THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Emler

In the Matter of the Application of Kansas City Power & Light Company for Approval of its Demand-Side Management Portfolio Pursuant to the Kansas Energy Efficiency Investment Act ("KEEIA"), K.S.A. 66-1283.	)	Docket No. 16-KCPE-446-TAR

FINAL ORDER

Public Version

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

I. Background

1. On April 6, 2016, Kansas City Power & Light Company (KCP&L) filed its Application seeking approval of its Demand-Side Management Portfolio Pursuant to the Kansas Energy Efficiency Investment Act (KEEIA), K.S.A. 66-1283.[1] On August 22, 2016, KCP&L filed in support of its Application the Rebuttal Testimony of Brian File, Mary Turner, Tim Nelson, and Kim Winslow.

2. The Commission granted intervention in this docket to the Citizens' Utility Ratepayer Board (CURB); Westar Energy, Inc. and Kansas Gas and Electric Company (Westar); the Climate and Energy Project (CEP); Black Hills Energy (Black Hills); Atmos Energy (Atmos); Kansas Gas Service (KGS); National Housing Trust (NHT); Brightergy, LLC (Brightergy); and the Natural Resources Defense Council.

[1] Application for Kansas City Power & Light Company (Apr. 6, 2016).

3. On July 12, 2016, the Commission filed an Order Setting Procedural Schedule in this Docket.

4. On August 8, 2016, the National Housing Trust filed the Direct Testimony of Annika Brink.

5. On August 8, 2016, Atmos, Black Hills, and KGS (collectively the Gas Utilities) filed the Direct Testimony of Paul H. Raab.

6. On August 8, 2016, Westar filed the Direct Testimony of Scott Unekis.

7. On August 8, 2016, Staff filed the Direct Testimony of Justin T. Grady, John Turner, Lana Ellis, Darren Prince, Robert H. Glass, and Joshua P. Frantz. On August 15, 2016, Staff filed the Cross-Answering Testimony of Robert H. Glass.

8. On August 8, 2016, Brightergy filed the Direct Testimony of Jessica Oakley.

9. On August 8, 2016, CURB filed the Direct Testimony of Stacey Harden. On August 15, 2016, CURB filed the Cross-Answering Testimony of Stacey Harden.

10. On August 8, 2016, CEP filed the Direct Testimony of Dorothy Barnett.

11. On August 31, 2016 KCP&L, CEP, NHT, and Brightergy filed a Joint Motion for Approval of Non-Unanimous Stipulation and Agreement. In support of the Stipulation and Agreement CEP filed the Testimony in Support of Dorothy Barnett, NHT filed the Testimony of Annika Brink, and KCP&L filed the Testimony in Support of Darrin Ives, who described the Settlement Agreement and testified that the Settlement Agreement was consistent with the five factor test required by the Commission in non-unanimous settlement agreements.

12. On September 1, 2016, the parties filed a Consolidated List of Contested Issues. Included with that filing was a separate list of contested issues submitted by the Gas Utilities. Also filed September 1, 2016, was an Amended Contested Issues List by the NHT.

13. On September 12, 2016, KCP&L filed a Correction to its KEEIA Report.

14. On December 15, 2016, the Commission amended its prior Procedural Schedule and directed KCP&L to supplement its testimony in support of the Application, and granted the other parties an opportunity to respond via surrebuttal testimony.

15. On December 15, 2016, KCP&L filed the Supplemental Direct Testimony of Brian File, Tim Nelson, Mark Foltz, and Mary Turner.

16. On January 20, 2017, Staff filed the Surrebuttal/Supplemental/Amended Testimony of Joshua P. Frantz, Robert H. Glass, and Darren L. Prince.

17. The parties identified 17 contested issues which can be categorized as Evaluation Issues, Program Issues, and Recovery Issues.

Evaluation Issues

Cost Effectiveness Test

18. KCP&L's recommended portfolio of programs was designed to provide at least one program in which each of its customers could participate[2] and is estimated to cost $29.7 million over the three year life of the initial program.[3] KCP&L recommended its portfolio of programs based primarily on the Total Resource Cost ("TRC") test, which measures the value of a program across the entire customer base.[4]

19. Staff testified that the Commission ordered[5] when utilities file demand-side program proposals, those proposals be accompanied with the following benefit/cost tests: 1) TRC, 2) Ratepayer Impact Measure (RIM), Program Administrator Cost (PAC), and Participants

[2] KCP&L Brief p. 1.
[3] KEEIA Report, p. 1-2.
[4] KEEIA Report, pp. 2-7, pp. 3-12, p. A-17; Nelson Rebuttal, pp. 1 - 8, pp. 12-16, pp. 29-31.
[5] *See, Docket No. 08-GIMX-442-GIV Order Setting Energy Efficiency Policy Goals, Determining a Benefit-Cost Test Framework, and Engaging a Collaborative Process to Develop Benefit-Cost Test Technical Matters and an Evaluation, Measurement, and Verification Scheme, ¶38 (June 2, 2008) (08-442 Order); Docket No. 12-GIMX-337-GIV, Order p. 7 (March 6, 2013).*

tests.[6] Staff likewise testified that the Commission has previously stated two policy goals for demand-side programs: 1) the reduction or postponement of future construction of generation and reservation of capacity on natural gas transmission pipelines, and 2) the mitigation of customer bill increases.[7] According to Staff, the Commission has relied upon the TRC test because it ensures the demand-side program reduces net energy costs and the RIM test because the RIM shows the direction and degree of rate changes caused by the program.[8] Furthermore, Staff testified that though the Commission has not required the TRC and RIM tests to have a benefit-cost ratio of at least 1.0 for program implementation, the Commission had previously stated that programs with a TRC lower than 1.0 were unlikely to be approved.[9]

20. Staff testified that it utilized a three-stage approach to evaluating the cost effectiveness of demand-side programs.[10] In the first stage of Staff's analysis it reviewed KCP&L's benefit-cost test results.[11] If the TRC was above one, then Staff would proceed to stage two.[12] In the second stage, Staff asked KCP&L to conduct sensitivity analyses of KCP&L's benefit-cost test results to confirm Staff's belief that the two variables with the greatest impact on TRC results were the avoided capacity cost and the Net-to-Gross (NTG) ratio.[13] Based upon those results, Staff reasoned that if the TRC fell below one for a program or if the RIM for the program fell below 0.7, the program would not likely be cost-effective.[14] In the third stage, Staff evaluated the risk of the effect of a low RIM against other positive aspects of a program.[15]

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[6] Frantz, Direct, pp. 8-11; Glass Direct, p. 16.
[7] Glass Direct, p. 17.
[8] *Id.*
[9] Frantz Direct, p. 11; Glass Direct, p. 17.
[10] Glass Direct, pp. 22-23.
[11] *Id.* at p. 22.
[12] *Id.* at p. 22.
[13] *Id.* at p. 22-25.
[14] *Id.* at p. 25.
[15] *Id.* at pp. 25-26.

21. CURB recommended that the Commission deny KCP&L's portfolio of programs as failing both the TRC and RIM tests utilizing CURB's recommended avoided capacity cost.[16] CURB took issue with KCP&L's test results because it disagreed with KCP&L's estimate of avoided costs, and because KCP&L utilized a Technical Resource Manual ("TRM") instead of California Database for Energy Efficiency Resources ("DEER") standard values to estimate the useful life and savings for energy efficiency measures.[17]

22. CEP addressed this issue through the Direct Testimony of Dorothy Barnett which supported the position of KCP&L.[18]

Avoided Capacity Cost

23. Avoided capacity cost is the value of the reduction in capacity needs created by the demand-side program.[19] KCP&L recommended use of the avoided cost of capacity used in its Integrated Resource Plan (IRP) which represents the estimated cost of constructing a Combustion Turbine consistent with the long-term impact of Demand-side Management (DSM) programs.[20] KCP&L testified that its Cycle 1 DSM programs project significant amounts of kWh and Kw savings which, as shown in KCP&L's IRP, will lead to postponement of future generation.[21] KCP&L argued that its proposed avoided capacity cost of [redacted] per kW is consistent with KEEIA's policy of valuing DSM investments on an equal basis to traditional investments in supply and delivery infrastructure.[22]

[16] Harden Direct, p. 52.
[17] Harden Direct, pp. 17-19; Harden Cross-Answer, pp. 5-6.
[18] Barnett Direct, p. 3.
[19] KEEIA Report 1, pp. 4-7-to 4-9.
[20] KEEIA Report, p. 4-7, p. 4-8; Nelson Rebuttal, pp. 8–9, pp. 20-29; Ives Rebuttal, pp. 2, 3, 29, 32.
[21] Nelson Rebuttal, pp. 8– 9.
[22] *Id.*

24. Staff recommended the use of the avoided capacity cost of [redacted] derived in part from KCP&L's last pre-KEEIA DSM program extension filing,[23] representing the short-term cost of a capacity contract to which Staff added a transmission and delivery capacity cost.[24] Staff reasoned that given the extensive excess capacity in the Southwest Power Pool (SPP),[25] the market value of capacity should remain below the cost of building capacity for the near future.[26] In support of its rationale, Staff testified that, "[i]n 2015, SPP reserve margin was up 1% from 48% in 2014...which amounts to four times the SPP's Annual Planning Capacity Requirement of 12%."[27] Furthermore, Staff noted that wind capacity in the SPP was only counted as 5% of its capacity.[28] Staff contrasted these figures with the reserve margins of the Pennsylvania New Jersey Maryland Interconnection, LLC (PJM) at between 16% and 17%,[29] New York ISO at 17%, New England ISO at 14.4%, and the South Eastern Reliability Council at 15%.[30] Staff concluded from this data that Kansas does not need DSM to postpone construction of future generation even with plant retirements.[31] Staff posited that SPP is presently overflowing with excess capacity, which only solidifies the reason Staff chose to use a KCP&L capacity contract from two years ago to identify the true cost of avoided capacity.[32] Furthermore, Staff argued that given the excess capacity present in SPP today as compared to two years ago, it is likely this capacity contract price is even lower than the price used by Staff.[33]

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[23] *See,* Docket No. 14-KCPE-042-TAR, Application of Kansas City Power & Light Company for Approval to Extend its Demand-Side Management Programs, Attachment 5 (Jul. 18, 2013).
[24] Glass Direct, pp. 22-25.
[25] *See,* https://www.spp.org/about-us/ (the SPP oversees the bulk electric grid and wholesale power market in the central United States on behalf of a diverse group of utilities and transmission companies, including KCP&L).
[26] Glass Rebuttal, p. 9.
[27] *Id.*
[28] *Id.*
[29] *Id.* at p. 10.
[30] *Id.* at p. 11.
[31] *Id.* at p. 10.
[32] *Id.* at p. 10.
[33] *Id.* at p. 10.

25. CURB recommended the use of a [redacted] avoided capacity cost, which is consistent with the short-term cost of capacity contract utilized by KCP&L in 14-KCPE-042-TAR.[34] CURB argued that KCP&L's proposed avoided capacity cost is overstated because KCP&L has recently testified before the Commission that over the past eight years, demand for electricity is flat or even overall declining and has significantly softened.[35] Furthermore, CURB argued that even if the Commission approved KCP&L's application as proposed, KCP&L would still need to construct a 207 MW combustion turbine in 2027 and a second 207 MW combustion turbine in 2033.[36] In contrast, if the Commission denied KCP&L's application KCP&L would become capacity constrained in 2021 and would consider adding additional generation capacity in 2023.[37] CURB alleged that KCP&L has expanded its DSM offering in Missouri, both through Kansas City Power & Light-Missouri (KCPL-MO) and its Greater Missouri Operations (GMO) operations, yet the timeline for adding new generation has not significantly changed.[38] Despite KCPL_MO's and GMO's respective $94.2 million and $71.3 million investments in energy-efficiency programs across the border in Missouri, KCP&L's estimate of when it will need to add additional generation moved just one year from 2023 to 2024.[39]

Net-to-Gross Ratio

26. The NTG ratio adjusts the cost effectiveness results so that they only reflect those energy efficiency gains that are the direct result of the energy efficiency program in question.[40] The NTG reduces gross energy savings estimates to reflect three types of adjustments: 1) deduction of energy savings that would have been achieved even without a conservation

[34] Harden Direct, pp. 18-22; Harden Cross-Answer, pp. 2-5.
[35] Harden Direct, pp. 20-21.
[36] *Id.* at p. 21.
[37] *Id.* at p. 22.
[38] *Id.* at p. 23.
[39] *Id.* at pp. 22-24.
[40] Frantz Direct, p. 12.

program, 2) deduction of energy savings that are not actually achieved in real world implementation, and 3) addition of energy savings that occur as an indirect result of the conservation program.[41] These adjustments are meant to solve the issues of free riders, participant spillover, and non-participant spillover, respectively.[42]

27. KCP&L recommended use of an NTG ratio of 1.0 for initial evaluation of the programs as well as for initial calculation of the Throughput Disincentive (TD) recovery amount.[43] Thereafter, KCP&L recommended use of the results of the Evaluation, Measurement & Verification ("EM&V") study results for true-up of the Throughput Disincentive calculation and for calculation of the Earnings Opportunity (EO).[44] KCP&L explains it bases its proposal on its experience running energy efficiency programs in Missouri.[45] In that context, KCP&L states the downward and upward adjustment factors tend to roughly cancel each other out such that the net-to-gross is very close to 1.0.[46] Without prior basis in existing Kansas programs, KCP&L posited it is reasonable to begin with NTG assumptions of 1.0 and adjust these as program evaluations are conducted.[47]

28. Staff recommended the Commission use a 0.80 NTG ratio for initial program evaluation.[48] Staff testified that it utilized the NTG ratio estimate from the Navigant Demand-Side Resource Potential Study Report.[49] The authors of the Navigant report stated they [redacted]

[41] Frantz Direct, p. 12.
[42] KEEUA Report, p. 3-4 to 3-5.
[43] KEEIA Report, p. C-3; Nelson Rebuttal, pp. 8-10, p. 41; Ives Rebuttal, p. 3.
[44] *Id.*
[45] Nelson Rebuttal, p. 41.
[46] *Id.* at p. 41.
[47] *Id.* at p. 41.
[48] Glass Direct, pp. 22-25.
[49] Glass Rebuttal, p. 11.

[redacted]**[50] Staff further noted it preferred a NTG of 0.8 due to its prior experience with demand-side programs and Staff's risk aversion.[51] However, Staff noted that changing the NTG ratio did not have much effect on the benefit-cost scores.[52] Staff further noted because the effect of changing the NTG was linear it requested KCP&L run scenarios to compare an NTG ratio of 1.0 and an NTG ratio of 0.9 so that Staff could calculate what the benefit-cost test would be at an NTG of 0.8.[53] Staff reasoned that if a program failed with an NTG ratio of 0.9, then it would also fail with an NTG ratio of 0.8.[54] Likewise, Staff argued that the purpose of sensitivity analysis is to determine how the results of a model or program respond to different input values.[55] Staff claimed that its sensitivity analysis confirmed its previous experience that the key input to the benefit-cost tests was the avoided capacity cost.[56]

29. CURB argued that KCP&L's use of an NTG of 1.0 is contrary to the Commission's policy that California DEER values for NTG should be used.[57] Additionally, CURB objected to KCP&L's usage of NTG values that reflect participant and non-participant spillover contrary to the Commission's policies which specify that, at least temporarily, NTG should only reflect free ridership.[58] Consequently, CURB recommended that KCP&L be required to follow prior Commission policies which are consistent with KEEIA, inasmuch as those policies are the product of considerable study and are proven to be in the public interest.[59]

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[50] Glass Direct, pp. 23-24.
[51] *Id.* at p. 24.
[52] *Id.* at p. 23.
[53] Glass Rebuttal, p. 11.
[54] *Id.* at p. 11.
[55] *Id.* at p. 12.
[56] *Id.*
[57] Harden Direct, pp. 27-28; Harden Cross-Answer, p. 6.
[58] Harden Direct, p. 27.
[59] *Id.* at pp. 27-28.

TRM

30. KCP&L recommended use of its proposed Technical Resource Manual ("TRM"), including expected Measure Life and Expected Savings per measure and requested a variance/waiver from prior Commission orders, as necessary to do so.[60]

31. Staff discussed TRMs generally but took no position as to the request for a waiver from prior Commission orders requiring DEER. Staff expressed concerns pertaining to the wide range of estimates for measuring incremental cost, life expectancy of a measure, and energy and demand savings of a measure.[61] Staff testified that this wide range of estimates create uncertainty about the validity of KCP&L's benefit-cost test results.[62] Further, Staff indicated that it was unable to quantify the uncertainty created by the wide range of measure estimates when comparing KCP&L's TRM to various other TRMs.[63] Staff alleges that this uncertainty leads Staff to believe that all the estimates dependent upon KCP&L's TRM should be thought of as estimates with large error bands.[64] Those error bands, according to Staff, are of unknown size because KCP&L did not conduct sensitivity analysis regarding the effect of different variable values in its TRM.[65]

32. CURB opposed use of KCP&L's TRM because prior Commission orders require the use of the California DEER.[66] Additionally, CURB alleged that based upon its review it appears that KCP&L's TRM generally overstates the benefits measures, while concurrently

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[60] KEEIA Report 1-8; Turner Direct, p. 17.; Nelson Rebuttal, p. 2, pp. 31-38; Turner Rebuttal, pp. 6- 7, pp.10-11; Ives Rebuttal, p. 4, p. 32.
[61] Glass Direct, pp. 21-22.
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] Harden Direct, pp. 24-27; Harden Cross-Answer, p. 6.

understating the incremental cost of measures.[67] CURB was unable to provide a comparative analysis between the DEER values and the TRM values on the TRC and RIM test because KCP&L refused CURB's request to run a simulation through the DSMore model using the DEER standard values.[68] Regardless, CURB reasoned that if benefits are overstated and costs are understated, the calculated results of the TRC and RIM tests will be inflated.[69]

Fuel Switching

33. KCP&L contended that its residential programs have been designed to effectively remove fuel switching incentives by requiring that participants in residential programs only participate on a like for like basis.[70] KCP&L also argued that KEEIA's and the Commission's prior orders regarding fuel switching apply only to residential heating systems.[71] Despite that, KCP&L argued that its business programs were not likely to incentivize fuel switching because the majority of savings were found in replacement of inefficient lighting.[72]

34. Staff testified that there was a potential for the Business Energy Efficiency Rebate - Standard, Business Energy Efficiency Rebate -Custom, and Block Bidding Programs to create a bias toward electricity as a fuel source.[73] Staff also testified that the Commission has previously ordered that DSM were not to be offered in a manner that biases users toward a particular fuel source.[74] Staff recommended that if the Commission determines no DSM program should be offered in a manner that biases users toward a particular fuel source, measures that create such

[67] Harden Direct, pp. 25.
[68] *Id.* at p. 26.
[69] *Id.* at p. 26.
[70] File Rebuttal, pp. 2-7.
[71] File Rebuttal, pp. 2-7; 17-18; Turner Rebuttal, pp. 17-21.
[72] File Rebuttal, p. 18.
[73] *Id.* at p. 15.
[74] *Id.* at p. 16.

bias should be deemed ineligible for incentive as part of any program in KCP&L's KEEIA Cycle 1 DSM Program portfolio.[75]

35. The Gas Utilities testified KCP&L's programs that are offered for appliances, devices or process that can be powered by alternate fuels such as natural gas or propane should be rejected by the Commission.[76] The Gas Utilities raised specific concerns with the Whole House Efficiency Program, the Business Energy Efficiency Rebate Standard and Custom Programs.[77] Specifically, the Gas Utilities argued that these programs were inconsistent with the Commission's order in Docket No. 09-GIMX-160-GIV.[78] Likewise, the Gas Utilities argued that the payment of an energy efficiency incentive for the purpose of encouraging the installation of a high efficiency appliance will distort the fuel selection decision for that appliance. Thus, by approving the offending KCP&L programs, the Commission would be approving a market-share grab that will be funded twice by electric ratepayers: once for the incentive payment itself and then for the cost to provide the electricity over the lives of the devices added.[79] This is even more concerning, the Gas Utilities argued, because KCP&L is also proposing an offset of the TD at the same time energy efficiency investments are made.[80] This is of concern because KCP&L's ratepayers may also be forced to compensate KCP&L for lost margins that never really occurred.[81] Additionally, KCP&L is asking to be paid a bonus by its ratepayers for engaging in these actions by requesting an opportunity to earn an incentive amount based upon demand and energy savings achieved.[82]

[75] Frantz Direct, pp. 15-16.
[76] Raab Direct, p. 4.
[77] *Id.*
[78] *Id.* at pp. 5, 9-16.
[79] *Id.* at pp. 6, 9-16.
[80] *Id.* at pp. 6, 9-16.
[81] *Id.* at p. 6.
[82] *Id.* at pp. 6, 16-23.

36. As a final argument, the Gas Utilities testified that the distortions of the fuel selection decision caused by KCP&L incentives will universally result in increased usage of energy.[83]

Evaluation, Measurement, and Verification

37. KCP&L proposed to conduct EM&V in accordance with the EM&V plan and schedule outlined in Appendix C, EM&V Plan and Timeline, using an independent contractor hired by KCP&L with KCC Staff approval, with a Commission hired EM&V auditor to review the results.[84] KCP&L also requested to provide reporting to the Commission in accordance with the KEEIA interim reports on KCP&L's demand-side programs on an annual basis consistent with KEEIA rather than on a semi-annual basis.[85] Finally, KCP&L requested to file an EM&V report with the Commission twice during the three year KEEIA program cycle, or every 18 months, in accordance with the timeline set out in Appendix C with review by an Advisory Group and approval of the Commission.[86] KCP&L also requested a variance/waiver, to the extent required, from the Commission's prior orders regarding EM&V to allow for the proposed EM&V process.[87] KCP&L also proposed the use of Navigant Consulting as the EM&V provider for KEEIA Cycle 1.[88]

38. Staff recommended KCP&L be allowed to hire an independent evaluator subject to Staff's review and approval.[89] Staff reasoned that changes to the State of Kansas Request for Proposal policies have made impracticable the previous Commission requirement of selecting an

[83] *Id.* p. 6.
[84] KEEIA Report Appendix G.
[85] *Id.*
[86] KEEIA Report 1-9.
[87] KEEIA Report Appendix G.
[88] KEEIA Report, pp. 2-6 (KCP&L has not yet contracted with Navigant for these services because the proposed programs are not yet approved).
[89] Glass Direct, p. 28.

EM&V contractor collaboratively.[90] Staff further recommended the Commission allow Staff to hire its own EM&V auditor to review the results or conduct the audit in-house if sufficient resources are available.[91] Additionally, Staff recommended KCP&L provide reporting on its demand-side programs to the Commission on an annual basis consistent with Section (f) of KEEIA rather than on a semi-annual basis. Finally, Staff recommended KCP&L be permitted to file an EM&V report with the Commission every 18 months rather than two years as specified in previous dockets.[92]

39. CURB recommended the Commission approve an EM&V process that is consistent with the Commission's prior orders in the 442 Docket and 10-GIMX-013-GIV.[93] CURB's concern was that KCP&L's EM&V proposal deviated from the Commission's prior orders by shortening the time in which the programs would run prior to conducting EM&V and in the selection of the third party EM&V provider.[94] CURB objected to the deviation of the timeline set in the 442 Docket but did not explain why implementation of EM&V review after two years would be preferable to the 18 month timeline requested by KCP&L and supported by Staff.[95] CURB also objected to KCP&L's request to use Navigant to conduct EM&V, because KCP&L did not go through a Request for Proposal (RFP) process as contemplated in the Docket 08-GIMX-441-GIV or as outlined in Docket 10-GIMX-013-GIV.[96] CURB therefore argued that Navigant is not truly a third-party independent EM&V provider in this particular case.[97] CURB also argued that failure by the Commission to appoint an independent third-party evaluator will

[90] *Id.*
[91] *Id.*
[92] *Id.* at pp. 27-28.
[93] Harden Direct, pp. 30-31.
[94] *Id.* at p. 30.
[95] Harden Direct, pp. 30-32.
[96] *Id.* at p. 32.
[97] *Id.* at pp. 30-32.

inhibit the Commission's ability to provide effective oversight of KCP&L's KEEIA programs and could cost Kansas ratepayers millions of dollars.[98]

40. The Gas Utilities recommended that the EM&V provisions relating to the appliance rebate measures included in KCP&L's Whole House Efficiency Program, Business Standard Program and Business Custom Program should be modified so it will be possible to confirm through the audit process of those programs what appliances were replaced under the programs and that such confirmation can be done on a real-time basis.[99]

Advisory Group

41. KCP&L recommended implementation of an Advisory Group that would meet regularly to review the progress of KCP&L's KEEIA Cycle 1 programs as well as review and comment on the EM&V reports.[100]

42. NHT recommended that the Kansas Housing Resources Corporation (KHRC) be included as a targeted stakeholder by KCP&L[101] NHT argued that the KHRC was a valuable resource because of its ongoing relationships with affordable housing owners and with lenders active in the affordable multifamily space.[102]

43. CEP also testified in support of an on-going Advisory Group.[103]

[98] Harden Direct, pp. 31-32.
[99] Raab Direct, pp. 19-20.
[100] KEEIA Report, pp. 1-9, pp. 4-11 through 4-12; File Rebuttal, p. 9; Turner Rebuttal, pp. 13, 15.
[101] Brink Direct, p. 9.
[102] Brink Direct, p.9.
[103] Barnett Direct, p. 2.

Program Issues

Educational Programs

44. KCP&L filed for approval of two educational programs – Online Home Energy Audit and the Online Business Energy Audit.[104] The purpose of these programs is to inform customers of their energy consumption and ways to reduce energy usage.[105]

45. Staff recommended approval of these programs on the basis that the parameters, descriptions and target markets of the programs indicate they are in the public interest and are supported by a reasonable budget.[106] Staff further noted that educational programs are not required to undergo strict benefit-cost analysis so long as they are found to be in the public interest and supported by a reasonable budget.[107] Staff's analysis applied an overall budgetary guideline of 5% for educational programs based upon prior Commission policy.[108]

Income Eligible Programs

46. KCP&L filed for approval of two income-eligible programs – Income-Eligible Weatherization and Income-Eligible Multi-Family.[109] The Income-Eligible Multi-Family provides low-income multi-family housing energy efficiency measures to reduce electric consumption, at no cost to participants, with additional emphasis on common areas.[110] The Income-Eligible Multi-Family Program was amended by the Stipulation and Agreement to increase the number of annual participants and budget amount in years two and three of the

[104] KEEIA Report, Appendix A-5.
[105] *Id.*
[106] Ellis Direct, p. 6.
[107] *Id.*
[108] *Id.* at p. 8.
[109] KEEIA Report, pp. 1-4, 2-3; KEEIA Report, pp. 3-7 through 3-8; KEEIA Report, p. 3-13; KEEIA Report, pp. 4-1 through 4-4; KEEIA Report, p. 4-15, p. 4-17; KEEIA Report, p. 5-2, p. 6-1; KEEIA Report, Appendix A; Winslow Rebuttal, pp. 5-6, 8-9; Turner Rebuttal, pp. 2-5; Ives Rebuttal, p. 17.
[110] KEEIA Report, Appendix A-10.

program and more closely match the eligibility provisions to those in KCP&L's Missouri program.[111]

47. The Income-Eligible Weatherization Program provides similar measures as the Income-Eligible Multi-Family, but also provides weatherization measures at no cost to participants.[112]

48. Staff recommended approval of these programs on the basis that the parameters, descriptions and target markets of the programs indicate they are in the public interest and are supported by a reasonable budget.[113] Staff evaluated KCP&L's benefit-cost analysis and found that neither of the programs passed the TRC or RIM tests.[114] However, Staff noted that low-income programs are not required to pass strict benefit-cost analysis so long as they are found to be in the public interest and supported by a reasonable budget.[115] Staff argued that the programs would result in savings on energy bills each subsequent month following installation of those measures and "[t]hat rather than acting as a temporary fix, the measures would provide ongoing energy savings that should result in consistently lower bills for those customers, as well as reduced energy requirements for the system as a whole."[116]

49. Staff's analysis applied an overall budgetary guideline of 5% for low-income programs, similar to the analysis it conducted for educational programs.[117] Staff noted the Commission has articulated an overall budgetary guideline for education programs but has of yet not done the same for low-income programs.[118] Staff argued that in this case utilizing the 5% overall budget cap was appropriate because education programs are similar to low-income

[111] Stipulation and Agreement, p. 2 (Aug. 31, 2016).
[112] KEEIA Report, Appendix A-12.
[113] Ellis Direct, pp. 12-13.
[114] *Id.* at pp. 11-12.
[115] *Id.* at p. 6.
[116] *Id.* at p. 12.
[117] *Id.* at p. 8.
[118] *Id.*

programs in that neither require benefit-cost tests to be passed.[119] Staff requested the Commission either adopt the 5% overall budget cap or set another value as the budget cap in order to assist parties in future program design and requests for approval of future demand-side programs.[120]

50. NHT, while supporting approval of this program, requested enhancements to the Income-Eligible Multiple-Family program. Those enhancements included modifications to align the eligibility requirements of KCP&L's proposed program with those used in KCP&L's equivalent Missouri program, an increase to target units in years 2 and 3, and an associated increase to the program's budget.[121]

51. CURB did not specifically address either program but recommended denial of KCP&L's complete application based upon its conclusion that the rest of the portfolio of programs fails to pass the Total Resource Cost ("TRC") and Ratepayer Impact Measure ("RIM") tests.[122]

Residential Programs

52. In addition to the residential educational and income eligible programs, KCP&L filed for approval of four residential programs – Home Lighting Rebate,[123] Home Energy Report,[124] Whole House Efficiency[125] and Residential Programmable Thermostat.[126]

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[119] *Id.* at p. 14.
[120] Staff Brief, p. 46.
[121] Brink Direct pp. 3-12
[122] Harden Direct, pp. 9-12; 18-19.
[123] KEEIA Report, pp. 2-3; KEEIA Report, pp. 3-8, 3-12; KEEIA Report, p. 4-2; KEEIA Report, pp. A-1, B-1; Winslow Rebuttal, pp. 9-10, p. 12; Nelson Rebuttal, pp. 9, 12.
[124] KEEIA Report, pp. 3-4 through 3-8; Winslow Rebuttal, pp. 9-12; Nelson Rebuttal, p. 12; Ives Rebuttal, p. 17.
[125] KEEIA Report, pp. 3-2, 3-7, 3-8; KEEIA Report, pp. 4-2 through 4-3; KEEIA Report, pp. A-6, A-14; Winslow Rebuttal, p. 9; File Rebuttal, pp. 1- 4; Nelson Rebuttal, pp. 12- 16; Turner Rebuttal, pp. 3, 19; Ives Rebuttal, pp. 16-17.
[126] KEEIA Report, pp. 2-7; KEEIA Report, pp. 3-6 through 3-8; KEEIA Report, p. 4-1; KEEIA Report, pp. 4-5 through 4-6; KEEIA Report, pp. A-14 through A-15; Winslow Rebuttal, pp. 9, 10-14; Nelson Rebuttal, pp. 13, 21; Turner Rebuttal, p. 3; Ives Rebuttal, p. 7.

53. The Home Lighting Rebate Program provides a point of sale discount at retail stores for customers purchasing Light Emitting Diode light bulbs.[127]

54. The Home Energy Report Program provides residential customers with periodic reports on their energy usage and suggestions on ways to improve their home's efficiency.[128]

55. The Whole House Efficiency Program offers the following three options for customers: 1) a home energy audit and free installation of basic energy-efficiency measures; 2) weatherization measures, available to customers who have completed option 1; and 3) early retirement or replacement of heating ventilation air conditioning equipment.[129]

56. The Residential Programmable Thermostat Program is a residential demand-response program that uses thermostats to provide curtailable load reduction during periods of system peak, delivery constraints or for other economic reasons.[130]

57. Staff recommended approval of the Home Lighting Rebate Program because it passed the TRC test[131] and was sufficiently accessible to KCP&L customers to justify approving the program even though it did not pass the RIM test.[132] Regarding the Programmable Thermostat Program, Staff noted that it did not pass the TRC or RIM test but argued the anticipated high participation rate and openness to all customers would reduce the risk of low TRC and RIM results.[133] Furthermore, Staff noted KCP&L indicated participation in the program would be offered to a large number of KCP&L customers.[134]

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[127] Winslow Supplemental, p. 12.
[128] Prince Direct, p. 9.
[129] KEEIA Report, Appendix A-6.
[130] KEEIA Report, Appendix A-14; KEEIA Report, Appendix E, Tariff 12.08 Sheet 4 of 5; Tariff 12.17, Sheet 2 of 2.
[131] Prince Direct, p. 17.
[132] *Id.* at pp. 17-19.
[133] *Id.* at pp. 17-19, 21.
[134] KEEIA Report, Appendix A-15; Tr. Vol. 1, p. 89.

58. Staff did not recommend approval of the Whole House Efficiency program or the Home Energy Report Program.[135] Staff rejected the Whole House Efficiency program because under Staff's analysis it failed both the TRC and the RIM tests.[136] Additionally, Staff raised concerns regarding the program's level of participation.[137] Staff had initially recommended approval of the Home Energy Report Program but amended its recommendation after an error in the data provided by KCP&L came to light. The result of the error caused the program to fail the TRC test.

59. The Gas Utilities argued the like for like appliance rebate measure included in KCP&L's Whole House Efficiency Program does not comply with KEEIA's requirement that energy efficiency programs should "not include any measures to incent fuel switching for residential heating systems," and the KCC's order issued in the 160 Docket that concluded that an energy efficiency program should be established "in a manner that does not bias users toward a particular fuel source."[138] As explained in the pre-filed testimony of Paul Raab filed on behalf of the Gas Utilities, the appliance rebates proposed by KCP&L incent and bias users toward the purchase of an appliance using a particular fuel source (electricity).[139]

60. CURB specifically addressed the Residential Programmable Thermostat Program and recommended denial of KCP&L's complete application based upon CURB's conclusion that the entire portfolio of programs failed to pass the TRC and RIM tests.[140] CURB was specifically concerned with the Residential Thermostat Program because Kansas ratepayers will be charged to replace thermostats that were provided under KCP&L's existing Energy Optimizer

[135] Prince Direct, pp. 6-8, 9-10, 16-18; Prince Supplemental, p. 4.
[136] *Id.* at pp. 10-13, 19-20.
[137] Tr. Vol. 2, pp. 384-385.
[138] Raab Direct, pp. 4-16.
[139] *Id.*
[140] Harden Direct, pp. 9-12; 18-19.

program.[141] CURB asserted these thermostats, which have already been paid for by ratepayers, are still functioning and can be used by KCP&L during cycling events.[142] In response to CURB's Data Request 49, KCP&L was unsure when it would no longer have the ability to cycle the existing thermostats because "[a]t some point the vendor may decide to stop offering the communication services to the existing thermostats in the program, which would render them unable to cycle as part of the Programmable Thermostat program."[143] Therefore, CURB did not recommend the Commission allow KCP&L to charge Kansas ratepayers an additional [redacted] to replace thermostats that are still functioning and can be used by KCP&L during cycling events.[144]

Business Programs

61. In addition to the business educational program, KCP&L filed for approval of six business programs – Business Energy Efficiency Rebate - Standard,[145] Business Energy Efficiency Rebate - Custom,[146] Small Business Direct Install,[147] Strategic Energy Management,[148] Block Bidding[149] and Demand Response Incentive.[150]

62. The Business Energy Efficiency Rebate – Standard Program is designed to help commercial and industrial customers save energy through a range of prescriptive energy efficiency measures.[151] Program participants purchase energy efficient equipment from a pre-

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[141] *Id.*
[142] *Id.*
[143] *Id.* at p. 16 (quoting KCPL response to CURB Data Request 48).
[144] *Id.* at p. 17.
[145] KEEIA Report, pp. 1-4, 3-6, 4-2 through 4-3, 4-17; KEEIA Report, pp. A-16 through A-21; File Rebuttal, p. 8; Nelson Rebuttal, p. 12.
[146] *Id.*
[147] *Id.*
[148] *Id.*
[149] *Id.*
[150] *Id.*
[151] Frantz Direct, p. 16.

qualified list and are issued rebates upon completion of the project and submission of the rebate application.[152] KCP&L's proposed program was modified by the Settlement Agreement so that a customer could pursue a rebate under the Business Energy Efficiency Rebate – Custom Program if the hours of use are 20% higher than the Annual Operating Hours from KCP&L's TRM.[153]

63. The Business Energy Efficiency Rebate – Custom Program is designed to help commercial and industrial customers save energy by encouraging business and industrial customers purchase and install energy-efficiency equipment.[154] Program participants submit applications for equipment not contained on the Business-Standard Program's prescriptive list. The applications then undergo benefit-cost analysis conducted by KCP&L.[155] This program was modified by the Settlement Agreement to require KCP&L to work with municipalities, school districts, hospitals and colleges to benchmark energy usage and to provide to owners of multi-tenant buildings with five or more tenants and over 50,000 square feet, aggregated whole building electricity usage data.[156] KCP&L's cost for providing aggregated whole building electricity usage is to be considered a program cost under the Business Energy Efficiency Rebate-Custom Program.[157]

64. The Strategic Energy Management Program provides energy education, technical assistance and company-wide coaching to large commercial and industrial customers to drive behavioral change and transformation of company culture with respect to energy use and management.[158]

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[152] *Id.*
[153] Ives Support, p. 5.
[154] Frantz Direct, p. 20.
[155] *Id.*
[156] Settlement Agreement, p. 3.
[157] *Id.*
[158] KEEIA Report, Appendix A-24.

65. The Block Bidding Program is a reverse auction that purchases blocks of energy and demand savings from customers by issuing Request for Proposals to eligible commercial and industrial customers.[159]

66. The Small Business Direct Install Program provides lighting measures to small and medium businesses.[160] Under this program, KCP&L will partner with third party vendors, who will install lighting measures for program participants.[161] KCP&L reasoned that small business customers do not have the time to become better educated about energy efficiency nor do they have the money to be more energy efficient.[162]

67. The Demand Response Incentive Program is designed to provide economic, system or grid relief during peak hours by decreasing demand usage.[163] This program is available to large commercial and industrial customers with load curtailment capability of at least 25 kW.[164]

68. Staff recommended approval of the Business Energy Efficiency Rebate – Standard Program[165] and conditional approval of the Demand Response Incentive[166] Program, but recommended denial of the remaining four business programs.[167] Staff's concern with these four programs was using Staff's recommended avoided capacity cost and NTG ratio the Strategic Energy Management,[168] Business-Custom,[169] and Small Business Direct Install[170] programs

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[159] Frantz Direct, pp. 33-35.
[160] KEEIA Report, Appendix A-31.
[161] *Id.*
[162] *Id.*at A-31, A-32.
[163] Frantz Direct, p. 44.
[164] *Id.* at p. 44.
[165] *Id.* at pp. 16-20 (Staff's analysis indicated the program passed the TRC test but had low RIM scores. Staff was unconcerned because KCP&L intends to market the program to all commercial and industrial customers with measures of which customers may easily take advantage.).
[166] *Id.* at pp. 44-49.
[167] *Id.* at pp. 20-26, 26-33, 33-39, 39-43.
[168] *Id.* at p. 32.
[169] *Id.* at p. 25.
[170] *Id.* at p. 43.

failed the TRC Test and all four programs result in unacceptable RIM ratios in relation to participation levels.[171] Additionally, Staff testified the Block Bidding Program could not be fully evaluated given the absence of any meaningful or measurable data.[172]

69. Regarding the Demand Response Incentive Program, Staff recommended that contract duration be limited to the timeframe KCP&L's KEEIA Cycle 1 is in effect.[173] Also, Staff recommended the proportion of risk borne by non-participants and the utility be altered by lowering the fixed capacity-reserve incentive while raising the performance incentive paid for curtailment.[174]

70. The Gas Utilities argued the appliance rebates included in KCP&L's Business Standard-Program and Business-Custom Program do not comply with the KCC's Order issued in the 160 Docket that concluded that an energy efficiency program should be established "in a manner that does not bias users towards a particular fuel source."[175] As explained in the pre-filed testimony of Paul Raab, the appliance rebates proposed by KCP&L bias users toward the purchase of an appliance using a particular fuel source (electricity).[176] In addition, the conclusion reached by the KCC in its order issued in the 160 Docket is applicable to KCPL's Business-Standard and Business-Custom Programs.[177]

71. CURB does not specifically address any of these business programs but recommended denial of KCP&L's complete application based upon its conclusion that the entire portfolio of programs fails to pass the TRC and RIM tests.[178]

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[171] *Id.* at pp. 32-33, 39, 43.
[172] *Id.* at p. 39.
[173] *Id.* at p. 48.
[174] *Id.* at pp. 48-49.
[175] Raab Direct, pp.4-16.
[176] *Id.*
[177] *See*, Gas Utilities' Brief, pp. 8-9, 11-12, 15-17.
[178] Harden Direct, pp. 9-12; 18-19.

Research and Pilot

72. KCP&L included a budget for DSM-related research and implementation of pilot programs in addition to the programs listed above.[179] No other party raised any concerns regarding KCP&L's research and pilot proposal.

Termination of Existing Programs

73. KCP&L requested to terminate the Cool Homes, Energy Star New Homes, Energy Audit and Energy Measure Rider, and Building Operators Certificate programs.[180]

74. Staff testified in support of KCP&L's proposal but recommended that if the Commission denies the Business Energy Efficiency Rebate-Custom program, KCP&L be permitted to continue operating the Building Operators Certificate Program.[181]

Recovery Issues

Program Cost Recovery

75. KCP&L recommended use of projected program costs with true-up to actual costs (with symmetric carrying charge accumulation to reflect time value of money at short-term debt cost rate) filed on a semi-annual basis.[182] KCP&L also recommended inclusion in the DSIM Rider of incremental labor costs necessary to implement the approved KEEIA portfolio.[183]

76. Staff recommended the use of a revised version of the DSIM Rider that recovers actual, historically incurred costs beginning in May following the year in which Program Costs were incurred.[184] Additionally, Staff recommended the balance of these unrecovered expenses be allowed to accumulate carrying charges to recognize the time-value of money associated with the

[179] KEEIA Report, p. 4-12, p. 5-2, p. 7-4.
[180] KEEIA Report, p. 3-8, p. 3-9.
[181] Ellis Direct, pp. 15-18.
[182] KEEIA Report, p. 1-8; KEEIA Report, pp. 4-14 through 4-19; KEEIA Report, Appendix E, Schedule 18, Sheets 1-10; Foltz Rebuttal, pp. 3-9, 10-11, 18-19, 22; Ives Rebuttal, pp. 18-20.
[183] *Id.*
[184] Grady Direct, pp. 5, 7-8, 9-10; Glass Direct, pp.12-13; Glass Cross-Answering; p.17.

lag in the recovery of these expenditures.[185] Staff reasoned its revision to the DSIM Rider would reduce the amount of regulatory lag inherent in the existing Energy Efficiency (EE) Rider from 12 months down to 10 months.[186] Additionally, Staff noted the under/over recovered balances for Program Costs, TD, and EO would accrue carrying charges at the short-term borrowing cost rate available to KCP&L, which would make KCP&L or ratepayers whole for any lost time value of money that is experienced due to regulatory lag associated with Staff's proposal.[187]

77. CURB recommended that actual program costs be recovered through the current EE Rider or some similar mechanism as there is no reason to create an entirely new mechanism to recover such costs.[188] CURB advocated the guiding principle of the Commission should be to put cost recovery of DSM programs on the same basis as supply side programs.[189] Thus to the greatest extent possible, the Commission should mirror the mechanism for recovery of DSM program costs with the traditional ratemaking requirement that investors are entitled to the opportunity to earn a reasonable return on the investment they made related to the provision of safe and reliable utility service.[190] CURB reasoned that the existing EE Rider provides a reasonable mechanism for recovery of costs associated with the KEEIA or a similar program.[191]

Earnings Opportunity

78. KCP&L proposed an EO award that would align KCP&L's interests with helping its customers use energy more efficiently and in a manner that sustains or enhances such

[185] *Id.* at p. 8 (for this calculation, Staff stated it would not object to KCP&L's short term borrowing rate definition in the DSIM Rider tariff.).
[186] *Id.* pp. 8-9 (Staff further testified that the EE Rider was timely for purposes of complying with KEEIA.).
[187] *Id.* at p. 9.
[188] Harden Direct, pp. 34-41.
[189] *Id.* at p. 39.
[190] *Id.* at pp. 39-40.
[191] *Id.* at pp. 40-41.

customers' incentives to use energy more efficiently.[192] As proposed, the EO will be earned proportionally[193] to the actual kWh and kW achieved as determined by the EM&V evaluator including an adjustment for ex-post gross and NTG.[194] KCP&L included a matrix based on the KCP&L's recommended methodology.[195] The EO target proposed by KCP&L provides a sharing of net benefits with approximately 83% of the net benefits to the customer and 17% of the net benefits to the KCP&L's shareholders.[196] Under KCP&L's proposal, KCP&L would have an opportunity to earn up $12.0 million in additional margin associated with successful implementation. KCP&L testified its targeted EO was $8.5 million.[197]

79. Staff recommended a shared net benefits approach with 90% of the net benefits going to the customer and 10% of the net benefits for KCP&L's shareholders.[198] Under Staff's proposal, total benefits would be calculated using avoided energy multiplied by a particular customer's rate and capacity costs (in kilowatts saved) multiplied by [redacted][199] Total costs would be actual program costs as defined in Staff's proposed DSIM mechanism plus any additional revenue KCP&L would receive from Staff's decoupling mechanism.[200] Staff argued its proposal would orient KCP&L's incentives toward promoting demand-side programs since KCP&L has the opportunity to recover more than its allowed revenue requirement if it runs successful demand-side programs that create benefits to customers.[201]

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[192] KEEIA Report, pp. 4-17.
[193] *Id.* (Except for the HER and Low Income Programs).
[194] *Id.*
[195] KEEIA Report, Appendix I.
[196] KEEIA Report, pp. 1-8; KEEIA Report, pp. 4-14 through 4-19; KEEIA Report, Appendix E, Schedule 18, Sheets 1-10 ; KEEIA Report, Appendix I; Foltz Rebuttal, pp. 22-23; Ives Rebuttal, pp. 27-31.
[197] KEEIA Report, p. 4-18.
[198] Glass Direct, pp. 12-13, 18-19.
[199] *Id.* at p. 13.
[200] *Id.*
[201] *Id.*

80. CURB recommended KCP&L's EO not be approved because the EO does not reflect a return on investment by shareholders in KCP&L inasmuch as 100% of the actual program costs would be recovered from ratepayers and is, therefore, not cost based and is inconsistent with traditional ratemaking principles.[202] CURB also disagreed with the amount of benefits which KCP&L asserted would inure to the benefit of ratepayers.[203] Alternatively, if the Commission were to approve some form of additional equity return be given to KCP&L, then CURB recommended the Commission require actual Program costs be amortized over a multi-year period and KCP&L be permitted to recover carrying costs on the unamortized balance.[204] CURB reasoned this methodology would value DSM investments on the same basis as supply side resources, as is required by KEEIA.[205]

Throughput Disincentive

81. KCP&L recommended recovery of projected TD costs to reimburse KCP&L for lost revenue due to demand-side savings.[206] KCP&L's proposed calculation methodology is based on estimated kWh savings from DSM measures installed with true-up to actual on a semi-annual basis and true-up to EM&V study results through adjustment of the EO when the second EM&V study is final.[207] KCP&L testified that under its proposal it would recover approximately $20 million in order to make shareholders whole for margins lost as a result of the KEEIA Program.[208]

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[202] Harden Direct, p. 49.
[203] *Id.* at p. 48.
[204] *Id.* at p. 36.
[205] *Id.* at p. 52.
[206] KEEIA Report, pp. 4-14 through 4-19.
[207] KEEIA Report, p. 1-8; KEEIA Report, pp. 4-14 through 4-19; KEEIA Report, Appendix E, Schedule 18, Sheets 1-10; Foltz Rebuttal, pp. 3-9, 11-22; Ives Rebuttal, pp. 20-27.
[208] KEEIA Report, p. 4-16.

82. Staff proposed a decoupling mechanism that would recover the difference between KCP&L's approved revenue requirement and its actual revenue collection, if EM&V shows the lost revenue was due to demand-side programs.[209] This would have the effect of neutralizing the possibility of KCP&L under recovering its actual costs.[210] Staff argued its approach was preferable to KCP&L's TD because unlike the TD, which is based on estimation and forecasting, Staff's decoupling proposal depends on the difference between measured revenue collected and the approved revenue requirement and the EM&V investigations.[211] Therefore, Staff's proposal would have the advantage of using actual data and retrospective verification of energy savings.[212]

83. CURB recommended KCP&L's TD not be approved for several reasons. First, CURB testified since any evaluation must be based on numerous assumptions, it is impossible to accurately assess the impact of any particular demand-side management program on a utility's sales.[213] As an example in support of its argument, CURB cited the customer who may receive an energy efficient light bulb and then never install it or, perhaps, increase usage, thus offsetting the benefit of the more efficient lighting.[214] Likewise, CURB argued usage patterns can change without regard to energy efficiency measures.[215] For example, children may return from college, elderly parents may move in, a person's job may change, or a multitude of other facts, all of which may impact energy usage.[216] Despite KCP&L's ability to accurately track the number of measures distributed, in many cases KCP&L will not know with certainty the number of

[209] Glass Direct, p. 12.
[210] *Id.*
[211] *Id.* at pp. 13-14.
[212] *Id.* at p. 14.
[213] Harden Direct, pp. 41-42.
[214] *Id.*
[215] *Id.*
[216] *Id.*

measures actually installed and utilized.[217] CURB acknowledged KCP&L may rely upon general demand response assumptions that have been developed to estimate the impact of various energy-efficiency measures on consumption, and other evaluation techniques.[218] However, CURB argued KCP&L will not be able to know with certainty how usage would have varied if the energy-efficiency measure had not been installed.[219] Furthermore, CURB asserted charging a TD sends the wrong signal to customers by requiring ratepayers who conserve energy to pay more for their electricity.[220]

84. CEP supported the position of KCP&L.[221]

Labor Costs

85. KCP&L requested the inclusion of internal labor expenses associated with the 4.5 new full time employees (FTEs) that it asserts would be necessary in order to implement the KEEIA Cycle 1 demand-side programs.[222] Employees assigned to implementation of demand-side programs would work for all three KCP&L jurisdictions and their time would be charged accordingly.[223]

86. Staff expressed concern that KCP&L may be able to over-recover its internal labor expenses by recovering those costs in base rates as well as in a surcharge mechanism.[224] Staff therefore recommended if KCP&L could show its actual internal labor expenses in aggregate are higher than the level used to set its base rates in the last rate case, and the

[217] *Id.*
[218] *Id.*
[219] *Id.*
[220] *Id.*
[221] Barnett Direct, p. 2.
[222] KEEIA Report, p. 2-7; Ives Rebuttal, pp. 19-20.
[223] *Id.*
[224] Grady Direct, p. 11.

employee's job function is solely related to DSM/energy efficiency, Staff would not object to the inclusion of those incremental internal labor expenses in the DSIM Rider.[225]

87. Similar to Staff, CURB expressed concern regarding the potential for KCP&L to double recover labor expenses through both base rates and a surcharge mechanism.[226] CURB did not expressly advocate for labor cost inclusion or exclusion in the DSIM rider, but rather recommended if the Commission allows incremental labor costs to be included in the proposed DSIM, the Commission should establish clear guidelines and measures that ensure the included labor costs are solely related to the demand-side management programs and do not reflect any general allocations that could include costs already being recovered in base rates.[227]

Ten Percent Portfolio

88. The Commission's Order Following Collaborative on Benefit-Cost Testing and Evaluation, Measurement, and Verification, issued Apr. 13, 2009 in Docket No. 08-GIMX-442-GIV, established a 10% budget variance for individual DSM programs. KCP&L requested the 10% budget variance be applied to the entire portfolio of programs, rather than on a program-by-program basis.[228] KCP&L asserted this flexibility would allow KCP&L to better manage actual program participation, reallocate the marketing budget, or address variances in actual implementation costs.[229]

89. Staff recommended approving KCP&L's request to change the 10% budget variance from a program to a portfolio level because it would grant KCP&L the flexibility to

[225] *Id.* at pp. 11-12.
[226] Harden Direct, pp. 32-33.
[227] *Id.* at pp. 33-34.
[228] KEEIA Report, Appendix G.
[229] *Id.*

better manage its programs by redirecting funds to address unforeseen implementation cost and participation variances.[230]

90. CURB recommended the Commission not grant KCP&L's request to change the 10% budget variance from a program to a portfolio level.[231] CURB noted if the Commission granted such a waiver, KCP&L could disregard the budget in any one program by reallocating a substantial portion of the budget in another program and remain within the 10% portfolio limitation.[232] CURB asserted that granting such broad flexibility over the overall budget would result in essentially no Commission oversight over program budget limitations.[233]

II. Legal Standard

91. Every public utility in Kansas is required to provide reasonably efficient and sufficient service and establish just and reasonable rates.[234] Just and reasonable rates are those that fall within a "zone of reasonableness," which balances the interests of present versus future ratepayers, and the public interest.[235] The Kansas Supreme Court has recognized that "the touchstone of public utility law is the rule that one class of consumers shall not be burdened with costs created by another class."[236] The Commission may in addition to cost-causation, consider matters of public policy, such as gradualism to minimize rate shock, revenue stability for the company, economic development, and energy efficiency.[237]Both federal and state courts have been clear that rates must be based on costs and supported by substantial competent evidence.[238]

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[230] Glass Direct, pp. 27-28.
[231] Harden Direct, p. 29.
[232] *Id.*
[233] *Id.*
[234] K.S.A. 66-101b.
[235] *Kansas Gas and Elec. Co. v. Kansas Corp. Comm'n.*, 239 Kan. 483, 488 (1986).
[236] *Jones v. Kansas Gas & Electric Co.*, 222 Kan. 390, 401 (1977).
[237] Staff Direct Testimony Prepared by Robert Glass, p. 10, Docket No. 12-KCPE-764-RTS (Aug. 22, 2012); *See* also, *Midwest Gas Users Ass'n v. Kansas Corp. Comm'n,* 3 Kan. App.2d 376, 380 (1979).
[238] *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *Kansas Gas and Electric Co.*, 239 Kan. At 501; *Zinke & Trumbo, Ltd. v. State Corp. Comm'n,* 242 Kan. 470, 475 (1988).

Substantial competent evidence is that which possesses something of substance and relevant consequence, and which furnishes a substantial basis of fact from which the issues can reasonably be resolved.[239] A decision of the Commission is unsupported by substantial competent evidence "only when the evidence shows the [Commission's] determination 'is so wide of the mark as to be outside the realm of fair debate.' "[240] The Kansas Supreme Court has also stated that the Commission "is not obligated to render its finding of fact in minute detail ... [h]owever, we require its findings to be specific enough to allow judicial review of the reasonableness of the order."[241]

92. KEEIA directs the Commission, when practicable, to value demand-side program investments equal to traditional investments in supply and delivery infrastructure.[242] KEEIA requires the Commission to allow for the timely recovery of the reasonable and prudent costs associated with delivering commission-approved demand-side programs, so long as the program meets the following two conditions.[243] First, programs must result in energy or demand savings[244] and second, programs must be beneficial to customers in the customer class for which the programs were implemented, whether or not the program is utilized by all customers in such class.[245] KEEIA requires the Commission ensure financial incentives for an electric public utility are aligned with helping such utility's customers use energy more efficiently and in a manner that sustains or enhances such customers' incentives to use energy more efficiently.[246] KEEIA further requires the Commission to provide timely earnings opportunities for public

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[239] *Farmland Indus., Inc. v. Kansas Corp. Comm'n.*, 25 Kan.App.2d 849, 852 (1999).
[240] *Zinke & Trumbo, Ltd. v. Kansas Corp. Comm'n*, 242 Kan. 470, 474 (1988) (quoting *Kansas-Nebraska Natural Gas Co. v. Kansas Corp. Comm'n*, 217 Kan. 604, 617).
[241] *Id.* at 475.
[242] K.S.A. 66-1283(b).
[243] K.S.A. 66-1283(c)(2); K.S.A. 66-1283(e)(1).
[244] *Id.*
[245] *Id.*
[246] K.S.A. 66-1283(d)(1)(2).

utilities associated with cost-effective, measurable and verifiable demand-side program savings.[247] Under KEEIA, the Commission provides oversight and approval for utility-specific settlements and tariff provisions.[248]

III. Analysis/Findings

93. The Commission finds that the pre-filed direct, cross, rebuttal, and supplemental testimony of 16 witnesses, and three days of hearing have provided ample evidence from which to base a decision.

94. During the hearing, KCP&L testified if the Commission did not grant the avoided capacity cost, EO, TD, or recovery mechanism as proposed by KCP&L, KCP&L would be unable to move forward with its application.[249] Regardless of whether KCP&L opts to withdraw its application as permitted under KEEIA, the Commission finds it is in the public interest for the Commission to provide guidance regarding how it views the issues raised by the parties. The Commission is hopeful with the clarification contained herein utilities may be able to craft a portfolio of programs the Commission can approve.

95. K.S.A. 66-1283(b) directs demand-side program investments to be valued equal to traditional investments in supply and delivery infrastructure as much as is practicable. Consequently, the Commission finds that as much as practicable the principles of traditional ratemaking, including a return of and a return on investment, should apply, as well.[250]

[247] K.S.A. 66-1283(d)(1)(3).
[248] K.S.A. 66-1283(d)(1)(4).
[249] Tr. Vol. 2, pp. 426-429.
[250] *See, Moundridge Tel. Co., Inc. v. Kansas Corp. Comm'n.,* 361 P.3d 523 (Kan. App. 2015); K.S.A. 66-128; K.S.A. 66-128c; K.S.A. 66-101b.

Evaluation Issues

Cost Effectiveness Test

96. The Commission finds that KEEIA gives the Commission full discretion to establish the appropriate benefit-cost tests to use when evaluating energy efficiency programs.[251] The Commission finds the stated rationale in the Docket No. 08-GIMX-442-GIV is consistent with KEEIA.[252] In that order, the Commission stated, "[t]he Commission has determined that reducing or postponing future construction of generation and reservation of capacity on natural gas transmission pipelines are primary goals which may have benefits for all of a utility's customers. Therefore, the Commission will place emphasis on the TRC Test since the TRC Test reflects the benefit to implementing an energy efficiency program throughout a utility's territory."[253] Likewise, the Commission stated it "... has also identified the mitigation of customer bill increases as a primary goal. Thus, the Commission will also place an emphasis on the review of the RIM Test. This will provide the Commission with information regarding the effect on rates that may occur if an energy plan is implemented."[254] Therefore, the Commission upholds its prior orders that the appropriate benefit-cost tests are the 1) Participant Test; 2) Ratepayer Impact Test (RIM); 3) Program Administrator Test (PAC); and 4) Total Resource Cost Test (TRC).[255] However, the Commission shall continue to place primary emphasis on the TRC and RIM tests because these tests provide information particularly relevant to KEEIA's and the Commission's shared policy objectives.[256]

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[251] K.S.A. 66-1283(c)(1)(D).
[252] *See,* Order Setting Energy Efficiency Policy Goals, Determining a Benefit-Cost Test Framework, and Engaging a Collaborative Process to Develop Benefit-Cost Test Technical Matters and an Evaluation, Measurement and Verification Scheme, (June 2, 2008); Docket No. 12-GIMX-337-GIV, Order ¶15 (Mar. 6, 2013).
[253] *Id.* at p. 15.
[254] *Id.* at p. 16.
[255] *Id.* at p. 13.
[256] *Id.* at p. 16.

Avoided Capacity Cost

97. As previously stated, KEEIA clearly directs demand-side program investments should be valued the same as traditional supply or delivery infrastructure, when practicable.[257] For this reason, the Commission acknowledges KCP&L's avoided capacity cost is in keeping with the overall spirit of KEEIA and under different circumstances would be appropriate. However, the Commission finds that KEEIA's caveat "as much as practicable" requires the Commission to make a finding as to the present circumstances affecting the practicability of valuing demand-side programs the same as traditional supply or delivery infrastructure. Under traditional ratemaking principles the Commission makes a valuation of utility property that is used and required to be used for public service.[258] When making a valuation of utility property the Commission is granted the power to evaluate the efficiency or prudence of acquisition, construction, or operating practices of a utility.[259] If the Commission determines that a portion of the costs were incurred in the acquisition or construction of excess capacity, the Commission is granted the power and authority to exclude all or a portion of those costs from the revenue requested by the utility.[260] The Commission, thus, concludes that when valuing traditional supply infrastructure the Commission may take into consideration the current availability of capacity.

98. In this case, the Commission is concerned about the current energy market facing KCP&L. The record evidence shows that KCP&L's load is flat if not declining.[261] Additionally, the evidence shows KCP&L will have access to abundant and inexpensive capacity for the foreseeable future.[262] Consequently, the Commission does not believe it would be practicable to

[257] K.S.A. 66-1283(b).
[258] K.S.A. 66-128(a).
[259] K.S.A. 66-128c.
[260] *Id.*
[261] Harden Direct, p. 22.
[262] Glass Direct, pp. 22-25; Glass Rebuttal, p. 9.

build a new generation plant under such circumstances. Therefore, KCP&L's proposed avoided capacity cost is too high to be practicable. However, if KCP&L was facing significant load growth or if the capacity available to KCP&L saw a substantial decline, KCP&L's avoided capacity cost would likely be more practicable.

99. The Commission is, therefore, left to choose between Staff and CURB's avoided capacity cost. The Commission finds CURB's rationale to be well reasoned. CURB's avoided capacity cost, however, does not, in the Commission's view, provide sufficient flexibility to reflect the potential for a decline of the excess capacity currently available to KCP&L or the potential for KCP&L's load to grow even an incremental amount. The Commission finds Staff's avoided capacity cost that includes both the cost of capacity contracts and a smaller amount for future transmission services, is more in line with the likely short to mid-term costs facing KCP&L and is more in keeping with the requirements of KEEIA. Therefore, the Commission finds for the purposes of figuring KCP&L's avoided capacity cost Staff's proposal of [redacted] is the most appropriate.

Net-to-Gross Ratio

100. The Commission is persuaded by Staff's testimony[263] that based upon its prior experience with demand-side programs a posture of risk aversion is appropriate and an NTG ratio of 0.8 is preferable to an NTG ratio of 1.0. This position is further bolstered by Staff's testimony that its choice was consistent with analysis taken in the Navigant Demand Side Resource Potential Study Report [redacted].**[264] Despite KCP&L's assertion that Staff's NTG ratio was unsupported,[265] the Commission finds there to be sufficient evidence to conclude Staff's proposed NTG ratio is

[263] Glass Direct, pp. 23-26.
[264] *Id.* at pp. 23-24.
[265] Nelson Rebuttal, p. 10.

appropriate.[266] Furthermore, because Staff's analysis showed changes in the NTG ratio had little impact on TRC scores[267] the Commission finds Staff's reliance on Scenario 6 of KCP&L's sensitivity runs to be reasonable.[268]

TRM

101. The Commission finds KCP&L's proposed TRM, though, technically a deviation from prior Commission orders is generally acceptable. However, the Commission notes, whether utilizing the DEER or the TRM, the key is ensuring parties and program participants are confident in the accuracy of the data. The Commission believes it to be in the best interest of all involved for KCP&L to work with Staff, CURB and any other interested party to compare the TRM to the DEER so the parties may collaboratively confirm the quality of the TRM data and work to improve the TRM's deficiencies, as highlighted by Staff.[269] The Commission recognizes there was some testimony regarding the TRM being a "living document" which would be updated throughout the EM&V process. The Commission would prefer the parties to have their concerns addressed prior to there being an impact on rates.

Fuel Switching

102. The Commission has thoroughly reviewed KEEIA and concludes in regards to the issue of fuel switching, the language of KEEIA supersedes and replaces the Commission's prior orders. KEEIA states "[i]t is the goal of the state is to promote the implementation of cost-effective demand-side programs in Kansas."[270] Demand-side programs are defined as, "any program conducted by: (A) An electric utility to reduce the net consumption of electricity by a retail electric customer; or (B) a natural gas utility to reduce the net consumption of natural gas

[266] Glass Rebuttal, p. 11.
[267] Glass Direct, p. 23.
[268] Glass Rebuttal, p. 11.
[269] Turner Direct, pp. 15-17.
[270] K.S.A. 66-1283(b).

by a retail customer."[271] According to KEEIA, a demand-side program, "may include, but shall not be limited to: (A) Energy efficiency measures, not to include measures to incent fuel switching for residential heating systems; (B) load management; (C) demand response; and (D) interruptible or curtailable load."[272] The Commission notes this proceeding has resulted in multiple interpretations regarding the meaning of KEEIA especially as it relates incentivizing non-residential customers to switch fuel choice.

103. KCP&L is a Kansas electric public utility that desires to implement cost-effective demand-side programs in Kansas. KCP&L's desires are consistent with the goal of KEEIA. Under K.S.A. 66-1283(a)(3), any demand-side program KCP&L wishes to implement must reduce the net consumption of electricity by a retail electric customer. K.S.A. 66-1283(a)(3) does not permit KCP&L to incent its residential customers to switch their gas heating systems. The question remains, however, as to whether KCP&L can incentivize its business or industrial customers to switch fuel choices.

104. The Commission concludes the answer is contained in the first part of K.S.A. 66-1283(a)(3). If a KCP&L demand-side program is able to incentivize its business and industrial customers to switch to high efficiency electric heat pumps or water heaters, and still reduce the net consumption of <u>electricity</u> by that customer, then that incentive to switch fuel choice is permitted under KEEIA. When a statute is plain and unambiguous, there is no need to speculate as to the intent behind it.[273] Likewise, ordinary words are given their ordinary meanings.[274] The Commission concludes that the plain reading of KEEIA does not expressly forbid attempts to incentivize fuel switching of business or industrial customers. Be that as it may, for a demand-

[271] K.S.A. 66-1283(a)(3).
[272] *Id.*
[273] *State v. Ruiz-Reyes,* 285 Kan. 650, 653, 175 P.3d 849, 852 (2008).
[274] *Id.*

side program implemented by an electric utility, the Commission concludes regardless of whether the demand-side program is an energy efficiency, load management, demand response, interruptible or curtailable load or any other proposed measure, the result must be a reduction of the net consumption of electricity by the participating retail customer.

105. KCP&L argued that K.S.A 66-1283(a)(3) more broadly addresses demand-side programs not individual customers, therefore reductions in consumption on a program basis is how the statute should be read.[275] The Commission does not agree. K.S.A. 66-1283(a)(3) places a firm limitation on the scope of demand-side programs available to electric utilities. Namely, electric utilities' demand-side programs must reduce consumption of electricity on the customer level.

106. KCP&L next argued that under K.S.A. 66-1283(c)(2)(A) and (B) the program costs may be recovered so long as the program (A) results in energy or demand savings, and (B) is beneficial to customers in the customer class for which the programs were implemented, whether or not the program is utilized by all customers in such class. These sections, according to KCP&L, broadly state that if a program results in energy or demand savings, then the program costs are eligible for recovery, regardless of whether every member of the class participated in the program. KCP&L contended a holistic reading of the statute demonstrates K.S.A. 66-1283(c)(2)(A) and (B) underscore the fact that the Act as a whole is looking at energy and demand savings and benefits at a program level, not an individual customer level. The Commission does not agree. K.S.A. 66-1283(c)(2) serves as a statutory exception to the long held public utility regulatory rule that the cost causer is responsible for bearing the cost. K.S.A. 66-1283(c)(2) states the condition for recovery of reasonable and prudent costs associated with commission approved demand-side programs. K.S.A. 66-1283(a)(3) defines what type of

[275] KCP&L Brief, p. 12.

demand-side programs the commission can approve. KCP&L's proposed holistic reading of K.S.A. 66-1283 reads an intent into the statute that is not evident in the plain language.

107. KCP&L also argued K.S.A. 66-1283(a)(4), which defines energy efficiency to mean "measures that reduce the amount of energy required to achieve a given end use," broadly applies to measures that reduce energy and does not specify electricity or natural gas.[276] KCP&L concluded, therefore, "programs that incent the use of higher efficiency appliances [are] consistent with KEEIA."[277] The Commission agrees in part. The Commission agrees that under the definition of energy efficiency, programs that incent the use of higher efficiency appliances are consistent with KEEIA; so long as the higher efficiency appliance results in a net reduction of electricity by a customer participating in an electric utility's demand-side programs. It is on this basis the Commission concludes KCP&L's programs that utilize a like for like replacement scheme are consistent with conditions and limitations placed upon demand-side programs by KEEIA.

Evaluation, Measurement, and Verification

108. The Commission finds KCP&L's request to conduct EM&V in accordance with the EM&V plan and schedule outlined in KCP&L's Appendix C of the KEEIA Report is reasonable. Furthermore, the Commission finds KCP&L's request for an independent contractor hired by KCP&L with KCC Staff approval, and a Commission hired EM&V auditor to review the results, to be acceptable. Staff's testimony indicated the State of Kansas' Request for Proposal policies have made the previous requirement of selecting an EM&V contractor

[276] KCP&L Brief, p. 12.
[277] *Id.*

collaboratively impracticable.[278] The Commission, therefore, concludes its past requirement should be amended.

109. Additionally, the Commission finds KCP&L's request to provide reporting on its demand-side programs on an annual basis is consistent with Section (f) of KEEIA and is appropriate.

110. Finally, the Commission finds sufficient evidence[279] in support of KCP&L's request to file an EM&V report with the Commission every 18 months rather than every two years.

Recovery Issues

Program Cost Recovery

111. The Commission finds that KEEIA requires the Commission provide timely cost recovery.[280] The Commission is persuaded by CURB's argument[281] that cost recovery of DSM programs should function similarly to supply side programs. The Commission is also persuaded by testimony that a rate mechanism for demand-side programs should be based upon actual costs, not projected costs.[282] The Commission also agrees with Staff[283] that KEEIA requires "timely" cost recovery and that "timely" does not necessarily mean contemporaneous. Staff argued any rider or surcharge that allows for cost recovery between rate cases should be considered timely recovery.[284] The Commission finds the common definition of "timely," i.e. occurring at a suitable time; seasonable; opportune; well-timed, early,[285] is consistent with Staff's argument. Therefore, the Commission finds KCP&L's existing EE Rider already provides

[278] Glass Direct, p. 28.
[279] KEEIA Report 1-9; Glass Direct, pp. 27-28.
[280] K.S.A. 66-1283(e)(1).
[281] Harden Direct, p. 39.
[282] Grady Direct, pp. 5, 7-8, 9-10; Glass Direct, pp.12-13; Glass Cross-Answering; p.17; Harden Direct, p. 38.
[283] *Id.* at pp. 4-7.
[284] *Id.* at p. 5.
[285] Dictionary.com.

a timely mechanism for recovery of costs associated with demand-side programs because it provides recovery of demand-side program costs sooner than they would be recovered under a traditional rate case.[286] Furthermore, the Commission finds the parties' familiarity with the existing EE rider will provide administrative efficiency. Therefore, the Commission finds the existing EE Rider should be utilized to recover costs associated with the demand-side programs approved, herein.

Earning Opportunity and Throughput Disincentive

112. The Commission finds that KEEIA requires the Commission provide timely earnings opportunities for public utilities associated with cost-effective, measurable and verifiable demand-side program savings.[287] KEEIA also requires the Commission align incentives for an electric public utility so the utility will help its customers use energy more efficiently and in a manner that sustains or enhances such customers' incentives to use energy more efficiently.[288] The Commission finds KCP&L's requested EO and TD are designed to align KCP&L's interests with helping its customers use energy more efficiently and is generally consistent with the regulatory concept that a public utility's shareholders be granted an opportunity to earn a return of and a return on their investments.[289] The Commission recognizes that CURB's argument[290] regarding the differences between traditional returns on investment and KCP&L's application is accurate. Albeit, unlike traditional ratemaking, where investor money is used for the purpose of encouraging the use of energy, KCP&L is proposing to incentivize its customers to reduce the amount of electricity consumed, thereby reducing the opportunity for KCP&L to earn a return on the investments it already made. Likewise, the

[286] Grady Direct, p. 7; Harden Direct, pp. 38-40; K.S.A. 66-117.
[287] K.S.A. 66-1283(e)(3).
[288] K.S.A. 66-1283(e)(2).
[289] *See, Moundridge Tel. Co., Inc. v. Kansas Corp. Comm'n.*, 361 P.3d 523 (Kan. App. 2015).
[290] Harden Direct, p. 49.

Commission recognizes KCP&L is entitled to recovery of its investment and should not be placed in a financially worse condition as a result of demand-side programs. Because the existing EE Rider is based upon actual costs and does not provide for the time-value of money the Commission finds that KCP&L's investors will be required to advance the costs of KCP&L demand-side programs on an annual basis and should be granted a recovery of that investment but also earn some measure of return for the investment as well.

113. The Commission has thoroughly reviewed the EO and TD proposed by KCP&L and is concerned that, under KCP&L's approach, KCP&L may be able to collect twice on its lost revenue.[291] Also, the Commission is concerned that KCP&L's TD forecasts the energy reduction anticipated by demand-side programs and attempts to recover those costs contemporaneously with when they are incurred.[292] Furthermore, the Commission has serious concerns regarding the complexity of how KCP&L's proposed EO and TD are calculated.

114. The Commission finds under KEEIA the Commission is granted broad discretion to allow or disallow cost recovery mechanisms that further encourage investments in demand-side programs.[293] Such recovery mechanisms may include capitalization of investments in and expenditures for demand-side programs, recovery of lost revenue associated with demand-side programs, decoupling, rate design modifications, accelerated depreciation on demand-side investments, and allowing the public utility to retain a portion of the net benefits of a demand-side program for its shareholders.[294]

115. The Commission has reviewed its prior orders on lost margin recovery and found it had determined lost margin recovery had four flaws. First, it places too much weight on

[291] Glass Direct, pp. 14-15.
[292] Tr. Vol. 2. p. 414.
[293] K.S.A. 66-1283(d)(1).
[294] *Id.*

accurate evaluation of program impacts.[295] Second, it increases the potential for expensive, time-consuming litigation.[296] Third, it forces the Commission to rely on outside firms to evaluate the methodology,[297] and finally, it fails to measure free ridership in evaluating the impact of energy efficiency programs.[298]

116. The Commission finds its previously expressed concerns regarding lost margin recovery continue to exist today and the record evidence fails to persuasively address those concerns. For this reason, and the concerns expressed above regarding KCP&L's proposed EO and TD, the Commission prefers Staff's proposal. The Commission finds Staff's decoupling mechanism and shared benefits approach will ensure successful demand-side programs do not cause KCP&L to under-recover its approved revenue requirement. The Commission also finds Staff's proposal will align KCP&L's financial incentives with helping its customers use energy more efficiently by providing KCP&L the opportunity to recover more than its allowed revenue requirement. The Commission, therefore, finds Staff's proposal is consistent with KEEIA and traditional ratemaking principles and is, therefore, in the public interest. The Commission finds the existing EE Rider should be modified in order to incorporate Staff's decoupling and shared benefits mechanisms. The Commission directs Staff and KCP&L to work collaboratively to develop proposed tariff sheets which modify the existing EE Rider to incorporate Staff's decoupling and shared benefits mechanisms, and to file those prior to implementation of any demand-side programs approved herein.

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295 Docket No. 08-GIMX-441-GIV, Final Order ¶68 (Nov. 14, 2008); Docket No. 12-GIMX-337-GIV, Order ¶10 (Mar. 6, 2013).
296 *Id.*; Docket No. 12-GIMX-337-GIV, Order ¶10 (Mar. 6, 2013).
297 *Id.*; Docket No. 12-GIMX-337-GIV, Order ¶10 (Mar. 6, 2013).
298 *Id.* at ¶ 69; Docket No. 12-GIMX-337-GIV, Order ¶10 (Mar. 6, 2013).

Labor Cost

117. The Commission understands KCP&L's desire to include the costs of full time employees in the surcharge mechanism. However, the Commission shares Staff's and CURB's concern regarding the possibility KCP&L may over-recover its labor expenses through both base rates and a surcharge mechanism.[299] The Commission has previously adopted the position that inclusion of internal labor expenses in energy efficiency riders was acceptable when the job function of the employee was solely related to energy efficiency and that the employee's salary, or someone he or she replaced was not already included in base rates.[300] The Commission finds that Staff's proposal ensures labor costs associated with DSM/energy efficiency programs are not double recovered and is therefore in the public interest.

Ten Percent Portfolio Budget Waiver

118. The Commission finds that KEEIA imposes on the Commission the obligation of general oversight of DSM programs.[301] The Commission finds KCP&L's Ten Percent Portfolio Budget waiver would deprive the Commission of any significant oversight regarding KCP&L's demand-side program budgets. KEEIA states, "[t]he fact that a commission-approved program proves not to be cost-effective is not by itself sufficient grounds for disallowing cost recovery. Programs determined to be non-cost-effective...shall be modified to address deficiencies or terminated following such determination."[302] In light of this provision, the Commission is particularly concerned regarding the potential for KCP&L to shift substantial resources into a program that is later determined to not meet a benefit-cost test. Though the Commission will have the authority to modify or terminate the program, the costs to ratepayers will already have

[299] *See,* Grady Direct, p. 11; Harden Direct, pp. 32-33.
[300] Grady Direct, p. 11; *See also*, Docket No. 10-KCPE-636-TAR Order Approving Energy Efficiency Rider (June 21, 2010).
[301] K.S.A. 66-1283(c)(1)(B); K.S.A. 66-1283(c)(2); K.S.A. 66-1283(e)(4).
[302] K.S.A. 66-1283(c)(2).

been incurred and the Commission has little recourse but to grant the recovery of those costs by KCP&L. The Commission fully appreciates Staff's recommendation that KCP&L be granted the flexibility to adequately carry out its program objectives. The Commission finds, however, KCP&L's proposal would result in an inability of the Commission to perform its statutory duty of oversight and shifts too much risk onto the ratepayers. However, the Commission is willing to review on a case-by-case basis KCP&L's requests to amend its program budgets.

Advisory Group

119. The Commission finds that KCP&L's proposal to form an Advisory Group to meet and review the progress of KCP&L's KEEIA Cycle 1 programs and EM&V reports is supported by the record and is in the public interest.[303]

Program Issues

Educational Programs

120. The Commission finds KEEIA directs general education campaigns do not need to meet a cost-effectiveness test, so long as the Commission determines the campaign is in the public interest and is supported by a reasonable budget in the context of the overall budget.[304] The Commission has previously found:

> [E]ducational programs will have difficulty passing benefit-cost tests because it is difficult to attribute energy efficiency savings directly to educational programs. However, education will be necessary and important to achieving the full potential from other energy efficiency programs. With this in mind, the Commission finds that it will not subject education programs to benefit-cost analysis but will require utilities to provide extensive explanations of the programs and their attendant costs, evidence, of usefulness in other jurisdictions, and any additional information the utility believes will support the implementation of an education program.[305]

[303] KEEIA Report, p. 1-9, pp. 4-11 through 4-12; File Rebuttal, p. 9; Turner Rebuttal, pp. 13, 15; Brink Direct, p. 9; Barnett Direct, p. 2.
[304] K.S.A. 66-1283(c)(1)(D).
[305] 442 Docket, Order Setting Energy Efficiency Policy Goals, ¶ 42 (Jun. 2, 2008).

The Commission has also adopted the following definition of an educational program:

> Efforts to educate and train customers, retailers, architects, contractors, and building inspectors to identify energy efficiency opportunities, properly install energy savings measures, and maintain equipment so that it continues to operate as efficiently as possible.[306]

The Commission finds the rationale regarding educational programs, as stated in prior orders, is consistent with KEEIA.

121. The Commission finds there is sufficient evidence to conclude the proposed Educational Programs are in the public interest because of their parameters, descriptions, and target markets.[307] The Commission also finds, in light of KEEIA's direction that educational programs do not need to meet a benefit-cost test,[308] the Commission's prior orders regarding the 5% budget cap on educational programs[309] remain in effect and will result in ensuring the programs are supported by a reasonable budget. In order to better achieve the policy objectives as stated in KEEIA, the Commission suggests KCP&L consider providing information regarding other energy efficiency programs or grants that may be available to KCP&L customers from other sources.

Income Eligible Programs

122. The Commission finds KEEIA directs low-income programs do not need to meet a cost-effectiveness test, so long as the Commission determines the program is in the public interest and is supported by a reasonable budget in the context of the overall budget.[310] The Commission has previously found, "[w]hile recognizing that addressing societal inequities is not its primary mandate, the Commission encourages utilities to develop energy efficiency programs

[306] Docket No. 09-WSEE-986-ACT, Order Approving Application and Energy Efficiency Educational Programs, ¶¶ 30-31 (July 28, 2009).
[307] KEEIA Report, Appendix A-5; Ellis Direct, pp. 6-8.
[308] K.S.A. 66-1283(c)(1)(D),
[309] 442 Docket, Order Following Collaborative, ¶ 32.
[310] K.S.A. 66-1283(c)(1)(D).

for all classes of customers, including low-income customers where appropriate."[311] The Commission also recognized that low-income programs tend to score lower on benefit-cost tests and may not be able to meet a bright-line goal.[312]

123. The Commission finds there is sufficient evidence to conclude the proposed Income-Eligible Programs are in the public interest because of their parameters, descriptions, and target markets.[313] The Commission also finds in light of KEEIA's direction that low income programs do not need to meet a benefit-cost test, Staff's proposal[314] to cap Income-Eligible Programs at 5% will provide a helpful guideline that provides assurance the Income-Eligible Programs will be supported by a reasonable budget similar to the Educational Programs.

124. The Commission has reviewed the settlement agreement as it relates to low-income programs and understands the recommendation to better align the eligibility requirements of KCP&L's proposed program with those used in KCP&L's equivalent Missouri program and to increase the target units in years 2 and 3. The Commission finds that aligning the eligibility requirements would reduce the administrative burden of certifying program-eligible buildings for both KCP&L and program participants because the proposed modifications are consistent with federal income eligibility guidelines.[315] Also the Commission finds that the proposed modification of the budgetary increase would raise the eligible program's budget from approximately 4.3% of the portfolio budget to 5.9%.[316] The Commission finds the proposed modification is consistent with the Commission's desire to use a 5% budget cap as a guideline because the increased budget exceeds the 5% budget cap guideline by less than 1%. The

[311] 448 Docket, Order Setting Energy Efficiency Policy Goals, ¶28.
[312] 448 Docket, Order Following Collaborative, ¶26.
[313] KEEIA Report, pp. 1-4, 2-3,; KEEIA Report, pp. 3-7 through 3-8; KEEIA Report, p. 3-13; KEEIA Report, pp. 4-1 through 4-4; KEEIA Report, p. 4-15, p. 4-17; KEEIA Report, p. 5-2, p. 6-1; KEEIA Report, Appendix A; Winslow Rebuttal, pp. 5-6, pp. 8-9; Turner Rebuttal, pp. 2-5; Ives Rebuttal, p. 17; Ellis Direct pp. 12-15.
[314] Ellis Direct, p. 14.
[315] Frantz Rebuttal and Supplemental, p. 6.
[316] *Id.*

Commission, therefore, finds the Settlement Agreement, as it relates to low-income programs is in the public interest.

Residential Programs

125. In light of the above findings regarding the appropriate benefits-cost analysis, avoided capacity cost, and NTG ratio, the Commission finds sufficient evidence exists to approve the Home Lighting Rebate.[317]

126. The Commission notes despite the fact the Residential Programmable Thermostat Program did not pass Staff's TRC and RIM tests, Staff recommended the program anyway.[318] The Commission also shares CURB's concern that under this program ratepayers are required to bear the cost of the existing functioning thermostats and their replacements.[319] The Commission finds there is not currently sufficient evidence to warrant the replacement of these demand response measures. If KCP&L had evidence the existing thermostats were failing or had KCP&L been given notice that the manufacturer was no longer supporting these devices, the Commission would be willing to reevaluate the program. Therefore, the Commission finds the Residential Programmable Thermostat Program is not in the public interest.

127. Pursuant to Staff's analysis, the Whole House Energy Efficiency Program did not pass the TRC or RIM test.[320] Therefore, the Commission finds that the Whole House Energy Efficiency Program as proposed is not in the public interest.

128. Pursuant to Staff's analysis, the Home Energy Report did not pass the TRC or RIM test.[321] Therefore, the Commission finds the Home Energy Report as proposed is not in the public interest.

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[317] Prince Direct, p. 17.
[318] *Id.* at pp. 18-19.
[319] Harden Direct, pp. 16-17.
[320] Prince Direct, pp. 6-8, 9-10, 16-18;

Business Programs

129. Pursuant to Staff's analysis, the Commission finds the Business Energy Efficiency Rebate – Standard Program passes the TRC and RIM test. Therefore, the Commission finds the Business Energy Efficiency Rebate – Standard Program to be in the public interest.

130. Pursuant to Staff's analysis, the Demand Response Incentive Program has the potential to provide exorbitant benefits to participants at the expense of both non-participants and KCP&L itself.[322] To mitigate the expense to non-participants, Staff proposed the duration of program contracts be limited to the timeframe KCP&L's KEEIA Cycle 1 is in effect. Staff also proposed the proportion of risk borne by non-participants and the utility be altered by lowering the fixed capacity-reserve incentive while raising the performance incentive paid for curtailment.[323] The Commission finds the Demand Response Incentive Program is in the public interest and that Staff's proposed modifications to the program are a reasonable approach to mitigate the risk to non-participants.

131. Pursuant to Staff's analysis, the Business Energy Efficiency Rebate-Custom, Strategic Energy Management Program, Block Bidding and Small Business Direct Install Programs either do not pass the TRC or the RIM tests.[324] Therefore, the Commission finds the Business Energy Efficiency Rebate-Custom, Strategic Energy Management Program, Small Business Direct Install and the Block Bidding Programs are not in the public interest. Additionally, the Commission finds that the evidence presented demonstrated that the Settlement Agreement's modifications to the Business Energy Efficiency Rebate – Custom did not change

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[321] Prince Supplemental, p. 4.
[322] Frantz Direct, p. 48.
[323] *Id.* at pp. 48-49.
[324] Frantz Direct, pp. 25; 32-33; 39-43.

the result of Staff's TRC and RIM analyses.[325] The Commission, therefore, finds the provisions of the Settlement Agreement regarding the Business Energy Efficiency Rebate – Custom are not in the public interest.

Research and Pilot

132. The Commission finds in light of there being no specific objection to the Research and Pilot Program, this program is in the public interest.

Termination of Existing Programs

133. The Commission finds KCP&L's request to terminate the Cool Homes, Energy Star New Homes, Energy Audit and Energy Measure Rider, and Building Operators Certificate programs is supported by the record and is in the public interest.[326] The Commission will, however, permit KCP&L to continue its Building Operators Certificate program if, it so chooses.

IV. Summary of Findings

134. The Commission upholds its prior orders and finds the appropriate benefit-cost tests are the 1) Participant Test; 2) Ratepayer Impact Test (RIM); 3) Program Administrator Test (PAC); 4) Total Resource Cost Test (TRC).[327] However, the Commission shall continue to place primary emphasis on the TRC and RIM tests because these tests provide information particularly relevant to KEEIA's and the Commission's shared policy objectives.[328]

135. The Commission finds for the purposes of figuring KCP&L's avoided capacity cost Staff's proposal of [redacted] is the most appropriate.

136. The Commission finds that Staff's proposed NTG ratio of 0.8 was appropriate and supported by the record.

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[325] Frantz Rebuttal and Supplemental, pp. 8-9.
[326] Ellis Direct, pp. 15-18.
[327] *Id.* at p. 13.
[328] *Id.* at p. 16.

137. The Commission finds KCP&L's proposed TRM is generally acceptable.

138. The Commission concludes that the plain reading of KEEIA does not expressly forbid attempts to incentivize fuel switching of business or industrial customers. Be that as it may, for a demand-side program implemented by an electric utility, the Commission concludes regardless of whether the demand-side program is an energy efficiency, load management, demand response, interruptible or curtailable load or any other proposed measure, the result must be a reduction of the net consumption of electricity by the participating retail customer.

139. The Commission finds it appropriate to amend its past EM&V requirements to allow KCP&L to conduct EM&V in accordance with the EM&V plan and scheduled outlines in KCP&L's Appendix C of the KEEIA Report. The Commission, also, finds it necessary to amend its past EM&V requirements to grant KCP&L's request to hire an EM&V independent contractor with KCC Staff approval, and a Commission hired EM&V auditor.

140. The Commission finds the existing EE Rider should be utilized to recover costs associated with the demand-side programs approved herein.

141. The Commission finds Staff's decoupling mechanism and shared benefits proposal is in the public interest.

142. The Commission finds that Staff's proposed treatment of labor costs associated with DSM/energy efficiency programs ensures those costs are not double recovered and the Commission, therefore, finds Staff's proposal to be in the public interest.

143. The Commission finds KCP&L's Ten Percent Portfolio Budget waiver would deprive the Commission of any significant oversight regarding KCP&L's demand-side program budgets and is, therefore, not in the public interest.

144. The Commission finds that KCP&L's proposal to form an Advisory Group to meet and review the progress of KCP&L's KEEIA Cycle 1 programs and EM&V reports is supported by the record and is in the public interest.[329]

145. The Commission finds the proposed Educational Programs are in the public interest because of their parameters, descriptions, and target markets.[330] The Commission, also finds, the Commission's prior orders regarding the 5% budget cap on educational programs[331] remain in effect and will result in ensuring the programs are supported by a reasonable budget.

146. The Commission finds the proposed Income-Eligible Programs are in the public interest because of their parameters, descriptions, and target markets.[332] The Commission also finds Staff's proposal[333] to cap Income-Eligible Programs at 5% serves as a helpful guideline which will provide assurance the Income-Eligible Programs will be supported by a reasonable budget similar to the Educational Programs. The Commission, also, finds the Settlement Agreement, as it relates to low-income programs is in the public interest.

147. The Commission finds the Home Lighting Rebate Program is in the public interest. The Commission finds the Residential Programmable Thermostat Program, Whole House Energy Efficiency Program, and the Home Energy Report did not pass the benefit-cost tests and are, therefore, not in the public interest.

148. The Commission finds the Business Energy Efficiency Rebate- Standard Program and the Demand Response Incentive Program are in the public interest. The Commission finds the Business Energy Efficiency Rebate-Custom, Strategic Energy Management Program, Block

[329] KEEIA Report, p. 1-9, pp. 4-11 through 4-12; File Rebuttal, p. 9; Turner Rebuttal, pp. 13, 15; Brink Direct, p. 9; Barnett Direct, p. 2.
[330] KEEIA Report, Appendix A -5; Ellis Direct, pp. 6-8.
[331] 442 Docket, Order Following Collaborative, ¶ 32.
[332] KEEIA Report, pp. 1-4, 2-3,; KEEIA Report, pp. 3-7 through 3-8; KEEIA Report, p. 3-13; KEEIA Report, pp. 4-1 through 4-4; KEEIA Report, p. 4-15, p. 4-17; KEEIA Report, p. 5-2, p. 6-1; KEEIA Report, Appendix A; Winslow Rebuttal, pp. 5-6, pp. 8-9; Turner Rebuttal, pp. 2-5; Ives Rebuttal, p. 17; Ellis Direct pp. 12-15.
[333] Ellis Direct, p. 14.

Bidding and Small Business Direct Install Programs either do not pass the TRC or the RIM tests and are, therefore, not in the public interest.

149. The Commission finds the Research and Pilot Program is in the public interest.

150. The Commission finds KCP&L's request to terminate the Cool Homes, Energy Star New Homes, Energy Audit and Energy Measure Rider, and Building Operators Certificate programs are in the public interest. The Commission will, however, permit KCP&L to continue its Building Operators Certificate program if, it so chooses.

THEREFORE, THE COMMISSION ORDERS:

A. The Commission approves KCP&L's application as modified by the findings above.

B. The parties have 15 days from the date this Order was electronically served to petition for reconsideration.[334]

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner.

Dated: JUN 22 2017

SF

Lynn M. Retz
Lynn M. Retz
Secretary to the Commission

MAILED

JUN 22 2017

[334]K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

16-KCPE-446-TAR

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on JUN 2 2 2017.

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