

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Kansas City Power & Light)
Company’s Request for Authority to Implement) File No. ER-2014-0370
a General Rate Increase for Electric Service)

**MISSOURI DIVISION OF ENERGY’S
REPLY BRIEF**

COMES NOW the Missouri Division of Energy (“DE”) and for its *Reply Brief*, states

Clean Charge Network (“CCN”):

DE continues to support Kansas City Power and Light Company’s (“KCPL” or “the Company”) CCN pilot program in principle. Specifically, DE recommends that the Public Service Commission (“Commission”) determine that the CCN is a regulated public utility service and that the Commission should approve the CCN pilot program with the condition that KCPL will develop tariffs to address the issue of how the cost of electric service at these electric vehicle (“EV”) charging stations will be recovered at the end of the pilot program; these tariffs should be proposed in the context of a general rate proceeding, with the resulting tariffs to be in effect in advance of the end of the pilot program. The tariffs developed should recover the costs of the charging stations and their installation from EV owners or host sites.

Several parties have raised issues in their initial briefs regarding whether the CCN is a public utility service and whether the CCN should be considered in a separate proceeding. For example, OPC believes, “The purpose of monopoly regulation is to protect customers against the possibility that competition would require the duplication of a vast and expensive distribution systems, and would result in the destruction of the utility if competition whittled away at a customer base necessary to provide the revenues necessary to maintain the system.”, and implies that a

competitive market for EV charging by itself would not subsequently destroy the regulated utility.¹ In coming to this belief, OPC partly relies on a Missouri Supreme court case from 1918², which states,

The purpose of monopoly regulation is to protect customers against the possibility that *competition would require the duplication of a vast and expensive distribution systems, and* would result in the destruction of the utility if *competition whittled away at a customer base necessary to provide the revenues necessary to maintain the system.* *State ex rel. Electric Co. v. Atkinson*, 275 Mo. 325, 337 (Mo. 1918). **[Emphasis added]**

However, OPC fails to see that the present situation is what is contemplated by the court as requiring regulation.

First, it is a necessity that the Commission regulates a utility service when there is a possibility that a vast and expensive distribution system could be duplicated. KCPL is proposing to construct 1,000 charging stations in its initial phase at a cost of \$7-8 million. KCPL anticipates constructing additional EV charging stations in the future. These charging stations represent a necessary evolution of KCPL's distribution system to meet customer demand for electric service throughout its service area. The CCN will eventually cover KCPL's Missouri and Kansas service territories, as well as GMO's service territory. Just as KCPL's existing distribution plant provides ongoing benefits to customers through economies of scale and scope, the Company's investment in the CCN will meet customer needs for expanding modern infrastructure at a lower average cost.

It would be negligence on the part of the Commission to not regulate EV charging when there is the possibility that a competitive market could lead to the duplication of a vast and expensive EV charging distribution system. It is also a necessity that the Commission regulate a utility when a competitive market for the same service would result in a, "... whittl[ing] a way of

¹ Amended Initial Brief of the Office of the Public Counsel, p. 65.

² Id.

[the] necessary customer base to provide the necessary revenues to maintain the utility system.”³ As stated by counsel for Brightergy, the revenues necessary to maintain the electric system are already being whittled away at because utilities all over the country face a plateau, and in some cases a decline in their market base, which are beyond their ability to control.⁴ DE recognizes that electric utilities must find new customers for their services in order to generate the revenues necessary to maintain the electric system. While several parties have tried to characterize EV charging as distinct from other uses for electricity, EV charging stations provide the same service that KCPL provides to all of its customers. It is only the means by which that service is provided that is different. If the Commission allows EV charging to be an unregulated utility service, distinct from the rest of the electric service, the utility’s ability to collect enough revenues to maintain its system will further erode, resulting in additional rate increases for customers and, if unmitigated, the potential destruction of the electric utility.

Staff attempts to liken the CCN to that infrastructure which a residential housing developer is required to install at the developer’s expense, with the opportunity to recover its costs only if the developer is successful in selling the houses it has constructed. However, KCPL’s EV charging customers would not pay for the charging stations the way a homeowner would pay for electrical infrastructure with the purchase of a house, because EV owners (the end users) are transient customers and the Company will own the charging stations; therefore, the only way for shareholders to earn a return on their investment is through the retail sale of electricity at the charging station. While there is a risk that the EV charging stations will not be utilized to the greatest extent possible (as with any plant investment), as stated by counsel for Brightergy, there is also a risk to ratepayers that KCPL, facing unsure growth and returns, may

³ *State ex rel. Electric Co. v. Atkinson*, 275 Mo. 325, 337 (Mo. 1918).

⁴ Initial Post Hearing Brief of Brightergy, LLC, pp. 1-2.

experience a lowered credit rating, increased costs of borrowing, and sinking shareholder confidence should the Commission reject the CCN proposal or deem it an unregulated service.⁵ Each of these factors has the potential to raise KCPL's cost of providing service, and thus also has the potential to impact all customer rates.⁶ Not allowing KCPL to include the costs of capital investments in rate base, which are intended to increase its kWh sold, while the customer base necessary to provide the revenues to maintain the utility system continues to be whittled away will further complicate KCPL's ability to earn its revenue requirement and lead to more rate increases for customers.

Sierra Club generally supports KCPL's efforts to deploy EV charging stations within its service territory, but Sierra Club suggests that all issues associated with the CCN should be considered in a separate proceeding on the grounds that "it is not clear whether the current design of the CCN will maximize its stated benefits or fully leverage KCP&L's unique capacities."⁷ While DE agrees that there are details of the CCN that need further study by KCPL and stakeholders, this does not prohibit the Commission from approving the pilot phase of the CCN. KCPL can deploy the pilot phase of its CCN while also working with stakeholders to develop the optimal rate designs, deployment and management of the CCN after the pilot phase. KCPL and stakeholders will benefit from additional data from Missouri-based EV charging stations in a working group docket.

The Sierra Club also stated, "An increase in electricity demand, if not properly managed, could undermine the potential benefits of EVs and present new challenges ... for instance, increased load could drive a need for new investment in generation, transmission, and distribution capacity, potentially raising rather than lowering electricity rates for consumers

⁵ Id. at 2.

⁶ Id.

⁷ Sierra Club Initial Post Hearing Brief, p. 24.

Thus, while EV charging can provide great benefits, it also presents risks and must be thoughtfully managed.”⁸ While DE agrees that EVs present regulatory challenges, Sierra Club’s points further illustrate that it is important for the Commission to establish regulatory authority over the expansion of utility-sponsored EV charging stations in this case so as to ensure that the increased load attributable to EVs may be managed in a manner beneficial to ratepayers and the utility.

Residential Customer Charge

DE continues to recommend that the Commission approve the *Nonunanimous Stipulation and Agreement on Certain Issues*, which states that the Residential Customer Charge for a Residential General Use customer should remain at \$9.00, and that the Residential Customer Charges for the other residential customer rate schedules also remain the same as currently charged.⁹ This stipulated agreement is consistent with DE’s filed position. A \$9.00 customer charge already recovers over seventy-five percent (75%) of the costs to serve a customer through a flat customer charge, with the remaining twenty-five percent (25%) recovered through a variable rate.¹⁰ DE concurs with OPC that increases to the fixed customer charge reduce a customer’s incentive to employ energy efficiency measures in their home, reduce the energy savings realized by customers that have already invested in energy efficiency measures,¹¹ and acts as a disincentive to KCPL management to aggressively control costs.¹²

DE concurs with the Sierra Club that an increase in the fixed customer charge reduces the incentive for customers to consume energy efficiently; contravenes the well-established rate design principles of maintaining customer equity and promoting rate stability, and would reduce

⁸ Sierra Club Initial Post Hearing Brief, p. 16.

⁹ *Non-Unanimous Stipulation and Agreement on Certain Issues*, p. 2, filed 6/16/2015.

¹⁰ Amended Initial Brief of the Office of the Public Counsel, pp. 71-72.

the state of Missouri's ability to utilize energy efficiency to comply with the Clean Power Plan.¹³ Specifically, DE would draw the Commission's attention to Sierra Club's statement that "If KCP&L's proposed residential fixed customer charge increase is adopted,¹⁴ the utility will have to rely upon more expensive options to achieve the emission reductions that will be established in the final Clean Power Plan."

Residential Time of Day, Two-Part Time of Use, & Real Time Pricing Tariffs

DE continues to recommend that the Commission approve the *Nonunanimous Stipulation and Agreement on Certain Issues*, which states that "... current residential and other special two part time of day or real time pricing tariffs remain available, and the Signatories would request that the Commission order Kansas City Power & Light Company to complete a study regarding these issues within 2 years in which no party is obligated to support the findings of that study or any proposed tariff design as a result of that study."¹⁵ KCPL states in its brief that the Company opposes this request because time-of-use ("TOU") rates cannot be implemented effectively with KCP&L's existing metering equipment and billing system.¹⁶ DE would remind the Commission that it was KCPL's position in its direct filing to freeze its current TOU rates and redesign those rates because they were undersubscribed.¹⁷ It is DE's position that it is inappropriate to freeze KCPL's current TOU rates when the Company does not have new rates to take their place. Requiring KCPL to redesign its current TOU rates within two years is a modest request and will ensure that these rates are redesigned in a timely manner. Approving the *Nonunanimous Stipulation and Agreement on Certain Issues* will maintain the availability of the current time-differentiated rates for new customers interested in realizing energy efficiency gains based on

¹³ Sierra Club Initial Post Hearing Brief, p. 28-29.

¹⁴ Id at 35.

¹⁵ *Non-Unanimous Stipulation and Agreement on Certain Issues*, pp. 2-3, filed 6/16/2015.

¹⁶ KCPL Initial Post-Hearing Brief, p. 141.

¹⁷ Ex. 134, KCPL witness Rush Direct, p. 59, l. 14; p. 66, ll. 8-9.

detailed energy price signals while simultaneously giving the Company a path to improving the tariffs.

Economic Development Rider/Urban Core Development Rider

DE continues to recommend that the Commission approve its proposal to link MEEIA participation to receipt of EDR and UCD incentives. KCPL opposes DE's proposal to link MEEIA participation to receipt of EDR and UCD incentives because KCPL believes the proposal to be administratively unenforceable.¹⁸ The only additional requirement would be for KCPL to determine whether any of the demand-side measures offered under its Business Energy Efficiency Programs were applicable to the customer's facility and would have a payback period of five years or less.¹⁹ As stated in the DE witness Ms. Lohraff's direct testimony, "only those measures that are both applicable and have an incremental payback of five years or less would become part of the EDR/UCD. If there are no applicable measures identified, or the identified measures cannot meet the payback criteria, no energy efficiency measures would be required to receive EDR/UCD benefits."²⁰ Additionally, KCPL opposes the proposal because it may violate provisions of the MEEIA statute by seemingly restricting the ability of customers to opt out.²¹ As stated in DE's Initial Post-hearing Brief and the testimonies of Ms. Lohraff, DE has changed its proposal since filing direct testimony in this case to exempt customers who qualify for opt-out under Commission rules 4 CSR 240-20.094(6)(A)(1) and 4 CSR 240-20.094(6)(A)(3).²² Additionally, if a new customer or an existing customer that has not previously opted-out can document that they are implementing all possible energy efficiency measures and none of the MEEIA Programs offerings are applicable and cost effective, they would still be eligible for an

¹⁸ KCPL Initial Post-Hearing Brief, p. 145.

¹⁹ Ex. 355, DE witness Lohraff Surrebuttal, p. 8, ll. 3-5 & 9-12.

²⁰ Ex. 354, DE witness Lohraff Direct, p. 6, ll. 10-13.

²¹ KCPL Initial Post-Hearing Brief, p. 145.

²² Ex. 355, DE witness Lohraff Surrebuttal, p. 5, ll. 16-23.

EDR or UCD.²³ DE made this change to its proposal due to concerns raised by other parties in this proceeding. DE notes that the Initial Post-Hearing Brief of Missouri Industrial Energy Consumers, which represents various opt-out customers and which was the only other party in this case to file testimony opposed to DE's recommendation, is completely silent on the issue of linking KCPL's EDR and UCD to participation in MEEIA.

Standby Service

DE continues to recommend that the Commission approve the *Nonunanimous Stipulation and Agreement on Certain Issues*, which states that "a working group should be formed to review KCP&L's Standby Service Tariff for the purposes of 1) ensuring that the design of standby rates and the terms and conditions of service are consistent with best practices and 2) to develop recommendations on cost-based rate levels. Signatories request that the Commission order KCPL to file a new Standby Service Tariff in its next general rate case." KCPL opposes the review of its Standby Service Tariff on the grounds that no showing has been made that it is in any way unreasonable or inadequate;²⁴ however, KCPL's Standby Service Tariff went into effect in 1997 and there is no recent evidence that the rates continue to be cost-based.²⁵ Additionally, parties have agreed to review stand-by rates in the most recent Ameren Missouri and Empire District Electric Company rate cases. Concurrent review of standby rates may result in a better end product and consistency of rate design. It's in Missouri's best interest for utility regulations to reflect the best available information on cost based standby service rates, to increase consumer choice of their electricity needs and respond to potential economic development opportunities.²⁶

²³ Id at p. 6 ll. 1-6.

²⁴ KCPL Initial Post-Hearing Brief, p. 142.

²⁵ Ex. 355, DE witness Lohraff Surrebuttal, p. 12, ll. 12-15

²⁶ Id. at p. 15, ll. 1-4.

Low-income Weatherization

DE continues to recommend that KCPL's low-income weatherization program costs be collected in base rates at the conclusion of the Company's current MEEIA cycle in December 2015. KCPL opposes this recommendation because the Company claims inclusion in MEEIA provides flexibility and support that does not necessarily exist through base rates.²⁷ Having program costs included in KCPL's base rates assures on-going funding on an annual basis regardless of whether KCPL has a Commission approved MEEIA portfolio. While KCPL states that it intends to continue MEEIA, there is no requirement that they do so. Additionally, any MEEIA portfolio must also first be approved by the Commission. When considering recent MEEIA cases the possibility of KCPL not having a MEEIA in place by the end of December becomes all the starker. Empire District Electric's MEEIA application has been suspended due to unresolved issues with its application. Also as of the date of this filing Ameren Missouri's MEEIA cycle two application has not been approved and has been opposed by both Staff and OPC. DE hopes that KCPL will submit a second cycle of MEEIA programs which the Commission will find acceptable; however, low-income weatherization is far too important of a program to be subject to the volatility of MEEIA. Weatherization provides a cost effective means to help low-income individuals and families pay their energy bills year after year for the life of the weatherization product, but Weatherization programs also represent job training for a number of community action agencies. These agencies need the assurance that they are going to have those jobs moving forward.²⁸ Having low-income weatherization programs funded through base rates provides that assurance.

²⁷ KCPL Initial Post-Hearing Brief, p. 147.

²⁸ Tr. Vol. 20, p. 1973, ll. 5-10.

WHEREFORE, the Missouri Division of Energy respectfully files its *Reply Brief*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 3rd day of August, 2015.

/s/ Alexander Antal

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