

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

POST-HEARING BRIEF OF THE
CITIZENS' UTILITY RATEPAYER BOARD

PUBLIC VERSION

**  ** *DESIGNATES CONFIDENTIAL*

May 8, 2017

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**POST-HEARING BRIEF OF THE
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I. INTRODUCTION

A. Position of Citizens’ Utility Ratepayer Board (CURB)

1. The Chief of the Economics and Rates Section of the Utilities Division of the Kansas Corporation Commission, Robert H. Glass, PhD, summed up the problem with the application filed by Kansas City Power & Light Company (“KCP&L”) in this docket, as follows:

“...Staff notes that when Staff’s choice of avoided capacity cost is used to estimate total benefits and when all costs are taken into account, it is questionable whether the portfolio as a whole has benefits greater than the total costs. While Staff has recommended a cost recovery mechanism and approval of certain programs, we note that the Commission is not required to approve any programs if it doubts their cost effectiveness or prudence.”¹

Doctor Glass’s testimony is astute. The Kansas Energy Efficiency Investment Act of 2014 (“KEEIA”) cannot be read to require the Commission to approve any energy efficiency (EE) program unless it is cost-effective and prudent. In fact, the KEEIA requires the termination

¹ Direct Testimony Prepared by Robert H. Glass, PhD, p. 28, ll. 15-21.

of EE programs which are not proven to be cost-effective. The Applicant bears the burden of proof on these matters.

2. Doctor Glass's testimony emphasizes the fact that the calculation of avoided capacity costs vastly affects the issue of whether or not the KCP&L EE programs are cost-effective. Significantly, the calculation of avoided capacity costs affects the amount of "energy savings" which KCP&L ratepayers may attain through EE programs. Thus, the proper calculation of avoided capacity costs is vital to the protection of ratepayers from EE programs which are not cost-effective.

3. CURB represents the very ratepayers who will gain or lose from implementation of EE programs: Residential and small commercial utility ratepayers. Therefore, CURB is very concerned that EE programs which are approved by the Commission are cost-effective. CURB supports EE programs which are proven to be cost-effective and beneficial under the KEEIA and the Commission's regulatory policies, but opposes those that are not.

4. In these regards, CURB opposes KCP&L's application because KCP&L's portfolio of EE programs (which it refers to as "KEEIA Cycle 1") is not cost-effective, is not transparent, and heavily favors shareholders' interests over ratepayers' interests. CURB opposes the whole of KEEIA Cycle 1 because KCP&L proposes it as an "all or nothing" deal, manifested by the testimony of Darrin Ives.² Frankly, KCP&L affords no ground for reasonable compromise.

² Tr., Vol. 2, pp. 427-429 (Ives).

5. It appears to CURB that the Commission shares this concern, in view of the insightful questions posed by the Commission at the hearing in this docket. The Commission was transparent in its efforts to find some manner of approving the implementation of some EE programs, without violating the public interest in reasonable utility rates. However, since KCP&L may unilaterally reject any EE program under the provisions of the KEEIA, it would be surprising if Commission modifications to the KCP&L Cycle 1 would be acceptable to KCP&L unless they contained virtually all of the features of KCP&L's application.

6. CURB recognizes that the Commission, as the policy maker, can simply give KCP&L what it wants; but that solution will yield EE programs which are not cost-effective and will raise rates paid by KCP&L's ratepayers. The Commission can also attempt to jerry-rig a resolution so that it can be said that Kansas has some approved EE programs; but considering the complexity of EE programs, any such resolution would likely have many unforeseen adverse effects (and probably cannot be supported by the record evidence). Yet, the simplest solution (and what CURB desires) is for the Commission to reject KCP&L's application entirely because it is offered as an "all or nothing" proposition and it clearly is not cost-effective. After the application is rejected, the parties can work collaboratively to create a cost-effective EE portfolio.

7. In the discussion below, CURB will show why the Commission should deny KCP&L's application. However, if the Commission (as the policy maker) chooses now to attempt to rectify the problematic offering that KCP&L has placed before it, as the Commission Staff (hereinafter, "Staff") suggests, CURB will outline minimal safeguards to protect the

interests of residential and small business ratepayers. Finally, CURB will attempt to answer those of the Commission's additional questions which CURB believes it can.

B. Procedural History

8. On April 6, 2016, KCP&L submitted an Application proposing a demand-side management (DSM) program portfolio consisting of fourteen electric efficiency programs, for a pilot program to be effective from January 1, 2017, through December 31, 2019, and referred to as "KEEIA Cycle 1"³ (hereinafter referred to as "KCP&L EE Portfolio"). The KCP&L EE Portfolio consists of seven DSM programs designed for residential ratepayers, and seven DSM programs designed for commercial/industrial ratepayers in KCP&L's service territory. Of the 14 DSM programs, two are designed for income-eligible participants and two are designed as general education programs. Program details for each of the 14 programs are shown in Appendix "A" of KCP&L's Application and will not be further described here.

9. The major components of the KCP&L EE Portfolio are the DSM program portfolio (which is described above), a **Technical Resource Manual** ("TRM"), a **Cost Recovery Mechanism**, and an **Evaluation, Measurement and Verification** ("EM&V") system which is the process of determining the "energy savings" which result from the KCP&L EE Portfolio. KCP&L's **Cost Recovery Mechanism** includes a mechanism by which KCP&L will recover its program costs, a **Throughput Disincentive (TD)** designed to recover lost revenues caused by

³ Application of Kansas City Power & Light Company For Approval of Demand-side Management Program Portfolio and Recovery Mechanism (April 6, 2016).

the KCP&L EE Portfolio, and an **Earnings Opportunity (EO)** designed to reward KCP&L for any “energy savings” which result from the KCP&L EE Portfolio.

10. In addition to seeking approval of its DSM portfolio, KCP&L requests approval of a DSIM (Demand-Side Investment Mechanism) Rider, to replace KCP&L’s current EE Rider. With respect to its **Cost Recovery Mechanism**, KCP&L proposes that its program costs and TD be collected on the basis of forecasts which are updated semi-annually with a reconciliation of the prior periods’ forecasted costs to calculated historical amounts with carrying costs on any under-recovery or over-recovery. KCP&L proposes that its EO be recovered over a two-year period next following the final determination of cost savings resulting from the KCP&L EE Portfolio, which is based on the EM&V review in the year following the 36-month KCP&L EE Portfolio programs. KCP&L proposes to terminate the tariffs for its previous DSM programs, and replace them with a new set of tariffs.

11. CURB filed a petition for intervention on April 7, 2016. CURB’s intervention in this proceeding was approved by the Commission on April 26, 2016. The following parties also sought intervention in this proceeding:

Brightergy, LLC, National Housing Trust, Climate and Energy Project, Kansas Gas Service, a Division of OneGas, Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy, Atmos Energy Corporation, Natural Resources Defense Council, Westar Energy, Inc. and Kansas Gas & Electric Company.

The Commission granted intervention in this proceeding for all above-named parties.

12. The Commission issued an Order Setting Procedural Schedule on July 12, 2016, followed by an Order Nunc Pro Tunc Correcting Order Setting Procedural Schedule on July 18,

2016, which set a Prehearing Conference to be held on September 2, 2016 and evidentiary hearings to be held on September 7, 8 and 9, 2016.

13. On August 31, 2016, Climate and Energy Project, Brightergy, LLC, National Housing Trust and KCP&L filed a Joint Motion for Approval of Non-unanimous Stipulation and Agreement. The parties filed a consolidated list of contested issues on September 1, 2016.

14. A Prehearing Conference was held on September 2, 2016. However, just before the Prehearing Conference, KCP&L discovered an error regarding the data pertaining to one of its demand-side programs and notified the parties and the Commission of the same. Although the KEEIA provides that the Commission shall issue an order determining any application filed with the Commission under the Act within 180 days (or 240 days if good cause is shown for the extension), the parties waived that deadline in view of the need to continue the hearing due to the discovery of the aforementioned error.

15. Additionally, KCP&L filed a motion seeking to (1) extend the expiration date of KCP&L's current DSM programs as pilot programs from December 31, 2016 to September 30, 2017, (2) extend the three-year budget an additional nine months to September 30, 2017, and (3) waive the requirement for an evaluation of these current DSM programs to allow for the extension. The Commission granted KCP&L's motion.

16. An Order Amending Procedural Schedule was issued by the Commission on December 15, 2016, which set a Prehearing Conference on March 6, 2017, and an evidentiary hearing to be held on March 22, 2017 through March 24, 2017. A second Prehearing Conference was held as scheduled. Westar Energy, Inc. and Brightergy, LLC have withdrawn from this proceeding.

17. An evidentiary hearing was held before the Commission on March 22, 2016, through March 24, 2016.

C. Outline of Pertinent Authority

18. The KEEIA authorizes the Commission to approve energy efficiency measures proposed by Kansas utilities in accordance with the Act.⁴ A Kansas utility must prove that its EE programs: (A) result in energy or demand savings; and (B) are 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.⁵ Moreover, the KEEIA provides that DSM programs such as those contained in the KCP&L EE Portfolio, other than programs targeted to low-income customers or general education campaigns, must be proven to be cost-effective by means of a test which the Commission, in its discretion, shall determine.⁶

19. The KEEIA contemplates that if DSM programs are proven to be cost-effective, the value of the DSM program investments shall be valued equal to traditional investments in supply and delivery infrastructure as much as is practicable.⁷ In essence, the KEEIA treats cost-effective DSM programs as an alternative to supply-side electric generation. Significantly, this means that the principles which the Commission employs in rate cases apply equally (as much as is practicable) to DSM applications filed under the KEEIA.

⁴ K.S.A. 66-1283(c)(1)(A)(Supp., 2016).

⁵ K.S.A. 66-1283(c)(2)(Supp., 2016).

⁶ Id.

⁷ K.S.A. 66-1283(b)(Supp., 2016).

20. If DSM programs are determined to be cost-effective, the Commission shall fairly apportion the costs and benefits of such programs to each customer class.⁸ In addition, if a DSM program is determined to be cost-effective, the Commission must meet a number of objectives:

- a. Provide timely cost recovery for electric public utilities, which may include (without limitation) capitalization of investments in and expenditures for DSM programs, recovery of lost revenues associated with DSM programs, decoupling, and rate design modifications;
- b. Ensure that the financial incentives for an electric public utility are aligned with helping such utility's customers use energy more efficiently;
- c. Provide timely earnings opportunities for public utilities associated with cost-effective, measureable and verifiable DSM programs;
- d. Provide oversight and approval for utility-specific settlements and tariff provisions; and
- e. Provide independent evaluation of DSM programs as deemed necessary by the Commission.⁹

21. Unmistakably, the Commission is vested with considerable discretion on how to achieve these objectives. In addition to the discretion plainly allowed to the Commission in the above matters, there are several key terms which the Kansas legislature left for the Commission to determine. For example, the term "timely" is not specifically defined, but the term logically should be defined to be consistent with how the Commission treats the "timely" recovery of expenses in traditional rate cases before the Commission -- a matter left to the Commission's discretion.

22. Significantly, at the time when the KEEIA was enacted, the Kansas legislature was keenly aware that the Commission had outlined regulatory policy in various energy efficiency dockets. Yet, the KEEIA maintains the Commission's role as the policy maker in EE

⁸ K.S.A. 66-1283(d)(2) (Supp., 2016)

⁹ K.S.A. 66-1283(e) (Supp., 2016).

matters.¹⁰ Therefore, it is evident that the Kansas legislature did not intend to broadly restrict the Commission's authority to set policy with respect to EE programs.

23. As Charles Caisley (for KCP&L) testified before the Senate Utilities Committee concerning the KEEIA (then SB 374), the act was intended to give the Commission an expansive array of tools to attain energy efficiency more so than the Commission had under prior law. Indeed, the KEEIA generally broadens, rather than restricts the Commission's authority to determine the basis upon which the cost-effectiveness of EE programs should be measured and to structure cost recovery for cost-effective EE programs so as to promote the public interest. Thus, policies established prior to the KEEIA by the Commission regarding EE programs generally remain applicable and should be treated with deference.

24. As policy, the Commission has established that it will not likely approve a DSM program that fails the Total Cost Recovery (TRC) test.¹¹ Viewing energy efficiency as a demand-side alternative to supply-side resources, the Commission has noted that the clear importance of the TRC test is that it evaluates energy efficiency programs for their ability to meet the goal of reducing future energy costs in Kansas.¹² Thus, when a DSM program fails the TRC test, the Commission would justifiably reject that DSM program as being energy inefficient.¹³

25. Of course, the TRC test is not the only test which is used to measure the cost effectiveness of energy efficiency programs. In addition to the TRC test, the *California Standard*

¹⁰ See, for example, K.S.A. 66-1283(c)(1)(D)(Supp., 2016).

¹¹ Docket No. 08-GIMX-442-GIV, *Order Following Collaborative On Benefit-Cost Testing and Evaluation, Measurement, and Verification*, ¶ 36, p. 13 (April 13, 2009).

¹² Docket No. 08-GIMX-442-GIV, *Order Following Collaborative On Benefit-Cost Testing and Evaluation, Measurement, and Verification*, para. 25, pp. 9-10 (April 13, 2009).

¹³ *Id.*

Practice Manual lists four other tests as being pertinent to the cost-effectiveness of energy efficiency programs, as follows:

- Ratepayer Impact Measure (RIM);
- Participant Test;
- Program Administrator Cost (PAC) Test; and
- Societal Test.¹⁴

While the Commission has determined that all of these tests should be used to calculate the energy efficiency caused by DSM programs requested by Kansas utilities, the Commission believes an emphasis on the RIM and TRC tests is appropriate in light of Kansas realities and Commission goals.¹⁵

26. Like the other three tests, the TRC test and RIM test are cost-benefit tests, the results of which can be expressed in a benefit/cost ratio where the net present value of the sum of the benefits of the DSM program is divided by the net present value of the program costs.¹⁶ A benefit/cost ratio is simply an expression of an analysis of the cost-effectiveness of a program. In his testimony, Staff witness Joshua P. Frantz set out the benefits and the costs to be used in the calculations of the TRC test and the RIM test.¹⁷

¹⁴ Docket No. 08-GIMX-442-GIV, *Order Setting Energy Efficiency Goals*, ¶ 34, p. 13 (June 2, 2008).

¹⁵ Docket No. 08-GIMX-442-GIV, *Order Following Collaborative On Benefit-Cost Testing and Evaluation, Measurement, and Verification*, para. 36, p. 13 (April 13, 2009).

¹⁶ (*Understanding Cost-Effectiveness of Energy Efficiency Programs: Best Practices, Technical Methods, and Emerging Issues for Policy-Makers* (Energy and Environmental Economics, Inc. and Regulatory Assistance Project, www.epa.gov/eeactionplan) (NAPEE Report))

¹⁷ The benefits calculated in the TRC test are the avoided supply costs, the reduction in transmission, distribution, generation, and capacity costs valued at marginal cost for the periods when there is a load reduction. (Joshua P. Frantz, p. 10, ll. 32- p. 11, ll. 3) The costs in this test are all equipment costs, installation, operation and maintenance, cost of removal (less salvage value), and administration costs, no matter who pays for them. (Joshua P. Frantz, p. 11, ll. 3-10) The benefits calculated in the RIM test are the savings from avoided supply costs. These avoided costs include the reduction in transmission, distribution, generation, and capacity costs for periods when load has been reduced and the increase in revenues for any periods in which load has been increased. The avoided

27. All of the above-named cost-benefit tests measure the efficiency of energy efficiency programs from differing perspectives.¹⁸ For example, the Participant Test indicates whether a DSM program is cost-effective for the customer who actually participates in the program.¹⁹ The PAC Test indicates whether a DSM program will increase or decrease the costs to the utility.²⁰

28. Staff witness Joshua Frantz described the purpose of the TRC test according to the California Manual, as follows:

“The Total Resource Cost Test measures the net costs of a demand-side management program as a resource option based on the total costs of the program, including both the participants' and the utility's costs.”²¹

As the Commission pointed out in Docket No. 08-GIMX-442-GIV, the TRC test answers the question: "Will the total costs of energy in the utility service territory decrease?"²²

29. Because DSM programs tend to cause shifts in revenue which must be made up by ratepayers, the RIM test is important as it is the only test which measures these revenue

supply costs are a reduction in total costs or revenue requirements ... Both the reductions in supply costs and the revenue increases should be calculated using net energy savings. (Joshua P. Frantz, p. 9, ll. 16-24) The costs for this test are the program costs incurred by the utility, *and/or other entities incurring costs and creating or administering the program*, the incentives paid to the participant, decreased revenues for any periods in which load has been decreased and increased supply costs for any periods when load has been increased. The utility program costs include initial and annual costs, such as the cost of equipment, operation and maintenance, installation, program administration, and customer dropout and removal of equipment (less salvage value). (Joshua P. Frantz, p. 9, ll. 25-34)

¹⁸ Docket No. 08-GIMX-442-GIV, *Order Following Collaborative On Benefit-Cost Testing and Evaluation, Measurement, and Verification*, para. 21, pp. 7-8 (April 13, 2009).

¹⁹ Docket No. 08-GIMX-442-GIV, *Order Setting Energy Efficiency Goals*, ¶ 35, pp. 13-14 (June 2, 2008).

²⁰ *Id.*

²¹ Direct Testimony Prepared by Joshua P. Frantz, p. 10, ll. 24-28.

²² Docket No. 08-GIMX-442-GIV, *Order Following Collaborative On Benefit-Cost Testing and Evaluation, Measurement, and Verification*, para. 24, p. 9 (April 13, 2009).

shifts.²³ Staff witness Joshua Frantz described the purpose of the RIM test according to the California Manual, as follows:

“The Ratepayer Impact Measure (RIM) test measures what happens to customer bills or rates due to changes in utility revenues and operating costs caused by the program. ... This test indicates the direction and magnitude of the expected change in customer bills or rate levels.”²⁴

The Commission has determined that the RIM test is “useful to protect customer classes.”²⁵ Accordingly, the Commission has stated that an energy-efficiency program that scores less than 1.0 on the RIM test “may still be considered by the Commission for approval, depending on the degree of RIM test failure, (and) its performance on the other tests.”²⁶

II. STATEMENT OF ISSUES

30. There were several issues presented at the hearing in this docket.

However, CURB will address the following issues in its Post Hearing Brief:

- A. Is the KCP&L EE Portfolio cost-effective as required under the KEEIA?
- B. Is it in the public interest to allow KCP&L to recover costs and lost revenues through its cost recovery mechanism on a forecasted basis?
- C. Is it in the public interest to allow KCP&L to recover an earnings opportunity as set forth in its application?
- D. Is it in the public interest to allow KCP&L to use Navigant as the EM&V provider?

²³ Docket No. 08-GIMX-442-GIV, *Order Following Collaborative On Benefit-Cost Testing and Evaluation, Measurement, and Verification*, para. 22, p. 8 (April 13, 2009).

²⁴ Direct Testimony Prepared by Joshua P. Frantz, p. 9, ll. 11-15.

²⁵ *Id.*

²⁶ Docket No. 08-GIMX-442-GIV, *Order Following Collaborative On Benefit-Cost Testing and Evaluation, Measurement, and Verification*, para. 23, p. 9 (April 13, 2009).

- E. Is it in the public interest to allow KCP&L to adjust its entire demand-side portfolio by ten percent?
- F. Is it in the public interest to allow KCP&L to include its internal labor costs in its rider?

III. ARGUMENTS AND AUTHORITIES

A. The KCP&L EE Portfolio Should Be Denied By The Commission Because The KCP&L EE Portfolio Is Not Cost-Effective As Required Under The KEEIA

31. The KCP&L EE Portfolio does not pass the TRC and RIM tests when properly measured. Indeed, KCP&L overstates the TRC and RIM test values of these programs for the reasons set forth below.²⁷ Because the KCP&L EE Portfolio is actually not cost-effective, disapproval by the Commission is warranted under the KEEIA and the well-established policies of the Commission.²⁸

32. The TRC and RIM values provided in the Company's application are overstated for two reasons: (1) KCP&L's estimate of avoided costs is inflated, and (2) KCP&L utilized a Technical Resource Manual ("TRM") to estimate the useful life and savings for its energy efficiency measures instead of DEER standard values.²⁹ Crucially, KCP&L's TRM does not reflect energy efficient market realities.³⁰ Thus, KCP&L's TRM cannot be reliably used to measure the cost-effectiveness of its EE programs. These deficiencies are discussed below.

²⁷ Direct Testimony of Stacey Harden, p. 17, ll. 17-19; p. 18, ll. 3-5.

²⁸ Direct Testimony of Stacey Harden, p. 5, ll. 4-5.

²⁹ Id.

³⁰ (Direct Testimony Prepared by John M. Turner, p. 16, ll. 7-9.

(1) KCP&L overstates the avoided costs in its TRC and RIM Tests

33. This is a key issue because the difference between KCP&L's avoided costs calculation and the avoided costs calculated by Staff and CURB fundamentally affects whether or not KCP&L's DSM programs pass the TRC and RIM tests. To be sure, in its Initial Post-Hearing Brief, KCP&L states that calculation of avoided costs is a major issue in this case.³¹ The Commission's decision on the appropriate value of the costs avoided by the KCP&L EE Portfolio will likely determine the outcome of KCP&L's application.

34. In these regards, the differences between the parties' avoided capacity costs calculations are vast. KCP&L used **[REDACTED]** per kW as avoided capacity costs in its benefit-cost tests, and its model escalates that figure annually.³² Staff used **[REDACTED]** per kW as avoided capacity costs in its benefit-costs tests.³³ CURB's used **[REDACTED]** per kW as avoided capacity costs, which are the same avoided capacity costs which KCP&L supported in Docket No. 14-KCPE-042-TAR (KCP&L's last energy efficiency docket) in CURB's benefit-costs tests.³⁴

35. A comparison between Staff's avoided capacity costs calculation and KCP&L's avoided capacity costs calculation helps to illustrate why this issue is so important relative to KCP&L's EE Portfolio. As shown by Table 1 (below), when Staff's avoided capacity costs of **[REDACTED]** per kW is used, many of the KCP&L EE programs fail the TRC test. The differences

³¹ Initial Post-Hearing Brief of Kansas City Power & Light Company, ¶ 106, p. 51.

³² The **[REDACTED]** per kW was calculated as the sum of **[REDACTED]** from generation capacity, **[REDACTED]** from transmission and distribution capacity, **[REDACTED]** from firm gas cost. And **[REDACTED]** from fixed operations and maintenance costs. Direct Testimony of Stacey Harden, p. 18, ll. 8-9, ll. 13-15.

³³ Because the cost of gas runs through KC&L's ECA rider, Staff asserts that firm gas cost is not a capacity cost. Direct Testimony Prepared by Robert H. Glass, PhD, p. 24, ll. 5-7, ll. 16-18.

³⁴ Direct Testimony of Stacey Harden, p. 19, ll. 8-11.

between the results of Staff's TRC tests and KCP&L's TRC tests and Staff's RIM tests and KCP&L RIM tests for KCP&L's DSM programs (which are intended neither for low income recipients nor for general education) are set out in Table 1 below:

TABLE 1³⁵

Program	TRC Test Results		RIM Test Results	
	KCP&L	Staff	KCP&L	Staff
Home Lighting Rebate	1.82	1.54	0.59	0.50
Home Energy Report	1.78	1.17	0.54	0.38
Residential Programmable Thermostat	2.22	.95	0.89	0.63
Whole House Efficiency	1.20	.83	0.61	0.42
Business Energy Efficiency Rebate – Standard	1.81	1.32	0.53	0.71
Business Energy Efficiency Rebate – Custom	1.28	.88	0.27	0.61
Strategic Energy Management	1.20	.76	0.98	0.43
Block Bidding	1.91	1.44	0.90	0.68
Small Business Direct Install	1.28	.96	0.66	0.50
Demand Response Incentive	12.49	4.39	0.65	0.77

The differences between KCP&L's and Staff's TRC and RIM test results are stark. Staff's calculation of the cost-effectiveness of the KCP&L EE Portfolio shows that only ½ of the above-described DSM programs pass the TRC test.

36. Further, it should be noted that none of the KCP&L's DSM programs described above pass the RIM test. In fact, if Staff's avoided costs estimate is used, many of the DSM programs fail the RIM test by a substantial margin. This means that the ratepayers' right to reasonable utility rates will be severely and detrimentally affected by these DSM programs.

³⁵ This table is a compilation of data from the Rebuttal Testimony of Timothy M. Nelson, Direct Testimony Prepared by Joshua P. Frantz, Direct Testimony Prepared by Darren L. Prince, and the KEEIA Cycle 1 2017-2019 Filing. It uses KCP&L's TRC and RIM test results as originally filed versus Staff's scenario 6 as shown in the above testimony.

37. In order to protect the ratepayer, it is imperative to minimize any rate increase caused by offering energy-efficiency programs.³⁶ In these regards, the RIM test is essential. A slight RIM failure with a significant TRC indicates that rates may go up slightly, but there will be a large overall benefit; however, a poor RIM score coupled with a low TRC indicates that rates will increase significantly with very little overall benefit to the system.³⁷

38. As explained by Staff witness, Robert H. Glass, PhD, the value of the relationship between TRC and RIM test results is as follows:

“The Commission has stated two policy goals for demand-side programs: (1) “reducing or postponing future construction of generation and reservation of capacity on natural gas transmission pipelines;” and (2) “the mitigation of customer bill increases.” The first policy goal caused the Commission to emphasize the TRC Test because the TRC ensures the demand-side program lowers net energy costs. The second policy goal caused the Commission to emphasize the RIM Test because the RIM shows the direction and degree of rate changes because of the program.”³⁸

39. With regard to the values in Table 1, the Commission should note that if CURB’s calculated avoided capacity costs were used, the KCP&L EE Portfolio TRC and RIM test results drop to 0.96 and 0.47.³⁹ Thus, Staff’s TRC and RIM test results would be considerably lower than shown in Table 1 if CURB’s avoided capacity costs calculation is used.⁴⁰

40. CURB approached measuring the TRC and RIM for KCP&L’s application as a portfolio, versus measuring each individual DSM program, because KCP&L requested its DSM

³⁶ Direct Testimony of Stacey Harden, p. 12, ll. 16-17.

³⁷ Direct Testimony of Stacey Harden, p. 12, ll. 17-20.

³⁸ Direct Testimony Prepared by Robert H. Glass, PhD, p. 17, ll. 9-16.

³⁹ Direct Testimony of Stacey Harden, p. 19, ll. 17-18.

⁴⁰ Tr., Vol. 3, pp. 625-628 (Glass).

programs as a portfolio of programs (not as individual programs).⁴¹ Moreover, KCP&L sought the authority to adjust all of its DSM programs as KCP&L decides provided that the \$30 million portfolio budget limitation is not exceeded.⁴² Indeed, when KCP&L witness Darrin Ives was asked what flexibility KCP&L had toward adjustment of its programs, he responded that perhaps the company could live with a smaller overall budget.⁴³

41. It is also important to note that, according to KCP&L, Staff's calculated avoided capacity costs inappropriately includes **■■■■** per kW of transmission and distribution costs.⁴⁴ Indeed, inclusion of transmission and distribution costs for the KCP&L EE Portfolio is not appropriate because those costs are not affected by KCP&L's DSM programs.⁴⁵ Staff Witness Glass admitted that it was certainly reasonable not to include **■■■■** per kW of transmission and distribution costs when calculating KCP&L's avoided capacity costs, although Staff did not take that approach.⁴⁶

42. If Staff does not include transmission and distribution costs when calculating KCP&L's avoided capacity costs, Staff's avoided capacity costs calculation would be equal to CURB's avoided capacity costs calculation.⁴⁷ Staff's avoided capacity costs calculation would also be the same as KCP&L posited in Docket No. 14-KCPE-042-TAR as the appropriate avoided costs for its EE programs. Plainly, if Staff did not include transmission and distribution

⁴¹ Tr. Vol. 2, p. 489, ll. 1-7 (Harden).

⁴² Tr. Vol. 2, p. 506-508 (Harden).

⁴³ Tr. Vol. 2, p. 451-452 (Ives).

⁴⁴ Initial Post-Hearing Brief of Kansas City Power & Light Company, ¶117, pp. 57-58; See also Cross-Answering Testimony of Stacey Harden CA, p. 3, ll. 30-31.

⁴⁵ Id.

⁴⁶ Tr. Vol. 3, p. 628, ll. 12-15 (Glass).

⁴⁷ Tr. Vol. 3, p. 628, ll. 6-11 (Glass).

costs when calculating KCP&L's avoided capacity costs, very few of KCP&L's EE programs would pass the TRC test.

43. In view of the fact that transmission and distribution costs are not affected by KCP&L's DSM programs, and to be consistent with Staff's testimony in other dockets, CURB believes that the appropriate calculation of avoided capacity costs is **[REDACTED]** per kW, as CURB witness Harden testified. It is the very same value for avoided capacity costs which KCP&L supported in Docket No. 14-KCPE-042-TAR.⁴⁸ Clearly the record evidence most supports CURB's value for avoided capacity costs.

44. In its Initial Post-Hearing Brief, KCP&L asserts that the appropriate avoided capacity costs to be used for its EE programs is **[REDACTED]** per kW based upon a proprietary cost estimate for combustion turbine technology that was developed with the assistance of a local engineering firm.⁴⁹ KCP&L bases its calculation of avoided capacity costs on the Cost of New Entrant (CONE). KCP&L's claim that the CONE represents appropriate avoided capacity costs in this case is based upon its assertion that it treats DSM as part of its long-term planning, upon its assertion that capacity contracts may not be available in the future, and upon its assertion that circumstances have changed from those circumstances present in Docket No. 14-KCPE-042-TAR such that KCP&L's testimony in that docket concerning avoided capacity costs for its EE programs is inapplicable.

⁴⁸ Cross-Answering Testimony of Stacey Harden, p. 3, ll. 31-36; p. 4, ll. 1-8)

⁴⁹ Initial Post-Hearing Brief of Kansas City Power & Light Company, ¶107, p. 52.

45. These arguments fail. First, KCP&L's claim that its EE programs should be valued as a long-term resource does not accord with the evidence in the record. Secondly, given the fact that the KCP&L EE Portfolio is only a three-year pilot program, the cost of a capacity contract is the appropriate value for avoided capacity costs. Finally, circumstances have not materially changed from those present in Docket No. 14-KCPE-042-TAR such that the value provided by KCP&L for avoided costs in that docket is still pertinent in this docket. These arguments are addressed in order below.

46. First, KCP&L claims that its EE programs should be valued as a long-term investment. However, there is no concomitant requirement that KCP&L will maintain its EE programs for any length of time.⁵⁰ Under the KEEIA, there is no legal requirement for KCP&L to maintain the KCP&L EE Portfolio for any length of time.⁵¹ Under the KEEIA, KCP&L can terminate its EE programs at any time.⁵²

47. Furthermore, KCP&L is asking the Commission for budget flexibility so as to allow KCP&L to adjust its DSM programs on a portfolio basis.⁵³ This request essentially allows KCP&L to defund the budget in any particular EE program and place substantially much more budget in another EE program.⁵⁴ In short, KCP&L can terminate funding to any of its EE programs at any time, in KCP&L's sole discretion.

⁵⁰ Tr. Vol. 2, p. 427, ll. 11-17 (Ives)

⁵¹ K.S.A. 66-1283(b) (Supp., 2016).

⁵² K.S.A. 66-1283(b)(Supp., 2016)

⁵³ Direct Testimony of Stacey Harden, p. 28, ll. 16-21.

⁵⁴ Direct Testimony of Stacey Harden, p. 29, ll. 10-15.

48. As a result, no KCP&L EE program is guaranteed to be a long-term resource. Without better assurances than KCP&L is willing to provide, ratepayers are short-changed if ratepayers are required to pay a long-term benefit price for a benefit that (depending upon the caprice of KCP&L and its shareholders) may be very short-term. No consumer should pay the price for a product that is guaranteed to last 20 years for a product with no guarantee that it will last for even one year. KCP&L has provided no assurances that it will continue any EE program for any amount of time, let alone 20 years.

49. Secondly, KCP&L's argument that capacity contracts may not be available in the future also fails. While KCP&L speculates that capacity contracts may not be available to KCP&L in the future,⁵⁵ the evidence in the record shows that the cost of a capacity contract is the correct value for avoided costs in this docket given that the KCP&L EE Portfolio is only a three-year pilot program. KCP&L's argument that capacity contracts may not be available in the future is interesting (given the evidence in the record) but not compelling. Indeed, KCP&L invites the Commission to speculate that capacity contracts may not be available in the near future, but wants the Commission to believe that its future need for a combustion turbine generator is inevitable. However, in view of the advent of distributive generation, the future of the Clean Power Act, and a myriad of other factors, it is impossible to state without speculation that KCP&L will need to construct any generation unit in the future.

50. In fact, KCP&L has been all over the map on its estimates of when additional generation units may be required. The testimony of KCP&L witness Nelson shows that

⁵⁵ Initial Post-Hearing Brief of Kansas City Power & Light Company, ¶113, pp. 55-56.

KCP&L's professed need for additional generation capacity is unknown. Mr. Nelson testified that in KCP&L's ** [REDACTED] **, KCP&L stated that it would need generation from a combustion turbine in ** [REDACTED] **. ⁵⁶ However, in KCP&L's ** [REDACTED] **, KCP&L stated it would need generation from a combustion turbine in ** [REDACTED] **. ⁵⁷ Yet, in response to CURB Data Request No. 23 in Docket No. 14-KCPE-042-TAR, KCP&L stated that it would need additional capacity to meet demand in ** [REDACTED] **. ⁵⁸ Still, in response to CURB Data Request No. 15, in Docket No. 10-KCPE-795-TAR, KCP&L stated that it would need additional capacity to meet demand in ** [REDACTED] **. ⁵⁹ However, in response to CURB Data Request in this docket, KCP&L stated that, if the Commission did not approve the KCP&L EE Portfolio, KCP&L would need additional capacity to meet demand in ** [REDACTED] **. ⁶⁰

51. As the testimony of KCP&L witness Nelson plainly shows, KCP&L has issued five statements (under oath) in the last seven years in which it has given wildly different perspectives of when KCP&L may need additional capacity. Mr. Nelson's testimony proves that KCP&L does not really know when it will need additional capacity. Consequently, Mr. Nelson's testimony establishes that the amount of savings brought about by the KCP&L EE Portfolio is simply unknown, if one were to accept its CONE methodology of calculating avoided costs. The Commission should be able to insist on assured savings before it subjects ratepayers to additional energy costs for the KCP&L EE Portfolio.

⁵⁶ Tr. Vol. 2, p. 296, ll. 5-11 (Nelson)

⁵⁷ Tr., Vol. 2, p. 298, ll. 3-5 (Nelson).

⁵⁸ Tr., Vol. 2, p. 298, ll. 16-25; p.299, ll. 1-3 (Nelson).

⁵⁹ Tr., Vol. 2, p. 299, ll. 18-25 (Nelson).

⁶⁰ Direct Testimony of Stacey Harden, p. 22, ll. 1-5.

52. In fact, CURB witness Harden notes that the KCP&L EE Portfolio will not avoid the cost of construction entirely if its EE programs are implemented; KCP&L will only postpone the construction of a generation unit for a small period of time if its EE programs are approved. Ms. Harden, assuming for argument's sake that the EE programs are long lived, testified on the basis of data request responses from KCP&L that if none of the EE programs are implemented KCP&L will build a ** [REDACTED] ** generation unit in ** [REDACTED] **. ⁶¹ If all EE programs are implemented, KCP&L will build a ** [REDACTED] ** generation unit in ** [REDACTED] **. ⁶²

53. In other words, if all KCP&L EE programs are implemented, KCP&L ratepayers will still pay for a ** [REDACTED] ** generation unit in ** [REDACTED] **. ⁶³ Although KCP&L complains that Ms. Harden does not calculate an “alternate world” where the DSM programs were not enacted, ⁶⁴ KCP&L wants the Commission to adopt a philosophy where the “alternate world” does not accord with real avoided costs. As Ms. Harden points out, the only real cost that the KCP&L EE Portfolio may avoid is the delay of the costs of construction of a ** [REDACTED] ** generation unit for a three year period of time from ** [REDACTED] **. ⁶⁵

54. For simplicity, CURB witness Harden accepted the value of avoided capacity costs attributed by KCP&L itself to its EE programs in Docket No. 14-KCPE-042-TAR (which is ** [REDACTED] ** per kW). ⁶⁶ Yet, KCP&L remains critical. In its Initial Post-Hearing Brief, KCP&L asserts that circumstances have fundamentally changed from the time when Docket No. 14-

⁶¹ Direct Testimony of Stacey Harden, p. 22, ll. 1-5.

⁶² Direct Testimony of Stacey Harden, p. 21, ll. 12-16; p. 22, ll. 1-5.

⁶³ Direct Testimony of Stacey Harden, p. 21, ll. 12-16; p. 22, ll. 5-16.

⁶⁴ Initial Post-Hearing Brief of Kansas City Power & Light Company, p. 58.

⁶⁵ Id.

⁶⁶ Direct Testimony of Stacey Harden, p. 19, ll. 8-11.

KCPE-042-TAR was decided.⁶⁷ KCP&L asserts that in Docket No. 14-KCPE-042-TAR it was dealing with two-year EE programs.⁶⁸ Now, KCP&L is dealing with EE pilot programs having a life of three years. KCP&L states that in Docket No. 14-KCPE-042-TAR it was not confident in the continuation of its programs, but it now claims to be confident that it will continue these programs into the future⁶⁹ (but only as long as KCP&L gets all of its conditions approved).⁷⁰ Notably, KCP&L reserves the right to cancel or defund any of its EE programs at any time.

55. Thirdly, for these above reasons, KCP&L's argument that things have changed since Docket No. 14-KCPE-042-TAR also fails. Truthfully, there is no real difference between those circumstances existing at the time when Docket No. 14-KCPE-042-TAR was decided and circumstances existing now. As observed by Staff witness Glass:

“[Since] KCP&L's proposal is for only three years, the market value of capacity (i.e. the price KCP&L can pay today per kWh) is much more reasonable than the value of steel in the ground).”⁷¹

Indeed, Doctor Glass testified that KCP&L's asserted avoided capacity costs of ** [REDACTED] ** per kW is not based upon a realistic assessment of the marketplace. In fact, he testified as follows:

“Given the excess capacity present in SPP today compared to two years ago, it is likely this ‘capacity contract’ price is *even lower* than the price used by Staff.”⁷²

⁶⁷ Initial Post-Hearing Brief of Kansas City Power & Light Company, ¶ 110, p. 54.

⁶⁸ Id.

⁶⁹ Initial Post-Hearing Brief of Kansas City Power & Light Company, p. 54.

⁷⁰ Rebuttal Testimony of Darrin Ives, p. 5; Tr., Vol. 2, p.427-428.

⁷¹ Direct Testimony Prepared by Robert H. Glass, PhD, p. 24, ll. 14-16.

⁷² Surrebuttal Testimony Prepared by Robert H. Glass, PhD, p. 10, ll. 11-12.

Doctor Glass's opinion reveals that SPP has sufficient capacity so that KCP&L does not need to build a combustion turbine generator. Doctor Glass testified that, given the extensive excess capacity in the SPP, the market value of capacity should remain below the cost of building capacity for the near future.⁷³

56. This evidence was corroborated by KCP&L in its testimony in Docket No. 16-KCPE-160-MIS. CURB witness Harden noted that, in that docket, Mr. Charles Caisley testified that over the past eight years, demand for electricity is "flat, or even overall declining" and has "significantly softened."⁷⁴ KCP&L simply cannot truthfully argue that it is capacity constrained. Thus, Staff witness Glass is correct in stating that KCP&L does not need to build a turbine generator, such that avoided capacity costs should be measured as the market value of capacity.⁷⁵

57. The fact that KCP&L does not need to build a combustion turbine generator is also shown by KCP&L's experience with its MPower program. CURB witness Harden noted that KCP&L reported that its MPower program, which was a demand response program for commercial customers with peak loads greater than 200 kW, was discontinued for new participants due to lower-than-expected energy demand.⁷⁶ Importantly, KCP&L justified its discontinuance of the MPower program due to an economic downturn and the start-up of KCP&L's Iatan 2 power plant in August 2010.⁷⁷

⁷³ Surrebuttal Testimony Prepared by Robert H. Glass, PhD, p. 9, ll. 10-11.

⁷⁴ Direct Testimony of Stacey Harden, p. 19, ll. 21-22; p. 20, ll. 1-2.

⁷⁵ Surrebuttal Testimony Prepared by Robert H. Glass, PhD, p. 10, ll. 8-9.

⁷⁶ Direct Testimony of Stacey Harden, p. 6, ll. 6-8.

⁷⁷ Direct Testimony of Stacey Harden, p. 6, ll. 8-10.

58. Moreover, KCP&L's CONE methodology of calculating avoided capacity costs is not supported by the record evidence. KCP&L used a single value for avoided capacity costs based on the CONE (a new combustion turbine generation plant) all year.⁷⁸ It supports that methodology based upon an Idaho Power 2011 IRP Appendix C.⁷⁹ However, Mr. Nelson admitted that Idaho has transmission constraints.⁸⁰ The KCP&L application does not show that Kansas has transmission constraints.⁸¹ KCP&L's CONE methodology of calculating avoided capacity costs is inappropriately based upon a jurisdiction with significantly different market restraints than Kansas; it should be rejected by the Commission.

59. In short, the record evidence shows that KCP&L significantly overstates its avoidance costs in its benefit-costs tests of the KCP&L EE Portfolio. KCP&L witness Nelson admitted that KCP&L can enter (and has entered) into capacity contracts in SPP, and that the cost of these capacity contracts is the capacity cost outlined by CURB witness Harden (**■■■■**) per kW).⁸² Therefore, the record evidence shows that KCP&L's avoided capacity costs, if the KCP&L EE Portfolio is approved by the Commission, is only **■■■■** per kW.

60. What KCP&L is attempting to do is to inflate avoided capacity costs in order to inflate TRC results. KCP&L is certainly correct in stating that its EE programs depend upon the calculation of avoided capacity costs. Unfortunately, KCP&L fails to propose an appropriate value for the avoided capacity costs potentially caused by the KCP&L EE Portfolio.

⁷⁸ Tr. Vol. 2, p. 339, ll. 10-12 (Nelson).

⁷⁹ Tr. Vol. 2, p. 339, ll. 22-25 (Nelson).

⁸⁰ Tr. Vol. 2, p. 343, ll. 3-8 (Nelson).

⁸¹ Tr. Vol. 2, p. 345, ll. 3-10 (Nelson).

⁸² Tr. Vol. 2, p. 335, ll. 8-18 (Nelson).

61. Since the record evidence demonstrates that KCP&L has overstated its avoided capacity costs, its projected savings under the KEEIA is not supported by the record. Indeed, the record best supports the **■■■■** per kW avoided capacity costs calculated by CURB, which results in the KCP&L EE Portfolio failing the TRC and RIM tests. Yet, even if the Commission were to accept Staff's calculation of avoided capacity costs, the KCP&L EE Portfolio largely fails to be cost-effective. As the Staff points out, if the TRC falls below one for a program, or if the RIM for the program falls below 0.7, then the program will likely not be cost-effective.⁸³ Because the KCP&L EE Portfolio fails to pass the TRC and RIM tests by significant margins, the Commission should not approve it.

(2) KCP&L's Technical Resource Manual overstates pertinent savings and costs of energy efficiency measures

62. KCP&L uses its TRM in its cost-benefit analysis of the KCP&L EE Portfolio.⁸⁴ A TRM is a central resource which contains calculated or projected energy savings for EE measures that are part of EE programs.⁸⁵ KCP&L's TRM contains the amount of energy or capacity which each particular energy efficiency measure in the KCP&L EE Portfolio is assumed to save.⁸⁶

63. Importantly, KCP&L did not comply with the Commission's policy to utilize DEER values to estimate a measure's useful life and savings in its TRM.⁸⁷ Rather, KCP&L

⁸³ Direct Testimony Prepared by Robert H. Glass, PhD, p. 26, ll. 7-9.

⁸⁴ (Tr. Vol. 2, p. 324, ll. 15-21.

⁸⁵ Direct Testimony Prepared by John M. Turner, p. 4, ll. 15-16.

⁸⁶ (Tr. Vol. 2, p. 335, ll. 11-14.

⁸⁷ Direct Testimony of Stacey Harden, p. 24, ll. 10-11.

used data from a number of sources, including data from Illinois, Indiana and Wisconsin to create its TRM.⁸⁸ The reliability of KCP&L's TRM is an important issue in this case.

64. In Docket No. 08-GIMX-442-GIV, the Commission required the utilization of California DEER data to measure the energy efficiency of EE programs proposed for approval by the Commission. The Commission's rationale is as follows:

"43. The Commission believes using standard DEER data provides the benefit of reducing disagreements and litigation until a Kansas-specific database is built. The Commission prefers historical data. However, the Commission also recognizes DEER data may not be the most accurate for Kansas and utilities may find other reliable sources which provide better data.

"44. The Commission believes the best solution is to use the widely recognized DEER values for at least a program's first two years until the first EM&V review. Of course, as a general matter where possible, DEER data most consistent with Kansas conditions should be used. At the first EM&V review, a utility may suggest alternative values for a measure's useful life with appropriate supporting documentation and study results. If parties agree on a more accurate value, or if the useful life data is not available in DEER, a utility may also propose another value. Kansas data should be used when it is available."⁸⁹

65. These excerpts show that the Commission understood that DEER data may not be completely accurate for Kansas EE programs, but the Commission clearly wanted alternate values to be mutually attained between the Commission Staff and the utility. The Commission clearly sought to avoid disagreements and litigation between the parties until a Kansas database

⁸⁸ Tr. Vol. 2, p. 328, ll. 11-25; p. 329, ll. 1-21 (Nelson).

⁸⁹ Docket No. 08-GIMX-442-GIV, *Order Following Collaborative On Benefit-Cost Testing and Evaluation, Measurement, and Verification*, ¶¶ 43-44, pp. 14-15 (April 13, 2009).

is built. The Commission would allow the utility to provide more accurate value, but only after the first EM&V review.

66. In its Initial Post-Hearing Brief, KCP&L seeks to excuse its decision not to use DEER values in its TRM simply by asserting that its TRM better reflects Kansas conditions.⁹⁰ Yet, there is no evidence in the record particularly showing that KCP&L's TRM is superior to DEER data. KCP&L simply argues that it could not use DEER data, because it is incomplete and that the Commission anticipated that, at some time, a Kansas database would be built.⁹¹

67. It is important to note that KCP&L bears the burden of proof on this issue. It cannot meet that burden of proof by simply publishing its database and then speculating that "had the 08-442 Docket occurred in 2012, it is likely the Commission would have recommended that the Illinois TRM be used instead of the California DEER."⁹² Under the rules of civil procedure, KCP&L is required to prove specifically how its TRM better fits Kansas rather than Staff and CURB being required to prove that it does not. KCP&L does not even attempt to meet this burden.

68. Unbelievably, KCP&L argues that Staff largely agrees with KCP&L because Staff only asserts that its comments are merely "cautionary."⁹³ That argument is not supported by the record. Indeed, Staff found KCP&L's TRM to be fraught with error.

⁹⁰ Initial Post-Hearing Brief of Kansas City Power & Light Company, p. 62.

⁹¹ Id.

⁹² Id.

⁹³ Initial Post-Hearing Brief of Kansas City Power & Light Company, p. 63.

69. Staff witness John Turner testified that KCP&L’s TRM has large error bands “which creates uncertainty around prospective analysis that relies on TRM values.”⁹⁴ One should note that when a pupil completes a test with “large error bands” it generally means that the pupil has failed the test. Although KCP&L asserts that Mr. John Turner’s testimony only suggests that there are large variations among energy efficiency data when it comes to various states, the clear purport of Mr. Turner’s testimony is that KCP&L’s TRM values do not accurately reflect energy efficient market realities.⁹⁵

70. There are indeed wide variances between DEER standard values and the TRM values used in KCP&L’s benefit-cost calculations.⁹⁶ CURB witness Harden provided evidence of these wide variances in certain examples in her testimony, as follows:⁹⁷

Screw In LEDs	KCPL TRM	DEER
Measure Life (years)	20	16
Incremental Cost	\$ 13.21	\$ 16.65
Annual Gross Savings per Unit (kWh)	31.7	11.5
Gross Demand Reduction per Unit (kW)	0.003	0.001

Heat Pump SEER 16	KCPL TRM	DEER
Measure Life (years)	18	15
Incremental Cost	\$ 304.61	\$ 411.00
Annual Gross Savings per Unit (kWh)	233.9	163
Gross Demand Reduction per Unit (kW)	0.054	0.022

⁹⁴ Direct Testimony of John M. Turner, p. 3, ll. 13-16.
⁹⁵ (Direct Testimony Prepared by John M. Turner, p. 16, ll. 7-9.
⁹⁶ Direct Testimony of Stacey Harden, p. 24, ll. 15-17.
⁹⁷ Direct Testimony of Stacey Harden, p. 25, ll. 1-7.

Directional LED Bulb (<15W)	KCPL TRM	DEER
Measure Life (years)	11	7
Incremental Cost	\$ 18.00	\$ 21.31
Annual Gross Savings per Unit (kWh)	143.7	78.5
Gross Demand Reduction per Unit (kW)	0.029	0.018

71. The wide range of estimates in KCP&L’s TRM creates uncertainty about the validity of KCP&L’s benefit-cost test results.⁹⁸ Staff is unable to quantify the uncertainty created by the wide range of measure estimates when comparing KCP&L’s TRM to various other TRMs.⁹⁹ Moreover, CURB witness Harden could not define what the results of the TRC and RIM tests would be if KCP&L utilized DEER standard values instead of its TRM.¹⁰⁰

72. KCP&L’s argument that it could not use DEER values because they are incomplete is interesting since it compiled data from a number of sources (including three states).¹⁰¹ KCP&L witness Nelson noted that no one state mirrors Kansas.¹⁰² KCP&L could have used DEER values where they were appropriate. KCP&L simply chose to disregard the policy set in Docket No. 08-GIMX-442-GIV.

73. Doctor Glass warns that Staff was unable to quantify the uncertainty created by the wide range of measure estimates when comparing KCP&L’s TRM to various other TRMs.¹⁰³ In fact, KCP&L simply chose not to provide data to CURB which would allow it to see what the

⁹⁸ Direct Testimony Prepared by Robert H. Glass, PhD, p. 21, ll. 9-10.
⁹⁹ Direct Testimony Prepared by Robert H. Glass, PhD, p. 21, ll. 10-12.
¹⁰⁰ Direct Testimony of Stacey Harden p. 26, ll. 3-4.
¹⁰¹ Tr., Vol. 2, pp. 328-329 (Nelson).
¹⁰² Tr., Vol. 2, pp. 327-331 (Nelson).
¹⁰³ Direct Testimony Prepared by Robert H. Glass, PhD, p. 21, ll. 10-12.

difference is between DEER values and KCP&L's TRM. It makes common sense that before one seeks a variance on data, one would show how much the variance is.

74. It is astounding that KCP&L refused to even run its benefit-costs tests using DEER values so that the effect between using DEER standard values and using KCP&L's TRM values could be understood.¹⁰⁴ KCP&L's refusal to run benefit-cost tests using DEER standard values instead of its TRM is not acceptable under the KEEIA.¹⁰⁵ As pointed out by CURB witness Harden:

"KCPL's refusal to supply the Commission with DEER estimates takes away the Commission's ability to scrutinize both DEER and TRM estimates to determine which makes the most sense for energy-efficiency programs in Kansas."¹⁰⁶

75. It is curious that one of KCP&L's main arguments for its TRM is its assertion that, had the Commission determined EE policy in 2012, it would have chosen the Illinois TRM.¹⁰⁷ Aside from the obvious fact that this argument is speculative and aside from the fact that KCP&L would not even show the practical difference between DEER data and its TRM, it is interesting that KCP&L only now chooses to pursue that approval. Clearly, the Illinois TRM was available for comparison with DEER as early as 2012. Thus, KCP&L could have provided comparisons between the pertinent databases and sought Commission approval to use KCP&L's TRM in 2012, in 2013, in 2014 and in 2015 before it filed this application. Rather, KCP&L waited until it had filed its application to assert that its TRM is more suitable than DEER.

¹⁰⁴ Direct Testimony of Stacey Harden, p. 26, ll. 9-13.

¹⁰⁵ Direct Testimony of Stacey Harden, p. 26, ll. 17-18.

¹⁰⁶ Direct Testimony of Stacey Harden, p. 27, ll. 8-10.

¹⁰⁷ Initial Post-Hearing Brief of Kansas City Power & Light Company, p. 62.

76. KCP&L then asserts that CURB's reliance upon the policy statements in Docket No. 08-GIMX-442-GIV is unfounded because CURB ignores the fact that KCP&L has asked for a variance.¹⁰⁸ Actually, KCP&L ignores the rationale for the Commission's policy decision concerning DEER data in that docket. It is clear that the Commission required the use of DEER data in order to avoid disagreements and needless litigation between parties. The Commission desired the parties to collaborate to arrive at a TRM which had alternate values to DEER. By starting with DEER data, the Commission required the applicant to work with Staff and CURB to arrive at these alternate values. KCP&L chose not to work with Staff and CURB to arrive at mutually agreeable data for its TRM. KCP&L is inflexible on these aspects of its application.¹⁰⁹

77. While the Commission understood that Kansas utilities could potentially find data which was more applicable to Kansas than DEER, it desired the utilities to cooperate with Staff in the development of EE databases. In Docket No. 08-GIMX-442-GIV, the Commission stated:

"The Commission encourages utilities to cooperate on energy efficiency programs. The Commission also encourages utilities to work closely with Staff and the Commission as they consider and develop their energy efficiency programs and portfolios."¹¹⁰

78. KCP&L refused to work with Staff and CURB on development of KCP&L's TRM, choosing to prepare it independently and to file the TRM as part of its application without Staff or CURB input. In fact, KCP&L's collaborative efforts consisted merely of a number of technical conferences to cover an array of topics of interest to Staff and CURB, which were held

¹⁰⁸ Initial Post-Hearing Brief of Kansas City Power & Light Company, p. 65.

¹⁰⁹ Tr., Vol. 2, pp. 428-429 (Ives).

¹¹⁰ April 13, 2009, Order Following Collaborative, 08-GIMX-442-GIV, at ¶33, p. 12.

only after KCP&L had filed its Application along with the TRM.¹¹¹ In truth KCP&L's TRM is highly complex and cannot be understood with a few technical conferences, as shown by the following colloquy:

Q: (by Mr. Vincent): "Can you tell me what the incremental cost is that KCP&L uses for its 60 Watt LED bulb?"

A: (by Mr. Nelson): "I don't recall that number specifically. There's a lot of numbers in the TRM."

Q: (by Mr. Vincent): "You won't get any disagreement from me there."¹¹²

79. More importantly, Staff has found KCP&L's TRM to contain uncertainty in relation to validity of KCP&L's cost-benefit test results.¹¹³ How significant this uncertainty is cannot be quantifiably determined. As noted by Staff witness Glass:

"Because the uncertainty cannot be quantified, Staff believes that all the estimates dependent upon KCP&L's TRM should be thought of as estimates with large error bands. Staff does not know how large the error bands are because Staff does not know what the probability distribution of TRM estimated savings is. The lack of sensitivity analysis done by KCP&L about the effect of different variable values in its TRM only heightens the sense of uncertainty."¹¹⁴

80. Importantly, KCP&L's assumptions and methodology are not transparent. Indeed, Staff witness Glass noted:

"The MIDAS Model and the DSMore Model, if not black boxes, are at a minimum, not very transparent. In particular, the data massaging by Integral Analytics is not open to inspection"¹¹⁵

¹¹¹ Tr. Vol. 1, p. 91, ll. 1-19 (Winslow).

¹¹² Tr. Vol. 2, p. 331, ll. 13-18 (Nelson).

¹¹³ Direct Testimony Prepared by Robert H. Glass, PhD, p. 21, ll. 4-12.

¹¹⁴ Direct Testimony Prepared by Robert H. Glass, PhD, p. 21, ll. 15-20.

¹¹⁵ Direct Testimony Prepared by Robert H. Glass, PhD, p. 20, ll. 21-23.

Essentially, in order for KCP&L's TRM to be accepted, KCP&L is asking the Commission to place blind trust in its process and a number of assumptions which Staff and CURB cannot reasonably verify. Staff witness Glass testified, "Staff recommends the Commission take a skeptical view of KCP&L's benefit-cost test results."¹¹⁶ Moreover, without adequate evaluations to create a Kansas specific database, CURB suggests that DEER values should not be displaced at this time.¹¹⁷ Based on her review of KCP&L's response to Staff Data Request No. 5, CURB witness Harden concluded that KCP&L's TRM generally overstates the benefits of measures, while at the same time understating the incremental cost of measures.¹¹⁸

81. It is also significant that KCP&L ignored the Commission's policy that DEER net-to-gross ratios (which account for free ridership of EE programs – those that would purchase EE measures independent of utility incentives, but take advantage of the same) should be used in its TRM. KCP&L assumed a net-to-gross ratio of 1.0 for all of its programs. Yet, as noted by CURB witness Harden:

"[KCP&L's NTG of 1.0] is contrary to the Commission's policy that DEER values should be used, if they are available, for NTG. DEER NTG values are indeed available, yet KCPL has chosen to ignore the Commission's policy in these regards. Moreover, KCPL insists that NTG values also reflect participant and non-participant spillover, even though the Commission's policies specify that, at least temporarily, NTG should only reflect free ridership."¹¹⁹

¹¹⁶ Direct Testimony Prepared by Robert H. Glass, PhD, p. 28, ll. 13-14.

¹¹⁷ Direct Testimony of Stacey Harden, p. 13, ll. 17-20.

¹¹⁸ Direct Testimony of Stacey Harden, p. 25, ll. 10-12.

¹¹⁹ Direct Testimony of Stacey Harden, p. 27, ll. 14-19.

82. As noted by Staff witness Glass, for the energy efficiency programs, the assumption of one for net-to-gross violates common sense.¹²⁰ CURB witness Harden agrees:

“KCPL’s use of NTG is contrary to the Commission’s policy and fails to reflect actual utilization of the KEEIA programs by KCPL participating customers. In order for its application to be approved, KCPL should be required to follow the Commission’s policies which are consistent with the KEEIA, inasmuch as those policies are the product of considerable study and are proven to be in the public interest.”¹²¹

83. With respect to NTG, KCP&L asserts that its 1.0 NTG is appropriate,¹²² even though it does not follow the above-cited Commission policy in Docket No. 08-GIMX-442-GIV. This assertion is based upon what KCP&L claims to be its experience under MEEIA.¹²³ KCP&L further asserts that Staff’s NTG of 0.8 is unrealistic, not proven by competent evidence, and is only posited because Staff is risk-averse.¹²⁴ Finally, KCP&L argues that CURB’s position should be rejected because CURB fails to recognize that KCP&L has asked for a variance from the Commission’s policy in Docket No. 08-GIMX-442-GIV.¹²⁵

84. KCP&L’s arguments regarding its 1.0 NTG should be rejected. KCP&L notes that Staff witness Glass testified that KCP&L’s NTG violates common sense, but apparently believes that his testimony does not amount to sufficient justification for rejection of KCP&L’s NTG. It is clear that Doctor Glass believes that KCP&L’s NTG is simply illogical on its face; and he provided a “common sense” example of free ridership. Truly, one would expect from

¹²⁰ Direct Testimony Prepared by Robert H. Glass, PhD, p. 23, ll. 3-6.

¹²¹ Direct Testimony of Stacey Harden, p. 27, ll. 19-22; p. 29, ll. 1-2.

¹²² Initial Post-Hearing Brief of Kansas City Power & Light Company, p. 59.

¹²³ Id.

¹²⁴ Initial Post-Hearing Brief of Kansas City Power & Light Company, pp. 59-60.

¹²⁵ Initial Post-Hearing Brief of Kansas City Power & Light Company, p. 61.

common knowledge and experience that it is highly unlikely that there would entirely no free-riders through all of KCP&L's EE programs.

85. In fact, KCP&L's own numbers (out of its MEEIA experience) belie KCP&L's assertions. KCP&L posits that in Missouri, KCP&L has experienced a portfolio NTG upward to .95.¹²⁶ First, the Commission will readily see that .95 is not the equivalent of 1.0. Secondly, the NTG portfolio ratio of .95 is clearly an average. Because it is an average, the NTG ratios for some EE programs are obviously lower than .95. Given the testimony of KCP&L, it is certainly reasonable for Staff to attribute a 0.8 NTG ratio to KCP&L's programs out of being risk-averse. Indeed, in its criticism of Doctor Glass, KCP&L fails to understand that Staff's wariness about EE programs is that EE programs often fail to perform as advertised.¹²⁷

86. It is noteworthy that Staff and KCP&L have a significant disagreement as to the appropriate NTG ratio to be used in evaluation KCP&L's EE portfolio. In Docket No. 08-GIMX-442-GIV, the Commission wanted to avoid disagreements between the parties, favoring a collaborative approach to EE programs. Thus, the Commission required as a matter of policy that DEER NTG ratios be used. While CURB believes that policy to be still valid, KCP&L criticizes CURB for its deference to the Commission's decision in that docket. CURB has not ignored the fact that KCP&L has asked for a variance from the Commission's requirement that DEER NTG ratios be used for Kansas EE programs; CURB merely believes that such a variance is contrary to the interests of ratepayers as the above evidence proves.

¹²⁶ Initial Post-Hearing Brief of Kansas City Power & Light Company, p. 60.

¹²⁷ Direct Testimony Prepared by Robert H. Glass, PhD, p. 14, ll. 14-18.

87. In sum, KCP&L has ignored the Commission's policy with respect to its TRM. KCP&L has asked for a variance from the Commission's policy to use an NTG which accords with DEER standard values. This request can be disregarded simply by employing common sense. It has created a TRM with large error bands, the significance of which cannot be ascertained due to lack of transparency. Thus, as noted by Staff witness John Turner, KCP&L's TRM values do not accurately reflect energy efficient market realities.¹²⁸ KCP&L's TRM is unreliable and should be rejected.

(3) The TRC Test should not be the sole determinant for the approval of EE Programs

88. KCP&L asserts that the TRC test should be used to determine if the KCP&L EE Portfolio is cost-effective.¹²⁹ It appears that KCP&L implies that the TRC should alone be used to determine whether or not EE programs are cost-effective, upon the basis of its assertion that the TRC is the only test used for least-cost planning.¹³⁰ If so, it is significant that in Docket No. 08-GIMX-442-GIV, KCP&L agreed that an emphasis on both the TRC and RIM tests is reasonable with respect to the determination of the cost-effectiveness of DSM programs.¹³¹ Thus, CURB wonders if KCP&L has chosen to ignore the Commission's policies to which KCP&L agreed in Docket No. 08-GIMX-442-GIV. In that docket, the Commission required that the RIM test be considered in the EE program approval process.

¹²⁸ (Direct Testimony Prepared by John M. Turner, p. 16, ll. 7-9.

¹²⁹ Initial Post-Hearing Brief of Kansas City Power & Light Company, pp. 66-70.

¹³⁰ Initial Post-Hearing Brief of Kansas City Power & Light Company, p. 66.

¹³¹ Docket No. 08-GIMX-442-GIV, *Order Following Collaborative On Benefit-Cost Testing and Evaluation, Measurement, and Verification*, ¶ 17, p. 6 (April 13, 2009).

89. Although a RIM test failure would not automatically doom an EE program, the Commission made clear that a significant RIM failure (combined with a low TRC result) would be significant in determining whether or not to approve the pertinent EE program.¹³² Both Staff and CURB evaluated KCP&L's EE Portfolio on the basis of the results of the TRC and RIM tests.

90. CURB perceives that KCP&L wants the Commission to ignore RIM test results because of the bad RIM test results which the KCP&L EE Portfolio attained (even with KCP&L's overstated avoided capacity costs estimate). Yet, the Commission cannot do so, because the RIM test results show the harm that non-participants will suffer due to the KCP&L EE Portfolio. Many of these non-participants may be low-income families who are not able to absorb the higher rates that the KCP&L EE Portfolio will bring about.

91. CURB urges the Commission to continue to evaluate EE programs upon the basis of TRC and RIM test results. In these regards, consider the testimony of Staff witness Glass that, if the TRC falls below 1.0 for a program, or if the RIM for the program falls below 0.7, then the program will likely not be cost-effective.¹³³ As noted by CURB witness Harden,¹³⁴ a poor RIM score coupled with a low TRC indicates that rates will increase significantly with very little overall benefit to the system.¹³⁴ The KCP&L EE Portfolio fails the RIM tests substantially. The KCP&L application should therefore be denied.

¹³² Direct Testimony of Stacey Harden, p. 12, ll. 1-6.

¹³³ Direct Testimony Prepared by Robert H. Glass, PhD, p. 26, ll. 7-9.

¹³⁴ Direct Testimony of Stacey Harden, p. 12, ll. 19-20.

B. It Is Not In The Public Interest To Allow KCP&L To Recover Costs And Lost Revenues Through Its Cost Recovery Mechanism.

92. KCP&L's application includes a request for recovery through KCP&L's DSIM of three components: Program Costs, a Throughput Disincentive ("TD"), and an Earnings Opportunity ("EO") award.¹³⁵ Under the Company's proposal, Program Costs and the TD would be recovered using forecasts and estimates, while the EO Award would be recovered over a two-year period following completion of the initial three-year KEEIA program cycle.¹³⁶

93. The Company proposes a semi-annual true-up of revenues received pursuant to its DSIM and actual program costs and the estimated TD.¹³⁷ The true-up would reflect the actual program costs incurred by KCP&L as well as the TD, based on the actual type and number of measures installed.¹³⁸ Thus, each measure would have an assumed throughput loss factor. The Company proposes that the over-recoveries and under-recoveries related to Program Costs and the TD accrue carrying charges at the short-term borrowing rate.¹³⁹

94. According to the Company's filing, "(a)ctual program costs will include the incremental cost of planning, developing, implementing, monitoring, and evaluating demand-side programs."¹⁴⁰ KCP&L estimates that KEEIA Cycle 1 Program Costs will total \$29.7

¹³⁵ Direct Testimony of Stacey Harden, p. 34, ll. 7-8.

¹³⁶ Direct Testimony of Stacey Harden, p. 34, ll. 9-11.

¹³⁷ Direct Testimony of Stacey Harden, p. 35, ll. 21-22.

¹³⁸ Direct Testimony of Stacey Harden, 35, l. 22; p. 36, ll. 1-3.

¹³⁹ Direct Testimony of Stacey Harden, p. 36, ll. 3-5.

¹⁴⁰ KEEIA Cycle 1 2017-2019 Filing, page 4-16.

million over the three year life of the initial program.¹⁴¹ KCP&L proposes that the DSIM be recovered through an energy charge rider on a dollar per kWh basis.¹⁴²

(1) KCP&L should not be allowed to recover program costs and lost revenues on a forecasted basis.

95. KCP&L argues that its forecasted recovery of Program Costs and TD are required by the KEEIA. KCP&L asserts that only its DSIM rider is adequate to allow it to pursue DSM programs.¹⁴³ CURB disagrees. It is very evident that where KCP&L is concerned any lag whatsoever does not allow “timely” recovery. Essentially, the KCP&L EE Portfolio overwhelmingly favors KCP&L’s shareholders above the interests of the ratepayer.

96. Under the KEEIA, this cannot be tolerated. Under the KEEIA, the Commission is required to balance the interests of ratepayers and shareholders in regard to EE programs.¹⁴⁴ KCP&L’s EE rider is a good balance between the interests of KCP&L and its ratepayers.¹⁴⁵ But that is not enough for KCP&L; it now wants “forecasted” expenses even though that has never been approved by the Commission.

97. CURB reiterates its position that the record evidence, the KEEIA and pertinent Commission policies all dictate that the KCP&L EE Portfolio be rejected by the Commission in entirety. However, if the Commission authorizes KCP&L to implement its proposed DSM programs or some modification of the programs, then CURB recommends that the Commission

¹⁴¹ Direct Testimony of Stacey Harden, p. 34, ll. 18-19.

¹⁴² Direct Testimony of Stacey Harden, p. 36, ll. 14-15.

¹⁴³ Initial Post-Hearing Brief of Kansas City Power & Light Company, p. 74

¹⁴⁴ For example, see K.S.A. 66-1283(c)(2)(Supp., 2016).

¹⁴⁵ Direct Testimony of Stacey Harden, p. 40, ll. 17-23; p. 41, ll. 1-6.

limit cost recovery to actual program costs and reject KCP&L's proposal to recover forecasted Program Costs and its TD.¹⁴⁶

98. KCP&L attempts to justify its request to collect Program Costs and its TD on a forecasted basis upon its assertion that the KEEIA requires forecasted recovery of these items.¹⁴⁷ Under KCP&L's approach, ratepayers may be required to prepay KCP&L for its EE program costs.¹⁴⁸ However, the KEEIA does not contemplate that result. The KEEIA only requires the "timely" recovery of program costs.¹⁴⁹ The Kansas legislature did not use the word "forecasted" or even "contemporaneous" when describing cost recovery under the act. One should presume that use of the word "timely" was by design.

99. In fact, "timely" is not defined in the KEEIA. Merriam Webster defines "timely" as simply "opportune."¹⁵⁰ Another definition of "timely" is "occurring at a suitable or opportune time."¹⁵¹ "Opportune" and "suitable" are words which clearly encompass judgment. CURB believes that in using the term "timely" in the KEEIA, the Kansas legislature entrusted the Commission with discretion to fashion the recovery of program costs to be "timely."

100. In these regards, the KEEIA states that "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."¹⁵² The KEEIA actually directs the Commission to treat

¹⁴⁶ Direct Testimony of Stacey Harden, p. 38, ll. 6-9.

¹⁴⁷ Initial Post-Hearing Brief of Kansas City Power & Light Company, pp. 74-75.

¹⁴⁸ Direct Testimony Prepared by Justin Grady, p. 7, ll. 11-13.

¹⁴⁹ K.S.A. 66-1283(e) (1) (Supp., 2016).

¹⁵⁰ Merriam Webster Online Dictionary. Found at <https://www.merriam-webster.com/dictionary/timely>.

¹⁵¹ Your Dictionary. Found at <http://www.yourdictionary.com/timely>.

¹⁵² K.S.A. 66-1283(b)(Supp., 2016).

investments for DSM programs the same, as much as practicable, as it treats supply-side energy investments. Accordingly, CURB believes that the guiding principle should be to put cost recovery of demand side management programs on the same basis as supply side programs;¹⁵³ and CURB notes that the Commission is vested with discretion in these matters.

101. Significantly, the Commission has already considered the issue of “suitable” cost recovery mechanisms for EE programs. In Docket No. 08-GIMX-441-GIV, the Commission received the comments from several Kansas utilities and other interest parties on questions pertaining to the general issues of cost recovery, the throughput incentive and performance incentives for EE programs.¹⁵⁴ A number of parties, including KCP&L, filed comments and participated in a workshop in that docket.¹⁵⁵

102. After considering the perspectives of all parties the Commission determined that a rider was the best approach to cost recovery.¹⁵⁶ The Commission noted that a “rider offers nearly contemporaneous recovery of program costs for utilities.”¹⁵⁷ The Commission noted that it serves to lower costs for customers.¹⁵⁸

103. CURB recommends that, if the Commission decides to approve the KCP&L EE Portfolio, that an appropriate cost recovery mechanism for Program Costs would be KCP&L’s current EE rider or a similar mechanism.¹⁵⁹ Under the current EE Rate Rider, costs incurred in

¹⁵³ Direct Testimony of Stacey Harden, p. 39, ll. 13-14.

¹⁵⁴ Docket No. 08-GIMX-441-GIV, *Final Order*, ¶ 1, p. 1 (November 14, 2008).

¹⁵⁵ Docket No. 08-GIMX-441-GIV, *Final Order*, ¶¶ 4-5, p. 2 (November 14, 2008).

¹⁵⁶ Docket No. 08-GIMX-441-GIV, *Final Order*, ¶ 29, p. 10 (November 14, 2008).

¹⁵⁷ Docket No. 08-GIMX-441-GIV, *Final Order*, ¶ 31, p. 11 (November 14, 2008).

¹⁵⁸ *Id.*

¹⁵⁹ Direct Testimony of Stacey Harden, p. 40, ll. 17-18.

the prior calendar year are recovered in the following July through June time frame. KCP&L would file on March 31 of each year for costs incurred in the prior calendar year and recovery of these costs, if approved, begins July 1 of that year.¹⁶⁰

104. Staff witness Grady noted that KCP&L's cost recovery mechanism is the most complex and convoluted that he has seen in his career at the Commission.¹⁶¹ Moreover, Staff witness Grady notes that, due to the manner in which KCP&L designed its cost recovery tariff, a "true-up" of recovery expenses would require that "some of the 'actual' cost and revenue components from the previous six months be estimated, which leads to a need to true up the true up calculation in subsequent six-month periods."¹⁶²

105. Given the possibility that ratepayers may have to prepay KCP&L for Program Costs, the complexity and timing aspects of KCP&L's recovery program is an unreasonable risk for ratepayers. As stated by CURB witness Harden, the Company's proposed cost recovery mechanism shifts the risk of recovery from shareholders to ratepayers, and it provides excessive rewards to shareholders.¹⁶³ It should be rejected by the Commission. Ms. Harden points out that, since KCP&L already has an EE rider in place, there is no reason to create an entirely new mechanism to recover EE Program Costs.¹⁶⁴ Certainly, the EE rider was satisfactory to KCP&L for recovery of its EE Programs Costs prior to the enactment of the KEEIA as it has had a number of EE programs in place.

¹⁶⁰ Direct Testimony of Stacey Harden, p. 40, ll. 20-23.

¹⁶¹ Direct Testimony Prepared by Justin Grady, p. 7, ll. 13-15.

¹⁶² Direct Testimony Prepared by Justin Grady, p. 7, ll. 16-20.

¹⁶³ Direct Testimony of Stacey Harden, p. 38, ll. 4-6.

¹⁶⁴ Direct Testimony of Stacey Harden, p. 40, ll. 18-19.

106. Kansas law requires the Commission to balance the interests of the utility with the interests of ratepayers with regard to utility rates.¹⁶⁵ The KEEIA certainly incorporates that duty. Importantly, KCP&L's current EE rider constitutes a balance between KCP&L's interest and ratepayers' interest. Indeed, in Docket No. 08-GIMX-441-GIV, the Commission found that a rider provided a "balanced approach between the positions of simply treating program costs in a traditional manner in a rate case without full cost capitalization, as favored by AARP, for example, and capitalizing all program costs, as favored by KCP&L."¹⁶⁶

107. It is telling that KCP&L wants an earnings opportunity which it pursues as a share of the energy savings caused by its EE programs, but does not want to bear any risk with respect to the cost of these programs, and has so designed its recovery tariff. This is simply not a balanced approach. As noted by CURB witness Harden, KCP&L's cost recovery program provides excessive rewards to KCP&L shareholders.¹⁶⁷

108. Staff witness Grady stated that, in his opinion, KCP&L's current EE rider was "timely" recovery of costs under the KEEIA.¹⁶⁸ However, in an effort to compromise, Staff proposed its own modification to the EE rider to be used in this docket should the Commission desire. Although CURB believes the current EE rider is preferable, as it is tried and true, CURB believes that Staff's modifications to the EE rider are superior to KCP&L's DSIM.¹⁶⁹ However,

¹⁶⁵ *Kansas Gas & Electric Co. v. Kansas Corporation Commission*, 239 Kan. 483, 490, 720 P. 2d 1063 (1986).

¹⁶⁶ Docket No. 08-GIMX-441-GIV, *Final Order*, ¶ 32, p. 11 (November 14, 2008).

¹⁶⁷ Direct Testimony of Stacey Harden, p. 38, ll. 4-5.

¹⁶⁸ Direct Testimony Prepared by Justin Grady, p. 8, ll. 4-5.

¹⁶⁹ Cross-Answering Testimony of Stacey Harden, p. 8, ll. 18-22.

CURB would request that Staff clarify a number of items as are set forth in the Cross Answering Testimony of CURB witness Harden.

**(2) KCP&L should not be allowed to recover lost revenues through its
Throughput Disincentive**

109. KCP&L seeks to recover \$20 million of a TD, which it claims to represent “the financial disincentive posed on the utility for each kWh saved as a result of successful implementation of EE.”¹⁷⁰ KCP&L claims that its TD is intended to make shareholders “whole” for margins lost as a result of the KEEIA Program.¹⁷¹ KCP&L proposes to adjust the TD if and when it files a base rate case.¹⁷²

110. At the outset, it is imperative to understand that the KEEIA does not require the Commission to include recovery of lost revenues in any cost recovery mechanism under the act. The KEEIA has a list of requirements, namely:

- (e) To achieve the goals of this act, 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;
 - (4) provide oversight and approval for utility-specific settlements and tariff provisions; and

¹⁷⁰ Id., page 4-14.

¹⁷¹ Direct Testimony of Stacey Harden, p. 35, ll. 4-7.

¹⁷² Direct Testimony of Stacey Harden, p. 37, l. 2.

- (5) provide independent evaluation of demand-side programs, as deemed necessary by the Commission.¹⁷³

Requiring the Commission to include recovery of lost revenues in any cost recovery mechanism is definitely not included in this list.

111. The doctrine of statutory construction, *expressio unius est exclusio alterius*, is actually helpful to show that the legislature did not intend to require the Commission to include recovery of lost revenues in any cost recovery mechanism.¹⁷⁴ This is acutely evident because in the section of the KEEIA immediately prior to those statutory mandates, the Kansas legislature specified that “the recovery of lost revenue associated with demand-side programs” is an item which the Commission may include in a cost recovery mechanism.¹⁷⁵

112. Thus the Commission has broad discretion on deciding whether or not to include recovery of lost revenues in a cost recovery mechanism in this docket. In Docket No. 12-GIMX-337-GIV, the Commission has already made its policy decision with respect to the issue of the recovery of “lost revenue.” In that docket, the Commission chiefly desired to clarify how to handle the utilities' reduced revenues resulting from energy efficiency programs.

113. As policy, the Commission has determined:

- “(g)iven the current economic and regulatory environment, the Commission is disinclined to allow lost margin recovery,
- “allowing recovery of lost margin creates a subsidy for energy efficiency programs that can violate the fundamental ratemaking principle of cost causation,

¹⁷³ K.S.A. 66-1283(e).

¹⁷⁴ For a discussion of this doctrine and its application to administrative agencies, see *Kansas Industrial Consumers Group, Inc., v. State Corporation Commission*, 36 Kan. App. 2d. 83, 95-97, 138 P. 3d 338 (2006).

¹⁷⁵ K.S.A. 66-1283(d)(1).

- “under the principle of cost causation, the participants in the energy efficiency programs alone should be responsible for any reduction in revenue resulting from the energy efficiency program, and
- “(i)n general, the Commission will not allow recovery for lost margins.”¹⁷⁶

CURB witness Harden outlined a number of reasons why KCP&L’s proposed recovery of a TD should be rejected. She pointed out that it is impossible to accurately assess the impact of any particular demand side management program on a utility’s sales because any evaluation is necessarily based upon numerous assumptions.¹⁷⁷ She noted that, although utilities undertake a number of evaluation techniques to attempt to arrive at a reliable figure pertaining to energy efficiency savings, there are too many factors involved in a customer’s energy usage to be able to reliably attribute any decrease in energy usage strictly to energy efficiency.¹⁷⁸ In short, if KCP&L is allowed to recover \$20 million in lost revenues, some of those lost revenues may not be related to KCP&L’s EE programs. This would be a windfall to KCP&L’s shareholders.

114. CURB witness Harden also testified that the recovery of lost revenues violates the fundamental ratemaking principle of cost causation.¹⁷⁹ When a utility is allowed to recover lost revenues from energy efficiency measures adopted by some but not all ratepayers, some ratepayers are saddled with costs that they did not create. This is contrary to the policies established by the Commission in Docket No. 12-GIMX-337-GIV. For the very reasons which

¹⁷⁶ Docket No. 12-GIMX-3237-GIV, Order (March 6, 2013).

¹⁷⁷ Direct Testimony of Stacey Harden, p. 41, ll. 15-17.

¹⁷⁸ Direct Testimony of Stacey Harden, p. 41, ll. 17-22; p. 42, ll. 1-15.

¹⁷⁹ Direct Testimony of Stacey Harden, p. 44, ll. 3-4.

CURB witness Harden illuminated, the Commission determined that lost revenue recovery should not be allowed for energy efficiency programs.¹⁸⁰

115. In these regards, it is important to note that violation of the regulatory principle of cost causation may hurt the ratepayers who most desperately need the Commission's protection: The low income residential customer. Many of the programs in the KCP&L EE Portfolio are designed for the business class. As businesses take advantage of the rebates offered by KCP&L to undertake energy efficiency measures which reduce revenue to KCP&L, the lost revenues are made up in part by higher utility rates paid by low income residential customers.

116. CURB witness Harden warns that KCP&L's proposed TD is in stark contradiction to regulatory practices used for traditional investments in supply and delivery infrastructure.¹⁸¹ She notes that under current ratemaking mechanisms, utility investors bear the risk of reduced sales between base rate cases, but reap the benefits of increased sales between base rate cases. Due to this investment risk, utility shareholders are awarded an authorized return on equity that is higher than a risk-free rate.¹⁸² In fact, she pointed out that KCP&L's proposed recovery of its TD, the company's shareholders could receive compensation for lost sales related to the KEEIA EE Portfolio, even if overall revenue exceeded amounts authorized under KCP&L's latest general rate case.¹⁸³

¹⁸⁰ Docket No. 12-GIMX-3237-GIV, Order (March 6, 2013)

¹⁸¹ Direct Testimony of Stacey Harden, p. 44, ll. 20-22.

¹⁸² Direct Testimony of Stacey Harden, p. 45, ll. 3-9.

¹⁸³ Direct Testimony of Stacey Harden, p. 45, ll. 9-12.

117. This last point is very important. The Commission, like every other public utility commission (PUC) is now being bombarded with rider requests from utilities. As PUCs continue to award riders to utilities for utility expenditures and variations from anticipated normal revenue receipts, the utilities' investment risk becomes lower. Yet, utilities continue to demand a high risk premium in their return on equity even though they want the stability of having their expenses recovered through riders versus traditional rate cases. Noticeably, traditional ratemaking principles weaken as some PUCs continue to award riders to utilities without sufficient justification.

118. This Commission has argued that the burden of justifying the use of an alternative rate mechanism (relative to utility expenses), as opposed to recovery through a traditional rate case, falls upon the utility.¹⁸⁴ The Commission maintains that the utility must prove that it will be significantly harmed if these costs are recovered under traditional ratemaking principles.¹⁸⁵ Consistent with the policies of the Commission, CURB has generally opposed riders and has supported the regulatory lag associated with recovery of expenses and lost revenues through traditional rate cases. CURB's position is protective of the ratepayer.

119. Here, KCP&L offers no proof that it will be harmed if it is not allowed to recover lost revenues through its TD; it merely claims that forecasted recovery of its TD is necessary to make its shareholders "whole."¹⁸⁶ Yet, KCP&L's shareholders will be made whole in its next

¹⁸⁴ F.E.R.C. Docket No. PL-15-1-000, Comments of the Kansas Corporation Commission (1/26/2014).

¹⁸⁵ *Id.*

¹⁸⁶ Initial Post-Hearing Brief of Kansas City Power & Light Company, pp. 77-78.

rate case.¹⁸⁷ Moreover, one should note that there is no reliable indication in the record when (if at all) these lost revenues will occur (they could clearly occur in the very last stages of the three-year pilot program). KCP&L plans to file a rate case in the near future.¹⁸⁸

120. In short, the record evidence shows that KCP&L has failed to prove that it would be significantly harmed if the lost revenues (if any) caused by its EE programs are recovered in its next rate case. KCP&L has merely offered the same tired arguments which utilities always make when attempting to avoid regulatory lag. These arguments are generally disregarded by this Commission and certainly were disregarded in Docket No. 12-GIMX-337-GIV. KCP&L has offered nothing new to warrant a change in the Commission's policy.

121. Consequently, CURB recommends that the Commission deny KCP&L's request to recover lost revenues due to its EE programs through its TD. CURB's recommendation supports the Commission's established policy. It protects the traditional ratemaking process.

122. Certainly, the many benefits that recovery of lost revenues through rate cases brings are well known. Firstly, traditional rate of return regulation is well established. Secondly, rates remain stable between rate cases. Thirdly, the regulatory lag associated with traditional rate of return regulation helps to bring a competitive element to rate regulation of utilities. Fourthly, traditional rate of return regulation matches the revenues and expenses associated with an increase in the rate base. Finally, traditional rate regulation balances the rights and

¹⁸⁷ Direct Testimony of Stacey Harden, p. 45, ll. 19-22; p. 46, ll. 1-2.

¹⁸⁸ Direct Testimony of Stacey Harden, p. 45, ll. 19-22.

responsibilities of all parties affected by utility rates: The utility, present ratepayers and future ratepayers, and the public interest.¹⁸⁹

123. These benefits will be garnered here, if the Commission requires KCP&L to recover any lost revenues due to its EE programs through its next rate case. Moreover, it should be noted that rate cases allow Staff and others more time to evaluate claims of lost revenues made by utilities; riders call for an expedited review period. With an expedited review, there is increased risk that something will be missed, to the detriment of the ratepayer.

124. With its TD, KCP&L asks the Commission to turn against the traditional rate principles which are used in supply-side utility investments. Yet every time that these principles are ignored, the foundation of traditional ratemaking is destabilized. The predominance of riders weakens traditional ratemaking principles like when a mighty oak is continually struck with an axe; at some point, there is no trunk left to support the branches and the tree falls. It is not the time to end the traditional use of the general rate case as the primary means to recover lost revenues. The KEEIA does not require it. There are many sound policy reasons for traditional regulatory treatment of lost revenues in this docket. KCP&L may argue that its TD causes no harm to traditional ratemaking; it is only one swing of the axe. Yet, CURB hopes that the Commission continues to vehemently support traditional ratemaking practices by not allowing KCP&L to recover forecasted lost revenues associated with its EE programs through its TD.

¹⁸⁹ *Kansas Gas & Electric Co. v. Kansas Corporation Commission*, 239 Kan. 483,488, 720 P. 2d 1063 (1986).

C. It Is Not In The Public Interest To Allow KCP&L To Recover An Earnings Opportunity As Set Forth In Its Application.

125. KCP&L requests an EO which would be recovered over a two-year period after completion of the 2017-2019 KEEIA Cycle 1 and after the program results are formally evaluated. KCP&L proposes that the EO target of \$8.5 million would be adjusted, based on the actual results of the evaluation of energy savings resulting from the measures that were installed, but the maximum EO that the Company could receive would be \$12.0 million and the EO could not go below \$0. The company also proposes to recover carrying costs on the unamortized balance of the EO during the two year collection period at the short-term borrowing rate.¹⁹⁰

126. CURB opposes KCP&L's request for an EO for two reasons. First, KCP&L's proposed EO does not equate demand-side investments to traditional investments in supply side resources.¹⁹¹ Second, CURB disagrees with the Company's quantification of net benefits.¹⁹² These reasons are discussed below.

(1) KCP&L's EO does not equate demand-side investments to traditional investments in supply side resources

127. The KEEIA requires the Commission to "provide timely earnings opportunities for public utilities associated with cost-effective, measurable and verifiable demand-side program savings."¹⁹³ However, it is important to note that in order to have an earnings

¹⁹⁰ Direct Testimony of Stacey Harden, p. 36, ll. 6-13.

¹⁹¹ Direct Testimony of Stacey Harden, p. 47, ll. 18-19.

¹⁹² Direct Testimony of Stacey Harden, p. 48, ll. 5-6.

¹⁹³ K.S.A. 66-1283(e)(3) (Supp., 2016).

opportunity, an investment (of capital or uncompensated labor) should logically be required. Indeed, the Merriam Webster dictionary defines “earnings” as “something (as wages or dividends) earned as compensation for labor or the use of capital.”¹⁹⁴

128. While KCP&L seeks an expensive EO, it has not really made any investment in its EE programs. As discussed by CURB witness Harden, it is not appropriate to provide an EO to KCP&L in this case. She testified as follows:

“KEEIA states that it ‘shall be the policy of the state to value demand-side program investment equal to traditional investments in supply and delivery infrastructure as much as it practicable...’. While shareholders do earn a return on investment in supply side resources, they do so because they actually invest in these resources. In this case, KCPL is proposing that shareholders effectively earn a return on an investment that they never made, creating a windfall for shareholders at the expense of Kansas ratepayers.”¹⁹⁵

129. As pointed out earlier in this brief, KCP&L proposes that all of its actual Program Costs would be recovered from ratepayers.¹⁹⁶ Further, KCP&L proposes a TD to recover all of KCP&L’s lost revenues.¹⁹⁷ KCP&L proposes that both its Program Costs and TD would be collected from the ratepayer on a forecasted basis.¹⁹⁸ KCP&L is seeking to be reimbursed for its internal labor costs as part of its DSIM.¹⁹⁹ In short, the ratepayer is fronting all of the costs of the KCP&L EE Portfolio. The KCP&L EE Portfolio too heavily favors its shareholders to the detriment of its ratepayers.

¹⁹⁴ Merriam Websters Online Dictionary. Found at <https://www.merriam-webster.com/dictionary/earnings>.

¹⁹⁵ Direct Testimony of Stacey Harden, p. 46, ll. 20-23; p. 47, ll. 1-3.

¹⁹⁶ Direct Testimony of Stacey Harden, p. 47, ll. 19-20.

¹⁹⁷ Direct Testimony of Stacey Harden, p. 47, l. 22; p. 48, ll. 1-2.

¹⁹⁸ Direct Testimony of Stacey Harden, p. 34, ll. 9-11.

¹⁹⁹ Direct Testimony of Stacey Harden, p. 32, ll. 14-15.

130. Although the KEEIA specifies that the Commission should provide an earnings opportunity, KCP&L is not offering any use of its capital or uncompensated labor upon which an earnings opportunity is appropriate. The pertinent phrase used in the KEEIA is “earnings opportunity.” KCP&L apparently translates that phrase to mean a participation reward.

131. CURB does not believe that a utility which does not offer any use of its capital or uncompensated labor should be entitled to a reward for taking action in the public interest. Should KCP&L have to be goaded by a reward to engage in energy efficiency? Apparently, KCP&L believes so.

132. If the KCP&L EE Portfolio were proven to be cost-effective, then CURB would certainly agree that KCP&L should be reimbursed for its Program Costs and be allowed to recover its lost revenues in a timely, not forecasted, manner consistent with supply-side energy investments. Yet, because KCP&L is a company vested with a public interest, CURB believes it to be inappropriate to give KCP&L an earnings opportunity on capital others (ratepayers) have invested.

(2) KCP&L’s quantification of net benefits do not justify its EO

133. As set out earlier in this brief, the record evidence shows that the KCP&L EE Portfolio is not cost-effective. As CURB witness Harden testified:

“Because of KCPL’s use of inflated avoided costs and overstated energy savings from its TRM, it is likely that there are no net benefits to ratepayers of the Company’s proposal. Therefore, the Company’s claim that its proposed cost recovery mechanism allows ratepayers to receive 83.2% of the net benefits is misplaced.”²⁰⁰

²⁰⁰ Direct Testimony of Stacey Harden, p. 48, ll. 6-10.

Ms. Harden observes that KCP&L not only wants its shareholders to fully recover all costs and lost revenues associated with its EE programs, but it wants to make a profit off of the programs all the while ratepayers are paying more than the energy efficiency benefits they are receiving.²⁰¹

134. Ms. Harden's observation is still more forceful when the RIM test results of the KCP&L EE Portfolio is taken into account. She noted that, even using KCP&L's inflated avoided capacity costs and troublesome TRM assumptions, the KCP&L EE Portfolio results in a RIM test failure of 0.88.²⁰² Consequently, "even if the Commissions accepts all of the Company's assumptions used in its cost/benefit analysis, KCPL's portfolio of demand-side programs still results in net costs to Kansas ratepayers."²⁰³

135. CURB is aware that Staff is willing to provide an EO to KCP&L, provided that KCP&L's TD is incorporated as a ratepayer cost and Staff's avoided costs of ****[REDACTED]**** per kW is used to measure energy efficiency savings.²⁰⁴ CURB certainly agrees with Staff that KCP&L's proposed TD is a ratepayer cost and that KCP&L should not be allowed to "double dip" with respect to its estimated lost revenues. CURB believes, however, that Staff's avoided costs are still too high and that, in any case, KCP&L has not actually invested any capital in its EE programs. Ratepayers fund those programs completely. However, should the Commission determine that KCP&L should have an EO under the KEEIA, CURB believes that the EO should be no higher than Staff's proposed EO.

²⁰¹ Direct Testimony of Stacey Harden, p. 48, ll. 21-22.

²⁰² Direct Testimony of Stacey Harden, p. 48, ll. 11-15.

²⁰³ Direct Testimony of Stacey Harden, p. 48, ll. 16-18.

²⁰⁴ Direct Testimony Prepared by Robert H. Glass, PhD, p. 14, ll. 4-16.

D. It Is Not In The Public Interest To Allow KCP&L To Use Navigant As Its EM&V Provider.

136. In Docket No. 08-GIMX-442-GIV, the Commission required that Staff and interested parties, including the utilities and CURB, should engage in a collaborative process to select a third-party EM&V provider or providers.²⁰⁵ The Commission opened Docket No. 10-GIMX-013-GIV for that purpose. In that docket, the Commission noted the importance of an independent third-party EM&V provider, as:

“Independent EM&V serves as an important quality control mechanism for energy efficiency programs, ensuring that ratepayers' funds are being prudently allocated and potential performance incentives are tied to actual program performance related to established metrics.”²⁰⁶

The Commission also stated:

“An evaluator must provide an unbiased program performance assessment as well as a result that justifies a program's funding and any applicable performance based incentives.”²⁰⁷

137. KCP&L has requested Commission approval to allow the company Navigant to conduct its EM&V. According to its application, Navigant would conduct the first KEEIA EM&V eighteen (18) months after implementation of its KEEIA program.²⁰⁸ CURB opposes KCP&L's request to involve Navigant in the EM&V process.

²⁰⁵ Docket No. 08-GIMX-442-GIV. *Order Following Collaborative On Benefit-Cost Testing and Evaluation, Measurement, and Verification*, ¶ 154, p. 46 (April 13, 2009).

²⁰⁶ Docket No. 10-GIMX-013-GIV, Attachment No. 1 to Order Adopting Energy Efficiency Program EM&V RFP and Procedures, p. 21 (October 4, 2010)

²⁰⁷ Docket No. 10-GIMX-013-GIV, Order Adopting Energy Efficiency Program EM&V RFP and Procedures, ¶ 17, p.7 (October 4, 2010)

²⁰⁸ Direct Testimony of Stacey Harden, p. 30, ll. 12-13.

138. CURB witness Harden noted that Navigant provided the initial program evaluation of the KEEIA filing.²⁰⁹ She also noted that there was no collaborative (RFP) process as contemplated in Docket No. 08-GIMX 442-GIV and outlined in Docket 10-GIMX-013-GIV. Further, KCP&L did not seek approval from any other party to this proceeding before electing to use Navigant as its independent, third-party evaluator.²¹⁰

139. Thus, Navigant cannot reasonably be said to be independent. Bias could be problematic for the ratepayer. As CURB witness Harden noted, “Without a truly independent third-party evaluator to verify the actual performance of KCP&L’s KEEIA programs, ratepayers could potentially be charged over \$30 million for benefits that were not [sic.] truly recognized.”²¹¹ In these regards, it is important to remember that Staff witness Glass testified that KCP&L’s TRM was not very transparent. CURB believes that it would be very difficult for parties other than Staff to be able to perform the independent analysis at such a depth as to protect the ratepayer if Navigant is involved in the process.

140. Moreover, even if Staff retains its own consultant/evaluator, the process outlined by KCP&L leaves out small parties like CURB with its limited budget as a practical matter. CURB has steadfastly maintained that it would like to be part of the RFP and selection process with respect to EM&V of EE programs. CURB hopes that its role in this important aspect of EE programs is not merely as a spectator. Yet, this will be the case under KCP&L’s application if approved by the Commission.

²⁰⁹ Direct Testimony of Stacey Harden, p. 31, ll. 17-18.

²¹⁰ Direct Testimony of Stacey Harden, p. 31, ll. 17-21.

²¹¹ Direct Testimony of Stacey Harden, p. 31, ll. 11-13.

E. It Is Not In The Public Interest To Allow KCP&L To Adjust Its Entire Demand-Side Portfolio By Ten Percent.

141. KCP&L requests that the Commission waive certain requirements that pertain to EE program budgets, described as follows:

“That a utility may flex an individual program’s budget by up to 10%. If the program required a budget modification of greater than 10%, the utility must seek Commission approval.”²¹²

KCP&L’s application seeks to have the Commission waive this requirement on a program level, and instead apply the 10% variance on a portfolio level.²¹³

142. CURB believes that this variance should be denied, because it essentially results in no Commission oversight regarding program budget limitations.²¹⁴ As explained by CURB witness Harden:

“The overall portfolio budget is approximately \$30 million. By providing KCPL the ability to adjust program budgets on a portfolio basis, the Commission is essentially allowing KCPL to adjust all programs so long as the \$3 million overall portfolio limit is not violated. If granted such a waiver, KCPL could almost completely disregard the budget in any one particular program and place substantially much more budget in another program and still remain within 10% portfolio limitation.”²¹⁵

Commission oversight of an EE program budget is significant. When an application for any EE program is filed, the Commission has the authority to review it and determine whether ratepayers should pay for that program. If utilities are able to remove or add

²¹² Direct Testimony of Stacey Harden, p. 28, ll. 17-19.

²¹³ Direct Testimony of Stacey Harden, p. 28, ll. 19-21.

²¹⁴ Direct Testimony of Stacey Harden, p. 29, l. 9.

²¹⁵ Direct Testimony of Stacey Harden, p. 29, ll. 10-15.

more than 10% of the budget from a program, the Commission's approval process can be thwarted. For that reason, in Docket No. 08-GIMX-442-GIV, the Commission stated:

“Budget changes in excess of 10% should be permitted outside of the normal filing and review process. The Commission believes utility cost-tracking procedures should be sufficient to enable a utility to request budget modifications greater than 10% before the situation becomes an issue.”²¹⁶

143. In CURB's opinion, a 10% variance on a program level (without needing to obtain Commission approval) gives KCPL enough flexibility to adjust each program to account for changes in costs and benefits over the three years for each program.²¹⁷ CURB would have no objection for allowing KCP&L to seek and obtain larger than 10% budget variances on specific EE programs upon application and appropriate proof, but believes that the Commission should have authority to determine whether such variances are in the public interest. Thus, CURB maintains that the substantial variance which KCP&L seeks with respect to budget modification should be denied as not sufficiently protective of the ratepayers' interest in this docket.

F. It Is Not In the Public Interest To Allow KCP&L To Collect Internal Labor Costs Through Its DSIM

144. KCP&L requests that the Commission allow it to recover internal labor costs in its proposed DSIM. With respect to this issue, CURB witness Harden notes, as follows:

“Isolating a specific cost, like payroll and associated benefits which are typically recovered through base rates, and shifting that cost to a rider

²¹⁶ Docket No. 08-GIMX-442-GIV. *Order Following Collaborative On Benefit-Cost Testing and Evaluation, Measurement, and Verification*, ¶ 182, p. 54 (April 13, 2009).

²¹⁷ Direct Testimony of Stacey Harden, p. 29, ll. 15-18.

increases the possibility that the single cost item may be recovered both through base rates and through a rider.”²¹⁸

145. CURB understands that Staff also has issues with KCP&L’s request. CURB recommends as follows:

“If the Commission determines that it is appropriate to allow incremental labor costs to be included in the proposed DSIM, then the Commission must also establish clear guidelines and measures that ensure the included labor costs are solely related to the demand side management programs and do not reflect any general allocations that could include costs already being recovered in base rates.”²¹⁹

G. Additional Safeguards.

146. CURB understands that the Commission is the policy maker in regulatory matters before it, including this docket. CURB believes that, in a docket as complex as this docket, it would be very difficult to find a median solution that would have no adverse consequences. Nonetheless CURB Witness Harden has recommended additional safeguards in her testimony in the event that the Commission chooses to approve some part of the KCPL EE Portfolio. There is no reason to set these additional safeguards out in this brief and CURB would merely direct the Commission to Ms. Harden’s testimony.²²⁰

H. Commission Questions.

147. Throughout the hearing of this matter, the Commission developed a number of questions which were posed to the parties through Samuel Feather, the Commission’s Deputy

²¹⁸ Direct Testimony of Stacey Harden, p. 32, ll. 21-22; p. 33, ll. 1-2.

²¹⁹ Direct Testimony of Stacey Harden, p. 33, ll. 21-23; p. 34, ll. 1-3.

²²⁰ (See Harden, p. 50, ll. 19-23; p. 51, ll. 1-9.

General Counsel: Chief FERC Counsel on March 31, 2017. These were all very good questions, but CURB is not poised to answer some of them. There were two certain questions posed with respect to Missouri law, including provisions in the MEEIA. CURB is very unfamiliar with Missouri law and respectfully believes that its answers to these questions would likely be incomplete or inaccurate. Obviously, the fourth question was directed to KCP&L. Due to CURB's budget constraints and manpower limits, CURB is unable to provide a meaningful response to the fifth question.

148. With respect to the third question posed by the Commission, CURB understands the KEEIA Cycle 1 to adjust the TRM only after completion of the first EM&V. It is CURB's belief that, as KEEIA Cycle 1 is proposed, the KCP&L TRM would be adjusted based upon the results of the EM&V. Thus, there would be no reliable manner of updating the TRM until the EM&V is completed. Moreover, CURB does not believe that adjustment of the TRM is automatic upon completion of the first EM&V. After the EM&V is completed, the parties would need to attempt to mutually agree to adjustments to the TRM. If no agreement is reached, the matter would need to be determined by the Commission upon hearing. Again, CURB wishes to emphasize that a negotiated EE portfolio among the parties could eliminate some of the timing issues involved. CURB would hope that if KCP&L chooses to attempt to arrive at an EE portfolio through collaboration with Staff and CURB (and other interested parties) that no party would take an "all or nothing" approach. CURB believes there is some room to negotiate a good EE portfolio in Kansas.

149. As for the last question (no. 6), CURB has found a comparison of electric rates for the vicinity surrounding Kansas. It is attached as Exhibit "A."²²¹ CURB apologizes for its inability to respond to the other questions raised by the Commission. CURB appreciates the opportunity to represent the views of residential and small commercial ratepayers in this proceeding.

IV. CONCLUSION

150. The KEEIA proclaims that "it is the goal of the state to promote the implementation of **cost-effective** demand-side programs in Kansas."²²² The chief question in this docket is whether or not the KCP&L EE Portfolio is cost-effective. As noted by the parties, the answer to this question is primarily dependent upon the determination of the appropriate avoided costs and upon the inclusion of an appropriate NTG among other data points in KCP&L's TRM.

151. It is clear to CURB that the Commission wants to be able to approve some EE programs in Kansas. Yet, the Commission has an obligation under the KEEIA (as well as its general regulatory authority) to protect the interest of ratepayers, particularly with respect to ensuring that utility rates are just and reasonable. In order for the costs of EE programs to be charged to the ratepayer, the EE programs must be proven to be cost-effective. Indeed, the KEEIA requires this finding before a demand-side program is approved by the Commission.

²²¹ The source for this document can be found at <http://www.les.com/resources/dyn/files/1136543zbaffe7d1/fn/rate-comparison-regional.pdf>.

²²² K.S.A. 66-1283(b)(Supp., 2016).

152. KCP&L bears the burden of proving that its EE programs are cost-effective. In these regards, KCP&L must meet standards set by the Commission by substantial and competent evidence. This is important because if an applicant is allowed to lower the bar where EE programs are concerned, then cost-effectiveness is thrown by the wayside for all EE programs.

153. In this particular case, KCP&L has failed to prove that its EE programs are cost-effective. Using the avoided capacity costs proposed by KCP&L is highly inappropriate, as shown by the compelling testimony of Doctor Glass and Ms. Harden. The EE programs proposed by KCP&L are short-term, being part of a three-year pilot program. KCP&L has the right to terminate any program at any time. KCP&L asks for authority to be able to defund any particular EE program under the variances (from Docket No. 08-GIMX-442-GIV) in its sole discretion.

154. In view of the circumstances in this case, Staff calculated avoided capacity costs at approximately 1/3 of KCP&L's avoided costs estimate; CURB calculated avoided capacity costs at approximately 1/6 of KCP&L's avoided costs estimate. CURB believes that the record evidence best supports CURB's calculated avoided capacity costs. If CURB's calculation of avoided capacity costs is used, the KCP&L EE Portfolio fails the TRC and RIM tests. Even if Staff's calculation of avoided costs is used, a majority of the KCP&L EE Portfolio fails the TRC and all EE programs fail the RIM tests. Under either scenario, the conclusion that the KCP&L EE Portfolio is not cost-effective is inescapable.

155. The truth of the matter is that currently there is so much excess capacity in the energy marketplace that there is little economic benefit to employment of energy efficiency measures. Even in the absence of any EE programs, KCP&L will not build any generation unit until ** [REDACTED] **. The KCP&L EE Portfolio only postpones the building of that generation unit by

three years. Capacity contracts are now available and are used by KCP&L for capacity purposes; the cost of these contracts was used by KCP&L in Docket No. 14-KCPE-042-TAR as true avoided capacity cost.

156. Given the current low cost of energy, it is impossible for an EE program (with the many shareholder benefits provided by KCP&L in its application) to pass the TRC test; and the Commission has noted that it will not likely approve an EE program which fails the TRC test. It is also important to note that when incentives or price modifications are granted or approved by governmental entities, wealth is created. In actuality the free market does a good job of promoting energy efficiency when it is economically warranted. To allow KCP&L the ability to alter the marketplace for energy efficiency measures creates real winners and losers. Since KEEIA Cycle 1 is not cost-effective, the losers are the very ratepayers whom CURB represents.

157. The lack of cost-effectiveness of the KCP&L EE Portfolio is exacerbated by KCP&L's use of an NTG ratio which, as Doctor Glass aptly states, violates "common sense." KCP&L wants the Commission to pretend that there is absolutely no free ridership in any of its EE programs. This faulty assumption is belied by KCP&L's evidence itself. Moreover, both Staff and CURB did not find that the TRM was reliable. As Staff witness John Turner noted, the KCP&L TRM has large error bands. In short, the overwhelming weight of the evidence shows that the KCP&L EE Portfolio, when properly measured, is not cost-effective.

158. Moreover, KCP&L proposes a recovery program, a TD and an EO which is overly favorable to KCP&L's shareholders to the detriment of KCP&L ratepayers. No longer satisfied with timely recovery under a rider, KCP&L now wants forecasted cost recovery. In KCP&L's view, if recovery of its Program Costs and TD is not forecasted recovery, it will not

implement an EE program in Kansas. The Commission should not have to dispose of the cost recovery policies which it uses in supply-side rate cases to entice KCP&L to implement EE programs in Kansas. More importantly, CURB worries that capitulation on forecasted costs recovery will have a very negative effect on future regulation of utilities. It is not time to entirely do away with traditional rate regulation in favor of alternative rate mechanisms. CURB does not believe that is what the Kansas legislature intended by enacting the KEEIA.

159. In view of the evidence in this case, CURB asks the Commission to entirely reject the KCP&L EE Portfolio. CURB makes this request knowing that the Commission wants to see EE programs implemented in Kansas. However, CURB believes that, through collaboration between the parties, an optimal set of EE programs will be implemented in Kansas.

160. In fact, CURB believes that, only through collaboration can optimal EE programs be implemented. The KEEIA recognizes this. It makes EE programs voluntary. It requires cooperation between the Commission and Kansas utilities where EE programs are concerned. Moreover, the Commission has viewed collaboration to be very important to EE program development in its policy orders. For example, there are several instances in Docket No. 08-GIMX-442-GIV where the Commission required the parties to an EE program application to collaborate. Yet, more to the point, the Commission stated in paragraph 33 of the Order Following Collaborative On Benefit-Cost Testing and Evaluation, Measurement, and Verification:

“The Commission encourages utilities to cooperate on energy efficiency programs. The Commission also encourages utilities to work closely with Staff and the Commission as they consider and develop their energy efficiency programs and portfolios.”

161. The KCP&L EE Portfolio fails in this most fundamental respect. KCP&L did not work with Staff or CURB to develop its programs. While it may have worked with the Missouri Public Service Commission to establish its MEEIA program, it simply wants Kansas to defer to its program in Missouri. CURB does not believe that what works in Missouri will necessarily work in Kansas. Kansas has its own unique population and environment. This Commission was not party to KCP&L's application in Missouri and cannot know what facts and circumstances led to approval of MEEIA, or what the status of that program is at this time.

162. Therefore, CURB requests that this Commission reject KCP&L's application in entirety. Further, CURB requests that this Commission reaffirm its policy that KCP&L should work with Staff and CURB to collaboratively arrive at a set of EE programs which are the negotiated optimal set of EE programs that can be implemented at this time. It is in the public's interest to do so.

Respectfully submitted,

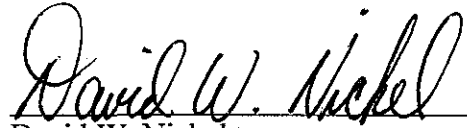


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VERIFICATION

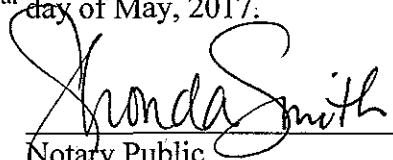
STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

I, David W. Nickel, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.



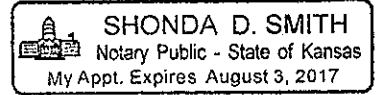
David W. Nickel

SUBSCRIBED AND SWORN to before me this 8th day of May, 2017.



Notary Public

My Commission expires: 08-03-2017.





**Lincoln Electric System
2017 Regional Electric Utility Bill Comparison**

The following tables reflect the average monthly bill by rate class for cities in the region. The average bills are calculated (at the demand and energy levels identified) by LES using 2017 electric rates as shown on the utility's website for the respective city. As applicable, franchise fees are included (LES' City Dividend is included).

Residential	
City	Residential 1,000 kWh
Lincoln	\$96
Denton, NE	\$104
Denver	\$111
Des Moines	\$114
Omaha	\$115
Colorado Springs	\$120
Kansas City, KS	\$127
Kearney, NE	\$130
Wichita	\$134
Kansas City, MO	\$138
Minneapolis	\$141

General Service Demand Commercial	
City	75 kW 50,000 kWh
Lincoln	\$2,661
Denton, NE	\$2,897
Omaha	\$3,117
Des Moines	\$3,317
Denver	\$3,435
Colorado Springs	\$3,625
Kearney, NE	\$3,743
Minneapolis	\$4,087
Kansas City, KS	\$4,300
Kansas City, MO	\$4,817
Wichita	\$4,842

Large Light & Power Industrial	
City	1,000 kW 650,000 kWh
Des Moines	\$36,117
Lincoln	\$37,794
Denton, NE	\$38,065
Denver	\$39,038
Omaha	\$39,389
Colorado Springs	\$40,097
Wichita	\$44,006
Kearney, NE	\$46,151
Kansas City, MO	\$51,274
Kansas City, KS	\$54,768
Minneapolis	\$57,289

Small Commercial	
City	40 kW 10,000 kWh
Lincoln	\$774
Omaha	\$804
Denton, NE	\$914
Des Moines	\$919
Colorado Springs	\$925
Kearney, NE	\$1,085
Wichita	\$1,159
Minneapolis	\$1,255
Kansas City, KS	\$1,258
Denver	\$1,262
Kansas City, MO	\$1,421

Large Light & Power Commercial	
City	500 kW 180,000 kWh
Des Moines	\$11,876
Omaha	\$14,036
Denton, NE	\$14,127
Lincoln	\$15,779
Kearney, NE	\$16,645
Wichita	\$17,044
Colorado Springs	\$17,146
Denver	\$17,224
Minneapolis	\$18,620
Kansas City, KS	\$19,915
Kansas City, MO	\$21,747

- This table uses January 2017 rates with cost adjustments for the following cities:
 - Des Moines (MEC) Transmission Cost Recovery, Energy Adjustment, Energy Efficiency Cost Recovery, Carbon Reduction
 - Denver (Xcel) Electric Commodity, Transmission Cost, DSM Cost Adjustment, Clean Air-Clean Jobs Act Rider
 - Wichita (Westar) Franchise Fee, Fuel Cost, Transmission Delivery, Environmental Cost Recovery
 - Colorado Springs (CSU) Electric Cost
 - Minneapolis (Xcel) Transmission Cost, Fuel Cost
 - Kansas City, MO (KCPL) Fuel Adjustment Rider, DSM Rider
- Seasonal rates are factored into the bills.
- Lincoln bills use an average determined from four summer bills and eight winter bills. Other utilities may have different billing seasons and the average annual bills reflect different monthly weights.
- Lincoln bills include the LES city dividend (effective 1/1/2016).
- The following utilities include franchise fees:
 - Denver (Xcel)
 - Des Moines (MEC)
 - Kansas City, MO (KCP&L)
 - Kearney (NPPD)
 - Minneapolis (Xcel)
 - Wichita (Westar)

CERTIFICATE OF SERVICE

16-KCPE-446-TAR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Post-Hearing Brief of the Citizens' Utility Ratepayer Board (Public Version) was served by electronic service on this 8th day of May, 2017, to the following parties:

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CERTIFICATE OF SERVICE

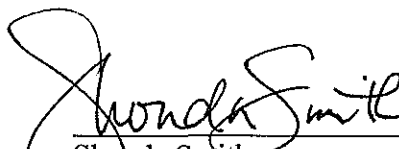
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