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Kansas Corporation Commission
/S/ Patrice Petersen-Klein

BEFORE THE CORPORATION COMMISSION

OF THE STATE OF KANSAS

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State Corporation Commission
of Kansas

IN THE MATTER OF A GENERAL INVESTIGATION OF ENERGY-EFFICIENCY POLICIES FOR UTILITY SPONSORED ENERGY-EFFICIENCY PROGRAMS	]]]]]	KCC Docket No. 12-GIMX-337-GIV

DIRECT TESTIMONY OF

DAVID R. SPRINGE

ON BEHALF OF

THE CITIZENS' UTILITY RATEPAYER BOARD

June 11, 2012

Q. Please state your name and your business address.

A. David R. Springe, Citizens' Utility Ratepayer Board, 1500 S.W. Arrowhead Rd., Topeka, Kansas 66604-4027.

Q. In what capacity are you employed by the Citizens' Utility Ratepayer Board?

A. I am the Consumer Counsel for the Citizens' Utility Ratepayer Board (CURB).

Q. What is your educational background?

A. I have a Bachelor of Science degree and a Master of Arts degree, both in Economics from the University of Kansas. I have a Juris Doctor from the University of Kansas School of Law.

Q. Have you previously testified before the Commission?

A. Yes. Prior to accepting my current position, I spent six years on the Economics staff of the Kansas Corporation Commission (KCC or Commission) and four years as the Chief Economist for CURB. In those positions I filed expert testimony in numerous cases.

Q. What is the purpose of your testimony?

A. The purpose of this testimony is to address three questions posed by the Commission in its Order Setting Questions and Procedural Schedule, issued on April 4, 2012 in this docket.

Q. What is the first question?

A. The Commission asked: "*What uncertainties or ambiguities in the Commission's orders, rules and regulations, if any, inhibit the offering of energy-efficiency or demand side management programs?*"

Q. What is your response?

A. The simple answer to the question is that there is nothing in the Commission's prior orders, or in its rules or regulations that inhibits the offering of energy-efficiency and demand-side-management programs by jurisdictional utilities. Any utility, at any time, can file an application with the Commission and propose an energy-efficiency or demand-side management program. Westar Energy (Westar), Kansas City Power& Light (KCP&L), Empire District Electric Company and Midwest Energy have all received approval from the Commission to offer various energy-efficiency or demand-side management programs. The Commission has established energy-efficiency cost recovery riders for each utility so that the costs associated with the programs are recovered over a reasonably contemporaneous time period. The Commission has also approved a lost-margin recovery mechanism for Westar to recover margin revenues lost due to Westar's participation in the Efficiency Kansas program.

Q. Did the Commission intend for its policy orders in the 08-GIMX-441-GIV (441 docket) and 08-GIM-442-GIV (442 docket) to set out bight-line rules on what types of utility sponsored energy efficiency and demand-side-management programs should be offered, how the programs should be designed and how costs and benefits should be calculated and/or shared?

A. No. The Commission's prior orders were intended to "lay the foundation for the Commission to continue to develop energy-efficiency policy as it delves further into these issues and educated itself."[1] The Commission orders did not answer every conceivable question related to utility sponsored energy-efficiency and demand-side-management programs. Further, the Commission expressed its preference to address

[1] KCC Docket No. 10-WSEE-775-TAR, *Order Approving Partnership Between Efficiency Kansas and Westar's Simple Savings Program*, at para. 28

these complex and technical issues on a case-by-case basis, which is how the utilities have proceeded since these policy orders were issued.

Q. Even though it did not answer every conceivable question, did the Commission give fairly clear guidance on cost recovery and incentive mechanisms in its policy orders?

A. Yes. In the 441 docket, the Commission addressed three broad issues related to cost recovery. First, the Commission decided to allow prudently incurred program costs to be recovered through a rider on the utility bill. The Commission believed that a rider allowed the Commission to maintain its responsibility to review costs for prudence while allowing a "nearly contemporaneous" recovery of program costs for utilities.[2]

Second, the Commission recognized that a "throughput incentive may be necessary to avoid utilities experiencing loss of margin as a result of implementing energy efficiency programs."[3] The Commission devotes 11 pages of its 441 Order, paragraphs 45 through 78, solely to throughput incentives. The Commission determined that, "of the various types of throughput mechanisms the Commission believes decoupling is the best method."[4] Staff suggested that it will consider decoupling as a method if a utility "can show that a program will have a significant detrimental impact on company finances."[5] The Commission appears to adopt this litmus test stating that the utility should "provide a comparison of the potential financial impacts of the energy efficiency programs it has received approval for or intends to seek approval for and the expected financial outcome without energy efficiency programs in place."[6] The Commission further stated that "the utility must demonstrate that decoupling makes economic sense in the context of the utility's efficiency program of suite of programs"

[2] 441 Order at para. 31-32
[3] 441 Order at para. 45
[4] 441 Order at para. 62
[5] 441 Order at para. 47
[6] 441 Order at para. 72

and that decoupling "should be implemented in context of measurable and verifiable program performance in meeting Commission established goals", noting specifically that "on a basic level, if the program is not performing, it is unlikely utility margins are being negatively affected by energy efficiency."[7] KCC staff utilized this financial impact litmus test in evaluating each subsequent filing in which a utility requested approval of a incentive mechanism associated with a proposed energy-efficiency program.

Third, the Commission addressed the use of performance incentives as a nudge towards using demand side resources rather than traditional supply side resources to meet customer energy needs. The Commission devotes the remaining pages of the 441 Order, paragraphs 79 though 111, to performance incentives. The Commission concluded that it is "reluctant to provide additional incentives, resulting in increasing costs to consumers, for energy efficiency programs."[8] Further, the Commission stated that "if energy efficiency inherently does not result in the same amount of ratebasing, or capitalized costs, that is simply reflective of the nature of the resource."[9] The Commission however did recognize that "utilities must attract capital and need a sustainable business model to remain financially strong" and that "incentives are important to maintaining that model and to encouraging utility investment in energy efficiency."[10] The Commission determined that the "best manner in which to balance these considerations is to allow for incentives, but limit them to specific energy efficiency programs the Commission has determined are the most beneficial for Kansas energy customers and the long-term energy efficiency goals of the Commission."[11] The Commission determined that a performance incentive will only be appropriate for programs that met either or both of the following

[7] 441 Order at para. 70-71
[8] 441 Order at para 94
[9] *Id.*
[10] 441 Order at para. 95
[11] 441 Order at para. 96

Commission goals:

a. "Proposals for programs that target low and fixed income customers and renters."

And/or

b. "Proposals that target new and existing residential housing and demonstrate a potential for long term energy savings utilizing a comprehensive whole house concept, pursuant to Commission policy as expressed in Docket 08-GIMX-442-GIV."[12]

For programs that meet either or both of these two goals, the Commission stated it "favors the shared benefit approach to performance incentives" noting that "Net benefits generally include avoided energy and capacity cost and transmission and distribution savings."[13]

The Commission is clear and direct: the Commission favors decoupling if a throughput incentive is needed, but there is a high evidentiary bar about the financial impacts on the utility offering the programs before decoupling will be granted, and the Commission will consider a shared benefit performance incentive, but only in the limited instances where a program meets one or both of the Commission stated goals of targeting low income customers or offering comprehensive whole house programs.

Q. What about the 442 docket?

A. In the 442 docket, the Commission discussed issues related to the benefit-cost review process and evaluation and measurement process in great detail. While the Commission said it would consider all benefit-cost tests in reviewing programs, the Commission stated that it "continues to believe an emphasis on the RIM and TRC tests is appropriate in light of Kansas realities and Commission goals."[14] Review is to be on a program level basis,

[12] 441 Order at para. 97
[13] 441 Order at para. 99
[14] 442 Order at para. 21

and while the Commission declined to adopt a bright-line rule that if benefit-cost tests are passed, a program will be approved, it did state that it is "unlikely to deny a program that meets all tests."[15] The Commission approved using the formulas in the California Standard Practice Manual for the review process.[16] Data from the California Energy Commission's Database for Energy Efficient Resources (DEER) will be used until the Commission can develop a Kansas specific database.[17] Discount rates are to be set equal to the utility's most recently approved rate of return, although a 10% discount rate is to be used in the Participant Test,[18] attrition rates are set to 2% for electric utilities and 0% for natural gas utilities,[19] and the value of anticipated CO2 regulatory costs to be used in the Societal Cost Test for modeling purposes is $10/ton, $25/ton and $40/ton.[20] Utilities are allowed to use their own internal avoided cost models, but input assumptions must be shared, and the Commission adopted the NAPEE Report definition of the incremental cost of a measure.[21] The Commission allowed educational programs to make up 5% of the program portfolio (although utilities can request more) and education programs are not subject to benefit-cost testing.[22]

With regard to evaluation, measurement and verification (EM&V), the Commission set the allowed budget for EM&V at no more than 5% of total energy efficiency expenditures[23] (although utilities can ask for more) and EM&V should be conducted two years after program implementation.[24] The Commission expressed interest in opened a subsequent docket to discuss the use of third parties contractors to perform EM&V.[25]

[15] 442 Order at para. 28
[16] 442 Order at para. 37
[17] 442 Order at para. 43
[18] 442 Order at para.'s 56 and58
[19] 442. Order at para. 68
[20] 442 Order at para. 79
[21] 442 Order at para.'s 103 and 113
[22] 442 Order at para.'s 29 and 32
[23] 442 Order at para. 136
[24] 442 Order at para.149
[25] The Commission opened KCC Docket No. 10-GIMX-013-GIV to investigate the use of third party EM&V.

Q. Is it your opinion that the Commission's 441 and 442 orders contain fairly clear guidance on the Commission's energy-efficiency and demand-side-management policy?

A. Yes. While the Commission did not answer each and every question with a bright-line rule, read together and taken as a whole, these two orders provide fairly clear guidance on how the Commission wanted programs established, how it wanted programs reviewed, what priorities the Commission valued, how it would address through-put incentives and what it considered an appropriate incentive structure.

Q. Has the Commission further clarified its policy in any cases since it issued its original policy orders?

A. Not specifically. Black Hills,[26] Kansas Gas Service Company,[27] and Kansas City Power and Light,[28] have each filed applications seeking Commission approval to offer comprehensive energy-efficiency programs. Each case was subsequently withdrawn before the Commission could make any rulings. Empire District Electric Company[29] filed an application seeking to offer a comprehensive set of programs and also requesting lost margin recovery. That application was scaled back as part of a settlement. The Commission also opened a generic investigation into load building programs and fuel switching[30], but later closed the docket without offering any policy guidance. The Commission did issue an order in one Westar case.[31] In the Westar case, the Commission granted recovery of "lost-margins" for any margin revenue Westar might lose if customers utilized the Efficiency Kansas Loan Program to reduce energy usage. In the 441 docket, the Commission said that it did not favor lost-margin recovery,[32] so granting

[26] KCC Docket No. 10-BHCG-639-TAR
[27] KCC Docket No. 10-KSG-421-TAR
[28] KCC Docket No. 10-KCPE-795-TAR
[29] KCC Docket No. 10-EPDE-497-TAR
[30] KCC Docket 09-GIMX-160-GIV
[31] KCC Docket 10-WSEE-775-TAR
[32] 441 Order at para. 68

lost-margin recovery in the Westar case is inconsistent with the Commission's stated policy and creates some confusion and uncertainty.

Q. Why does the Westar order create confusion and uncertainty?

A. The Commission made a fairly clear statement in the 441 docket that it did not favor lost-margin recovery. KCC staff argued that when the Commission said it did not favor lost-margin recovery, the Commission actually meant that it did not preclude considering and approving lost-margin recovery. The Commission agreed with Staff's argument. But, for practical purposes, if the Commission's fairly clear statement about not favoring lost-margin recover can be turned around to allow lost-margin recovery, then every statement in the Commission's policy orders, while appearing direct, may not be so.

Q. Do you have an opinion about why Kansas utilities might find the Commission's policy orders uncertain or ambiguous?

A. While the utilities will address this issue in testimony in this docket, it is my opinion that the Kansas utilities subject to Commission jurisdiction want a bright-line ruling about how they will be compensated for offering energy-efficiency and demand-side-management programs. This includes compensation for the direct cost of the programs, which the Commission has addressed though Energy Efficiency Riders, and compensation for forgoing the profits associated with building more plant and selling more energy. It is my opinion that the utilities have no interest in suspending the traditional utility business profit model unless they are well compensated to do so.

Q. Is it reasonable for the utilities to want a bright-line rule on compensation/profit?

A. Yes. Utilities are investor-owned, for-profit businesses (cooperatives excepted) that have a fiduciary duty to shareholders to make every effort to protect and grow profits. Perhaps the relevant question the Commission should ask is, "how much will customers be required to pay in compensation to the utilities for offering energy-efficiency and demand-side-management, and is that compensation level too high (does that level of compensation makes the actual programs uneconomic)?" It may be the case that utilities will require a level of profit, or profit over a specified time period that simply makes the question of additional energy-efficiency offerings moot.

Q. Do you have any final comments before moving to the Commission's second question?

A. Yes. The only bright-line ruling made by the Commission during this process is that the Commission will not entertain having a third-party non-utility entity offer energy efficiency programs to the general public. If the Commission is truly interested in creating a comprehensive energy-efficiency program, the Commission may want to revisit this decision. One question the Commission should ask the utilities is how much money has been spent in the last seven years on energy-efficiency programs, including direct program costs, employee labor and overhead costs and legal and regulatory costs? Between Westar and KCP&L, the employee costs alone are millions of dollars and are paid for by customer in rates. The Commission should weigh the cost customers have paid against what has actually been accomplished and decide whether customers got a good deal for the money.

Q. What is the second question?

A. The Commission asked: *"What Commission orders, rules and regulations or practices, if any, inhibit the offering of energy-efficiency or demand-side-management programs?"*

Q. What is your response?

A. This is essentially the same question as the first question, so the above discussion serves to answer this question.

Q. What it the third question?

A. The Commission asked: *"What conditions are necessary for successful energy-efficiency and demand-side-management programs in Kansas?"*

Q. What is your response?

A. It would be helpful if the Commission defined what it means by "successful". If the Commission defines success as having utilities that offer a lot of programs, then success is achievable by simply throwing customer money at the utilities. However, if the Commission wants to achieve a comprehensive and meaningful level of cost-effective energy-efficiency and demand-side-management then several conditions are necessary.

First, the Commission must articulate a clear goal or objective for energy-efficiency and demand-side-management programs. The Commission has spoken generally about least cost service and avoiding the cost of building future plant, however, since the Commission began seeking comments on energy-efficiency in late 2005[33] KCPL has built an 850 MW coal plant, Westar has built a 600 MW gas plant, the Commission has preapproved a $1.2 billion retrofit of the La Cygne coal plant, Westar has retrofitted the Jeffery Energy Center and is in the process of retrofitting Lawrence Energy Center, somewhere in the neighborhood of 1000 MW of wind has been built and hundreds of millions of dollars of transmission is being built. While the Commission has discussed and debated energy-efficiency, Kansas utilities have built enough plant that there is now excess capacity, making energy-efficiency unnecessary.

It is my opinion that much of the uncertainty surrounding energy-efficiency in Kansas is simply that no one knows exactly what the Commission seeks to accomplish

[33] KCC Docket No. 04-GIMX-531-GIV. This docket started as a low-income rate docket, but after finding low-income rates unduly discriminatory, the Commission accepted comments on energy efficiency programs. The Commission subsequently closed this docket and opened KCC Docket No. 07-GIMX-247-GIV and sought further comments on energy-efficiency. KCC Docket No. 07-GIMX-247-GIV was later closed when the 441 and 442 dockets were opened.

through these dockets. There is no specific target for the utilities to aim for, and with no clear goal for energy-efficiency, it will be impossible to judge success as there will be no target to measure against.

Second, energy efficiency and demand-side-management must be cost effective. We have historically been blessed in Kansas with very low rates, mainly due to our use of low-cost coal to generate electricity. Finding cost effective energy efficiency against such low costs has been a challenge. Some demand-side measures aimed at reducing demand on peak have been cost-effective during periods when the price of natural gas has been high in the last decade. Now even this is changing. The price of natural gas is very low currently, and it does not look like prices will increase any time soon. Low-cost natural gas makes it very difficult to find energy-efficiency or demand-side-management programs that pencil out as cost effective.

The Commission must note however that we are no longer blessed with low electric rates in Kansas. Both Westar and KCP&L have increased retail rates about 40% in the last five years and rates will increase further in the next few years. A portion of these increases are related to environmental upgrades at existing coal plants. It is anticipated that emissions limitations will become more restrictive over time. Increased use of energy-efficiency and demand-side-management may prove necessary if increasingly stringent emission limitations lead to closure of older coal facilities. While natural gas is cheap right now, the Commission must also focus on the long-term in evaluating whether energy-efficiency and demand-side-management will be a necessary resource as older plants are removed from service.

Third, utilities must be held accountable. Up to this point, the Commission has made utility support of energy-efficiency voluntary. Utilities won't likely volunteer to offer additional energy-efficiency programs unless they are well compensated for the effort. They won't trade the revenue from sales of their product for a program that encourages fewer sales and less revenue. While that is a simple and understandable problem, it begs the question: if the utility foregoes offering a low-cost but less profitable demand-side measure so that the utility can sell a higher cost but more profitable solution, how can that meet the legal standard of sufficient and efficient service at just and reasonable rates? Wouldn't that be considered inefficient service at higher than reasonable rates? Or stated more directly, if energy-efficiency is the least cost means of meeting future demand, why should customers have to pay extra to make the utility provide it?

Ultimately, if the Commission wants additional energy-efficiency offerings, it can simply order the utilities to provide the service. The Commission is obligated to make sure that any direct cost associated with the programs is reimbursed. However, the Commission is not obligated to guarantee any level of profit in addition to allowing the recovery of direct costs. As the Commission stated in the 441 docket "if energy-efficiency inherently does not result in the same amount of ratebasing, or capitalized costs, that is simply reflective of the nature of the resource."[34] The Commission should set targets for cost effective energy or demand savings and reward utilities that meet the targets. The Commission must also penalize utilities that do not meet the targets.

Fourth, the Commission should reverse its decision on lost revenues. The general public does not favor paying utilities for margins lost from energy efficiency. Plus, it will be extremely difficult to find programs that are cost effective if the customer pays the cost of the program, plus pays the lost revenues associated with the program.

Fifth, the Commission should set forth more specific rulings on a reasonable shared savings program where utilities keep a small percentage of legitimate and verifiable savings (5%-15%) created through energy-efficiency. This is consistent with the Commission policy set forth in the 441 order, although the Commission may wish to expand the types of programs that qualify for shared savings incentives beyond those articulated in the 441 order. The Commission must also require the savings be verifiable,

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[34] *Id.*

and the sharing be consistent with the time period over which the savings occur. Two of the major points of contention in the KCP&L energy efficiency docket[35] were the level of shared savings and the time period over which the sharing was paid to KCP&L. KCP&L wanted to be paid 50% of the net present value of all future potential savings and KCP&L wanted to be paid its share of the savings over the next 5-7 years even though customers would have to wait many years into the future to see if the savings were actually achieved. CURB did not believe the program achieved balance or fairness to the customers that would have to pay today for speculative future savings.

Sixth, if the Commission allows decoupling as a means to remove the throughput incentive, the Commission must also reduce allowed returns on equity (ROE) in rates cases to balance customer interests. Decoupling guarantees a utility a set level of revenue (revenue requirement) each year regardless of how much energy the utility actually sells. The utility revenue requirement now has the functional characteristics of a bond since all revenue risk has been removed from the utility. In the 441 order, the Commission clearly stated that "decoupling lowers risk for a utility, because utility revenues are stabilized and protected from sales fluctuations," and as a result, "the utility's likelihood of receiving its rate-case established revenue requirement is significantly increased. The Commission will accordingly factor this lowered risk in setting rates of return in rate cases. This will result in a direct benefit to ratepayers"[36]

Q. Does this conclude your testimony?

A. Yes.

[35] KCC Docket No. 10-KCPE-795-TAR
[36] 441 Order at para. 64

VERIFICATION

STATE OF KANSAS)

COUNTY OF SHAWNEE) ss:

I, David Springe, of lawful age, being first duly sworn upon his oath states:

That he is testifying on behalf of the Citizens' Utility Ratepayer Board, that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.

David Springe

SUBSCRIBED AND SWORN to before me this 11th day of June, 2012.

DELLA J. SMITH
Notary Public - State of Kansas
My Appt. Expires January 26, 2013

Notary Public

My Commission expires: 01-26-2013.

CERTIFICATE OF SERVICE

12-GIMX-337-GIV

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 11th day of June, 2012, to the following parties who have waived receipt of follow-up hard copies:

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