Ameren Missouri's similar Cycle 1 Custom Rebate program's incentive structure more savings can be achieved at a lower cost to all ratepayers in the customer class.

Brightergy focuses on payback period but fails to refute how Ameren Missouri, with its lower incentive levels and thus longer payback periods, achieved significantly more than its targeted savings and targeted net benefits. Brightergy also failed to refute Ameren's low levels of free ridership –only 10 percent – the result of full EM&V for its

[9] *See* Surrebuttal Testimony of Kimberly Winslow, pages 3-5.
[10] Tr. 192-193
[11] Id., pages 4, 5

program with an incentive structure similar to the KCP&L/GMO Custom Rebate program, all the while making free ridership a flagpole argument without any empirical evidence.[12] Staff witness John Rogers testified, contrary to Brightergy's claims, that higher incentives do not lead to higher investments.[13] Brightergy mischaracterizes Mr. Rogers' testimony by stating, "Staff's witness admits that the Custom Rebate Structure contained in the Stipulation will increase the incidence of free-ridership."[14] Mr. Rogers in fact testified that he did not believe free-ridership would increase or be over the 10% level found in Ameren Missouri's similar rebate program, based on the results of Ameren Missouri's EM&V.[15]

Brightergy errs in arguing the Commission would cede its authority if it grants the requested rule variances for the flexibility provisions. Brightergy's argument lacks statutory authority and runs against MEEIA.

Brightergy fails to grasp that the MEEIA statute is *permissive*. MEEIA programs are a purely voluntary undertaking of the utility. Brightergy lacks any basis in law arguing that the Commission is somehow ceding its authority if it allows the Company to discontinue all programs with 30 day notice without an order of the Commission. The Commission's MEEIA rules permit it to grant variances. Also, Brightergy fails to grasp that the decision to terminate voluntary programs rests squarely with the utility. Because MEEIA is permissive the Commission cannot compel the continuation of MEEIA programs by denying their discontinuance.

The Company seeks only to be excused from filing an application for discontinuance, obtaining a Commission order granting discontinuance (of a voluntary

[12] *See* Rebuttal Testimony of Kim Winslow, page 6, lines 8-15.
[13] Tr. 207, lines 5-6
[14] *See* Brightergy, LLC Initial Brief, page 5
[15] Tr. 171, lines 18-23

program) and holding a hearing on the application. Because the rule requires the Commission to act in 30 days on such an application, a 30 day notice period is a reasonable accommodation of the rule. Also reasonable is the Company's agreement to meet at agenda or hearing to explain its reasons for discontinuance.

Moreover, as explained in its Initial Brief, the Staff summarizes the affirmative steps the Company must take to terminate all programs and further explains the stipulated customer protections agreed to by the seven signatories.

First – the requested variances apply only in the unlikely event the Company should reach a decision to terminate all MEEIA programs and suffer the loss of a possible $35 million earnings opportunity. For the Company to reach such a decision it would have to demonstrate "*changed factors or circumstances that have materially negatively impacted the economic viability of such programs…*" and submit workpapers supporting how such *changed factors materially, negatively impacted* the programs. This is a higher threshold to meet than what is required under the rule from which the Company seeks excusal.

Second – Should the Company decide to terminate an individual program, a situation far more likely than ending all programs, the Company must follow all rule requirements. The variances do not apply to the termination of an individual program. To end a program, all the Company must provide under the rule is a "*Complete explanation for the utility's decision to request to discontinue a demand-side program.*"[16] Giving an *explanation* is a lower standard than the standard agreed to by the Company of showing how *changed factors materially, negatively impacted its programs* under the Stipulation.

[16] 4 CSR 240-3.164(5)(A)

In the end, with or without the flexibility provisions, the Commission cannot compel the utility to perform a voluntary program or withhold approval of discontinuance.

Key to implementing MEEIA programs is Commission approval of the stipulated Plan's flexibility provisions. Well more than ample good cause for granting the enabling rule variances is shown by the Plan's 1) satisfying a condition necessary for the Company to commit to implementing MEEIA demand-side programs, 2) opening the door to substantial energy savings benefits to all customers whether they participate in MEEIA programs or not, and 3) protecting customers from harm as a result of its protections which either meet or exceed rule requirements.

Conclusion

Brightergy is but one of over 200 trade allies whose business provides energy efficiency services to the KCP&L/GMO service territory. It is the only trade ally that intervened in this proceeding. At hearing, Brightergy made clear that it has a strong profit motive behind its desire for higher incentive rebates. Brightergy would have the Commission approve the overly rich incentive structure of the old Cycle 1 Custom Rebate program – a program soundly rejected by the Company because the incentive payouts were too rich and proven to be cost-ineffective for the low amount of energy savings it produced. Brightergy seeks an overly rich incentive payout structure for the Custom Rebate program that would cost captive utility customers an additional and unnecessary $11 million on their DSIM charge.

Knowing the Commission will not approve a program rejected by the Company, Brightergy also seeks a Commission order directing the parties to go back to the table

to “negotiate.” Doing so would be unproductive and would further delay bringing substantial energy efficiency savings and benefits to KCP&L/GMO customers.

When pressed at hearing about its recommendation to reject the entire MEEIA Cycle 2 Plan if it did not get its way and win approval of the more costly Cycle 1 Custom Rebate program incentive structure, Brightergy admitted that it would still participate in the joint proposed Custom Rebate program if approved by the Commission.

Brightergy – clearly focused on how much profit it makes from ratepayer funded programs - has taken full advantage of the contested case procedures and due process afforded it by the Commission to adjudicate this otherwise non-contested case.[17] Brightergy has had its unsupported claims heard by the Commission and has effectively delayed the start of MEEIA Cycle 2 demand-side programs for all customers and trade allies for at least three months, if not longer. There should be no further delay in approving the MEEIA Cycle 2 Plan set forth in the Stipulation.

WHEREFORE, Staff respectfully requests the Commission reject Brightergy, LLC’s attempt to modify the MEEIA Cycle 2 Plan to its liking and renews its request that the Commission issue an order approving the joint proposed MEEIA Cycle 2 Plan portfolio of programs and DSIM and grant the requested variances with a finding of good cause shown for the reasons stated above and in Staff’s Initial Brief.

[17] The Commission has determined that an application for approval of MEEIA programs is a non-contested case. *See* Report and Order, Case No. EO-2015-0055,page 16.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been electronically mailed this 5th day of February, 2016, to all counsel of record in this proceeding.

/s/ Robert S. Berlin