

**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-) File No. EO-2015-0240
Side Programs Investment Mechanism)

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

MISSOURI DIVISION OF ENERGY’S INTIAL POST-HEARING BRIEF

COMES NOW the Missouri Division of Energy (DE), by and through the undersigned counsel, and for its *Initial Post-Hearing Brief* states:

A. *Should the Missouri Public Service Commission (“Commission”) approve the Missouri Energy Efficiency Investment Act (“MEEIA”) Cycle 2 programs and demand-side programs investment mechanism as agreed on in the joint position and articulated in the Non-Unanimous Stipulation and Agreement Resolving MEEIA Filings filed November 23, 2015 (“Stipulation”)?*

Yes, DE recommends that the Commission approve the MEEIA Cycle 2 programs and demand-side programs investment mechanism as agreed on in the joint position and articulated in the Stipulation filed by Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company (collectively, the “Company”), Staff of the Missouri Public Service Commission (“Staff”), Office of the Public Counsel (“OPC”), Missouri Department of Economic Development – Division of Energy (“DE”), National Housing Trust (“NHT”), Natural Resources Defense Council (“NRDC”), Earth Island Institute d/b/a Renew Missouri,

United for Missouri, Inc. (“UFM”), and West Side Housing Organization (“West Side”) (here after collectively referred to as the “Signatories”).

1. *Benefits to all customers in a customer class in which MEEIA programs are offered should be determined by calculating the benefits to all customers in each customer class as a whole and without considering whether programs are utilized by all customers.*

While DE recommends the Commission approve the Stipulation, DE notes that the Commission’s order should conclude that Section 393.1075.4 of the MEEIA statute requires that benefits to all customers in a customer class in which MEEIA programs are offered must be determined by evaluating the benefits to all customers in each customer class as a whole; and that it is a misinterpretation of Section 393.1075.4 to, as advocated by Staff, limit consideration to the impact on non-participating customers or to exclude consideration of benefits not quantified by a net rate impact test.

The primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue. *State ex rel. Union Electric Company v. Public Service Commission of Missouri*, 399 S.W.3d 467, 480 (Mo. App. W.D. 2013). If the intent of the legislature is clear and unambiguous, by giving the language used in the statute its plain and ordinary meaning, then a court is bound by that intent and cannot resort to any statutory construction in interpreting the statute. *Id.* at 479. Section 393.1075.4 of the MEEIA statute sets out three requirements for cost recovery of MEEIA programs: “Recovery for such programs shall not be permitted unless the programs are [1] approved by the commission, [2] result in energy or demand savings and [3] 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.” (emphasis added). DE and Staff disagree on the interpretation of requirement three. DE asserts that the plain and ordinary meaning of requirement three requires that benefits to all customers in a customer class in which MEEIA programs are offered should be determined by evaluating the benefits to all customers in each customer class as a whole. Contrarily, Staff asserts that requirement three requires quantification through the use of a non-participants test to determine whether non-participating customers receive a benefit from MEEIA programs offered in their customer class.¹

Requirement three consists of two clauses: the MEEIA programs must be [1] beneficial to all customers in the customer class in which the programs are proposed, [2] regardless of whether the programs are utilized by all customers.” In determining the plain and ordinary meaning of requirement three the Commission must determine the meaning of the word “regardless” and how that meaning in the second clause modifies the requirement in the first clause. Absent a definition in statute a word’s plain and ordinary meaning should be derived from the dictionary. *State ex rel. Public Counsel v. Public Service Commission or State*, 397 S.W.3d 441, 451 (Mo. App. W.D. 2013); The MEEIA statute provides no definition of “regardless”, so the dictionary must then be used to determine the plain and ordinary meaning of requirement three. The dictionary defines “regardless” as “without regard to”² and defines “regard” as “attention, care, or consideration”.³ The definition of “regardless” in context of requirement three requires that MEEIA programs be “beneficial to all customers in the customer class in which the programs are proposed, [**without consideration] of whether the programs are utilized by all customers.” (emphasis**

¹ Rogers Direct, p. 3, l. 15-19; p.6, l. 6-10.

² *A Dictionary of Modern Legal Usage* (2nd ed. 1995) by Bryan A. Garner

³ *Black’s Law Dictionary* (10th ed. 2014) ed. Bryan A. Garner.

added). Using the plain and ordinary meaning of the word “regardless” the intent of the legislature is clear and unambiguous that Section 393.1075.4 of the MEEIA statute explicitly prohibits isolating consideration to the impact, and more specifically a net rate impact on non-participating customers in each customer class when determining benefits to all customers.

When the word “regardless” is given its plain and ordinary meaning as defined in the dictionary the legislative intent of Section 393.1075.4 of the MEEIA statute clearly and unambiguously requires that benefits to all customers in a customer class in which MEEIA programs are offered must be determined by evaluating the benefits to all customers in each customer class as a whole. The Commission is bound by this intent and cannot resort to any statutory construction in interpreting the MEEIA statute. Although the statutory language requires consideration of all benefits, there was evidence that all customers in each customer class as a whole benefit even if evaluation of benefits were limited to benefits measured in terms of a net rate impact.

Analyses of Customer Net Benefits as a Whole for KCPL and GMO MEEIA Application and Stipulation & Agreement

Customers as a Whole		Portfolio		Residential		Business	
		Application	Stipulation	Application	Stipulation	Application	Stipulation
<i>a</i>	Expected Benefits	\$ 129	\$ 138	\$ 46	\$ 55	\$ 83	\$ 83
<i>b</i>	Program Administration	\$ 29	\$ 30	\$ 14	\$ 15	\$ 14	\$ 15
<i>c</i>	Customer Incentives	\$ 21	\$ 20	\$ 7	\$ 6	\$ 14	\$ 14
<i>m</i>	Earnings Opportunity	\$ 10	\$ 7	\$ 5	\$ 3	\$ 5	\$ 5
<i>n = b+c+m</i>	Customers' Costs	\$ 60	\$ 58	\$ 26	\$ 24	\$ 34	\$ 33
<i>o = a - n</i>	Customers' Net Benefits	\$ 69	\$ 80	\$ 20	\$ 30	\$ 49	\$ 50
<i>p = a / n</i>	Benefits / Costs	2.16	2.39	1.79	2.26	2.43	2.49

Customers as a Whole		Portfolio		Residential		Business	
		Application	Stipulation	Application	Stipulation	Application	Stipulation
<i>a</i>	Expected Benefits	\$ 134	\$ 139	\$ 59	\$ 64	\$ 75	\$ 75
<i>b</i>	Program Administration	\$ 31	\$ 32	\$ 17	\$ 18	\$ 13	\$ 13
<i>c</i>	Customer Incentives	\$ 23	\$ 21	\$ 7	\$ 7	\$ 15	\$ 14
<i>m</i>	Earnings Opportunity	\$ 10	\$ 10	\$ 6	\$ 5	\$ 4	\$ 6
<i>n = b+c+m</i>	Customers' Costs	\$ 63	\$ 63	\$ 30	\$ 30	\$ 33	\$ 33
<i>o = a - n</i>	Customers' Net Benefits	\$ 71	\$ 76	\$ 29	\$ 34	\$ 42	\$ 42
<i>p = a / n</i>	Benefits / Costs	2.12	2.20	1.95	2.15	2.29	2.25

As shown in the above excerpts the benefits per cost ratios are well above the 1.00 net benefit thresholds demonstrating that even based on consideration of only net rate impact the programs are beneficial to all customers in each customer class as a whole.⁴ The reported residential programs benefits per cost ratios are 2.26 and 2.15 respectively, and the reported business programs benefits per cost ratios are 2.49 and 2.25 respectively. As will be discussed below these benefits per cost ratios demonstrate that there is significant room for the Company to expand its energy efficiency programs to capture additional cost-effective energy savings.

Staff’s non-participant’s test requirement omits the words “regardless of” entirely so that MEEIA programs must be “beneficial to all customers in the customer class in which the programs are proposed, [] **whether the programs are utilized by all customers.**” However proper interpretation presumes the legislature intended that every word, clause, sentence, and provision of a statute have effect and be operative; and conversely, it must not be presumed that the legislature inserted idle verbiage or superfluous language in a statute. *State ex rel. Union Elec. Co. v. Public Service Commission of Missouri*, 765 S.W.2d 626, 628 (Mo. App. W.D. 1988). To accept Staff’s interpretation of Section 393.1075.4 of the MEEIA statute the Commission would necessarily be required to ignore the words “regardless of” contained in the statute, rendering those words meaningless. The

⁴ Full tables appear in the Direct Testimony of Mr. John A. Rogers in schedules JAR-D-2-1 and JAR-D-2-2 respectively.

Commission cannot presume that the legislature inserted the words “regardless of” as idle verbiage. The words must be presumed to have effect. Staff focuses on the first clause’s words of “all customers” and “customer class” and gives that clause dominance over the second; however, nothing in the wording of the statute warrants such an interpretation. Rather the intent of the legislature must be that the requirement of benefits to all customers in a customer class be qualified by the requirement that program utilization by all customers not be considered. To find otherwise would render a portion of the MEEIA statute meaningless. Staff’s non-participants test does exactly what the MEEIA statute prohibits. Staff’s non-participants test specifically considers in isolation whether MEEIA programs are beneficial to those customers who do not utilize programs.⁵

For the reasons explained above, the Commission should clarify in its order approving the Stipulation that the Company’s MEEIA programs per the requirements of Section 393.1075.4 of the MEEIA statute will be beneficial to all customers in each customer class in which the MEEIA programs are being offered as determined by evaluating the benefits to all customers in each customer class as a whole and without consideration on a more granular basis.

2. *Collaborative to identify additional energy and demand savings for consideration for program years 2017 and 2018, will create progress toward the goal of all cost-effective demand-side savings as defined in the MEEIA rules.*

While DE recommends the Commission approve the Stipulation, DE notes that the energy and demand savings levels in the Stipulation are significantly lower than the realistic achievable potential savings levels identified in the Company’s most recent market potential study and the minimum levels called for in the MEEIA rules; however, the Signatories have

⁵ Rogers Direct, p. 3, l. 4-5.

agreed to a collaborative process to address new and underserved customer markets and identifying cost-effective energy and demand savings strategies to achieve 200 GWh of additional savings for consideration for program years 2017 and 2018. DE sees this provision as integral to increasing the energy and demand savings targets for the Company's MEEIA Cycle 2 programs consistent with the realistic achievable levels identified in the Company's most recent market potential study and the minimum requirements in the MEEIA rules. DE is committed to this process.

The energy savings targets in the Stipulation are significantly lower than the levels identified in the Company's market potential study as realistically achievable and the energy savings goals established in the MEEIA rules.⁶ The annual savings under the Stipulation comes out to about 0.7% of sales per year for GMO and 0.8% of sales for KCP&L.⁷

Comparison of Proposed Energy Savings in Stipulation to Potential Energy Savings Identified in Market Potential Study as a Percent of Average Annual Load

Annual Savings	GMO	KCP&L
Stipulation	0.74%	0.79%
RAP Average Annual	1.45%	1.38%
MAP Average Annual	1.84%	1.89%

The table above shows that the savings levels in the Stipulation are 50% of the levels identified in the market potential study as realistically achievable ("RAP"), and 40% of the levels identified as maximally achievable ("MAP").⁸ This comparison demonstrates that

⁶ McDonald, Direct p. 3, l. 19-21

⁷ Id. at p. 4, l. 17-19

⁸ Id. at p. 5, l. 17-21 and p. 6, l. 1-3

there is significant room for the Company to expand its energy efficiency programs to capture additional cost-effective energy savings. Additionally, the MEEIA rules state that:

The commission shall use the greater of the annual realistic achievable energy savings and demand savings as determined through the utility's market potential study or the following incremental annual demand side savings goals as a guideline to review progress toward an expectation that the electric utility's demand-side programs can achieve a goal of all cost-effective demand-side savings (4 CSR 240-20.094(2)(A))

The savings goals in the MEEIA rules are similar to those identified in the market potential study. The savings goals in the MEEIA rules establish total annual energy savings goals of 1.1%, 1.3% , and 1.5% for years 2016, 2017, and 2018. *Id.* The Company's market potential study's RAP scenario gives energy savings levels of 1.3%, 1.4% , and 1.6% for years 2016, 2017, and 2018.⁹ (McDonald Direct p. 13) While there is no penalty to a utility for not meeting these goals, by the express terms of the Commission's own MEEIA rules the Commission must use the RAP energy savings levels from the Company's market potential study as a guideline to review progress toward the expectation that the Company's demand-side programs can achieve a goal of all cost-effective demand-side savings. The savings levels in the Stipulation are well below the goal of all cost-effective demand-side savings; however, the Company can and should achieve this goal. With the Signatories commitment to the collaborative process to identify additional energy savings and clarification from the Commission that Section 393.1075.4 requires that benefits to all customers in a customer class in which MEEIA programs are offered must be determined by evaluating the benefits to all customers in each customer class as a whole the goal of all-cost effective demand-side savings as established in the MEEIA rules is achievable.

⁹ McDonald Direct p. 13, l. 10-11

In conclusion, DE has agreed to these lower savings levels in part because the Signatories to the Stipulation have agreed to a collaborative process with a goal to identify and potentially pursue an additional 200 GWh of savings for the remainder of the program cycle. The Stipulation represents a compromise between the Signatories, which, if approved, will provide energy and demand savings to all of the Company's participating customers and provide benefits to all of the Company's customers in part by reducing the need for future capacity additions at greater expense to the Company's customers. A rejection or modification to the Stipulation, which is unacceptable to the Company, would lead to a further delay or outright discontinuation of the Company's energy efficiency programs, poor public policy outcomes and be detrimental to the public interest. Even a temporary lapse in program availability will, at the very least, create uncertainty for customers, program partners, and the Company while reducing the potential markets for energy efficiency in Missouri in the short term. For these reasons DE recommends that the Commission approves the MEEIA Cycle 2 programs and demand-side programs investment mechanism as agreed on in the joint position and articulated in the Stipulation. DE further recommends that the Commission clarify in its order that Section 393.1075.4 of the MEEIA statute requires that beneficial to all customers in a customer class in which MEEIA programs are offered must be determined by calculating the benefits to all customers in each customer class as a whole regardless of whether those programs are utilized by all customers.

B. Should the Commission approve the Commercial and Industrial ("C & I") Custom Rebate program in the Stipulation over the objection of Brightergy?

Yes, while the concerns Brightergy raises regarding the C & I Custom Rebate program may have merit, ordering the parties to continue negotiations or in the alternative to reject

the Stipulation outright will only further delay the implementation of the Company's MEEIA Cycle 2 programs creating additional uncertainty for customers, program partners, and the Company while reducing the potential markets for energy efficiency in Missouri in the short term and increasing the need for future capacity additions at greater expense to all the Company's customers.

Brightergy's witness Mr. Blake requests that the Commission either reject KCP&L's programs entirely or order KCP&L to continue the existing MEEIA Cycle 1 custom rebate program. Reverting back to the MEEIA Cycle 1 custom rebate program is not possible as the tariffs supporting that program have expired.¹⁰ Moreover, MEEIA programs are voluntary programs and the Company is not willing to continue the Cycle 1 custom rebate program as it believes that the incentives in the program are not in line with what other utilities are offering and are excessive.¹¹

DE is optimistic that the provision of the Stipulation providing for a collaborative process to address new and underserved customer markets and identifying cost-effective energy and demand savings strategies for an additional 200 GWh of savings for consideration for program years 2017 and 2018 will encourage all stakeholders, including non-signatories, to have constructive discussions about increasing the energy and demand savings targets for the Company's MEEIA Cycle 2 programs consistent with the realistic achievable potential levels identified in the Company's most recent market potential study and the minimum requirements in the MEEIA rules.

C. Should the Commission approve the regulatory flexibility provisions in the Stipulation over the objection of Brightergy?

¹⁰ Rush Surrebuttal, p. 2, l. 20-21

¹¹ *Id.* at p. 2, l. 21-22, p. 3, l. 1-3

Yes, While the concerns Brightergy raises regarding the regulatory flexibility provisions may have merit, ordering the parties to continue negotiations or in the alternative to reject the Stipulation outright will only further delay the implementation of the Company's MEEIA Cycle 2 programs creating additional uncertainty for customers, program partners, and the Company while reducing the potential markets for energy efficiency in Missouri in the short term and increasing the need for future capacity additions at greater expense to all the Company's customers.

If the Company terminates its MEEIA programs, the Company forfeits any recovery of an earnings opportunity that may have been achieved.¹² Therefore, the Company's discretion to discontinue its MEEIA programs is limited since termination of the programs comes with a significant financial consequence.¹³ Additionally, DE expects that the Company will not want to jeopardize the good will it has built with customers, program partners, as well as local and state government officials in MEEIA Cycle 1, and the threat of endangering it will deter the Company from engaging in any gamesmanship of program rebates, and that the Company will only use the regulatory flexibility provision in the most dire of circumstances.

WHEREFORE, DE respectfully files its *Initial Post-Hearing Brief* and recommends that the Commission approve the Company's MEEIA Cycle 2 Plan as modified by the Stipulation filed on November 23, 2015. DE further recommends that the Commission clarify in its order that Section 393.1075.4 of the MEEIA statute requires that beneficial to all customers in a customer class in which MEEIA programs are offered must be determined by calculating the benefits to all customers in each customer class as a whole and without considering whether those programs are utilized by all customers.

¹² Rush Surrebuttal, p. 4, l. 9-10

¹³ Id. at l. 10-12

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been emailed to the certified service list this 29th day of January, 2016.

/s/ Alexander Antal