BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

POST-HEARING BRIEF OF COMMISSION STAFF

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COMES NOW, the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) hereby submits its *Post-Hearing Brief* regarding Kansas City Power & Light Company's (KCP&L or Company) Application for Approval of its Demand-Side Management Portfolio pursuant to the Kansas Energy Efficiency Investment Act (KEEIA), K.S.A. 66-1283.

Staff has organized its *Post-Hearing Brief* to examine the KEEIA statute and compare the Statute's provisions to those of prior Commission Orders, evaluate KCP&L's Application, and respond to questions posed by the Commission. Staff's *Post Hearing Brief* is not intended to be a recitation of its case-in-chief. Accordingly, the failure of Staff to restate or respond to every critique of its position on any particular issue should not be construed as a waiver of such.

I. Condensed Procedural Background

1. On April 6, 2016, KCP&L filed its Application for approval of its KEEIA Cycle 1 Portfolio.[1] KCP&L's request consists of a portfolio of Demand-Side Management programs (demand-side program)[2] known as KEEIA Cycle 1, and a Demand-Side Investment Mechanism (DSIM) Rider.[3] KCP&L submitted with its Application, among other things, the KEEIA Cycle 1 2017-2019 Report, which further described the KEEIA Cycle 1 programs and DSIM Rider.[4] KCP&L's proposal requests approval of fourteen demand-side programs, though some are

[1] Application for Kansas City Power & Light Company (Apr. 6, 2016) (Application).
[2] Generally, Staff refers to all types of demand-side programs (*e.g.* demand-side management, demand response, energy efficiency measures, etc.) collectively as "demand-side programs" unless the circumstances require specificity. *See* Cross-Answering Testimony of Robert H. Glass, PhD, p.2 (Aug. 15, 2016) (Glass Cross-Answering).
[3] *See* Application at pp. 1, 3.
[4] *See id.* at p. 3. *See also*, Kansas City Power & Light Company – Kansas KEEIA Cycle 1 2017-2019 Filing (Apr. 6, 2016) (KEEIA Cycle 1 Report).

continuations of previously implemented programs.[5] KCP&L is also requesting to terminate certain existing programs,[6] and waivers of certain Commission policy requirements.[7]

2. On August 8, 2016, Staff filed direct testimony from six witnesses: Dr. Robert H. Glass, PhD, Dr. Lana J. Ellis, PhD, John M. Turner, Joshua P. Frantz, Darren L. Prince, and Justin T. Grady.[8] Staff witness Dr. Glass filed Cross-Answering testimony on August 15, 2016.[9] Prior to the scheduled evidentiary hearing, KCP&L discovered an error contained within its modeling for its Home Energy Report Program. Subsequently, the Commission requested KCP&L file supplemental direct testimony regarding its Application and enabled parties to submit corrections, surrebuttal or supplemental testimony of their own.[10]

3. On January 20, 2017, Staff witnesses Dr. Robert H. Glass, Darren L. Prince, and Joshua P. Frantz submitted additional testimony.[11]

4. Staff recommends the Commission approve eight of KCP&L's proposed demand-side programs, reject KCP&L's DSIM Rider and implement Staff's DSIM Rider.[12]

5. Between March 22, 2017, and March 24, 2017, the Commission held an evidentiary hearing in this matter where it received prefiled testimony from parties and witnesses were subjected to cross-examination and Commissioner questions.

6. On April 14, 2017, KCP&L submitted its initial brief in this matter.[13]

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[5] *See* KEEIA Cycle 1 Report, pp. 3-5 through 3-10.
[6] *See* Application at p. 4.
[7] *See* KEEIA Cycle 1 Report, Appendix G.
[8] *See* Direct Testimony of Justin T. Grady (Aug. 8, 2016) (Grady Direct); Direct Testimony of John M. Turner (Aug. 8, 2016) (Turner Direct); Direct Testimony of Joshua P. Frantz (Aug. 8, 2016) (Frantz Direct); Direct Testimony of Darren L. Prince (Aug. 8, 2016) (Prince Direct); Direct Testimony of Lana J. Ellis, PhD (Aug. 8, 2016) (Ellis Direct); *and* Direct Testimony of Robert H. Glass, PhD (Aug. 8, 2016) (Glass Direct).
[9] *See* Glass Cross-Answering.
[10] *See* Order Amending Procedural Schedule, pp. 1-3 (Dec. 15, 2016) (Order Amending Procedural Schedule).
[11] Surrebuttal and Supplemental Testimony of Joshua P. Frantz (Jan. 20, 2017) (Frantz Supplemental); Supplemental Testimony of Darren L. Prince (Jan. 20, 2017) (Prince Supplemental); Amended Testimony to Address Corrected Testimony of Robert H. Glass, PhD (Jan. 20, 2017) (Glass Corrected); Surrebuttal Testimony of Robert H. Glass, PhD (Jan. 20, 2017) (Glass Surrebuttal).
[12] *See infra* § III.C.

7. On April 21, 2017, KCP&L submitted its supplemental answers to Commissioner questions.[14]

II. The Kansas Energy Efficiency Investment Act; K.S.A. 66-1283

8. KEEIA, codified at K.S.A. 66-1283, affirms and expands the Commission's framework for reviewing and approving demand-side programs.[15] KEEIA's underpinnings are a combination of codifications of long-established Commission policies, supplemented with additional tools the Commission may use to advance energy efficiency programs. While KEEIA mandates certain actions, the manners in which the Commission may implement such are wide-ranging and unbridled.

9. Where required, certain aspects of KEEIA take precedence over Commission policy. KCP&L argues canons of statutory construction mandate an outcome favorable to KCP&L – that KEEIA created an entirely new paradigm for demand-side programs.[16] An appropriate question posed in response to such a claim is, specifically, what policy(ies) has(have) KEEIA overridden? Why did KCP&L request a multitude of waivers from "supplanted" policies? KCP&L's (1) case-in-chief and (2) *Initial Post Hearing Brief* are painfully silent. The majority of KCP&L's Initial Brief advocates for programs and cost recovery mechanisms KCP&L finds acceptable, not what is cost-effective or required by law. As Staff will demonstrate, KEEIA is consistent and harmonious with established Commission policies and encourages the development of cost-effective demand-side programs.

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[13] Initial Post-Hearing Brief of Kansas City Power & Light Company (Apr. 14, 2017) (KCP&L Initial Brief).
[14] Kansas City Power & Light Company's Response to Commissioner Questions (Apr. 21, 2017) (KCP&L Commissioner Questions Response).
[15] *See* KCP&L Rebuttal Testimony Prepared by Darren R. Ives, Exhibit DRI-3, p. 1 (Aug. 22, 2016) (". . . KEEIA provides additional framework and policy for utilities to invest in [demand-side programs.]" "The legislation gives the Kansas Corporation Commission additional tools to further encourage efficiency investments and it ensures cost-effective programs that benefit customers will be approved.") (Exhibit DRI-3).
[16] *See* KCP&L Initial Brief, pp. 8-9.

A. KEEIA's Definitions

10. KEEIA defines five terms: Commission, demand response, demand-side program, energy efficiency, and public utility.[17] "Commission" refers to the State Corporation Commission (*i.e.* this Commission),[18] and "public utility" refers to the Commission's general regulatory definition of such (*i.e.* K.S.A. 66-101).[19] As a vertically integrated electric public utility engaged in the generation and sale of electricity in Kansas,[20] KCP&L meets the definition of an electric public utility under both the Commission's general and KEEIA-specific definitions.[21]

i. Demand-Side Programs

11. KEEIA defines demand-side program in two sections: a general overview and a non-exhaustive list. Regarding the general overview, demand-side program means, "[A]ny 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 by a retail gas customer."[22] This definitional section highlights the "retail customer," which indicates a reduction in electricity (or natural gas) consumption is specific to an individual customer rather than a particular customer class. KEEIA does not, as KCP&L suggests,[23] require energy reductions at the customer class level.[24] KCP&L inappropriately reads this definitional section with KEEIA's program cost recovery section to reach this conclusion. A customer-class approach would allow customers who fuel switch, and as a result become less efficient, to be masked by other customers who become more efficient. It is well settled the

[17] K.S.A. 66-1283(a)(1)-(5).
[18] K.S.A. 66-1283(a)(1).
[19] K.S.A. 66-1283(a)(5).
[20] Application, p. 1.
[21] *See* K.S.A. 66-101, -101a, -104; *See also* K.S.A. 66-1283(a)(5).
[22] K.S.A. 66-1283(a)(3).
[23] *See* KCP&L Initial Brief, pp. 11-13.
[24] *See id.* at p. 11.

legislature does not intend to enact laws which lead to absurd results.[25] KCP&L's interpretation of energy savings would enable KEEIA (an energy-saving statue) to empower the consumption of more energy. Further, KCP&L argues MEEIA and KEEIA are "similar in their operation and intent."[26] Considering how MEEIA defines demand-side program to be "any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the electric meter . . ."[27] it becomes obvious KEEIA focuses on individual customer energy savings. Staff further addresses this flaw in its analysis of KEEIA's program cost recovery provisions, below.

12. Regarding the non-exhaustive list, demand-side programs may include, but are not limited to: (A) Energy efficiency measures, not to include any measures to incent fuel switching for residential heating systems; (B) load management; (C) demand response; and (D) interruptible or curtailable load.[28]

13. "Energy efficiency" is itself a defined term under KEEIA, which means measures that reduce the amount of energy required to achieve a given end use.[29] While "demand-side program" is broadly defined as a program that reduces the net consumption of electricity (or natural gas) by a retail customer,[30] an acceptable method to do so is through a program that reduces the amount of energy required to achieve an end use.

14. "Demand response" includes measures that decrease peak demand or shift demand to off-peak periods of time.[31] While many energy efficiency measures reduce overall

[25] *Tompkins v. Bise*, 259 Kan. 39, 47–48, 910 P.2d 185, 190 (1996).
[26] KCP&L Commissioner Questions Response, Exhibit A, p. 1.
[27] Mo. Rev. Stat. § 393.1075.1(3).
[28] K.S.A. 66-1283(a)(3) (emphasis added).
[29] K.S.A. 66-1283(a)(4).
[30] *See supra* ¶11.
[31] K.S.A. 66-1283(a)(2).

demand,[32] demand response measures may be called upon to immediately reduce peak demand or shift demand to a different period.[33]

15. KEEIA's definitional section provides an overview of what a demand-side program is and lists examples of such. While the definition of demand-side program appears to require a net reduction in an individual retail customer's electric (or natural gas) consumption, an acceptable program is one that uses energy efficiency measures to reduce the amount of energy required for a given end use. Accordingly, KEEIA supports programs that reduce an individual customer's energy consumption. Because KEEIA specifically identifies "energy efficiency measures" as an acceptable demand-side program, a net reduction in the consumption of electricity (or natural gas) is not a mandatory prerequisite for demand-side program approval. Demand-side programs, in theory, could increase production of electricity.[34] It would make little sense, and lead to an absurd result,[35] if KEEIA resulted in less energy efficient behavior. Nevertheless, if the total amount of <u>energy</u> required to achieve an end use is reduced, the demand-side program is acceptable under KEEIA. Furthermore, as KEEIA explicitly does not limit what may be considered a demand-side program, the Commission may use its broad authority to define and determine other acceptable demand-side programs.[36]

[32] *See generally* Kansas City Power & Light Company's Corrections to KEEIA Report, Attachment A, p. 2, Table 1-4 (Sep. 12, 2016).
[33] *See* KEEIA Cycle 1 Report, pp. 4-5 through 4-7; *See e.g.* KEEIA Cycle 1 Report, Appendix E, Proposed Tariff 12.01, sheet two of six; Proposed Tariff 12.08, sheet one of five (Apr. 6, 2016).
[34] *See infra* ¶19.
[35] *See N. Nat. Gas Co. v. ONEOK Field Servs. Co*., 296 Kan. 906, 918, 296 P.3d 1106, 1115 (2013).
[36] *See Sierra Club v. Mosier*, 391 P.3d 667, 684–85 (Kan. 2017) ("And while courts do not afford significant deference to an administrative agency's statutory interpretation, where an agency possesses discretion, a court must presume the validity of the agency action and cannot substitute its judgment for that of the administrative agency unless the action is unlawful, unreasonable, arbitrary, or capricious.") (internal citations omitted).

Fuel Switching and Biases

16. Not all demand-side programs that reduce energy consumption for an end use are permissible under KEEIA. Demand-side programs may not include any energy efficient measures to incent fuel switching for residential heating systems.[37]

17. KEEIA prohibits an electric public utility from incentivizing a residential customer to switch fuel sources. The plain language of the statute indicates this requires a change in fuel source. When a statute is plain and unambiguous, there is no need to speculate as to the intent behind it.[38] Ordinary words are given their ordinary meanings.[39] KEEIA prohibits utilities incentivizing residential customers to switch the fuel they use to generate heat.[40] There is no similar statutory limitation on commercial fuel switching in KEEIA.

18. Separate from KEEIA's prohibition on fuel switching for residential heating is the Commission's policy on fuel switching. In 2008, the Commission opened a general investigation into incentives for fuel switching: Docket No. 09-GIMX-160-GIV (09-160 Docket).[41] While the scope of the general investigation was broadly stated,[42] it also focused on consumer homes, *i.e.* residential customers.[43] After a series of filings and comments, Staff submitted the first of three Report and Recommendations.[44] Staff recommended the Commission maintain its definition of energy efficiency as encouraging site efficiency of the

[37] *See* K.S.A. 66-1283(a)(3).
[38] *State v. Ruiz-Reyes*, 285 Kan. 650, 653, 175 P.3d 849, 852 (2008).
[39] *Id.*
[40] *See* K.S.A. 66-1283(a)(3).
[41] Order Initiating Investigation and Assessing Costs, Docket No. 09-GIMX-160-GIV (Sep. 29, 2008) (09-160 Order Initiating).
[42] *See id*. at pp. 3-4 ("The Commission believes the scope of this docket should be limited to the appropriateness of encouraging fuel-switching for end-use or direct use applications, defined as the mechanism used at the point of consumption (as opposed to the point of energy production) since this is the context in which the issue was raised.").
[43] *See id.* at p. 4 ("This docket will address whether it is appropriate for utilities to use monetary incentives to encourage consumers to switch fuels for end-use applications within their homes.").
[44] Notice of Filing of Staff Report and Recommendation, Docket No. 09-GIMX-160-GIV (Apr. 13, 2009).

particular fuel used for a particular end use.[45] After further comments, Staff prepared a third Report and Recommendation recommending the Commission, "issue an Order closing the [09-160 Docket], and finding that energy efficiency programs should be designed in a manner that does not bias users toward a particular fuel source."[46]

19. In response, Kansas Gas Service requested the docket remain open until parties could address various fuel switching practices that are designed to favor electricity over natural gas or there be a ruling that incentives, rebates and economic benefits for electric fuel substitution not be paid or conferred to influence a fuel choice decision.[47] In response, Staff stated the 09-160 Docket had brought out the issues and concerns surrounding fuel switching, had served its purpose and therefore should be closed.[48]

20. On March 23, 2012, the Commission issued an Amended Order to Close Docket (09-160 Amended Final Order) wherein the Commission ordered, "Utility providers shall continue to offer energy-efficiency programs in a manner that does not bias users toward a particular fuel source."[49] The Commission sought to amend this particular order to include language necessary to identify the order as precedential.[50]

21. Regarding residential customers, KEEIA's more specific language certainly supersedes the generic language contained within the Commission's 09-160 Amended Final Order. KEEIA takes the Commission's policy of not biasing fuel sources and strengthens it in terms of fuel switching for residential customers. By so doing, KEEIA prohibits a utility from using demand-side programs as a Trojan horse to sneak into a competitor's service territory and

[45] *See* Order to Close Docket, p. 5, Docket No. 09-GIMX-160-GIV (Feb. 15, 2012).
[46] *See id.*
[47] *See id.*
[48] *See id.* at p. 6.
[49] Amended Order to Close Docket, p. 1, Docket No. 09-GIMX-160-GIV (Mar. 23, 2012) (09-160 Amended Order Closing Docket).
[50] *See id.* at p. 2.

convert market share. While KEEIA's specific fuel switching language supersedes Commission policy regarding residential fuel switching, the result is the same.

22. KEEIA contains no similar fuel switching prohibition for commercial or industrial customers, or any other mention of fuel switching. Administrative agencies such as the Commission, are creatures of statute and may only act within the scope of authority granted by their authorizing statutes.[51] The *expressio unius* doctrine is helpful in determining legislative intent, which is not otherwise manifest, although the doctrine should not be used to override or circumvent a clearly contrary legislative intention.[52] By explicitly prohibiting fuel switching for residential heating systems, but remaining silent as to other instances of fuel switching (*i.e.* commercial and industrial), KCP&L argues KEEIA overrides any policy prohibiting commercial fuel switching.[53]

23. KEEIA's prohibition on residential heating fuel switching does not supersede the Commission's 09-160 Amended Final Order. KEEIA states the Commission cannot incentivize the act of switching fuel for residential customers with a KEEIA-approved demand-side program. The 09-160 Amended Final Order states energy-efficiency programs should be designed so as to not bias one fuel source over another. KEEIA does not state public utilities may incentivize or bias fuel switching for other customers. Canons of statutory construction such as the *expressio unius* doctrine are helpful, but Courts are reluctant to apply this doctrine to an administrative agency's authority, especially "where the logic of the maxim – that the special mention of one thing indicates an intent for another thing not be included elsewhere – simply

[51] *Kansas Indus. Consumers Grp., Inc. v. State Corp. Comm'n of State of Kan.*, 36 Kan. App. 2d 83, 92, 138 P.3d 338, 347 (2006).
[52] *Id.*
[53] *See* KCP&L Initial Brief, p. 10.

[does] not hold up in the statutory context."[54] By holding in the 09-160 Amended Final Order energy efficiency programs should not bias one fuel source over another, the Commission recognized its broad authority to prohibit what could be considered an unjust, unreasonable, unduly preferential and unjustly discriminatory act.[55]

24. The act of offering a monetary incentive for equipment replacement creates an economic bias.[56] The Commission determines the point such a bias becomes unjust. KEEIA does not prohibit commercial fuel switching, and the Commission's stated policy in the 09-160 Amended Final Order speaks to biases generally. The question before the Commission is: At what point does an economic incentive become unduly preferential or discriminatory? Staff recognizes this is a policy question before the Commission.[57]

25. An initial monetary incentive to switch equipment may appear beneficial. However, if the "benefits" of utilizing a different fuel source are diminished or erased with rate increases customers may regret their decision to switch fuel sources. This could apply to individuals who rent homes or businesses. While the owner of the location may receive a rebate for installing a particular energy-efficient measure, the renter may be responsible for paying the utilities (and subject to any subsequent rate changes). Because the renter is the one paying the utility bill, the owner has little incentive to invest additional capital in more efficient units. Demand-side programs, especially those targeted to low-income customers, may help alleviate this hurdle.[58] The Commission has long been concerned about educating customers of their

[54] *See Kansas Indus. Consumers Grp., Inc. v. State Corp. Comm'n of State of Kan*., 36 Kan. App. 2d 83, 96, 138 P.3d 338, 349 (2006).
[55] *See* K.S.A. 66-101d, -101f(a). *See also* 09-160 Amended Order Closing Docket, p. 6-7.
[56] *See* Tr. Vol. 2, p. 541 (Frantz).
[57] *See id.* at pp. 548-549 (Frantz).
[58] *See* Order Setting Energy Efficiency Policy Goals, p. 11, Docket No. 08-GIMX-442-GIV (Jun. 2, 2008) (08-442 Order Setting Energy Efficiency Policy Goals).

energy usage with demand-side programs.[59] While the law indicates customers have no "right" to any particular rate,[60] the Commission is mindful of how rate changes affect Kansans.[61]

B. Goal of the State: Cost-Effective Programs

26. KEEIA establishes the goal of the state is to promote cost-effective demand-side programs.[62] Due to the interplay between the definitions of demand-side program, demand response and energy efficiency, this goal could be restated in multiple ways. Neither of these goals would be exclusive of others – they are all restatements of KEEIA's definition of demand-side program.

27. KEEIA's stated goal closely mirrors the goals established by the Commission in its previous energy efficiency general investigations. For example:

- "Energy efficiency programs need to produce cost-effective, firm energy savings. Energy efficiency programs should be used to achieve both energy and demand reductions."[63]
- "Programs should implement the most cost-effective programs in a logical sequence to maximize the energy savings per dollar spent."[64]

[59] *See* 08-442 Order Setting Energy Efficiency Policy Goals, pp. 11-12.
[60] *See State ex rel. Jackson Cnty. v. Pub. Serv. Comm'n*, 532 S.W.2d 20, 31 (Mo. 1975) *citing Wright v. Central Kentucky Natural Gas Co*. (1936), 297 U.S. 537, 542; *Norwegian Nitrogen Products Co. v. United States* (1933), 288 U.S. 294, 318; *San Antonio Utilities League v. Southwestern Bell Telephone Co*. (5th Cir., 1936), 86 F.2d 584, cert. den., 301 U.S. 682; *United States Light and Heat Corp. v. Niagara Falls Gas & Electric Light Co*. (2nd Cir., 1931), 47 F.2d 567, 570, cert. den., 283 U.S. 864; *Lenihan v. Tri-State Telephone & Telegraph Co*. (1940), 208 Minn. 172, 293 N.W. 601, cert. den., 311 U.S. 711; *Wisconsin Telephone Co. v. Public Service Commission* (1939), 232 Wis. 274, cert. den., 309 U.S. 657.
[61] *See* 08-442 Order Setting Energy Efficiency Policy Goals, p. 16 ("The Commission has also identified the mitigation of customer bill increases as a primary goal.").
[62] K.S.A. 66-1283(b).
[63] *See* Order Following Collaborative on Benefit-Cost Testing and Evaluation, Measurement, and Verification, p. 59, Docket No. 08-GIMX-442-GIV (Apr. 13, 2009) (08-442 Order Following Collaborative); *citing* 08-442 Order Setting Energy Efficiency Policy Goals, pp. 10-11.
[64] *See id.* at pp. 59-60, *citing* 08-442 Order Setting Energy Efficiency Policy Goals, pp. 11, 24.

28. The Commission's policy orders call for demand-side programs to be cost-effective. KEEIA states its goal is to promote cost-effective demand-side programs. KEEIA codifies a goal the Commission identified nearly a decade ago.

i. Inputs and Comparisons

29. To determine whether a demand-side program is cost-effective, KEEIA vests the Commission with authority to determine the appropriate test for evaluating cost-effectiveness.[65] Established Commission policy provides such a test. Determining cost-effectiveness requires evaluating whether the benefits of a particular demand-side program outweigh the program's costs. In Kansas, the appropriate test for evaluating the cost-effectiveness of demand-side programs was established in a series of general investigations. Starting in Docket No. 08-GIMX-442-GIV (08-442 Docket), and subsequently clarified in Docket No. 12-GIMX-337-GIV (12-337 Docket), the Commission established a policy requiring public utilities to submit results of four benefit-cost tests with applications for demand-side programs.[66] In fact, KCP&L agreed with Dr. Glass's recommendation at the conclusion of the 12-337 Docket that, "[N]o changes to the Commission's benefit-cost policy regarding [demand-side] programs are currently necessary."[67] These four tests are:

- (1) Total Resource Cost (TRC);
- (2) Ratepayer Impact Measure (RIM)'
- (3) Participant; and
- (4) Program Administrator (or Utility) Cost.[68]

[65] K.S.A. 66-1283(c)(1)(D).
[66] Order, p. 7, Docket. No. 12-GIMX-337-GIV (Mar. 6, 2013) (12-337 Final Order).
[67] Responsive Comments of Kansas City Power & Light Company to Technical Advisory Report of Dr. Robert Glass, p. 1, Docket. No. 12-GIMX-337-GIV (Dec. 12, 2012).
[68] 12-337 Final Order, p. 7.

30. These four tests analyze cost-effectiveness from different perspectives.[69] The results (or "scores") for these tests are displayed as a ratio. Programs scoring 1.0 or greater indicate the program's benefits exceed the program's costs from a particular perspective.[70] Likewise, programs that score below 1.0 indicate costs exceed their benefits (*i.e.* the program is not cost-effective).[71] Each benefit-cost test utilizes a different pool of benefits and costs when calculating its result.[72] Programs that appear to be cost-effective under one test (*i.e.* from one perspective) may not be cost-effective under another.[73]

31. The Commission emphasizes the TRC and RIM tests for this reason. The TRC Test (also known as the "All Ratepayers Test")[74] indicates whether a program is beneficial to the utility and the utility's customers as a whole.[75] In the 08-442 Docket, the Commission stated one policy goal of demand-side programs is reducing or postponing future construction of generation.[76] This policy goal caused the Commission to emphasize the TRC test.[77] If the TRC test score is a 1.0 or greater, the demand-side program should, in theory, lead to lower system costs.[78] It is the sum of the benefit and cost components in the Participant and RIM tests.[79]

32. Also in the 08-442 Docket, the Commission set a separate policy goal of mitigating customer bill increases.[80] This caused the Commission to place emphasis on the RIM test.[81] The RIM test indicates whether the rates of the utility's non-participating customers will

[69] 12-337 Notice of Filing of Technical Advisory Report of Dr. Robert Glass on Behalf of Kansas Corporation Commission Staff, Docket. No. 12-GIMX-337-GIV, pp. 4-7 (Nov. 8, 2012) (12-337 Glass Technical Report).
[70] *See* 12-337 Glass Technical Report, p. 4.
[71] *See id.*
[72] *See id.* at pp. 4-6.
[73] *See generally* 12-337 Glass Technical Report, p. 4.
[74] *See id.* at p. 6.
[75] *See id.*
[76] 08-442 Order Setting Energy Efficiency Policy Goals, pp. 15-16.
[77] *See id.*; *See also* Glass Corrected, p. 17.
[78] *See* 12-337 Glass Technical Report, p. 6.
[79] *See id.*
[80] 08-442 Order Setting Energy Efficiency Policy Goals, p. 16.
[81] *See id.*; *See also* Glass Corrected, p. 17.

increase or decrease over the life of the program.[82] Non-participants do not directly receive the savings attributable to reduced energy consumption (*i.e.* bill reductions due to becoming more energy efficient).[83] For this reason, any rate increase resulting from implementing a demand-side program translates into a bill increase for non-participants.[84]

33. Kansas does not favor a "bright-line" approach to approval or disapproval of demand-side programs.[85] Accordingly, the Commission's established test permits flexibility necessary to approve demand-side programs that would otherwise fail a strict bright-line rule. The Commission has not set a bright-line rule requiring results for both the RIM and TRC tests be equal to or greater than one in order for a demand-program to be approved.[86] A program that scores less than one on the RIM test may still be approved, depending on the degree of RIM test failure, its performance on the other tests, and if the Commission believes it will effectively address the Commission's goals.[87] A program that scores less than one on the TRC test is unlikely to be approved by the Commission.[88]

34. In summary, Commission policy supports the following test for evaluating the cost-effectiveness of a demand-side program:

- A public utility must submit the results of four major benefit-cost tests;
- Kansas does not utilize a bright-line pass/fail methodology;
- Emphasis is placed on the TRC test. Programs that score below a 1.0 are unlikely to be approved; and

[82] *See* 12-337 Glass Technical Report, p. 5.
[83] *See* Glass Corrected, p. 8.
[84] *See generally* 12-337 Glass Technical Report, p. 5.
[85] 08-442 Order Following Collaborative, p. 10.
[86] *See id.* at p. 10.
[87] *See id.* at pp. 8-9.
[88] *See id.* at pp. 9-10.

- Emphasis is placed on the RIM test. Programs that score below a 1.0 may still be approved depending on the degree of failure, performance in other tests and advancement of Commission goals.

35. Not all demand-side programs are subject to strict benefit-cost analysis. Under KEEIA, programs targeted to low-income customers or general educational campaigns may be approved so long as the Commission determines the program to be in the public interest and supported by a reasonable budget (in the context of the overall budget).[89] This too mirrors established Commission policy. Educational programs are necessary to achieve the full potential of demand-side programs.[90] However, it is difficult to attribute energy efficiency savings directly to an educational program.[91] Accordingly, educational programs are not subject to traditional benefit-cost analysis.[92] The Commission stated a useful guideline for funding devoted to demand-side programs is 5% of total funding devoted towards energy efficiency programs.[93] Regarding educational programs, KEEIA and Commission policy are consistent and harmonious.

36. KCP&L discretely asks the Commission to abandon this methodology. On one hand, they concur, all tests are important.[94] On the other, KCP&L argues the Commission should only be concerned with the results of the TRC test.[95] KCP&L readily admits, each benefit-cost test examines the impact of demand-side programs from unique perspectives.[96] As stated at the evidentiary hearing, KCP&L (a legislative sponsor of KEEIA)[97] modeled KEEIA

[89] *See* K.S.A. 66-1283(c)(1)(D).
[90] *See* 08-442 Order Setting Energy Efficiency Policy Goals, p. 16.
[91] *See id.*
[92] *See id.*
[93] 08-442 Order Following Collaborative, p. 12.
[94] *See* Rebuttal Testimony of Timothy M. Nelson, p. 5 (Aug. 22, 2016) (Nelson Rebuttal).
[95] *See id.* at p. 4.
[96] *See id.*
[97] Tr. Vol. 2, p. 441 (Ives).

after Missouri's Energy Efficiency Investment Act (MEEIA).[98] However, MEEIA establishes the TRC test as the primary benefit-cost test for demand-side program evaluation. "The [Missouri Public Service Commission] shall consider the total resource cost test a preferred cost-effectiveness test."[99] KEEIA contains no such qualification or limitation. Under KEEIA, "[T]he [Kansas Corporation Commission] shall determine the appropriate test for evaluating the cost-effectiveness of [a] demand-side program."[100] While MEEIA statutorily emphasizes the TRC test, KEEIA delegates to Commission authority. KEEIA does not require the Commission select a particular cost-effectiveness test above another. Rather, KEEIA calls for the Commission to determine an "appropriate test" for evaluating cost-effectiveness; a test presently articulated in the Commission's policy orders. Furthermore, KEEIA's initial proposed language mirrored that of MEEIA in preferring the TRC test.[101] However, the Kansas Legislature abandoned this language as KEEIA worked through the legislative process. With sound judgement, the Legislature rejected focusing solely on one test to evaluate the cost-effectiveness of demand-side programs.

37. Benefit-cost analysis requires identifying appropriate assumptions for an accurate evaluation. Commission policy endorses following the benefit-cost tests identified in the California Standard Practice Manual, 2002.[102] One key assumption is an appropriate avoided capacity cost. Commission policy allows utilities to submit internal cost modeling to calculate such avoided capacity costs,[103] but also subjects internal modeling assumptions to scrutiny from outside parties. Commission policy sought to value demand-side investments like traditional

[98] *See* KEEIA Cycle 1 Report, p. 1-1.
[99] Mo. Rev. Stat. § 393.1075.4.
[100] K.S.A. 66-1283(c)(1)(D).
[101] Glass Surrebuttal, Exhibit RHG-1, p. 2.
[102] *See* 08-442 Order Following Collaborative, pp. 12-13.
[103] *See id.* at pp. 32-33.

supply-side investments, but also recognized the fundamental differences between the two. Commission policy treats demand-side programs as a resource, but recognizes they are not a true energy resource – they cannot be used to generate electricity.[104] While both KEEIA and the Commission's policy orders call for a comparable valuation of demand-side and supply-side investments, KEEIA's "as much as is practicable" language requires a renewed examination of core differences between the resources.

38. KCP&L asks this Commission to treat supply-side resources and demand-side resources as if they are one in the same. Had the legislature intended to value them directly as equals, it would not have included the proviso "as much as is practicable." As KCP&L argues, when the Legislature acts it has a reason for doing so.[105] Surely, by including this language the Legislature understood the underlying differences between demand-side and supply-side resources and wisely codified discretion when evaluating demand-side proposals.

39. Because KEEIA defers to the Commission on establishing an appropriate test for evaluating cost-effectiveness, KEEIA cannot supplant Commission policy. Further, KEEIA and Commission policy mirror each other in the evaluation of educational programs. Regarding cost-effectiveness tests, KEEIA and Commission policy operate consistently and harmoniously.

C. Policy of the State: Realistic Valuations & Voluntary Participation

40. KEEIA establishes a state policy on valuing demand-side programs and solidifies the voluntary nature of such programs. KEEIA states:

> It shall be the policy of the state to value demand-side program investments equal to traditional investments in supply and delivery infrastructure as much as is practicable, but public utilities shall not be required to offer, implement or continue demand-side programs.[106]

[104] *See* 08-442 Order Following Collaborative, p. 60.
[105] *See* KCP&L Initial Brief, p. 9.
[106] K.S.A. 66-1283(b).

41. Regarding valuation, KEEIA provides the Commission discretion when determining the value of a demand-side program. By including the language, "as much as is practicable," Kansas law clearly enables the Commission to undertake a review of a demand-side program's "value" at the time the program is proposed. KEEIA's evaluation of demand-side programs closely resembles the Commission's stated policy on evaluating demand-side programs.

> "[E]nergy efficiency should be considered a resource, along with more traditional supply-side generation resources, to meet present and future energy needs."[107] "After reliability and permanence, the issue is a matter of cost: can we gain kWh of power, by being more efficient, at or below the price it would cost to generate that power?"[108] The Commission wanted to ensure Kansas customers could buy "power's equivalent at or below power's retail price."[109]

42. In fact, when KCP&L testified in support of KEEIA to the Kansas Legislature the Company stated KEEIA was consistent with this particular policy.[110] KCP&L now argues KEEIA supplants this policy, and requires the Commission to value demand-side programs as if they are capital investments.[111] This directly contradicts KCP&L's testimony to the Kansas Legislature in support of KEEIA.[112] The Commission's position on valuing energy efficiency recognizes two ideas. First, demand-side programs should reliably lower energy and peak demand.[113] Second, demand-side programs should be long-term options, not short-term (as one might view energy conservation efforts).[114] As the plain text of KEEIA and the Commission's policy orders clearly illustrate, demand-side resources should be evaluated like supply-side

[107] 08-442 Order Following Collaborative, p. 60.
[108] *See id*.
[109] *See id.* at p. 61.
[110] Exhibit DRI-3, p. 1.
[111] Rebuttal Testimony Prepared by Darren R. Ives, p. 14 (Aug. 22, 2016) (Ives Rebuttal).
[112] *See* Exhibit DRI-3, p. 1.
[113] *See* 08-442 Order Following Collaborative, p. 60.
[114] *See id.*

resources within reason. KEEIA's policy declarations and the Commission's stated policy goals are consistent.

D. Procedural Aspects: Timelines and Independence

43. KEEIA's procedural requirements are nearly identical to the Commission's other rate and tariff-related proceedings. By default, applications filed pursuant to KEEIA must receive a Commission order within 180 days, though the Commission may extend this deadline for good cause.[115] Consistent with K.S.A. 66-117(c), if the Commission does not issue a decision within this review window, the application is deemed approved by operation of law.[116] In this case, the Commission exercised its discretion to utilize a 240-day review window which was subsequently extended by agreement between KCP&L and the Commission.[117]

44. KEEIA grants both the Commission and the public utility submitting the application independent authority to accept or reject the establishment, continuation or modification of a demand-side program, portfolio of programs, or cost recovery mechanisms.[118] Both the Commission and public utility must independently agree on any establishment, continuation or modification of programs or mechanisms.[119] A public utility can reject modifications to its programs, portfolio or mechanisms, and cannot be required to implement proposed modifications.[120]

45. Once the Commission issues a final order on the application, the public utility has 30 days to reconsider and withdraw its plan.[121] This 30-day "reconsideration window" differs

[115] *See* K.S.A. 66-1283(c)(1)(A).
[116] K.S.A. 66-1283(c)(1)(A).
[117] *See* Order Amending Procedural Schedule, pp. 3-5.
[118] *See* K.S.A. 66-1283(c)(1)(B).
[119] *See id*.
[120] *See id.*
[121] *See* K.S.A. 66-1283(c)(1)(C).

from a standard Petition for Reconsideration period.[122] The time to file a petition for judicial review does not begin to run until this 30-day "reconsideration window" has expired.[123] The Company may still submit a Petition for Reconsideration within 15 days of a final order, but failing to do so does not require the public utility implement the program(s) contained within the application.

E. KEEIA Cost Recovery

46. KEEIA establishes cost recovery provisions the Commission must allow for. Specifically:

> The commission shall allow recovery of the reasonable and prudent costs associated with delivering commission-approved demand-side programs, 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. The 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, other than programs targeted to low-income customers or general education campaigns, shall be modified to address deficiencies or terminated following such determination.[124]

47. KCP&L reads this provision to support its claim KEEIA focuses on customer-class energy reductions instead of individual customer energy reductions.[125] The Commission is directed to allow a utility to recover demand-side program costs regardless of whether customers utilize such programs. In other words, the utility should not be denied program cost recovery simply because customers chose not to utilize the program. Whether customers choose to participate in a demand-side program is a factor beyond a utility's control. KCP&L may design cost-effective demand-side programs, but KCP&L cannot forcibly drive ratepayers to a store to purchase lightbulbs. Accordingly, KEEIA ensures utilities will receive fair recovery of program

[122] *Compare* K.S.A. 66-1283(c)(1)(C), *with* K.S.A. 66-118b and K.S.A. 77-529(a)(1).
[123] K.S.A. 66-1283(c)(1)(C).
[124] K.S.A. 66-1283(c)(2).
[125] *See* KCP&L Initial Brief, p. 11.

costs despite a want for participants. KEEIA does not contain a similar provision for throughput disincentive or earnings opportunity regardless of ratepayer utilization. If customers do not utilize a program, there would be no revenue declines to offset or reason to award an earnings opportunity. This reading of the statute dovetails neatly with KEEIA's other mandates. Statutes should be considered in their entirety and, if required, reconciled so as to make different provisions consistent, harmonious and sensible.[126]

48. Regarding the specific means by which the Commission must allow for cost recovery, KEEIA provides a non-exhaustive list for the Commission to consider. Specifically:

> To comply with this section, the commission may allow cost recovery mechanisms that further encourage investments in demand-side programs. Such cost recovery mechanisms may include, but shall not be limited to: (A) Capitalization of investments in and expenditures for demand-side programs; (B) recovery of lost revenue associated with demand-side programs; (C) decoupling; (D) rate design modifications; (E) accelerated depreciation on demand-side investments; and (F) allowing the public utility to retain a portion of the net benefits of a demand-side program for its shareholders.[127]

49. The language of the statute does not mandate the Commission use any particular mechanism from the list. Regarding lost margin recovery, the Commission evaluated cost recovery mechanisms in the 08-441 Docket,[128] and further examined the issue in the 12-337 Docket.[129] The Commission rejected lost margin recovery in the 12-337 Docket, stating:

> The Commission also notes allowing recovery of lost margin creates a subsidy for energy efficiency programs that can violate the fundamental rate making principle of cost causation, especially when one group of ratepayers subsidizes the lost margins caused by other consumers who enroll in and benefit from an energy efficiency program. For example, if a utility replaces the electrical appliances of one group of customers as part of an energy efficiency program, which in certain circumstances may reduce its net profits, it would be unfair to ask non-participants to pay for the reduction caused by a program from which they received little benefit. Under the principle of cost causation, the participants in the energy efficiency programs alone

[126] *See Farm & City Ins. Co. v. Am. Standard Ins. Co. of Wisconsin*, 220 Kan. 325, 332, 552 P.2d 1363, 1369 (1976).
[127] K.S.A. 66-1283(d)(1) (emphasis added).
[128] *See* Final Order, p. 23, Docket 08-GIMX-441-GIV (Nov. 14, 2008) (08-441 Final Order).
[129] 12-337 Final Order, pp. 4-5.

should be responsible for any reduction in revenue resulting from the energy efficiency program.[130]

50. The Commission examined multiple ways to allow utilities to recover costs, and ultimately found full decoupling to be the most appropriate.[131]

i. KEEIA Supports Historical Costs

51. KEEIA allows for recovery of reasonable and prudent costs associated with delivering demand-side programs so long as two conditions are met. First, programs must result in energy or demand savings.[132] Second, the program must be beneficial to customers in the class for which the demand-side program is implemented regardless of whether customers participate in the program.[133]

52. The first condition indicates KEEIA supports using historical data for program cost recovery. While a program's cost-effectiveness can be estimated upfront with benefit-cost analysis, the overall results cannot be known until a post-implementation evaluation, measurement and verification (EM&V) has been completed. Furthermore, KEEIA notes poor program performance (*i.e.* not as cost-effective as originally estimated) is not suitable grounds for disallowing recovery of program costs.[134] KEEIA allows underperforming programs to be modified or terminated.[135] Accordingly, KEEIA supports Staff's position of historical program cost recovery.

53. The second condition ensures a public utility recovers reasonable and prudent costs regardless of whether customers take advantage of the demand-side program. KCP&L argues this supports a class-level analysis on energy savings. This provision supports nothing of

[130] 12-337 Final Order, pp. 4-5.
[131] *See* Glass Cross-Answering, p. 8.
[132] *See* K.S.A. 66-1283(c)(2) (emphasis added).
[133] *See id*.
[134] *See id.*
[135] *See id*.

the sort. A utility can design an easy to use and cost-effective program, but that is no guarantee customers will actually take advantage of it. This provision in KEEIA ensures a public utility, who has designed a cost-effective program, does not forego recovery of reasonable and prudent costs due to consumer behavior beyond the utility's control.

ii. KEEIA Supports Flexible Cost Recovery Mechanisms

54. In order to comply with KEEIA's mandates, KEEIA authorizes the Commission to implement an infinite range of cost recovery mechanisms that further encourage investment in demand-side programs. Such mechanisms may include, <u>but shall not be limited to</u>:

> (A) Capitalization of investments in and expenditures for demand-side programs;
>
> (B) recovery of lost revenue associated with demand-side programs;
>
> (C) decoupling;
>
> (D) rate design modifications;
>
> (E) accelerated depreciation on demand-side investments; and
>
> (F) allowing the public utility to retain a portion of the net benefits of a demand-side program for its shareholders.[136]

55. By enumerating multiple methods for permitting cost recovery, but ensuring that cost recovery was not limited to only those enumerated items, the Commission holds legislative authorization to implement cost recovery approaches typically reserved for traditional rate cases. In addition, this list's non-exclusive nature confirms the Commission and public utilities have wide discretion when developing cost recovery mechanisms and proposals. The list is not exclusive, meaning the Commission is not limited to the items listed in the statute.[137] The very existence of a non-exclusive list indicates legislative intent to acknowledge the existence of valid

[136] *See* K.S.A. 66-1283(d)(1)(A)-(F) (emphasis added).
[137] *See In re Y.E.Z.*, 303 P.3d 727 (Kan. Ct. App. 2013); *See also M.S.W., Inc. v. Bd. of Zoning Appeals of Marion Cty.*, 29 Kan. App. 2d 139, 150, 24 P.3d 175, 184 (2001).

unlisted mechanisms.[138] KEEIA stands for the idea that when it comes to demand-side cost recovery, all options are available to the Commission.

56. When evaluating a demand-side proposal, both the Commission and public utility can be confident legal authority exists to support cost recovery mechanisms necessary to achieve KEEIA's stated goals. This does not, however, guarantee the Commission and public utility will both agree on which cost recovery mechanism is necessary. The Kansas Legislature sought to include language that ensures both the Commission and public utility have independent authority to reject modifications to demand-side cost recovery mechanisms and portfolios.[139] Combined with the public utility's "30-day review window," the Kansas Legislature created a process by which the Commission could craft a cost recovery mechanism (or program portfolio) it believed was cost-effective and beneficial to ratepayers, and the utility would have ample time to review it for financial soundness before committing to it.

F. KEEIA's Mandates

57. To achieve KEEIA's stated goals (*e.g.* promote the implementation of cost-effective demand-side programs in Kansas), the Commission shall:

> (1) Provide timely cost recovery for electric public utilities;
>
> (2) ensure that the 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;
>
> (3) provide timely earnings opportunities for public utilities associated with cost-effective, measurable and verifiable demand-side program savings;

[138] *State v. Martin*, 285 Kan. 735, 741, 175 P.3d 832, 836 (2008).
[139] *See* K.S.A. 66-1283(c)(1)(B).

(4) provide oversight and approval for utility-specific settlements and tariff provisions; and

(5) provide independent evaluation of demand-side programs, as deemed necessary by the commission.[140]

i. Timely Cost Recovery

58. KEEIA requires the Commission provide timely cost recovery for electric public utilities.[141] "Timely" and "cost" are not defined within KEEIA and thus present a question of statutory interpretation. When a statute is plain and unambiguous, there is no need to speculate as to the intent behind it.[142] Ordinary words are given their ordinary meanings.[143]

59. Parties to this docket disagree as to what constitutes "timely" cost recovery. "As with any problem of statutory interpretation, we turn first to the plain language of the statute itself."[144] It is only when the statute is ambiguous that we look to legislative intent.[145] As Staff detailed, the synonyms associated with "timely" support Staff's position.[146] KCP&L is requesting immediate, contemporaneous cost recovery.[147] As KCP&L explains, "contemporaneous cost recovery is the most timely."[148] The plain language of KEEIA shows such urgent cost recovery mechanisms are not mandatory.

60. In addition to the plain meaning of the statute, recall KEEIA states the Commission shall allow recovery of reasonable and prudent costs so long as demand-side

[140] K.S.A. 66-1283(e)(1)-(5).
[141] K.S.A. 66-1283(e)(1).
[142] *State v. Ruiz-Reyes*, 285 Kan. 650, 653, 175 P.3d 849, 852 (2008).
[143] *See id.*
[144] *State v. Hardy*, 390 P.3d 30, 37 (Kan. 2017).
[145] *Ohlmeier v. Jones*, 51 Kan. App. 2d 1014, 360 P.3d 447, 456 (2015).
[146] *See* Grady Direct, pp. 5-6.
[147] *See* Supplemental Direct Testimony Prepared by Kimberly H. Winslow, pp. 21-22 (Dec. 15, 2016) (Winslow Supplemental).
[148] Rebuttal Testimony Prepared by Mark A. Foltz, p. 3 (Aug. 22, 2016) (Foltz Rebuttal).

programs result in energy or demand savings.[149] It is impossible to know whether a demand-side program has resulted in any energy or demand savings until the program has been implemented. Parties can estimate how effective a program may be at reducing energy or demand (and use Commission-approved tests to do so). However, the accuracy of these evaluations will not be known until data from a program's operation is verified.

61. KEEIA only requires a utility recover its costs (*e.g.* costs the Company spends to implement demand-side programs, including program administration, implementation, and rebates to program participants)[150] timely.[151] Compared to the regulatory environment public utilities operate in, annual recovery of program costs is timely.[152] Utilities can incur costs for years before seeking recovery through the rate case process.[153] Compared to the timelines associated with traditional rate making procedures, annual recovery is certainly timely.[154] Traditional, historically based rate recovery should not be used as support for contemporaneous recovery. Rather, it supports the idea that annual recovery is certainly more timely than what utilities experience with other capital investments. If KEEIA calls for the treatment of demand-side investments similar to supply-side investments, then historical recovery is the appropriate framework to apply to cost recovery. KCP&L considers contemporaneous cost recovery not just timely, but the most timely.[155] There is no section in KEEIA mandating the Commission award contemporaneous cost recovery. What the record does support, however, is immediate contemporaneous recovery of projected costs is the most acceptable to KCP&L.

[149] *See* K.S.A. 66-1283(c)(2) (emphasis added).
[150] KCP&L Initial Brief, p. 22.
[151] K.S.A. 66-1283(e)(1).
[152] *See* Grady Direct, pp. 7-8.
[153] *See id.* at p. 7.
[154] *See id*.
[155] Foltz Rebuttal, p. 3.

62. Furthermore, KCP&L's Application supports the conclusion annual cost recovery is timely. KEEIA's provision mandating an earnings opportunity (discussed below) uses the term "timely" in a historically based manner. KCP&L asks the Commission to read two subsections with similar chronological components, and reach different conclusions. Staff argues the plain language of the statute leads to the conclusion "timely" supports annual cost recovery. If a statute requires the application of canons of statutory construction then statutes should be construed to avoid unreasonable or absurd results.[156] Surely, there can be no more of an absurd result than two subsections, with a similar emphasis on verifying demand-side program results, supporting contradictory conclusions.[157]

ii. Aligning Utility Financial Incentives with Customer Incentives

63. KEEIA mandates the Commission ensure the financial incentives of 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.[158] This provision requires the Commission to resolve the inherent disincentive public utilities face when sponsoring demand-side programs: reduced sales. However, this provision is not one-sided. Utility incentives must also be aligned with helping customers use energy more efficiently, and in a manner that sustains or enhances a customer's incentive to do so. The Commission recognized the need to balance these competing interests when it stated:

> The Commission's responsibility, however, is not to optimize utility profits, but seek an appropriate balance between utility customer and shareholder interests in the context of moving toward the Commission's objective of

[156] *N. Nat. Gas Co. v. ONEOK Field Servs. Co.*, 296 Kan. 906, 918, 296 P.3d 1106, 1115 (2013).
[157] Both KEEIA's provisions related to program cost recovery, K.S.A. 66-1383(c)(2), (e)(1), and earnings opportunity, K.S.A. 66-1283(e)(3) are rooted with historical text. *Compare* K.S.A. 66-1283(c)(2)(" The commission shall allow recovery of the reasonable and prudent costs associated with delivering commission-approved demand-side programs, so long as the program: (A) Results in energy or demand savings. . .") (emphasis added), *with* K.S.A. 66-1283(e)(3) ("provide timely earnings opportunities for public utilities associated with cost-effective, measurable and verifiable demand-side program savings.") (emphasis added).
[158] K.S.A. 66-1283(e)(2).

> meeting public power needs through balanced resource means while mitigating rate increases.[159]

64. Accordingly, KEEIA mandates the Commission balance incentives of utilities and customers. KEEIA does not require the Commission focus entirely on remedying a utility's perceived harm.

iii. Timely Earnings Opportunity

65. KEEIA requires the Commission provide timely earnings opportunities for public utilities associated with cost-effective, measureable and verifiable demand-side program savings.[160] KEEIA's earnings opportunity provision indicates a preference for historically based data. No party will know whether a program has been cost-effective until the program is subject to EM&V analysis. Accordingly, KEEIA supports an earnings opportunity based on historical data.

iv. Oversight and Evaluation

66. KEEIA calls on the Commission to provide oversight and approval of utility-specific settlements and tariff provisions.[161] This requires the Commission assert its regulatory role in overseeing and formally authorizing specific tariffs that implement proposed, approved and accepted demand-side programs. Further, KEEIA calls on the Commission to provide independent evaluation of demand-side programs, as deemed necessary by the Commission.[162]

G. Miscellaneous Provisions

67. KEEIA contains a number of miscellaneous provisions which the Commission must consider when approving a particular demand-side program or cost recovery mechanism. The Commission is required to fairly apportion the costs and benefits of demand-side programs

[159] 08-441 Final Order, p. 30.
[160] *See* K.S.A. 66-1283(e)(3).
[161] *See* K.S.A. 66-1283(e)(4).
[162] *See* K.S.A. 66-1283(e)(5).

to each customer class.[163] Public utilities that implement demand-side programs must submit an annual report to the Commission describing the results of those programs.[164] KEEIA details the information to be included with these reports.[165] KEEIA authorizes the Commission to adopt rules and regulations to administer KEEIA.[166] Finally, KEEIA contains a provision on how the Act may be cited.[167]

68. Staff's analysis of KEEIA finds little relevance in evaluating programs natural gas public utilities offer in other jurisdictions. KCP&L explored this issue at the evidentiary hearing.[168] However, this analysis does little more than attempt to show hypocrisy on the part of the gas utilities (*i.e.* advocating for programs in other jurisdictions while opposing programs in Kansas). What the gas utilities do elsewhere, however, has no relevance on the primary issue before the Commission in this proceeding: Whether KCP&L's proposal is cost-effective.

III. Kansas City Power & Light Company's KEEIA Cycle 1 Proposal

69. KCP&L's KEEIA Cycle 1 proposal consists of fourteen demand-side programs in total.[169] While some programs are cases of first impression, others are continuations of previously existing programs.[170] KCP&L's Application represents the first instance of a public utility requesting approval of demand-side programs using the KEEIA framework. Included with KCP&L's Application is the KEEIA Cycle 1 Report (with appendixes) supplemented by testimony.

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[163] *See* K.S.A. 66-1283(d)(2).
[164] *See* K.S.A. 66-1283(f).
[165] *See* K.S.A. 66-1283(f)(1)-(6).
[166] *See* K.S.A. 66-1283(g).
[167] *See* K.S.A. 66-1283(h).
[168] Tr. Vol. 1, pp. 245-250 (File); Tr. Vol. 2, pp. 475-477 (Raab).
[169] *See* Winslow Supplemental, pp. 12, 16.
[170] *See e.g.* Winslow Supplemental, p. 12 ("Of the residential programs, four (4) programs are new to Kansas and three (3) programs are continuations of existing programs."); *See also* Winslow Supplemental, p. 16 ("With regard to the Business Programs, five (5) of the programs are new to Kansas, and two (2) are continuations with modification of existing programs.").

A. Portfolio of Programs

70. KCP&L's proposed demand-side program portfolio is comprised of seven residential and seven commercial programs.[171] The table below indicates KCP&L's proposed portfolio:

Residential	Commercial
Home Lighting Rebate	Business Energy Efficiency Rebate – Standard
Home Energy Report	Business Energy Efficiency Rebate – Custom
Online Home Energy Audit [E]	Strategic Energy Management
Whole House Efficiency	Block Bidding
Income-Eligible Multi-Family [I]	Online Business Energy Audit [E]
Income-Eligible Weatherization [I]	Small Business Direct Install
Residential Programmable Thermostat	Demand Response Incentive

[E] Educational and [I] Income-Eligible programs are not subject to traditional benefit-cost analysis.[172]

71. KCP&L's proposed demand-side program portfolio consists of programs that utilize energy efficiency measures,[173] demand response technologies,[174] educate customers regarding energy efficiency techniques,[175] and support low-income ratepayers.[176] Staff's recommendations in this proceeding approve more than 82% of KCP&L's proposed demand savings.[177] Given the fact demand savings aid in the postponement of generation plant

[171] *See* KEEIA Cycle 1 Report, p. 1-4.
[172] K.S.A. 66-1283(c)(1)(D).
[173] *See* Winslow Supplemental, pp. 12, 16.
[174] *See id.* at pp. 15, 19.
[175] *See id.* at pp. 13, 18.
[176] *See id.* at pp. 14-15.
[177] *See, e.g.* Kansas City Power & Light Company Corrected Notice of Filing Update Schedule DRI-1, (Mar. 22, 2017.

construction,[178] Staff is recommending the Commission approve KCP&L's strongest, most cost-effective programs and reject KCP&L's more speculative and least cost-effective programs.

Introduction to Staff's Analysis

72. While KCP&L's Application represents the first instance of the Commission applying KEEIA to a portfolio of demand-side programs, it is not the first instance where the Commission has evaluated demand-side programs. Commission-established policies detail the tests used to evaluate applications for approval of demand-side programs. Staff has applied both the law and Commission policy consistently where possible, and KEEIA exclusively where required. As detailed above, KEEIA grants the Commission wide discretion to approve demand-side programs and cost recovery mechanisms. Given KEEIA's deference to Commission discretion, Staff's approach does not limit the Commission's ability to reflect on the record as a whole and adopt different methodologies not otherwise outlined.

73. Both KEEIA and Commission policy place limits on the degree, if any, a public utility may incentivize fuel switching. KEEIA expressly prohibits incentivizing fuel switching for residential heating systems,[179] and precedential Commission policy mandates demand-side programs not bias a particular fuel source.[180] As Staff witness Josh Frantz detailed, the Commission's determination of fuel-switching may impact which programs or measures contained therein should be approved.[181]

[178] 08-441 Final Order, p. 6 ("The Commission believes [demand response] programs can produce results by shaving demand peaks which reduces the need for peaking capacity and therefore helps keep energy costs down. The Commission favors implementation of DR programs as a means of mitigating the need for expensive new power generation.").
[179] *See* K.S.A. 66-1283(a)(3).
[180] *See* 09-160 Amended Order Closing Docket, p. 1.
[181] Tr. Vol. 2, pp. 542-543 (Frantz).

B. Evaluating Cost-Effectiveness: A Common Sense Approach

74. KEEIA supports cost-effective demand-side programs and a policy valuing demand-side programs like traditional investments in supply and delivery infrastructure, as much as is practicable.[182] KEEIA grants the Commission authority to determine the appropriate test for evaluating cost-effectiveness of demand-side programs.[183] Commission policy sets a reasonable and flexible approach to evaluating demand-side programs. Staff's analysis of KCP&L's Application takes this framework and applies it to the programs presented. Where necessary, Staff has made limited adjustments to benefit-cost assumptions. Staff's recommended approach considers the state of energy markets influencing Kansas ratepayers, the overall effectiveness of any particular program, the soundness of savings estimates, the impact of a program on ratepayer rates and the ease of ratepayer participation.

i. Staff's Approach to Demand-Side Program Evaluation

75. With KEEIA and Commission policy as Staff's guidepost, Staff used a three-part test to evaluate KCP&L's proposal.[184] Once the appropriate inputs are determined and applied, the application of benefit-cost tests displays an objective basis for program review. Cost-effective results are displayed as a ratio, with a score 1.0 or above indicating favorable results.

76. Programs with a TRC score below 1.0 indicate the program's cost will exceed its benefits. Due to Commission policy stating a program scoring below 1.0 on the TRC test is unlikely to be approved,[185] Staff uses a 1.0 TRC test score as a baseline. For this reason, the first

[182] K.S.A. 66-1283(b).
[183] K.S.A. 66-1283(c)(1)(D).
[184] *See* Glass Corrected, pp. 22-27.
[185] 08-442 Order Following Collaborative, p. 10, ("It is unlikely a program that fails the TRC test will be approved by the Commission.").

step in Staff's analysis is determining whether a program passes the TRC test. Programs that score near or below 1.0 are red-flagged.[186]

77. Programs that pass initial TRC screening are evaluated for their impact on customer rates using the RIM test.[187] Evaluating demand-side programs using the RIM test is directly called for by Commission policy.[188] The reason for this is simple: for non-participants, a rate increase associated with demand-side programs equates to a bill increase.[189] While KCP&L claims to have designed a portfolio where everyone can participate,[190] the reality of the portfolio's offerings indicates not all programs are available to all ratepayers. For many programs, the majority of KCP&L ratepayers will be non-participants. To follow Commission policy and ensure bill increases for non-participants are mitigated, Staff uses a 0.7 on the RIM test as a baseline for program recommendation.

78. The Commission disfavors bright-line tests when evaluating demand-side programs, and like the TRC test, Staff does not use a failing RIM test as the basis for program rejection. For borderline cost-effectiveness scores, Staff further evaluates the qualities of the programs and ease of participation.[191] "[I]f a program is only going to have a few participants, then a low RIM [score] creates serious risk – non-participants are going to be subsidizing the few participants. In these cases, mitigating risk implies a rejection of the program."[192] Staff largely remained silent on the appropriate selection of measures for KCP&L's programs. If necessary, Staff voices concern over programs that base savings estimates on conjecture and caveats such as

[186] *See* Glass Corrected, p. 23.
[187] *See id.* at pp. 22-27.
[188] 08-442 Order Following Collaborative, p. 9.
[189] *See* Glass Corrected, p. 8 ("The problem is the non-participants. As rate-payers, non-participants will pay the costs of the demand-side programs but will not benefit from the reduction in energy use by the participants.").
[190] Tr. Vol. 2, p. 383 (Nelson) ("The goal of our programs is for all customers to save, and we try to design our program so that they all have that opportunity. And we try to encourage everyone to participate. We would hope that everyone would be able to participate.").
[191] Glass Corrected, pp. 26-27.
[192] *See id.* at p. 27.

"actual savings will vary"[193] or "actual savings will vary widely."[194] Programs that present an inherent risk of free ridership receive this same caution.[195] However, these concerns are not the primary dispositive force behind any one program recommendation – cost-effectiveness results are. Staff has used KEEIA-supported Commission-required cost-effectiveness tests to methodically review KCP&L's Application in a manner that aims to recommend approval of programs, not reject them.

ii. Key Assumptions

79. Both KCP&L and Staff utilize the same benefit-cost tests to support their respective positions. As KCP&L admits, there is no conflict between the Commission's four benefit-cost test policy and KEEIA.[196] While KCP&L and Staff utilize the same benefit-cost tests, Staff changes two assumptions: avoided capacity cost and the Net-to-Gross (NTG) ratio. Due to the black box nature of KCP&L's demand-side program modeling,[197] Staff had to request KCP&L run benefit-cost analysis with varying avoided capacity costs and NTG ratios. These scenarios with varying assumptions are referred to as sensitivity analysis.[198]

1. Avoided Capacity Cost: Staff's Proposal is Supported and Reasonable

80. KEEIA mandates the policy of the state is to value demand-side programs equal to traditional investments in supply and delivery infrastructure as much as is practicable.[199] Importantly, the dollar figure attached to a particular avoided capacity cost in this proceeding is confidential. To obviate the need for a confidential brief, Staff has prepared the entirety of its textual brief in a public format. A confidential attachment (Attachment A) is being included at

[193] KEEIA Cycle 1 Report, Appendix A, p. A-23.
[194] *See id.* at p. A-26 (emphasis added).
[195] *See* Frantz Direct, pp. 23-24, 35, 37.
[196] Tr. Vol. 1. p. 161 (Turner).
[197] Glass Corrected, p. 21.
[198] Tr. Vol. 3, p. 671 (Glass).
[199] K.S.A. 66-1283(b).

the end of this brief to illustrate differences between the parties' recommended avoided capacity costs.[200] Staff recommends the Commission adopt a practicable avoided capacity cost representative of capacity prices that exist today and will continue to exist into the foreseeable future. Staff's avoided capacity cost is derived from KCP&L's own Potential Study in this docket,[201] and the avoided capacity cost provided in a recent KCP&L demand-side docket.[202]

81. Regarding the Potential Study, surplus capacity within the Southwest Power Pool (SPP) is depressing capacity contract prices.[203] At KCP&L's direction, Navigant (the preparer of the Potential Study) increased its avoided capacity cost assumption to the cost of a new entrant starting January 1, 2019.[204] When pressed on what would cause avoided capacity costs to increase six-fold over CURB's proposal in this case, and nearly three times that of Staff, KCP&L's chief witness on the subject could not provide an answer.[205] Staff's witness indicated the only thing that could cause such an increase would be a catastrophe.[206] Excess capacity in SPP is driving down capacity prices.[207] Accordingly, Staff examined this phenomenon. Data provided by SPP indicates since the time Navigant prepared its Potential Study for KCP&L even more capacity has come online.[208] Combined with KCP&L's flat and declining load curves,[209] one simple conclusion may be drawn: supply is increasing and demand is decreasing. Because of this, the true price of avoided capacity is likely lower than Staff's recommendation.[210] SPP

[200] *See* Confidential Attachment A.
[201] *See* KEEIA Cycle 1 Report, Appendix L, p. 77.
[202] *See* Nelson Rebuttal, pp. 20-21.
[203] KEEIA Cycle 1 Report, Appendix L, p. 77.
[204] *See* Tr. Vol. 2, pp. 336-37 (Nelson).
[205] Tr. Vol. 2, p. 337 (Nelson).
[206] Tr. Vol. 3, p. 700 (Glass).
[207] KEEIA Cycle 1 Report, Appendix L, p. 77.
[208] Glass Surrebuttal, pp. 9-11.
[209] *See* KCP&L Commissioner Questions Response, Attachment C.
[210] *See* Glass Surrebuttal, p. 10.

does not have a capacity market, and thus real-time capacity prices are not directly observable.[211] This does not lead to a conclusion there is no market for capacity in SPP. In fact, the company touts Purchase Power Agreements (*i.e.* capacity contracts) as an additional tool in its supply-side arsenal.[212]

82. In Docket No. 14-KCPE-042-TAR (14-042 Docket), KCP&L requested a two year extension of certain demand-side programs (particularly its demand-response programs). In support of its Application, KCP&L used an avoided capacity cost representative of a KCP&L capacity contract.[213] KCP&L now argues the time is right for long-term demand-side programs, and thus valuations like traditional capital investments. If this is true, why must KCP&L insist on a 30-day escape hatch that allows the company to withdraw its entire KEEIA portfolio with a simple notice filing?[214] A 30-day termination option based on hidden conditions no less.[215]

83. KCP&L advocates for adopting an avoided capacity cost representative of the levelized cost of a combustion turbine.[216] KEEIA does not require demand-side and supply-side investments be treated equally without exception. Rather, KEEIA says "as much as is practicable."[217] Traditional supply-side investments receive traditional regulatory treatment and, as in the case of a generation plant, exist for decades.[218] The Company seeks approval as if its proposal will endure through the ages, but makes no guarantee to accompany the claim. While Commission policy permits KCP&L to suggest the levelized cost of a combusting turbine as its avoided cost,[219] the record shows this is neither practicable, sensible, nor reasonable. KCP&L

[211] Tr. Vol. 2, p. 344 (Nelson).
[212] *See id.* at p. 322 (Nelson).
[213] *See* Nelson Rebuttal, pp. 20-22.
[214] *See* KEEIA Cycle 1 Report, Appendix E, Proposed Tariff 12.01, sheet one of six; Tariff 12.10, sheet one of six.
[215] Tr. Vol. 1, pp. 172-173 (Turner).
[216] *See* KEEIA Cycle 1 Report, pp. 4-7 through 4-9.
[217] K.S.A. 66-1283(b).
[218] Glass Corrected, p. 25; *See also* Glass Surrebuttal, p. 9.
[219] 08-442 Order Following Collaborative, p. 32.

rationalizes using its avoided cost with its Integrated Resource Plan (IRP).[220] The Commission should reject this rationalization as it is unsupported by the record.

84. Using a reasonable avoided cost is crucial to evaluating demand-side programs because it ensures programs are cost-effective. The Commission risks approving programs that are not cost-effective if too high of an avoided cost is used. KCP&L has based a large portion of its KEEIA filing on what is required in Missouri. A consequence of this is submitting an application that conforms to Missouri's statutes and regulations. Under Missouri's Public Service Commission (PSC) regulations for MEEIA, Avoided Cost is defined to be "the avoided cost from the company's latest IRP."[221] MEEIA and Missouri's PSC regulations explicitly call for MEEIA-sponsored demand-side programs to utilize the avoided cost from KCP&L's IRP.

85. KEEIA contains no such requirement. While the Commission permits utilities to submit internal cost modeling data in support of their avoided cost,[222] they must also submit the assumptions to do so.[223] Staff's analysis of KCP&L's rationale and assumptions calls into question their validity. KCP&L invites the Commission to adopt avoided costs based on forecasts and speculation. As will be shown below, Staff urges the Commission to decline the invitation. KEEIA calls for an evaluation of cost-effectiveness and valuation "as much as is practicable."[224] The record in this case indicates Staff's position is much more practicable.

[220] Winslow Supplemental, p. 11.
[221] *See, e.g.* Mo. Code Regs. Ann. tit. 4, § 240-3.163(1)(C) ("The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs."); *See also* Mo. Code Regs. Ann. tit. 4, § 240-3.164(1)(A).
[222] 08-442 Order Following Collaborative, p. 32.
[223] *See id*.
[224] K.S.A. 66-1283(b).

2. The Need for Capacity

86. Demand-side programs provide the ability to shave peak demand.[225] Commission policy recognizes this and emphasizes it.[226] However, the record in this case demonstrates KCP&L is not capacity constrained, and has an opaque estimate on when future generation will be needed. When market forces price supply-side resources low, it becomes unreasonable to value demand-side resources as if prices were high. This, however, is KCP&L's proposal.

87. KCP&L supports using the levelized cost of a combustion turbine as: (1) it is the price identified in KCP&L's IRP,[227] and (2) it is one of three acceptable perspectives for determining an avoided capacity cost.[228] In this proceeding, KCP&L argues without demand-side programs it will need a combustion turbine by 2024.[229] However, the Company's own IRP (and Kansas-specific supply side filings) indicate the earliest KCP&L will need any new generation is 2030.[230] When asked about this discrepancy, KCP&L's witness stated its IRP assumes implementation of Kansas demand-side programs.[231] Exhibits introduced at the evidentiary hearing indicate KCP&L's 2030 capacity need date contained within its IRP is based off of only Missouri demand-side programs.[232] These two statements cannot be reconciled, and yield troubling conclusions if they could. Either KCP&L is not capacity constrained (and will not be until 2030, thereby negating the need for using the levelized cost of a combustion turbine), or KCP&L represents to regulatory bodies generation construction timeliness presuming approval of demand-side applications that had not yet been filed.

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[225] *See* Tr. Vol. 2, p. 359-360 (Nelson).
[226] *See* 08-442 Order Setting Energy Efficiency Policy Goals, pp. 15-16.
[227] Winslow Supplemental, p. 11.
[228] KEEIA Cycle 1, p. 4-8.
[229] Tr. Vol. 1, p. 167 (Turner).
[230] *See id.* at p. 171 (Turner); *See also* KCC Staff Exh. 3 (confidential).
[231] *See* Tr. Vol. 1, p. 169 (Turner).
[232] *See id.* at p. 168 (Turner); *See also* KCC Staff Exh. 2.

88. KEEIA recognizes the fundamental differences between supply-side and demand-side investments with the language "as much as is practicable." Traditional supply-side investments, such as a power plant or substation, are necessary and required for an electric public utility to fulfill its service obligations.[233] Unlike supply-side investments, a demand-side program alone cannot meet a public utility's service obligations.[234] KEEIA appropriately recognizes this truth which should be applied to any evaluation of a KEEIA proposal.

3. Perspectives

89. KCP&L's KEEIA Cycle 1 Report describes three perspectives that may be used to support an avoided capacity cost. Both KCP&L and Staff utilize one of these three perspectives. While Staff's market-based perspective is supported by the record, the Company's levelized cost perspective is not. At the evidentiary hearing, Company witnesses were cross-examined regarding fundamental assumptions for using its perspective.[235] Of particular note, the primary support for using KCP&L's levelized cost perspective was Idaho Power's IRP.[236] However, this IRP showed that during summer months transmission constraints prevented Idaho Power from utilizing <u>its capacity market.</u>[237] KCP&L supplied no evidence in the record to show they are under similar constraints.[238] Accordingly, if fundamental assumptions for using the levelized-cost perspective are absent from KCP&L's operations, the Company cannot rely on this perspective to support its levelized cost.

[233] Tr. Vol. 2, p. 385 (Nelson).
[234] Tr. Vol. 2, p. 437 (Ives); KCC Staff Exh. 9.
[235] Tr. Vol. 2, pp. 340-345 (Nelson).
[236] *See* KEEIA Cycle 1 Report, p. 4-8.
[237] *See id.* (*citing* Idaho Power 2011 IRP Appendix C, p. 67, *available at* http://www.idahopower.com/pdfs/AboutUs/PlanningForFuture/irp/2011/2011IRPAppendixCTechnicalAppendix.pdf).
[238] Tr. Vol. 2, p. 345 (Nelson).

4. Summary of Staff's Avoided Cost Assumptions

90. Given the service-quality and economic realities present in the regulatory field where KCP&L operates, a capacity contract is a much more practicable avoided capacity cost than the levelized cost of a combustion turbine. An avoided capacity cost rooted in a capacity contract is the most relevant cost existing today that appropriately values demand-side programs. Supply-side investments can meet a utility's service obligations; demand-side programs cannot. KCP&L has relentlessly promoted altruistic reasons for implementing demand-side programs with claims of a long-term vision. However, the proposal before the Commission is limited in duration,[239] with an ejection mechanism should the proposal turn against the Company's interests.[240] Supply-side investments exist for decades, but no party truly knows how committed to demand-side programs KCP&L will be. KCP&L is aware of all of these data points indicating an avoided capacity cost should be lower and has chosen to ignore them. KEEIA makes demand-side programs voluntary, and KCP&L is not (and cannot) be required to implement its proposal. Physical limitations, withdrawal caveats and economic realities all support rejecting KCP&L's suggested avoided capacity cost and relying on Staff's more practicable value.

5. Net-to-Gross

91. NTG is a measure of free ridership and spillover.[241] Free-riders are individuals who do not need to be incentivized to participate in demand-side programs, yet are incentivized anyway.[242] Accordingly, free-ridership hurts the overall cost-effectiveness of a particular demand-side program.[243] Spillover is the opposite: customers who participate in a demand-side program (or are simply exposed to it) then take additional energy saving steps without

[239] *See* Tr. Vol. 1, p. 172 (Turner).
[240] *See id*.
[241] Frantz Direct, pp. 11-12.
[242] *See* Tr. Vol. 1, pp. 217-218 (File).
[243] *See id.*

incentive.[244] Likewise, spillover increases the cost-effectiveness of any particular program.[245] The Company has assumed a NTG ratio of 1.0, indicating the amount of free ridership and spillover will perfectly match.[246] Staff recommends tempering expectations with a reduced NTG ratio. Staff initially recommended using a 0.8 NTG ratio,[247] but resorted to the 0.9 NTG ratio contained within Staff's sensitivity runs due to time constraints.[248] Regardless, Staff found varying the NTG ratio in its sensitivity analysis did not produce a large swing in overall program recommendations.[249]

iii. The Technical Resource Manual and the California Database for Energy Efficient Resources

92. Evaluating a demand-side program prior to implementation inherently requires assuming certain variables. Beyond avoided capacity costs and NTG ratios, KCP&L's proposal consists of hundreds of measure-specific baselines, usage rates, incentive ranges, and so on.[250] KCP&L recommends utilizing its Technical Resource Manual (TRM) and the values contained within it as baselines for benefit-cost analysis. Neither KEEIA nor Commission policy prohibits the use of the TRM, and Staff finds the values contained within the TRM reasonable subject to certain caveats.

93. Commission policy indicates California Database for Energy Efficient Resources (DEER) savings estimates and useful life data consistent with Kansas should be utilized until a demand-side program's two-year EM&V.[251] KCP&L has requested a waiver of this requirement.[252] However, Commission policy also states parties may utilize values outside of

[244] *See* Tr. Vol. 1, pp. 217-218 (File).
[245] *See id*.
[246] KEEIA Cycle 1 Report, p. 4-15.
[247] Glass Corrected, p. 24.
[248] Tr. Vol. 3, p. 667 (Glass).
[249] Glass Corrected, p. 24.
[250] *See generally* KCP&L KEEIA Cycle 1 Report, Appendix D.
[251] *See* 08-442 Order Following Collaborative, pp. 15, 28-29.
[252] *See generally* KCP&L KEEIA Cycle 1 Report, Appendix G.

DEER if more accurate or if DEER data is unavailable.[253] Further, Commission policy allows for the use of Kansas-based estimates once they are developed.[254]

94. Staff's review of KCP&L's TRM indicates it is a reasonable proxy for DEER and is likely more representative of Kansas baselines.[255] Further, the Company's proposed EM&V process in this docket will take Kansas-specific data as it is collected and incorporate it into measure-specific assumptions contained within the TRM.[256] While the proposed TRM may not be rooted entirely in Kansas data, Staff's review of the TRM did not present any major concerns with the exception of one caveat. A TRM is simply a compilation of estimates, and the Commission should expect the post-verification values to be different.[257] Staff's position is while KCP&L's TRM may be relied on for benefit-cost analysis, its "deemed" savings will fall within an error band or range of values – the TRM is composed of estimates not guarantees. This is not indicative of a shortcoming on the part of KCP&L or the TRM itself. Simply that absolute faith in a TRM should be tempered. While Staff found the ranges of savings estimates to be reasonable, it should be noted that any variance between the savings estimates the TRM provides and the verified savings from EM&V will affect benefit-cost analysis of KCP&L's demand-side programs.[258] Staff's analysis indicates KCP&L's TRM is a reasonable resource

[253] 08-442 Order Following Collaborative, pp. 15, 28-29.
[254] *See id.* at p. 29.
[255] Turner Direct, pp. 12-13 ("Staff conducted a detailed comparison of KCP&L's 190 measures with DEER, the Illinois, and the Mid-Atlantic TRM [based on various criteria]."); *See also* Turner Direct, p. 14 ("After review of the 190 measures contained in the TRM, Staff finds that KCP&L's engineering algorithms are consistent with those found in other TRMs, and are based on generally accepted methodologies that exist throughout the industry.") ("In most cases, KCP&L's baseline assumptions are somewhat similar with Illinois, DEER or Mid-Atlantic.").
[256] KEEIA Cycle 1 Report, p. 1-9 ("The EM&V is a critical piece in this process as the results of the EM&V will be utilized to update the deemed measure values in the TRM, utilized in the [throughput disincentive] true-up, and the resulting NTG ratios will be applied to the [earnings opportunity].").
[257] Turner Direct, p. 17 ("Staff views KCP&L's TRM as a useful resource for future EM&V, however due to large variations in energy and cost savings among TRMs, these savings should be understood as having large error bands, which creates uncertainty around prospective analysis that relies on TRM values.").
[258] *See id. See also* Tr. Vol. 2, p. 324 (Nelson).

for this Application, and if implemented will only become more accurate as Kansas-specific data is gathered and incorporated.

95. Additionally, KEEIA permits the Commission to exercise independent evaluation of demand-side programs as the Commission deems necessary.[259] As the TRM is an integral part of KCP&L's proposal, the Commission itself may independently evaluate the Company's TRM. The Commission could request Staff or a third-party consultant with expertise in TRMs to conduct an evaluation of KCP&L's TRM if the Commission deemed it necessary. Staff recommends KCP&L be allowed to hire an independent EM&V contractor subject to Staff's review and approval.[260] Staff also recommends the Commission allow Staff to hire its own EM&V auditor to review the results or conduct an audit in-house if sufficient resources are available.[261]

C. Programs, Analysis and Results

96. Staff applied Commission-emphasized benefit-costs tests to the Company's proposed programs. Using Staff's assumptions, programs are screened for cost-effectiveness and viability. Programs that score below 1.0 on the TRC test are red flagged. Programs that score above 1.0 on the TRC test are evaluated for rate impacts using the RIM test. Programs that score above 0.7 on the RIM test are recommended for approval. Programs that score below 0.7 on the RIM test are further scrutinized for participation levels and other characteristics. Ease of program access facilitates approval. [262]

[259] K.S.A. 66-1283(e)(5).
[260] *See* Glass Corrected, p. 29.
[261] *See id*.
[262] *See, e.g.*, Frantz Direct, pp. 19-20.

i. Residential Programs

97. KCP&L is proposing a total of seven residential programs. Of these seven, three are continuations of existing programs.[263]

Home Lighting Rebate

98. The Home Lighting Rebate Program provides point of sale discounts at retail stores for customers purchasing Light Emitting Diode (LED) light bulbs.[264] Staff's sensitivity analysis indicates the Home Lighting Rebate Program is cost-effective. The program's TRC score is consistently above 1.0, irrespective of sensitivity scenario.[265] However, the RIM score for this program varies from 0.59 to 0.5 depending on the scenario examined.[266] While Staff is cautious of recommending approval of programs with low RIM scores,[267] the program's ease of accessibility and minimal barriers help guarantee KCP&L's ratepayers will be able to utilize the program if they so choose. The measures offered by the Home Lighting Rebate Program would be widely available to all KCP&L customers, with the only barrier to participation being the burden of visiting the store. Accordingly, Staff recommends approval of the Home Lighting Rebate Program.[268]

Home Energy Report

99. The Home Energy Report Program provides residential customers with periodic reports on their energy usage and suggestions as to how to improve their efficiency.[269] These reports also contain comparisons to peers thereby using "social competiveness" or peer influence

[263] KEEIA Cycle 1 Report, p. 3-7.
[264] *See* Prince Direct, pp. 6-7; *See also* Winslow Supplemental, p. 12.
[265] Prince Direct, p. 17.
[266] *See id*.
[267] *See* Prince Direct, p. 17; *See also* Glass Corrected, pp. 26-27.
[268] Prince Direct, p. 17.
[269] *See id.* at p. 9.

to reduce energy consumption.[270] KCP&L believes this can serve as a marketing tool for other demand-side programs.[271] Staff initially recommended approval of the Home Energy Report Program.[272] However, upon review of an error contained with KCP&L's modeling of the program Staff changed its recommendation.

100. Using corrected, Kansas-specific data, the Home Energy Report Program does not pass Staff's sensitivity analysis.[273] For reference, Scenario 6 utilizes Staff's avoided cost and a NTG ratio of 0.9.[274] In addition to scoring below a 1.0 on the TRC test, the Home Energy Report Program severely fails the RIM test scoring 0.35 to 0.49 depending on the scenario used.[275] These results indicate the Home Energy Report Program will not be cost-effective and will place upward pressure on KCP&L ratepayer rates. Accordingly, Staff recommends the Commission reject the Home Energy Report Program.[276]

Educational and Low-Income Programs

101. KCP&L has proposed three educational or low-income demand-side programs for residential customers. The Online Home Energy Audit Program is an educational program that provides residential customers access to an online energy-efficiency analysis tool, educational materials, and information on KCP&L's other demand-side programs.[277] The Income-Eligible Multi-Family Program provides low-income multi-family housing energy efficient measures to reduce electric consumption (at no cost to participants) with additional emphasis on common

[270] Prince Direct, p. 9.
[271] *See* KEEIA Cycle 1 Report, Appendix A, p. A-3 ("The program provides a significant opportunity to promote KCP&L's Residential DSM programs via the customer reports and the online tool, thereby resulting in increased program spillover.").
[272] Prince Direct, p. 18.
[273] Prince Supplemental, p. 4.
[274] *See* Nelson Rebuttal, p. 9.
[275] *See* Prince Supplemental, p. 4, Table 2.
[276] *See* Prince Supplemental, p. 4.
[277] KEEIA Cycle 1 Report, Appendix A, A-5; *See also* Ellis Direct, p. 6.

areas.[278] Finally, the Income-Eligible Weatherization Program provides similar measures as Income-Eligible Multi-Family, but also provides weatherization measures to participants at no cost.[279]

102. Staff's analysis of KCP&L's proposed residential educational and low-income programs differs from other residential demand-side programs. As discussed above, educational and low-income programs are not subjected to traditional benefit-cost analysis.[280] KEEIA and prior Commission policy orders indicate that strict benefit-cost analysis should not be applied to educational or low-income programs.[281] Commission policy states educational programs must contain explanations of the program and costs, as well as the presentation of evidence of usefulness in other jurisdictions.[282] KEEIA states the Commission may approve such programs upon finding they are in the public interest and supported by a reasonable budget. The parameters, descriptions and target markets of these programs indicate they are in the public interest and are supported by a reasonable budget. Accordingly, Staff recommends approval of these programs. Staff applied an overall budgetary guideline of 5% to its evaluation of low-income demand-side programs as neither educational or low-income programs are subject to benefit-cost analysis.[283] The Commission identified this overall budgetary guideline for education programs,[284] but has not articulated a more definite budgetary rule regarding low-income demand-side programs. For future applications, Commission insight as to appropriate budgeting levels for programs based on income levels will assist parties in program design and requests for approval.

[278] KEEIA Cycle 1 Report, Appendix A, p. A-10.
[279] *See id.* at p. A-12.
[280] *See supra* ¶35; *See also* Ellis Direct, pp. 4-6.
[281] *See id*.
[282] Ellis Direct, p. 6.
[283] *See id.* at p. 14.
[284] 08-442 Order Following Collaborative, p. 12.

Whole House Efficiency

103. The Whole House Efficiency Program offers three sets of "options" for customers pursuing energy efficiency upgrades.[285] Option 1 consists of a home energy audit and free installation of basic energy-efficient measures.[286] Option 2 consists of weatherization measures, but is only available to customers who have completed in Option 1.[287] Option 3 involves the early retirement or replacement of Heating Ventilation Air Conditioning (HVAC) equipment, and is open to all customers regardless of whether they participated in Option 1 or Option 2.[288]

104. Staff's sensitivity analysis indicates the Whole House Efficiency Program is not cost-effective. Under Staff Scenario 6 (Staff's avoided cost, 0.9 NTG), the Whole House Efficiency Program returns a TRC score of 0.83 and a RIM test score of 0.42.[289] Unlike other residential programs recommended for approval (*e.g.* Home Lighting Rebate), this residential program is not truly available to everyone. The number of participants who can receive measures under Option 1 is estimated to be between 1,200 to 2,200 persons per program year.[290] Because only Option 1 participants may take advantage of Option 2, the number of individuals eligible for Option 2 represents a miniscule fraction of KCP&L's customer base. Finally, Option 3's focus on HVAC equipment will be limited to customers who elect to early retire HVAC equipment or are in the market for new HVAC equipment. Essentially, Option 3 is a program for individuals already in the market for HVAC equipment or have the means necessary to early-retire functioning equipment.[291] KCP&L's witness responsible for supporting the TRM was

[285] KEEIA Cycle 1 Report, Appendix A, A-6.
[286] *See id*.
[287] *See id*.
[288] *See id*.
[289] *See* Prince Direct, p. 20.
[290] KEEIA Cycle 1 Report, Appendix A, A-8.
[291] *See id.* at p. A-6 ("Early retirement incentives are provided to customers with central air conditioners and/or heat pumps in operable condition and at least five years of age.").

unable to answer how much an air conditioner (of any kind) costs.[292] While all customers are "eligible" to participate in Option 3, the Kansans who will actually be able to take advantage of the program appear to be limited in number. In response to this line of questioning, KCP&L could only respond not every customer is expected to participate in every program.[293] Accordingly, Staff recommends the Commission reject the Whole House Efficiency Program.[294]

Residential Programmable Thermostat

105. 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.[295] It is a continuation of a previous KCP&L demand-side program.[296]

106. Staff's sensitivity analysis indicates this program is particularly sensitive to changes in the avoided cost assumption. Staff's Scenario 6 resulted in the TRC score dropping from 2.22 to 0.95.[297] The RIM score follows a similar patter, dropping from 1.46 to 0.63.[298] Staff's approach to program approval recommends caution with programs that score below 1.0 on the TRC test, or programs that have low RIM scores.[299] While the Residential Programmable Thermostat Program fails the TRC test under Staff's sensitivity analysis, the insurance-like nature of demand-response programs provides a sound basis for program approval.[300] Further, the company indicates participation in the program will be offered to a substantive amount of

[292] Tr. Vol. 2, p. 384-385 (Nelson).
[293] *See id.* at p. 385 (Nelson).
[294] Prince Direct, p. 20.
[295] KEEIA Cycle 1 Report, Appendix A, p. A-14; *See also* KEEIA Cycle 1 Report, Appendix E, Tariff 12.08, Sheet 4 of 5; Tariff 12.17, Sheet 2 of 2.
[296] KEEIA Cycle 1 Report, 3-7 through 3-8.
[297] Prince Direct, 19.
[298] *See id*.
[299] *See* Glass Corrected, pp. 22-27.
[300] *See e.g.* Frantz Direct, p. 48.

KCP&L customers.[301] Accordingly, Staff recommends approval of the Residential Programmable Thermostat Program.[302]

ii. Business Programs

107. KCP&L is proposing a total of seven business programs. Of these seven, two are continuations of existing programs.[303]

Business Energy Efficiency Rebate – Standard

108. The Business Energy Efficiency Rebate – Standard (Business-Standard) Program is designed to help KCP&L's commercial and industrial customers save energy through a range of prescriptive energy efficiency measures.[304] Participants select energy efficient equipment from a pre-qualified list and are issued rebates upon completion of the project and submission of the rebate application.[305]

109. Staff's sensitivity analysis indicates the program passes the TRC test, with a score above 1.0 regardless of the sensitivity scenario.[306] Staff's sensitivity scenarios also indicate the lowest the RIM score falls is 0.71.[307] While lower RIM scores indicate upward pressure on rates, KCP&L will market this program to all commercial and industrial customers with measures customers may easily take advantage of.[308] Staff recommends approval of the Business-Standard Program.[309]

[301] *See* KEEIA Cycle 1 Report, Appendix A, A-15; *See also* Tr. Vol. 1, p. 89 (Winslow).
[302] Prince Direct, p. 19.
[303] KEEIA Cycle 1 Report, p. 3-9.
[304] *See* Frantz Direct, p. 16.
[305] *See id*.
[306] *See id.* at p. 19.
[307] *See id.* at p. 19.
[308] *See id.* at pp. 19-20.
[309] Frantz Direct, p. 20.

Business Energy Efficiency Rebate – Custom

110. The Business Energy Efficiency Rebate – Custom (Business-Custom) Program is similar to the Business-Standard Program in that the goal is to encourage the purchase and installation of energy-efficiency equipment for commercial and industrial customers.[310] Participants submit applications for equipment not contained on the Business-Standard program's prescriptive list.[311] These applications then undergo benefit-cost analysis.[312]

111. The Business-Custom Program suffers from two key deficiencies: measure ambiguity and a serious risk of free-ridership.[313] With an unknown number of participants installing an unknown number of unknown measures, any savings estimates or budget proposals are conjectural at best.[314] Staff was unable to evaluate KCP&L's estimated program costs or energy/demand savings for this program.[315] Additionally, there is a high likelihood of free-ridership for the Business-Custom Program because the onus is on the customers to develop and propose projects.[316] If a customer has gone to the trouble of designing a cost-effective program, there is a high likelihood they will implement the program regardless of whether KCP&L provides a rebate.[317] Staff and others have warned the Company of this concern.[318] Further, verifying free-ridership will be difficult as 90% of program participants receiving less than $10,000 in rebates will never be audited.[319]

[310] Frantz direct, p. 20 (emphasis added).
[311] *See* Frantz Direct, p. 20. *See also* KEEIA Cycle 1 Report, Appendix A, A-22.
[312] *See* Frantz Direct, p. 20. *See also* KEEIA Cycle 1 Report, Appendix A, A-22.
[313] *See* Frantz Direct, p. 22.
[314] *See id.* at p. 25.
[315] *See id.* at p. 23.
[316] *See id.* at pp. 22, 35.
[317] *See id.* at pp. 23-24.
[318] *See generally* Frantz Direct, pp. 23-24; Tr. Vol. 1, p. 223-224 (File).
[319] Tr. Vol. 1, p. 270 (File).

112. Staff's sensitivity analysis indicates the Business-Custom Program will not be cost-effective, scoring below 1.0 on the TRC test when Staff's avoided cost is used.[320] Given the program's failing TRC test score, combined with unknown measures, free-ridership and conjectural savings estimates, Staff recommends the Commission reject the Business-Custom Program.[321] If the Commission rejects Business-Custom, and KCP&L wishes to retain its Building Operator Certification Program on a stand-alone basis, Staff recommends KCP&L be allowed to do so.[322]

Strategic Energy Management

113. The Strategic Energy Management (SEM) 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.[323] SEM uses two program tracks to achieve its goals: (1) One-on-One Consulting and (2) an Energy Management Cohort.[324] Energy efficiency measures that may be pursued under other programs are done so, and corresponding energy savings are netted out of SEM's savings.[325] This is done so the behavioral impacts of SEM are quantifiable, and not influenced by the installation of measures from other programs.

114. The very description of the program calls into question its effectiveness. SEM Cohort will supposedly consist of five to twelve participants (*i.e.* companies) from non-competing industries.[326] However, SEM's total estimated incremental participation is eight

[320] Frantz Direct, p. 25.
[321] *See id.* at p. 26.
[322] *See id.* at p. 26.
[323] *See* KEEIA Cycle 1 Report, Appendix A, p. A-24.
[324] *See id.* at pp. A-24 through A-25.
[325] Frantz Direct, p. 29-30.
[326] *See id*. at pp. 30-31; *See also* KEEIA Cycle 1 Report, Appendix A, p. A-24.

businesses per year.[327] Therefore, the maximum possible number of SEM Cohort groups for 2017 is just one. Depending on the number of participants who elect SEM's One-on-One Consulting, there may not be enough participants for a single cohort. Additionally, KCP&L indicates it plans to use SEM as a lead generator for other programs, but such programs already have marketing budgets.[328] Staff's analysis revealed concern over SEM's savings attributions.[329] Interestingly, SEM's own program description confirms this stating, "The average savings per customer is a planning estimate, actual program savings will vary widely."[330]

115. Staff's sensitivity analysis for SEM indicates the program will not be cost-effective under a number of conditions. If the Commission adopts Staff's avoided capacity cost, or in the alternative, the avoided capacity cost remains KCP&L's recommendation but the NTG ratio is lowered to 0.80, the TRC score falls below 1.0.[331] Even if the Commission adopts KCP&L's requested avoided capacity cost and NTG ratios, the program's minimal availability supports rejecting the program.[332] Accordingly, Staff recommends the Commission reject the SEM Program.

Block Bidding

116. The Block Bidding Program is a reverse auction that purchases blocks of energy and demand savings from customers by issuing Request for Proposals (RFP) to eligible commercial and industrial customers.[333] Staff's concerns regarding the Block Bidding Program mirror its concerns regarding KCP&L's other custom-based programs. Though not detailed anywhere in the Application submitted to Staff, Block Bidding is only open to customers who

[327] Frantz Direct, p. 31; *See also* KEEIA Cycle 1 Report, Appendix A, A-26.
[328] Frantz Direct, pp. 31-32.
[329] *See id.*
[330] KEEIA Cycle 1 Report, Appendix A, A-26 (emphasis added).
[331] Frantz Direct, p. 32.
[332] *See id.* at pp. 32-33.
[333] *See id.* at, pp. 33, 35; *See also* Winslow Supplemental, p. 18.

have exceeded a $100,000 annual incentive cap in KCP&L's Business-Custom Program.[334] KCP&L provided extremely vague data on the number of anticipated participants.[335] The program suffers from a lack of details regarding participants, measures, and incentive levels. First, the program is only open to a select group of businesses who have maxed out a different (and not cost-effective) program's incentive scheme. Second, it is unknown what measures a Block Bidding participant will "bid in" so it is impossible to verify any energy or demand savings.[336] Finally, it is impossible to verify if the reverse auction will produce competitive results. Because the pool of participants from this program will be screened by the Business-Custom Program's $100,000 cap, there may be few or a single participant per Block Bid RFP. Even if there are multiple participants, the program suffers from the same free-ridership concerns as the Business-Custom Program.[337]

117. Staff's sensitivity analysis indicates the program will pass a TRC test.[338] However, the Block Bidding Program returns a RIM test score below 1.0 based upon measures and projects that are unknowable and without an estimate of participation.[339] Given the absence of any meaningful or measurable data to evaluate, the Commission should reject the Block Bidding Program.[340]

Online Business Energy Audit

118. The Online Business Energy Audit Program is an educational program for commercial customers similar to KCP&L's proposed Online Home Energy Audit.[341] This

[334] Tr. Vol. 1, pp. 215-216 (File).
[335] Frantz Direct, p. 38.
[336] *See id.* at pp. 37-39.
[337] *See id.* at pp. 35-37.
[338] *See id.* at p. 38.
[339] *See id.* at p. 39.
[340] Frantz Direct, p. 39.
[341] *See* Ellis Direct, p. 3.

program informs customers of energy consumption and ways to reduce energy usage.[342] Commission policy and KEEIA's provisions establish the methodology for reviewing educational programs.[343] Commission policy states educational programs must contain explanations of the program and costs, as well as the presentation of evidence of usefulness in other jurisdictions.[344] In addition, KEEIA states the program must be in the public interest and must be supported by a reasonable budget in the context of the overall budget.[345] Like KCP&L's residential offerings, Staff believes KCP&L's educational business program has been effective, is in the public interest, and is supported by a reasonable budget.[346] After reviewing the data supporting Online Business Energy Audit, Staff recommends the Commission approve the Online Business Energy Audit Program.[347] Staff requests the Commission further rule on the acceptable education budgets to establish a guideline for future KEEIA-related filings.

Small Business Direct Install

119. The Small Business Direct Install (SBDI) Program is a program designed to provide lighting measures to small and medium businesses.[348] Unlike the self-installed measures contained in the Business-Standard Program, SBDI uses a trade ally to install lighting measures for a company.[349] KCP&L argues small business customers do not have the time to become educated about energy efficiency, nor do they have the money to be more energy efficient.[350] Accordingly, SBDI provides incentives for a third-party to install more efficient lighting in a business while the business owner, presumably, does something more useful with their time.

[342] *See* Ellis Direct, p. 3.
[343] *See id.* at pp. 4-5.
[344] *See id.* at p. 6.
[345] *See id.*; *See also* K.S.A. 66-1283(c)(1)(D).
[346] *See* Ellis Direct, p. 9.
[347] *See id*.
[348] KEEIA Cycle 1 Report, Appendix A, p. A-31.
[349] *See id*.
[350] *See id.* at pp. A-31 through A-32.

120. Staff's sensitivity analysis indicates the program will not be cost-effective at Staff's recommended avoided cost levels and a 0.9 NTG ratio.[351] While the SBDI program is beneficial to participants, the RIM and Utility test results indicate rate increases will be borne by non-participants and possibly even by KCP&L itself.[352] The Commission should reject the SBDI Program.[353]

Demand Response Incentive

121. Similar to KCP&L's previously approved MPower Program,[354] the goal of the Demand Response Incentive (DRI) Program is to provide system and grid relief during peak hours by decreasing peak demand usage.[355] Of note, since 2011 KCP&L's MPower Program has been under a moratorium due to a decline in demand and the startup of KCP&L's Iatan 2 power plant.[356] In addition to system and grid relief, DRI may also be called for purely economic reasons, *i.e*. the price of curtailing a customer is less than the price of providing service to the customer.[357] DRI is available for large commercial and industrial customers with load curtailment capability of at least 25 kW.[358]

122. Staff recommends changes to the proposed DRI Program. First, Staff recommends contract duration be limited to the timeframe KCP&L's KEEIA Cycle 1 is in effect.[359] Second, the proportion of risk borne by non-participants and the utility, as illustrated

[351] Frantz Direct, p. 43.
[352] *See id*.
[353] *See id*.
[354] The MPower Rider, Schedule MP, was approved in 2006. *See* Order, p. 8, Docket No. 06-KCPE-809-TAR (Sept. 25, 2006). In the Order Approving Joint Motion for Approval of Settlement Agreement, p. 9, Docket 14-KCPE-042-TAR (Oct. 14, 2014), the MPower Rider was renamed the Demand Response Incentive Rider.
[355] Frantz Direct, 44.
[356] *See id.* at pp. 46-47.
[357] *See id.* at p. 44.
[358] *See id.*
[359] *See* Frantz Direct, p. 48.

by the extremely high PCT ratio compared to the RIM and Utility ratios, concerns Staff.[360] As per the proposed DRI tariff, the precise rate of incentive is set on a contract-by-contract basis so it is difficult to devise a solution to this problem.[361] The fixed capacity-reserve incentive should be lowered and the performance incentive paid for curtailment should be raised so that non-participants and the utility are affected less adversely if curtailable load is not needed (*i.e.* an event is never called).[362] Phrased differently, DRI participants should be paid less for the ability to be called upon, and paid more when a curtailment event is called. Thus, Staff recommends approval of the DRI Program with Staff's recommended changes.[363] KCP&L indicated its current proposal could allow for such flexibility, but did not commit to this request.[364]

iii. Variances and Non-Unanimous Stipulation and Agreement Programs

123. KCP&L's request includes a portfolio-wide budget variance that would permit the Company to increase any individual program's budget by up to 10% of the overall portfolio budget.[365] As KCP&L's requested portfolio budget is $29.7 million,[366] this would allow KCP&L to increase any one program's budget by $2.97 million. By granting this variance, KCP&L would be permitted to better manage its programs by redirecting funds to address unforeseen implementation costs and participation levels.[367] Staff took no issue with this request, and stated KCP&L should have the ability to adjust budgets on a portfolio basis.[368]

[360] Frantz Direct, p. 48.
[361] *See id*.
[362] *See id.* at pp. 48-49.
[363] *See id*.
[364] Rebuttal Testimony Prepared by Brian File, pp. 16-17 (Aug. 22, 2016) (File Rebuttal).
[365] KEEIA Cycle 1 Report, Appendix G, pp. G-1 through G-2.
[366] KCP&L Initial Brief, p. 22.
[367] Glass Corrected, p. 28.
[368] *See id*.

124. The Non-Unanimous Stipulation and Agreement (S&A)[369] submitted in this docket contains a number of program amendments or new proposals not included in the Company's case-in-chief. Staff's critique of these newly proposed programs emphasizes the near infinite and poorly defined scope of KCP&L's custom programs. For instance, as part of the S&A KCP&L's Business-Custom Program (a program dedicated to installing equipment) could be used to provide customer-specific reports and lead generation (*i.e.* marketing).[370] This only reaffirms Staff's concern with custom programs – you do not know what you are getting.[371]

D. Staff's Cost Recovery Mechanism

125. Staff has proposed an alternative cost recovery mechanism to KCP&L's. Staff's mechanism contains the same three elements as KCP&L's and carries the same name while achieving KEEIA's mandated goals in a different manner. Staff's approach allows for timely, historical program cost recovery, a throughput disincentive rooted in the Company's authorized revenue requirement, and an earnings opportunity that looks at all the costs associated with the Company's request.

i. Timely Program Cost Recovery

126. As described above, KEEIA mandates the Commission provide public utilities timely recovery of program costs. Staff's recommendation is a revised version of the DSIM Rider that recovers actual, historically incurred costs following the year in which program costs are incurred.[372] To compensate KCP&L for the time value of money, Staff recommends the Company be permitted to collect carrying charges equal to KCP&L's short-term debt costs.[373] By so doing, the Company receives timely, annual recovery of program costs and is made whole

[369] Joint Motion for Approval of Non-Unanimous Stipulation and Agreement (Aug. 31, 2016).
[370] Frantz Supplemental, pp. 8-10.
[371] *See id*.
[372] Grady Direct, p. 8.
[373] *See id*.

for any opportunity cost associated with regulatory lag.[374] This approach inherently negates the need for forecasting and true-ups, and is by design less administratively burdensome.[375] Additionally, Staff's historical program cost approach is consistent with the Commission's policy vision. "Once approved program costs are incurred, [a public utility's] rider will take effect."[376] Staff's approach reduces the 12-month regulatory lag currently experienced by the Company's EE Rider down to ten months.[377] The Company takes two issues with this proposal: (1) it may lead to increased program costs due to carrying charge expense, and (2) it is not timely enough.

127. No doubt, carrying charges may increase the cost to ratepayers.[378] Interestingly, the Company's own proposal imposes carrying charges on any under (or over) recovery of program costs.[379] Staff testified this is an unrealistic claim.[380] Staff's streamlined methodology preserves utilizing forecasted costs for purposes that are more appropriate. KCP&L supports forecasted cost recovery by analogizing the DSIM rider to the Company's Energy Cost Adjustment (ECA).[381] While the DSIM Rider is used to support a voluntary energy efficiency portfolio, the ECA ensures KCP&L can purchase fuel for its power plants.[382] The purposes for these riders are fundamentally different. KCP&L's proposal requires semi-annual (twice per year) filings that forecast out program cost for six months, immediately begin recovering said costs, and true-up the previous period's forecasted cost recovery.[383] However, due to the filing timelines associated with semi-annual recovery, KCP&L will have to true-up a previous period's

[374] *See* Grady Direct, p. 9.
[375] *See id*.
[376] 08-441 Final Order, p. 13.
[377] Grady Direct, p. 8.
[378] *See id.* at p. 10.
[379] KEEIA Cycle 1 Report, pp. 1-8; 4-14; 4-15; 4-18.
[380] *See generally* Tr. Vol. 3, p. 576 (Grady).
[381] Direct Testimony Prepared by Mary B. Turner, pp. 15-17 (Aug. 22, 2016) (Turner Rebuttal).
[382] Tr. Vol. 1, p. 163 (Turner).
[383] *See* KEEIA Cycle 1 Report, pp. 4-14; 4-15; 4-18.

true-up.[384] Such a complicated rider is not needed to ensure KCP&L receives timely recovery of program costs.

128. The Company attacks Staff's methodology regarding timeliness, but does so in a perplexing way. The Company bases its calculation of regulatory lag on a methodology not indicative of the term used in the industry.[385] KCP&L does not argue annual cost recovery is untimely pursuant to KEEIA. Instead, the Company argues Staff's DSIM Rider is not acceptable to KCP&L.[386] KEEIA does not mandate program cost recovery conditioned on KCP&L's approval. Due to the voluntary nature of offering demand-side programs in Kansas, KCP&L may freely withdraw its application if the ultimate terms are unacceptable to KCP&L.[387] KCP&L recognizes its cost recovery proposal is "probably not the only way" to have appropriate recovery.[388] However, KCP&L has indicated it will withdraw its Application if the Commission adopts either Staff's cost recovery mechanism, Staff's avoided capacity cost or CURB's avoided capacity cost.[389] Such a rigid stance should be seen for what it is, an attempt to force the Commission into a position neither Commission policy, nor law, nor sense require.

129. KEEIA statutorily allows the Commission to use a number of cost recovery mechanisms, but does not mandate the Commission use a particular mechanism. KCP&L argues the Commission must allow timely cost recovery. No party has advocated the Commission must not. What KCP&L is really arguing is the Commission must allow the most timely cost recovery in order to approve a mechanism acceptable to KCP&L. The most acceptable mechanism for

[384] Grady Direct, p. 7.
[385] Tr. Vol. 3, pp. 569-570 (Grady).
[386] Tr. Vol. 2, p. 429 (Ives).
[387] *See* K.S.A. 66-1283(c)(1)(B), (C).
[388] Tr. Vol. 2, p. 428 (Ives).
[389] Ives Rebuttal, p 36; *See also* Tr. Vol. 2, pp. 428-29 (Ives).

KCP&L may not be the most appropriate for KCP&L's ratepayers. Accordingly, Staff recommends a more traditional rate making cost recovery mechanism.

ii. Throughput Disincentive: A Balanced Approach

130. Staff recognizes the inherent disincentive public utilities have regarding energy efficiency – reduced energy consumption reduces a public utility's revenue stream.[390] KEEIA requires the Commission ensure the:

> 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.[391]

131. To accomplish this, Staff recommends KCP&L recover a throughput disincentive if the successful implementation of demand-side programs causes KCP&L to recover revenues below its authorized revenue requirement.[392] Like Staff's program cost recommendation, Staff's throughput disincentive mechanism is based on measurement rather than forecasting.[393] KCP&L would submit a weather normalized non-fuel revenue estimate for residential and commercial & industrial customers to be compared to the Company's last full rate case.[394] If KCP&L earned above its authorized revenue requirement, no adjustment is necessary.[395] If the revenue estimate is below KCP&L's last approved revenue requirement, Staff's DSIM Rider would recover the difference on a per kilowatt-hour basis.[396] The question before the Commission is: At what point are the financial incentives of KCP&L no longer aligned with its customers' incentives for energy efficiency?

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[390] Glass Corrected, pp. 5-7.
[391] K.S.A. 66-1283(e)(2).
[392] *See* Glass Corrected, p. 12; *See e.g.* Glass Cross-Answering, pp. 12-17.
[393] Glass Cross-Answering, p. 17.
[394] *See id.* at p. 12.
[395] *See id.*at p. 13.
[396] *See id*.

132. KCP&L argues Staff's proposal inappropriately nets energy efficiency savings against costs incurred to serve customer growth.[397] KCP&L's primary witness on cost recovery did not offer any evidence indicating the company is experiencing load growth.[398] In theory, KCP&L incurs costs to serve additional load, and while it may technically earn above its authorized revenue requirement the Company incurs additional costs for serving this new load.[399] A windfall to the company is avoided as additional revenues are necessary to serve additional load. This, of course, assumes the Company is actually experiencing load growth. The record indicates otherwise. KCP&L's load is flat or declining,[400] and has been flat or declining for years.[401] KCP&L's load growth data submitted April 21, 2017, only confirms this.[402] Because KCP&L's load growth is flat or declining, there are no "increased costs" from load growth to net energy-efficiency savings against. No doubt, KCP&L will argue decreased load growth is due to the economic recession.[403] In response, one need only ponder a few questions: When did the economic recession end? Is the stock market at or near an all-time high? What is the unemployment rate? Any attempt to mask KCP&L's flat or declining load growth with arguments rooted in the housing market crisis of 2008 only serves to distract the factfinder from KCP&L's actual operational reality.

133. By contrast, Staff's approach uses weather normalized customer data to determine whether demand-side programs have created a disincentive (*i.e.* a decline in revenue) for KCP&L. [404] The Company argues Staff's suggested tariffs do not provide enough detail to

[397] Foltz Rebuttal, p. 22.
[398] Tr. Vol. 2, p. 411 (Foltz).
[399] *See* Foltz Rebuttal, p. 22.
[400] *See* KCP&L Commissioner Questions Response, Exhibit A, Attachment C.
[401] Tr. Vol. 1, p. 208 (File); *See also* Tr. Vol. 2, pp. 462-463 (Ives).
[402] *See* KCP&L Commissioner Questions Response, Exhibit A, Attachment C.
[403] *See id*.
[404] *See* Glass Cross-Answering, pp. 12-17.

successfully implement.[405] However, the revised procedural schedule in this matter, with an order date in June 2017 and effective date in October 2017,[406] leaves parties ample time to prepare any compliance tariffs necessary to effectuate Staff's (or any other) throughput disincentive methodology. KEEIA provides the Commission flexibility to utilize any number of recovery methodologies to accomplish KEEIA's mandates. Arguments rooted on any particular approach's vagueness serve only to create a false sense of urgency. There is no need to select a particular method over another simply because of tariff page length, as the parties to this proceeding have sufficient time to review any Commission order and craft language necessary to implement any Commission ruling.

134. Finally, KCP&L's suggested throughput disincentive certainly aligns its financial incentives with offering demand-side programs. However, KEEIA requires a balancing of incentives – not an outright concession to the utility.[407] By imposing a system-wide surcharge calculated with the methodology KCP&L requests, the Company is essentially arguing the only "incentive" a customer has to reduce their energy consumption is not a reduction in their bill but something more ethereal.

iii. Timely Earnings Opportunity

135. KEEIA requires the Commission provide timely earnings opportunities to public utilities.[408] Both Staff and KCP&L recommend earnings opportunities based largely on the same methodology. Where Staff and the Company differ is the use of throughput disincentive when calculating the demand-side program portfolio's net benefits.

[405] *See* Ives Rebuttal, p. 21.
[406] *See* Order Amending Procedural Schedule, pp. 2-3.
[407] *See* K.S.A. 66-1283(e)(2) (emphasis added).
[408] K.S.A. 66-1283(e)(3).

136. Staff's program recommendations alter the total program budget and savings estimates achievable under KCP&L's proposal.[409] These recommendations accordingly affect the collection of costs, throughput disincentive, and earnings opportunity. Notwithstanding these differences, Staff recommends the Commission provide KCP&L an earnings opportunity equivalent to 10% of the net benefits achieved from the implementation of demand-side programs.[410] Aside from the difference in percentage allocation of net benefits (KCP&L's approximately 17% to Staff's 10%),[411] Staff includes throughput disincentive as a cost when calculating net benefits.[412] While the throughput disincentive is not a "cost" to KCP&L, it is certainly a cost to KCP&L's customers who must pay to receive these programs.[413]

137. The Company disagrees with this approach and attempts to discredit it by comparing Staff's methodology to the TRC benefit-cost test.[414] The TRC test is, essentially, a combination of the Participant and RIM tests.[415] As a result, any throughput disincentive washes out as throughput disincentive is an intra-system monetary transfer.[416] Staff's counter to this critique is simple: Staff did not use the TRC test when developing its earnings opportunity proposal and neither should the Commission. Benefit-cost analysis determines whether a program will be cost-effective. It is not the correct approach for calculating the true, total cost of a demand-side program. As Staff argued, no one single benefit-cost test attempts to identify <u>all</u> the costs of a particular demand-side program.[417]

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[409] *See, e.g.* Kansas City Power & Light Company Corrected Notice of Filing Update Schedule DRI-1 (Mar. 22, 2017.
[410] Glass Corrected, p. 12.
[411] *See* Glass Corrected, p. 15, Table 1.
[412] *See id.*
[413] *See* Glass Corrected, p. 14.
[414] Nelson Rebuttal, pp. 29-31.
[415] *See* 12-337 Glass Technical Report, p. 6.
[416] *See* Nelson Rebuttal, p. 30.
[417] Glass Corrected, pp. 19-20.

138. KCP&L argues the throughput disincentive is not a "new" cost.[418] Without energy efficiency measures, customers would have used more energy and thus had higher bills. KCP&L's TRC-based throughput-disincentive imposes a charge over the entire system so that, from KCP&L's perspective, it is as if there were no decreased sales due to demand-side programs. KCP&L argues throughput disincentive should not be considered a "new" cost, as customers (viewed from a system perspective) would have paid it anyway.[419] This ignores an obvious reason ratepayers take energy saving steps – to save money. In order for KCP&L to offer these programs KCP&L must have a throughput disincentive.[420] Such cost, though not a "new" cost, should be recognized as a cost ratepayers will pay to have access to these demand-side programs.

139. The projected impact of Staff's approach reduces the earnings opportunity from millions of dollars to thousands.[421] This projection, however, assumes the company will have a large throughput disincentive offset. Should the company maintain its authorized revenue requirement, there will be no offset to net against the earnings opportunity. For example, if the Company remains above its authorized revenue requirement and implements programs that provide the estimated energy and demand savings, Staff's approach would award an earnings opportunity of approximately $2.3 million.[422]

iv. Additional Cost Recovery Considerations

140. The Commission is not limited in the cost recovery mechanism it employs in this proceeding. As stated above, KEEIA allows for wide Commission discretion on this subject. The record in this case, evidenced by the parties' positions and administrative notice of previous

[418] Tr. Vol. 2, p. 362 (Nelson).
[419] *See generally* Nelson Rebuttal, pp. 29-31. *See also* Tr. Vol. 2, p. 362 (Nelson).
[420] Tr. Vol. 2, p. 429 (Ives).
[421] *See* Glass Corrected, p. 15, Table 1.
[422] *See generally* Glass Corrected, p. 15, Table 1.

Commission policy dockets, enables the Commission to utilize any number of historically based cost recovery mechanisms or construct its own.

141. The Commission should reject the Company's request to include internal labor associated with the implementation of demand-side programs. Staff's stated concern in this docket, and previous dockets, has been a utility company will be able to over-recover internal labor expenses by recovering these costs in base rates as well as in a rider or surcharge mechanism.[423] If KCP&L can show its actual internal labor expenses in the aggregate are higher than the level used to set base rates, and the reason for this are employees whose sole job function is related to demand-side programs, then Staff would not object to the inclusion of these incremental internal labor expenses being included in the DSIM rider.[424]

E. Public Comments & Clean Power Plan

142. Staff has reviewed the public comments submitted in this matter. The majority of the comments are supportive of KCP&L's proposal or energy efficiency in general. However, the public comments may not be an accurate depiction of public sentiment in this case. No formal notice of a public comment period was provided to KCP&L's ratepayers through either bill inserts or ad campaigns. Had KCP&L's ratepayers been informed of KCP&L's proposal and potential rate impact with traditional public comment notice mediums the response may have be different. Staff, without question, welcomes public comments, critiques, and discourse – of its position or any other. The Commission should absolutely consider these public comments, but be mindful of the public comment procedural irregularities.

[423] *See* Grady Direct, p. 11.
[424] *See id.* at p. 12.

143. KCP&L and Climate and Energy Project advocate the Commission should approve KCP&L's request as it would aid in compliance with the Clean Power Plan.[425] This is not an appropriate reason for supporting this filing. Kansas law prohibits any agency from taking actions to comply with the Clean Power Plan.

> Due to the February 9, 2016, stay issued by the United States supreme court, all state agency activities, studies and investigations in furtherance of the preparation of an initial submittal or the evaluation of any options for the submission of a final state plan pursuant to the environmental protection agency docket EPA-HQ-OAR-2013-0602, codified as 40 C.F.R. part 60, shall be suspended until the stay is lifted. Nothing in this subsection shall be construed so as to restrict the ability of a state agency from communicating with, or providing information to, other state agencies in furtherance of any of the agency's statutory obligations.[426]

144. Furthermore, the United States Environmental Protection Agency (EPA) requested appellate procedures regarding the Clean Power Plan be suspended. On April 28, 2017, the United States Court of Appeals for the District of Columbia granted the EPA's request.[427] The order stays litigation for 60 days, and the case may eventually be remanded back to EPA.[428] Kansas law and Federal Appellate Court proceedings indicate compliance with the Clean Power Plan is not an appropriate reason for approving KCP&L's Application in this docket.

[425] Ives Rebuttal, p. 34. *See also* Direct Testimony Prepared by Dorothy Barnet, pp. 5-6 (Aug. 8, 2016).
[426] K.S.A. 65-3031(j) (emphasis added).
[427] *See* Juliet Eilperin and Brady Dennis, *Court freezes Clean Power Plan lawsuit, signaling likely end to Obama's signature climate policy*, THE WASHINGTON POST (Apr. 28, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/04/28/court-freezes-clean-power-plan-lawsuit-signaling-likely-end-to-obamas-signature-climate-policy/?utm_term=.bebb37d5e2eb.
[428] *See id.*

IV. Post-Hearing Questions

A. Please analyze the difference between MEEIA and KEEIA. Specifically address Mo. Rev. Stat. Ann. § 393.1075.14 (1) and what the practical effect of its limitation is on participation in MEEIA. Given the absence of corresponding language in KEEIA, what is the anticipated effect on the level of participation?

145. Staff analysis of KEEIA is contained primarily in § II of its *Post-Hearing Brief*, above. Staff has constructed this portion of its *Post-Hearing Brief* to evaluate apparent differences between Missouri's MEEIA legislation and Kansas's KEEIA legislation.

146. MEEIA and KEEIA, though both demand-side program statutes, contain a number of drastically different policy pronouncements and customer-specific exceptions. A comparison of their respective policies confirms this. MEEIA states:

> It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs.[429]

Contrast with KEEIA which states:

> It is the goal of the state to promote the implementation of cost-effective demand-side programs in Kansas. It shall be the policy of the state to value demand-side program investments equal to traditional investments in supply and delivery infrastructure as much as is practicable, but public utilities shall not be required to offer, implement or continue demand-side programs.[430]

147. One critical distinction may be drawn from this. Kansas qualifies the valuation of demand-side program investments with the language "as much as is practicable." Where MEEIA mandates demand-side investments be valued identical to supply-side, KEEIA allows the Commission to use reasonable assumptions when reviewing an application. This is an obvious distinction and centers on one of the primary contested issues in this proceeding.

[429] Mo. Rev. Stat. § 393.1075.3.
[430] K.S.A. 66-1283(b) (emphasis added).

Interestingly, KCP&L's response to Commission questions did not discuss this key difference between the statutes.

148. The definitional section of the two statutes contains similar terms. However, MEEIA explicitly defines "interruptible or curtailable rate"[431] and the "total resource cost test."[432] whereas KEEIA contains no definition for either.

149. MEEIA states the TRC test will be the preferred cost-effectiveness test whereas KEEIA leaves discretion to the Commission for establishing an appropriate test.[433] MEEIA allows the Missouri PSC to exempt allocation of demand-side expenditures to low-income classes.[434] MEEIA and KEEIA allow for apportioning demand-side costs to the appropriate rate class,[435] however MEEIA requires a docket studying the effects of rate design modification and a promulgated rule before approving such.[436] MEEIA contains numerous exemptions (*i.e.* opt-out provisions) for KCP&L's Missouri customers,[437] future eligibility prohibitions if a customer elects not to participate in a demand-side program,[438] participant funding obligations, [439] and rate schedule availability for non-participants and those opting-out of demand-side program eligibility.[440]

150. MEEIA explicitly references general legislative oversight of rules promulgated under MEEIA.[441] Though both MEEIA and KEEIA require annual reports to their respective

[431] Mo. Rev. Stat. § 393.1075.1(5).
[432] Mo. Rev. Stat. § 393.1075.1(6).
[433] *Compare* Mo. Rev. Stat. § 393.1075.5, *with* K.S.A. 66-1283(c)(1)(D).
[434] Mo. Rev. Stat. § 393.1075.6.
[435] *Compare* Mo. Rev. Stat. § 393.1075.5, *with* K.S.A. 66-1283(d)(2).
[436] Mo. Rev. Stat. § 393.1075.5.
[437] Mo. Rev. Stat. § 393.1075.7(1) – (3).
[438] Mo. Rev. Stat. § 393.1075.8.
[439] Mo. Rev. Stat. § 393.1075.9.
[440] Mo. Rev. Stat. § 393.1075.10.
[441] Mo. Rev. Stat. § 393.1075.11.

utility commissions, KEEIA's annual reports must include a comparison of authorized program budgets to actual costs.[442]

151. MEEIA states charges associated with a demand-side program to be displayed as a separate line item on a customer's bill.[443] Staff's analysis of the taxation and participation ramifications of Mo. Ann. Stat. § 393.1075.14 are consistent with KCP&L's description of such.[444] Finally, MEEIA mandates the Missouri Public Service Commission to adopt rules that provide for the disclosure of participants (*e.g.* name, address, amount of monetary incentive received) of demand-side programs.[445]

B. Are there other features of Missouri law, Missouri PUC regulations, or Missouri PUC orders that are different from those in Kansas, that have an impact on participation?(*i.e.*, renewable mandates, retail rate caps, or other ratepayer protections.)

152. Aside from MEEIA's limitations based upon receiving tax credits, Staff is not aware of any other laws or regulations affecting participation in MEEIA.

C. If the TRM is adopted as proposed and Kansas-specific information comes to light after its adoption, at what point during the three-year pilot could the TRM be modified to capture the new information? Could the modification occur during the term of the pilot? If so, would this modification alter the evaluation of cost-effectiveness of the program? Or would the modification have to wait until completion of EM&V? If the modification can occur during the pilot term, would EM&V be measured against the initial projected savings or the actual costs?

153. Presently, the TRM can be modified twice during KCP&L's proposal. KCP&L is proposing two EM&V reports, with the first occurring 18 months after the start of the program and the second at the conclusion of the three year program.[446] Certain aspects of the TRM may be updated post EM&V while others would not. For example, net kWh and kW savings would

[442] *Compare* K.S.A. 66-1283(f), *with* Mo. Rev. Stat. § 393.1075.12.
[443] Mo. Rev. Stat. § 393.1075.13.
[444] KCP&L Commissioner Questions Response, Attachment A, pp. 2-4.
[445] Mo. Rev. Stat. § 393.1075.15.
[446] *See* KEEIA Cycle 1 Report, Appendix C.

be evaluated each 18-month period, while deemed measure life would not.[447] Any changes to assumptions contained within the TRM may impact a demand-side program's cost-effectiveness.[448]

D. KCPL, please provide load growth data for the past 10 years.

154. Not applicable to Staff.

E. Please provide what the impact on retail rates will be at the end of the three-year pilot period. Please provide analysis based upon KCP&L, Staff, and CURB's avoided cost and with and without the throughput disincentive.

155. *See* Confidential Attachment B.

F. Please provide any readily available information or public report that provides a comparison of KCPL's electric rates to those of surrounding jurisdiction and/or the SPP footprint.

156. *See* Attachment C.

V. Conclusion

157. Kansas law and Commission policy appreciate the value demand-side programs can provide Kansas ratepayers. Staff recommends taking the plain language of the KEEIA statute and applying it to Commission policy. With this foundation, Staff recommends the Commission approve KCP&L's strongest demand-side programs, shown below. Staff's program recommendations are cost-effective today, and will remain cost-effective in the future should avoided capacity costs increase. Staff's cost recovery mechanism keeps KCP&L and its shareholders protected from the inherent disincentives associated with offering demand-side programs while awarding the Company for program success.

[447] *See id.* at p. 3.
[448] *See* Tr. Vol. 2, p. 324 (Nelson); Turner Direct, p. 17.

Demand-Side Programs Staff Recommends for Approval	
Residential	**Commercial**
Home Lighting Rebate	Business Energy Efficiency Rebate – Standard
Online Home Energy Audit	Online Business Energy Audit
Income-Eligible Multi-Family	Demand Response Incentive
Income-Eligible Weatherization	
Residential Programmable Thermostat	

WHEREFORE, Staff respectfully requests the Commission approve Staff's recommended demand-side program portfolio, Staff's DSIM Rider, and for any other relief the Commission deems just and reasonable.

Respectfully Submitted,

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Confidential Attachment A

Illustration of Differences between Parties' Avoided Capacity Costs

Confidential Attachment B

Aggregate Cost of KEEIA to KCP&L Customers

With and Without the Throughput Disincentive

Using KCP&L's, Staff's, and CURB's Avoided Capacity Costs

Attachment C

6. Please provide any readily available information or public report that provides a comparison of KCPL's electric rates to those of surrounding jurisdiction and/or the SPP footprint.

Below are the "all in prices" for electricity for KCP&L Kansas, Missouri, and Greater Missouri Operations (GMO). The prices were calculated by dividing total class revenue by total class kWh. The data are from the Energy Information Administration which is part of the Department of Energy. The prices are for the calendar years 2010 through 2015, the latest year available. On the first page are KCP&L and Westar. The following two pages have the investor owned utilities for the surrounding states plus Arkansas and Iowa. Besides KCP&L, two other utilities are multi-state electric utilities: Empire District (primarily in Missouri but has customers in Kansas, Oklahoma, and Arkansas) and Oklahoma Gas & Electric (primarily Oklahoma but some customers in Arkansas).

			Total	Residential	Commercial	Industrial
Data Year	Utility Name	State	$/kWh	$/kWh	$/kWh	$/kWh
2010	Kansas City Power & Light Co	KS	$0.0869	$0.0980	$0.0784	$0.0719
2011	Kansas City Power & Light Co	KS	$0.0962	$0.1080	$0.0875	$0.0761
2012	Kansas City Power & Light Co	KS	$0.0985	$0.1108	$0.0907	$0.0665
2013	Kansas City Power & Light Co	KS	$0.1042	$0.1157	$0.0959	$0.0817
2014	Kansas City Power & Light Co	KS	$0.1048	$0.1167	$0.0961	$0.0885
2015	Kansas City Power & Light Co	KS	$0.1101	$0.1233	$0.1005	$0.0930
2010	Kansas City Power & Light Co	MO	$0.0831	$0.1009	$0.0804	$0.0598
2011	Kansas City Power & Light Co	MO	$0.0867	$0.1052	$0.0839	$0.0628
2012	Kansas City Power & Light Co	MO	$0.0889	$0.1093	$0.0855	$0.0643
2013	Kansas City Power & Light Co	MO	$0.0949	$0.1146	$0.0921	$0.0692
2014	Kansas City Power & Light Co	MO	$0.0964	$0.1170	$0.0938	$0.0693
2015	Kansas City Power & Light Co	MO	$0.1028	$0.1255	$0.0999	$0.0741
2010	KCP&L Greater Missouri Operations	MO	$0.0834	$0.0986	$0.0771	$0.0562
2011	KCP&L Greater Missouri Operations	MO	$0.0884	$0.1039	$0.0821	$0.0613
2012	KCP&L Greater Missouri Operations	MO	$0.0899	$0.1081	$0.0824	$0.0610
2013	KCP&L Greater Missouri Operations	MO	$0.0931	$0.1099	$0.0861	$0.0656
2014	KCP&L Greater Missouri Operations	MO	$0.0980	$0.1148	$0.0912	$0.0701
2015	KCP&L Greater Missouri Operations	MO	$0.0935	$0.1126	$0.0859	$0.0641
2010	Westar Energy Inc	KS	$0.0780	$0.0955	$0.0770	$0.0650
2011	Westar Energy Inc	KS	$0.0819	$0.0993	$0.0805	$0.0684
2012	Westar Energy Inc	KS	$0.0871	$0.1070	$0.0851	$0.0714
2013	Westar Energy Inc	KS	$0.0915	$0.1118	$0.0896	$0.0745
2014	Westar Energy Inc	KS	$0.0986	$0.1208	$0.0971	$0.0802
2015	Westar Energy Inc	KS	$0.0975	$0.1211	$0.0956	$0.0784

Attachment C

			Total	Residential	Commercial	Industrial
Data Year	Utility Name	State	$/kWh	$/kWh	$/kWh	$/kWh
2010	Amana Society Service Co	IA	$0.0930	$0.1251	$0.1196	$0.0859
2011	Amana Society Service Co	IA	$0.0988	$0.1331	$0.1205	$0.0918
2012	Amana Society Service Co	IA	$0.0868	$0.1234	$0.1085	$0.0800
2013	Amana Society Service Co	IA	$0.0871	$0.1213	$0.1073	$0.0809
2014	Amana Society Service Co	IA	$0.0894	$0.1267	$0.1121	$0.0830
2015	Amana Society Service Co	IA	$0.0860	$0.1261	$0.1114	$0.0794
2010	Black Hills/Colorado Elec.Util	CO	$0.1004	$0.1219	$0.0916	$0.0829
2011	Black Hills/Colorado Elec.Util	CO	$0.1130	$0.1363	$0.1035	$0.0949
2012	Black Hills/Colorado Elec.Util	CO	$0.1373	$0.1627	$0.1267	$0.1185
2013	Black Hills/Colorado Elec.Util	CO	$0.1297	$0.1555	$0.1228	$0.1019
2014	Black Hills/Colorado Elec.Util	CO	$0.0948	$0.1263	$0.0915	$0.0570
2015	Black Hills/Colorado Elec.Util	CO	$0.1280	$0.1568	$0.1284	$0.0896
2010	Empire District Electric Co	Total	$0.0895	$0.0994	$0.0895	$0.0692
2011	Empire District Electric Co	Total	$0.1002	$0.1118	$0.1005	$0.0772
2012	Empire District Electric Co	Total	$0.1022	$0.1159	$0.1027	$0.0766
2013	Empire District Electric Co	Total	$0.1050	$0.1176	$0.1061	$0.0793
2014	Empire District Electric Co	Total	$0.1084	$0.1212	$0.1095	$0.0821
2015	Empire District Electric Co	Total	$0.1098	$0.1256	$0.1097	$0.0828
2010	Entergy Arkansas Inc	AR	$0.0748	$0.0907	$0.0716	$0.0585
2011	Entergy Arkansas Inc	AR	$0.0756	$0.0909	$0.0735	$0.0595
2012	Entergy Arkansas Inc	AR	$0.0797	$0.0965	$0.0773	$0.0630
2013	Entergy Arkansas Inc	AR	$0.0805	$0.0965	$0.0785	$0.0635
2014	Entergy Arkansas Inc	AR	$0.0780	$0.0926	$0.0770	$0.0618
2015	Entergy Arkansas Inc	AR	$0.0860	$0.1018	$0.0848	$0.0688
2010	Interstate Power and Light Co	IA	$0.0914	$0.1330	$0.0960	$0.0641
2011	Interstate Power and Light Co	IA	$0.0868	$0.1301	$0.0922	$0.0590
2012	Interstate Power and Light Co	IA	$0.0854	$0.1299	$0.0901	$0.0578
2013	Interstate Power and Light Co	IA	$0.0936	$0.1372	$0.0998	$0.0644
2014	Interstate Power and Light Co	IA	$0.0931	$0.1361	$0.1017	$0.0638
2015	Interstate Power and Light Co	IA	$0.0958	$0.1423	$0.1042	$0.0654
2010	MidAmerican Energy Co	IA	$0.0599	$0.0837	$0.0646	$0.0409
2011	MidAmerican Energy Co	IA	$0.0597	$0.0840	$0.0648	$0.0408
2012	MidAmerican Energy Co	IA	$0.0623	$0.0883	$0.0676	$0.0429
2013	MidAmerican Energy Co	IA	$0.0639	$0.0892	$0.0699	$0.0446
2014	MidAmerican Energy Co	IA	$0.0656	$0.0921	$0.0724	$0.0468
2015	MidAmerican Energy Co	IA	$0.0681	$0.0975	$0.0752	$0.0499

Attachment C

			Total	Residential	Commercial	Industrial
Data Year	Utility Name	State	$/kWh	$/kWh	$/kWh	$/kWh
2010	Oklahoma Gas & Electric Co	Total	$0.0761	$0.0937	$0.0740	$0.0547
2011	Oklahoma Gas & Electric Co	Total	$0.0763	$0.0951	$0.0732	$0.0540
2012	Oklahoma Gas & Electric Co	Total	$0.0737	$0.0959	$0.0707	$0.0503
2013	Oklahoma Gas & Electric Co	Total	$0.0767	$0.0956	$0.0750	$0.0546
2014	Oklahoma Gas & Electric Co	Total	$0.0793	$0.0985	$0.0776	$0.0569
2015	Oklahoma Gas & Electric Co	Total	$0.0742	$0.0979	$0.0696	$0.0503
2010	Public Service Co of Colorado	CO	$0.0924	$0.1115	$0.0929	$0.0639
2011	Public Service Co of Colorado	CO	$0.0939	$0.1119	$0.0952	$0.0654
2012	Public Service Co of Colorado	CO	$0.0904	$0.1105	$0.0916	$0.0604
2013	Public Service Co of Colorado	CO	$0.0968	$0.1170	$0.0982	$0.0658
2014	Public Service Co of Colorado	CO	$0.1000	$0.1201	$0.1020	$0.0689
2015	Public Service Co of Colorado	CO	$0.0954	$0.1160	$0.0963	$0.0651
2010	Public Service Co of Oklahoma	OK	$0.0645	$0.0795	$0.0640	$0.0451
2011	Public Service Co of Oklahoma	OK	$0.0691	$0.0849	$0.0682	$0.0486
2012	Public Service Co of Oklahoma	OK	$0.0626	$0.0801	$0.0618	$0.0413
2013	Public Service Co of Oklahoma	OK	$0.0673	$0.0843	$0.0674	$0.0460
2014	Public Service Co of Oklahoma	OK	$0.0711	$0.0888	$0.0711	$0.0497
2015	Public Service Co of Oklahoma	OK	$0.0707	$0.0907	$0.0704	$0.0486
2010	Southwestern Electric Power Co	AR	$0.0641	$0.0794	$0.0647	$0.0520
2011	Southwestern Electric Power Co	AR	$0.0662	$0.0817	$0.0669	$0.0538
2012	Southwestern Electric Power Co	AR	$0.0661	$0.0826	$0.0674	$0.0529
2013	Southwestern Electric Power Co	AR	$0.0742	$0.0904	$0.0758	$0.0608
2014	Southwestern Electric Power Co	AR	$0.0730	$0.0898	$0.0745	$0.0593
2015	Southwestern Electric Power Co	AR	$0.0696	$0.0870	$0.0707	$0.0552
2010	Union Electric Co	MO	$0.0679	$0.0815	$0.0673	$0.0461
2011	Union Electric Co	MO	$0.0751	$0.0917	$0.0739	$0.0504
2012	Union Electric Co	MO	$0.0772	$0.0969	$0.0751	$0.0502
2013	Union Electric Co	MO	$0.0851	$0.1053	$0.0836	$0.0563
2014	Union Electric Co	MO	$0.0841	$0.1038	$0.0826	$0.0552
2015	Union Electric Co	MO	$0.0895	$0.1134	$0.0869	$0.0567

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

VERIFICATION

Robert E. Vincent, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Post-Hearing Brief of Commission Staff* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.

Robert E. Vincent, S. Ct. # 26028
Litigation Counsel
The State Corporation Commission
State of Kansas

Subscribed and sworn to before me this 8th day of May, 2017.

PAMELA J. GRIFFETH
Notary Public - State of Kansas
My Appt. Expires 08-17-2019

Notary Public

My Appointment Expires: August 17, 2019

CERTIFICATE OF SERVICE

16-KCPE-446-TAR

I, the undersigned, certify that a true and correct copy of the above and foregoing Post-Hearing Brief of Commission Staff was served by electronic service on this 8th day of May, 2017, to the following:

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