

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

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

INITIAL POST-HEARING BRIEF
OF KANSAS CITY POWER & LIGHT COMPANY

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COMES NOW Kansas City Power & Light Company (“KCP&L” or “Company”) and hereby submits its *Post-Hearing Brief* (“Brief”) in compliance with the *Order Amending Procedural Schedule* of the State Corporation Commission of the State of Kansas (“Commission” or “KCC”) dated December 15, 2016. For its Brief, KCP&L states as follows:

I. EXECUTIVE SUMMARY

1. KCP&L has struggled for years to gain approval of Demand Side Management (“DSM”) programs and a reasonable cost recovery mechanism that would allow KCP&L to move forward with implementing robust DSM in Kansas. After a number of failed attempts under the regulatory parameters established by the Commission in previous generic dockets, the Kansas Legislature stepped in and enacted the Kansas Energy Efficiency Investment Act (“KEEIA”). Under the KEEIA, DSM investments are to be valued equal to traditional investments in supply and delivery infrastructure as much as is practicable, and timely recovery of all reasonable and prudent costs associated with implementing DSM is to be allowed.

2. KCP&L filed this Application under the KEEIA, presenting its three-year KEEIA Cycle 1 portfolio of programs. The portfolio builds on its existing DSM portfolio in Kansas, using knowledge and experience gained in both its Kansas and Missouri service territories over the past 10 years. It is a robust portfolio that provides for significant peak demand impacts and energy reduction, as well as focusing on improving customer participation and enhancing customer experience. The portfolio includes at least one program that would be available to every KCP&L customer choosing to participate.

3. For purposes of evaluating the proposed programs and the performance of the portfolio, KCP&L has developed a Technical Resource Manual (“TRM”) that reflects data gathered from sources more applicable to Kansas and the Midwest than the California DEER

Manual previously endorsed by the Commission in 2009. At that time, there were no other viable TRM alternatives; however, DSM has evolved significantly since that time. KCP&L proposes a relevant and region specific TRM for Commission approval for use in analyzing the benefits and costs of its programs. KCP&L also proposes that its TRM will be updated with results from its evaluation, measurement & verification (“EM&V”) during its KEEIA Cycle 1.

4. When reasonable and realistic estimates and inputs are employed in evaluating the benefits and costs of the DSM programs proposed by KCP&L in its Application, those programs pass the Total Resource Cost (“TRC”) test, which is the primary and most relevant benefit/cost test to be considered in evaluating DSM programs. The TRC is the test that considers the net benefits of the DSM portfolio on a system-wide basis, which is consistent with the manner in which the benefits of the portfolio will flow to customers.

5. The Application includes a proposed cost recovery mechanism to replace KCP&L’s present Energy Efficiency Rider (“EE Rider”). The EE Rider does not provide timely recovery of program costs, does not provide any recovery of lost revenues caused by the successful deployment of DSM, and does not allow for any recovery of the earnings opportunity foregone by the Company as a result of employing DSM as part of its resource supply plan in lieu of new generation construction. KCP&L’s Demand-Side Investment Mechanism (“DSIM”) is a contemporaneous cost recovery mechanism that includes recovery of program costs, a throughput disincentive (“TD”), and an earnings opportunity (“EO”). The DSIM is consistent with the KEEIA and will allow KCP&L to move forward in Kansas with implementing DSM programs that will benefit the State and allow KCP&L’s customers the opportunity they are requesting to better manage their utility costs.

6. KCP&L has worked to comply with KEEIA and with prior Commission orders, as applicable, and to present to the Commission a complete package for approval including a demonstrated, robust set of DSM programs, a defined evaluation methodology including oversight, and a reasonable and workable cost recovery mechanism and process. KCP&L respectfully requests Commission approval of its Application.

II. PROCEDURAL HISTORY

7. On April 6, 2016, KCP&L filed its *Application for Approval of Demand-Side Management Program Portfolio and Recovery Mechanism* (“Application”) and the KEEIA Cycle 1 2017-2019 Report (“KEEIA Report”) which describes the programs in the proposed Demand-Side Management (“DSM”) portfolio, the benefit/cost tests supporting approval of the programs as cost-effective, the recommended evaluation, measurement and verification (“EM&V”) processes, and the proposed Demand-Side Investment Mechanism (“DSIM”) Rider addressing cost recovery and incentives. Section 7 of the KEEIA Report identifies the witness sponsoring each section.¹

8. On August 8, 2016, Staff of the Commission (“Staff”), the Citizens’ Utility Ratepayer Board (“CURB”), Westar Energy, Inc. and Kansas Gas and Electric Company (collectively “Westar”), Kansas Gas Service, a division of ONEgas, Inc. (“KGS”), Atmos Energy (“Atmos”), Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy (“Black Hills”), Brightergy, LLC (“Brightergy”), the Climate and Energy Project (“CEP”), and National Housing Trust (“NHT”) filed their direct testimony. National Resources Defense Council (“NRDC”) is a party to this proceeding but did not file direct testimony.

9. On August 15, 2016, Staff and CURB filed their cross-answering testimony.

¹ A verification for each witness is included with the KEEIA Report.

10. On August 22, 2016, KCP&L filed its rebuttal testimony.
11. On August 31, 2016, KCP&L, CEP, NRDC, NHT and Brightergy filed a *Non-Unanimous Stipulation and Agreement* (“S&A”)² with supporting testimony from Mr. Darrin Ives of KCP&L, Ms. Dorothy Barnett of CEP and Ms. Annika Brink of NHT.³
12. On September 12, 2016, KCP&L filed Corrections to the KEEIA Report and to related rebuttal testimony.
13. At the request of the hearing officer made during the prehearing conference on September 2, 2016, KCP&L filed supplemental direct testimony on December 15, 2016, wherein each witness provided an overview of the sections of the KEEIA Report they were sponsoring.
14. On January 20, 2017, Staff and CURB filed their supplemental, amended, corrected, and surrebuttal testimony.
15. On March 13, 2017, Staff filed its *Stated Position on Non-Unanimous Stipulation and Agreement and Reaffirmation of Objection Out of Time* (“Staff Objection to S&A”).
16. Between March 22, 2017 and March 24, 2017, the Commission held an evidentiary hearing where it received testimony from witnesses and experts for the parties to this docket.
17. At the conclusion of the evidentiary hearing, the Commissioners stated that any additional questions they wanted the parties to address would be submitted in writing no later than the following Friday, March 31, 2017. Those questions were received on the date indicated and KCP&L will provide its response to those questions in a separate document to be filed the week of April 17, 2017.

² On March 20, 2017, Brightergy withdrew as a party to this proceeding and therefore is no longer a signatory to the Stipulation.

³ Ms. Brink’s testimony in support of the Stipulation was late-filed on February 23, 2017.

III. BACKGROUND

18. KCP&L began implementation of DSM programs in Kansas as part of its Comprehensive Energy Plan approved by the Commission in an Order issued August 5, 2005 in Docket No. 04-KCPE-1025-GIE (“04-1025 Docket” and “04-1025 Order”).⁴ Recovery of the costs of the DSM programs was established in Docket No. 07-KCPE-905-RTS (“07-905 Docket”) with adoption of an interim EE Rider as part of the Commission’s November 20, 2007 Order in that docket (“07-905 Docket” and “07-905 Order”).⁵ Since 2005, KCP&L has initiated 12 DSM pilot programs but currently has only six programs in effect. This is due in large part to an unsatisfactory cost recovery mechanism.⁶

19. During the same time period, the Commission conducted two general investigations into DSM: Docket No. 08-GIMX-441-GIV, addressing cost recovery and incentive issues, resulting in an Order issued November 14, 2008 (“08-441 Docket” and “08-441 Order”); and Docket No. 08-GIMX-442-GIV, addressing benefit/cost analysis tests and EM&V processes, resulting in an Order issued April 13, 2009 (“08-442 Docket” and “08-442 Order”). These Orders caused confusion and disagreement among parties over what would be considered acceptable DSM programs and cost recovery mechanisms, so interested stakeholders sought clarification from the Commission in Docket No. 12-GIMX-337-GIV (“12-337 Docket”).⁷ An Order was issued in the 12-337 Docket on March 6, 2013 (“12-337 Order”),⁸ but it was not helpful in clarifying the issues or relieving utility concerns. As a result, DSM has remained stalled in Kansas.⁹

⁴ KEEIA Report, p. 1-1.

⁵ KEEIA Report, p. 4-13. The parties in the 07-905 Docket agreed to an interim mechanism because the Commission was reviewing the issue generically at the time. That interim mechanism is still in place.

⁶ KEEIA Report, pp. 3-1 to 3-2; Ives Rebuttal, p. 4.

⁷ Ives Rebuttal, pp. 9-10.

⁸ Ives Rebuttal, pp. 9-10.

⁹ Ives Rebuttal, pp. 11-12.

20. At present, Kansas is ranked near the bottom in the nation in DSM.¹⁰ The rules and guidelines in place under the 08-441 Order and the 08-442 Order have not served Kansas well in moving DSM forward in Kansas. While the Orders claim to present a policy in support of DSM, they impose regulatory mechanisms and uncertainty that ensure meaningful DSM does not happen.

21. In contrast to the DSM experience in Kansas, KCP&L and other utilities have experienced successful deployment of programs in Missouri under the Missouri Energy Efficiency Investment Act (“MEEIA”) passed in 2009. In 2014, KCP&L sponsored similar legislation in Kansas - the KEEIA - which was approved by the Kansas legislature in that same year, becoming what is now K.S.A. 66-1283.¹¹ KCP&L’s Application in this case is the first such proposal made by a utility company in Kansas under the new KEEIA law.¹²

22. Under KEEIA, DSM investments are to be valued equal to traditional investments in supply and delivery infrastructure as much as is practicable, and recovery of all reasonable and prudent costs associated with implementing DSM programs is to be approved so long as the program (1) results in energy or demand savings, and (2) is beneficial to customers in the customer class for which the programs were implemented, whether or not the program is utilized by all customers in the class.¹³ In addition, KEEIA allows the utility company to establish a cost recovery mechanism to further encourage investments in DSM programs and which may include, among other things, capitalization of investments in and expenditures for demand-side programs, recovery of lost revenue associated with demand-side programs; and allowing the public utility to retain a

¹⁰ Ives Rebuttal, p. 4.

¹¹ Ives Rebuttal, p. 4.

¹² Westar filed an application on October 28, 2014 requesting approval for three energy efficiency educational and low income programs and permission to move one of its existing programs into maintenance and service mode. The application was based on the parameters contained in previous Commission Orders, not on KEEIA, and the request for approval of the three new programs was eventually withdrawn by agreement with the Staff. (*See* Docket No. 15-WSEE-181-TAR).

¹³ K.S.A. 66-1283(b) and (c)(2).

portion of the net benefits of a demand-side program for its shareholders.¹⁴ KEEIA also provides for timely cost recovery, financial incentives aligned with helping a utility's customers use energy more efficiently and in a manner that sustains or enhances such customers' incentives to use energy more efficiently, and timely earnings opportunities associated with cost-effective, measurable and verifiable demand-side program savings.¹⁵

23. KCP&L's Application presents a DSM program portfolio and related cost recovery mechanism consistent with the State's goal and policy as stated in KEEIA.¹⁶

IV. LEGAL ANALYSIS

24. Before addressing the specifics of KCP&L's proposal, certain legal issues have been raised that need to be addressed. Staff, CURB and/or the intervening natural gas companies (namely, KGS, Atmos, and Black Hills; collectively, the "gas companies") erroneously imply that KEEIA was not intended to modify previous Commission DSM Orders¹⁷ and that KCP&L's programs involve fuel switching in violation of KEEIA and prior Commission Orders.¹⁸ These arguments are not consistent with Kansas law and, if adopted, would serve only to keep DSM stalled in Kansas.

A. The KEEIA Supersedes Previous Commission Policy Directives

25. KCP&L seeks approval of a suite of DSM programs and a proposed cost recovery mechanism. Such programs are critical to reducing energy usage, which consequently delays the

¹⁴ K.S.A. 66-1283(d)(1).

¹⁵ K.S.A. 66-1283(e).

¹⁶ Ives Rebuttal, pp. 36-37.

¹⁷ Glass Direct, p. 3; Glass Cross-Answering, p. 2; Harden Direct, pp. 7-13.

¹⁸ Raab Direct, pp. 4-5.

need for construction of new generation plants and associated facilities, and reduces the environmental impact of carbon emissions.

26. For over a decade, KCP&L has rigorously pursued implementation of DSM initiatives in Kansas to little avail due primarily to the lack of clarity in regulations governing cost recovery. Lost revenue, program costs, and the need for an earnings opportunity are unavoidable outcomes of a utility implementing DSM programs. The prior orders in the 08-441, 08-442, and 09-160 Dockets did little to relieve the inescapable tension between KCP&L's desire to advance DSM programs and its fiduciary duty to protect its financial stability. The 2014 enactment of the KEEIA, which governs the regulation of DSM programs and associated cost recovery mechanisms, relieves some of this tension by explicitly promoting the implementation of DSM programs in order to move past the current standstill and to elevate Kansas from its current bottom-level ranking in the nation. Staff disagrees with KCP&L's characterization of the purpose of the KEEIA and instead speciously asserts that the Kansas legislature intended nothing more than to maintain the status quo and that nothing in the KEEIA requires the KCC to modify its prior orders related to energy efficiency.¹⁹ This reasoning defies the well-established rules of statutory construction. Thus, a foundational issue of this proceeding is whether the recently enacted statute supersedes previous KCC policy directives. The answer is unequivocally yes.

27. Kansas, like most jurisdictions, follows the common law until “modified by constitutional amendment, statutory law, or judicial decision.”²⁰ Once the legislature takes action, “[a]s a general rule, statutory law supersedes common law.”²¹ Indeed, “the plain language selected by the legislature, when it does not conflict with constitutional mandates, trumps both judicial

¹⁹ Glass Direct, p. 3.

²⁰ *City of Haven v. Gregg*, 766 P.2d 143, 147 (Kan. 1988).

²¹ *Stanley v. Sullivan*, 300 Kan. 1015, 1018, 336 P.3d 870, 873 (2014).

decisions and the policies advocated by parties.”²² Common law only exists in the absence of statutory law.²³ Simply put, common law is superseded once the legislature has spoken by statute.²⁴

28. Notably, “a statutory remedy will supersede a common-law remedy so long as the statute provides an adequate substitute remedy. For this reason, we must examine the parties’ claims and counterclaims in light of the statutory requirements, notwithstanding the parties’ arguments that are grounded in the common law.”²⁵

29. Additionally, the rules of statutory construction state the assumption that the legislature intended for an enactment to change the status quo. “When the legislature enacts legislation, we presume that it intends to change preexisting law. This is true even where the common law has a preexisting rule, because the appellate court defers to statutory language when it conflicts with the common law.”²⁶ Thus, the assertion that the enactment of KEEIA did nothing more than codify the Commission’s prior orders is not supported by the law. Further, merely maintaining the status quo renders the KEEIA meaningless, contrary to the rules of statutory construction. Indeed, the court clearly states: “we presume that the legislature does not intend to enact useless or meaningless legislation.”²⁷

30. Thus, Kansas law regarding the principles of statutory construction are in direct contradiction to Staff’s argument that the KEEIA simply codifies existing common law. Stated another way, Staff, the gas companies, and CURB would have the Commission view the KEEIA

²² *Id.*

²³ *See Metropolitan Life Ins. Co. v. Strnad*, 255 Kan. 657, 663, 876 P.2d 1362 (1994) (describing common law as “the law of necessity”).

²⁴ *See In re Marriage of Traster*, 301 Kan. 88, 107–08, 339 P.3d 778, 791 (2014).

²⁵ *Schoenholz v. Hinzman*, 295 Kan. 786, 789–90, 289 P.3d 1155, 1158 (2012).

²⁶ *Lewis v. Kansas Prod. Co.*, 199 P.3d 180, 184 (Kan. Ct. App. 2009) (*citing* *State v. McElroy*, 130 P.3d 100 (Kan. 2006)).

²⁷ *Id.*

through the lens of its previously issued orders when, according to the rules of statutory construction, the Commission should view its prior orders through the lens of the KEEIA.

B. The KEEIA Only Prohibits Fuel Switching for Residential Customers

31. The supremacy of the KEEIA particularly affects the issue of fuel switching. Pursuant to the explicit language of K.S.A. § 66-1283, the KEEIA only prohibits fuel switching for residential heating systems. Specifically, K.S.A. § 66-1283(a)(3) states that a demand-side program may include, but is not limited to, “[e]nergy efficiency measures, not to include any measures to incent fuel switching for residential heating systems.” No such prohibition for customer classes other than residential exists in the statute. In order to determine the legislature’s intent for business classes, “[t]he maxim ‘*expressio unius est exclusio alterius*,’ *i.e.*, the inclusion of one thing implies the exclusion of another, may be applied to assist in determining actual legislative intent which is not otherwise manifest, although the maxim should not be employed to override or defeat a clearly contrary legislative intention; ***under this rule, when legislative intent is in question, a court can presume that when the legislature expressly includes specific terms, it intends to exclude any items not expressly included in the specific list.***”²⁸ Here, the issue is the legislature’s intent with regard to application of the fuel switching prohibitions to business customer classes under KEEIA. Applying *expressio unius*, the fact that the statute expressly mentions “residential” customers reasonably means it was the legislature’s intent that business customers, a class of customers that is not mentioned, not be subject to the fuel switching restrictions of the KEEIA. In other words, if the KEEIA had intended to prohibit fuel switching for any customer class other than residential, it would have explicitly included business customers in K.S.A. § 66-1283(a)(3).

²⁸ *In re Lietz Const. Co.*, 273 Kan. 890, 911, 47 P.3d 1275, 1290 (Kan. 2002) (emphasis added).

C. The KEEIA Requires Energy Reductions at the Customer Class Level

32. The gas companies argue that KCP&L's incentive payment proposals for some of its business programs will result in the increased usage of electricity by customers who displace natural gas equipment with high efficiency electric equipment.²⁹ To be clear, KCP&L has not proposed any residential programs which incent customers to replace natural gas furnaces with electric heat pumps, consistent with the KEEIA's prohibition against fuel switching for residential heating systems.³⁰ Therefore, there is no scenario under which a residential customer's electric usage would increase under KCP&L's proposed KEEIA Cycle 1 programs because KCP&L is not offering fuel switching incentives to residential customers. With regard to the business DSM programs proposed by the Company in this docket, the Business Energy Efficiency Rebate - Standard ("BEER-Standard"), the Business Energy Efficiency Rebate - Custom ("BEER-Custom"), and the Block Bidding programs are the only programs which have the *potential* for rebates or other incentives to eligible customers to either upgrade or switch to high efficiency electric fuel source technologies.³¹ Under the scenario whereby a commercial or industrial customer receives a rebate for installing a high efficiency electric heating system and that system replaces natural gas or propane heating equipment, then it is possible that a specific customer could experience an increase in electric usage (and a corresponding decrease in natural gas consumption). At hearing, the gas companies attempted to argue *any* increase in electric usage by a single customer violates K.S.A. § 66-1283(a)(3) and K.S.A. § 66-1283(a)(4) of the KEEIA.³² The gas companies' reading of the KEEIA is overly narrow and misconstrues the intent of the Act. Furthermore, their interpretation produces an absurd result.

²⁹ Raab Direct, p. 17.

³⁰ See K.S.A. §66-1283(a)(3).

³¹ KEEIA Report, pp. 3-8 to 3-10.

³² See, e.g., Tr. Vol. 1, pp. 142-147.

33. K.S.A. § 66-1283(a)(3) provides, in pertinent part: “demand-side program’ means any program conducted by: (A) an electric utility to reduce the net consumption of electricity by a retail electric customer... .” The gas companies narrowly read this section to mean any increase in usage by an individual customer participating in one of KCP&L’s proposed DSM programs violates the KEEIA. This section, however, more broadly addresses demand-side programs, not individual customers; therefore, reductions in net consumption on a program basis is how the statute should be read. K.S.A. § 66-1283(a)(4) states: “energy efficiency’ means measures that reduce the amount of energy required to achieve a given end use... .” This section, too, more broadly applies to measures that reduce energy (does not specify electricity or natural gas); therefore, programs that incent the use of higher efficiency appliances is consistent with the KEEIA.

34. Further, under K.S.A. § 66-1283(c)(2)(A) and (B), the statute says program costs may be recovered so long as the program: (A) “results in energy or demand savings;” and (B) “is beneficial to customers in the customer class for which the programs were implemented, whether or not the program is utilized by all customers in such class... .” These sections also broadly state that if a program results in energy or demand savings (emphasis on program), then the program costs are eligible for discovery, and, furthermore, that not every member of the class needs to participate. In other words, in order for the entire Act to be internally consistent, it should be read holistically. Sections (c)(2)(A) and (B) underscore the fact that the Act, read as a whole, is looking at energy and demand savings and benefits at a program level, not an individual customer level.

35. The courts agree with a holistic reading of the statutes, stating: “in interpreting a statute, a court must look to the language and design of the statute as a whole.”³³ Further, “[w]e

³³ *Miller v. Bd. of Cty. Commissioners, Wabaunsee Cty.*, 390 P.3d 504, 510 (Kan. 2017) (quotation omitted).

must construe statutes to avoid unreasonable or absurd results and presume the legislature does not intend to enact meaningless legislation.”³⁴ The intent of the KEEIA is to encourage widespread implementation of demand-side measures. Therefore, looking at discrete portions of the KEEIA in isolation without considering the whole, in order to manufacture disapproval, would produce absurd results.

V. KCP&L’s KEEIA APPLICATION

36. The KEEIA Report filed with the Application explains the elements of KCP&L’s proposed programs, its TRM, and its DSIM Rider. The requested programs, TRM and the DSIM Rider consist of the following principal elements:

- A three-year plan for specified demand-side management programs;
- Recovery of program costs and offset of the TD at the same time energy efficiency investments are made; and
- An opportunity to earn an incentive amount based upon demand and energy savings achieved.³⁵ The EO award will not be determined until after the three-year cycle and after the EM&V verifies the savings realized. This EO award will then be recovered through the DSIM Rider over the following two years.

A. Program Portfolio

37. KCP&L is proposing a portfolio of DSM programs that would be in effect October 1, 2017 through September 30, 2020,³⁶ referred to as KEEIA Cycle 1. This portfolio will build on

³⁴ *Chambers v. Kansas Dep’t of Revenue*, No. 115,141, 2017 WL 1035442, at *5 (Kan. Ct. App. Mar. 17, 2017) (citing *State v. Frierson*, 298 Kan. 1005, 1013, 319 P.3d 515 (Kan. 2014)).

³⁵ Application, p. 5.

³⁶ Winslow Supplemental Direct, p. 9. The original request in the Application was for a three-year cycle from January 1, 2017 through December 31, 2019. Due to the delay in the procedural schedule, that request was modified to October 1, 2017 through September 30, 2020.

KCP&L's existing DSM portfolio in Kansas, using knowledge and experience gained in both its Kansas and Missouri service territories over the past 10 years. KEEIA Cycle 1 broadens the Company's current DSM offerings in Kansas with a robust portfolio that provides for significant peak demand impacts and energy reduction, as well as focusing on improving customer participation and enhancing customer experience.³⁷

38. The KEEIA Cycle 1 DSM portfolio is comprised of seven residential programs and seven business programs that provide an effective and balanced suite of energy and demand savings opportunities across all customer segments. Each non-educational program was designed to leverage the most advantageous mix of best-practice measures and technologies, delivery strategies, and target markets in order to most effectively deliver programs and measures to the Company's customers. In addition, within the residential and business programs, the Company proposes two online educational programs and a research and pilot program.³⁸

39. Four of the proposed residential programs are new for Kansas, while three are a continuation of existing programs. In addition, the Company is requesting approval to terminate two residential programs that have been frozen to new Kansas participants since mid-2011. The programs that the Company is proposing to continue will have modifications in the delivery of the program and/or incentive range; however, the main elements of the programs will remain the same.³⁹ The proposed residential DSM programs include:⁴⁰

- Home Lighting Rebate - This program provides instant incentives at qualifying retailers for light-emitting diode bulbs ("LEDs").

³⁷ KEEIA Report, pp. 1-1 to 1-2.

³⁸ KEEIA Report, pp. 1-8, 3-5, 4-12 and 4-13.

³⁹ KEEIA Report, p. 3-7.

⁴⁰ KEEIA Report, p. 3-6.

- Home Energy Report - The Home Energy Report (“HER”) is a behavior modification program utilizing customized energy reports sent periodically to households. This report is proposed to be sent to 65,000 households.
- Online Home Energy Audit - This educational program is an online energy audit tool.
- Whole House Efficiency - This program is comprised of three options:
 - Option 1. Home Energy Audit and Direct Install of Kit Measures
 - Option 2. Air Sealing, Insulation, and Windows
 - Option 3. HVAC Equipment
- Income-Eligible Multi-Family - This program is comprised of two tiers:
 - Tier 1. Home Kit
 - Tier 2. Common Area Lighting
- Income-Eligible Weatherization - This program is comprised of two tiers:
 - Tier 1. Home Kit
 - Tier 2. Weatherization
- Residential Programmable Thermostat - This is a direct load control program that cycles and curtails central air conditioners by way of a remote-controlled switch. This program achieves energy savings through learning thermostats as well.

40. Five of the proposed business programs are new for Kansas, while two are a continuation of existing programs. The business programs that the Company is proposing to continue will have modifications in the delivery of the program and/or incentive range; however, the main elements of the programs will remain the same. In addition, the Company is requesting approval to terminate two business programs, one of which will be absorbed into another program

and one of which will be redesigned and offered under a different name.⁴¹ The proposed business DSM programs include:⁴²

- Business Energy Efficiency Rebate - Standard - With this program, customers may receive incentives by installing efficiency measures from a pre-qualified list of options.
- Business Energy Efficiency Rebate - Custom - With this program, customers may receive incentives for implementing non-prescriptive measures.
- Strategic Energy Management - The Strategic Energy Management program provides energy education, technical assistance, and coaching for large commercial and industrial customers in order to drive behavioral change and transformation of the company culture.
- Block Bidding - With the Block Bidding program, the Company purchases blocks of electricity savings by issuing a request for proposal (“RFP”) to eligible customers and third-party suppliers, representing reduced electric usage from non-conventional projects that may not be eligible or appropriately incentivized to participate in other programs.
- Online Business Energy Audit - This educational program is an online energy audit tool.
- Small Business Direct Install - Small business customers that typically do not have the staffing or financial resources to engage in energy efficiency activities receive targeted marketing and incentives for qualifying DSM measures.

⁴¹ KEEIA Report, pp. 3-8 to 3-9.

⁴² KEEIA Report, p. 3-6.

- Demand Response Incentive - This is an interruptible tariff program for customers that can reduce load by at least 25 kW during times of system peak congestion.

B. Technical Resource Manual

41. In general, the energy savings from many energy efficiency measures can be estimated using engineering calculations. A TRM is a central resource which contains calculated or projected energy savings for energy efficiency measures that are part of energy efficiency programs.⁴³ Using standardized methods, formulas, and assumptions, a TRM provides a transparent approach for measuring energy savings across energy efficiency programs.⁴⁴ A TRM is used to calculate benefit-cost effectiveness ratios. Further, it assists in EM&V analysis. For customers and trade allies, a TRM provides information for assessing energy savings opportunities. Finally, a TRM allows public utility commissions to evaluate proposed energy efficiency programs relative to goals, evaluation, and compliance.⁴⁵

42. A TRM is developed in a series of steps. The first step in building a TRM is measure selection and prioritization. Energy efficiency measures should be selected on the basis of projected or expected savings. The second step is research, analysis, and review of available information to collect the data for each measure included in the TRM. To the extent possible, it is important to accurately reflect specific assumptions in a particular region, including such factors as climate data, baselines, and local codes and regulations.⁴⁶ The third step is to identify when engineering-deemed savings are appropriate and when other methods of savings calculations are

⁴³ John Turner Direct, p. 4.

⁴⁴ John Turner Direct, p. 5, *citing* New York Standard Approach for Estimating Energy Savings from Energy Efficiency Programs (Albany, New York: New York State Department of Public Service, 2016). Web. <http://www.dps.ny.gov>. July 6, 2016.

⁴⁵ John Turner Direct, p. 5, *citing* Mid-Atlantic Technical Reference Manual Version 4.0 (Lexington, MA: Northeast Energy Efficiency Partnership, 2014), p. 9. Web. <http://www.neep.org>. July 6, 2016.

⁴⁶ John Turner Direct, p. 5, *citing* Mid-Atlantic Technical Reference Manual Version 4.0, at 11.

more suitable. The assumptions included in the final TRM should be credible, accurate, complete, and transparent. Fourth and finally, it is important to keep in mind that a TRM is a living document and is designed to be dynamic and updated periodically. As a result, processes should be in place that allow for new information to be incorporated when it becomes available.⁴⁷

43. The most widely used variables to calculate energy savings and costs include: effective useful life (“EUL”); annual operating hours; measure energy efficiency value; baseline assumptions, including energy efficiency value; net-to-gross (“NTG”) ratio; coincidence factor (where applicable); waste heat factor (where applicable); and incremental costs. These variables are used to calculate estimated annual energy savings in kilowatt-hours (“kWh”), coincident peak demand savings in kilowatts (“kW”), and to measure costs.⁴⁸

C. KCP&L’s TRM Incorporates Data More Appropriate To Kansas

44. The Company’s proposed TRM is a consolidated and interactive table containing all the key variables and assumptions necessary to characterize the measures for implementation, tracking, and evaluation purposes. The TRM is found at Appendix D of the KEEIA Report. Each measure characterization is populated with numerous parameters, based on the Company’s default planning values.⁴⁹

45. As a practical matter, the TRM is based on a Microsoft Excel file with interactive formulas to calculate savings. The formulas can be inspected and interrogated to observe how the default planning values are constructed and calculated. The TRM provides a transparent and intuitive central resource for implementers, trade allies, customers, regulators, planners, and

⁴⁷ John Turner Direct, pp. 5-6, *citing* Mid-Atlantic Technical Reference Manual Version 4.0, at 12-13.

⁴⁸ John Turner Direct, p. 6, *citing* Illinois Technical Reference Manual Version 4.0 (Springfield, Illinois: Illinois Energy Efficiency Stakeholder Advisory Group), p. 21. Web. <http://www.ilsag.info/technical-reference-manual.html>. Web. July 7, 2016.

⁴⁹ KEEIA Report, p. 1-8 and Appendix D.

evaluators to access the relevant measure characteristics and calculations. This allows easier access to the measure values so that projects can be planned, savings and incentives can be estimated, and processing and evaluation can be expedited.⁵⁰

46. Sources for the TRM include the Company's 2013 Demand-Side Resource Potential Study conducted by Navigant Consulting Inc. ("Navigant Potential Study"), recent EM&V reports from MEEIA Cycle 1 for KCP&L's Greater Missouri Operations ("GMO"), and relevant secondary sources.⁵¹ The Company used several Kansas-specific and region-specific analyses and sources to develop its TRM and measure assumptions.⁵²

D. Cost Recovery – KCP&L's Demand-Side Investment Mechanism Rider Is Reasonable and Meets the Goals of KEEIA.

47. Appropriate cost recovery has been a primary obstacle in Kansas,⁵³ something the KEEIA was intended to correct.⁵⁴ There are three categories of necessary recovery related to DSM: (1) program costs, (2) lost revenues (called throughput disincentive or TD), and (3) earnings opportunities on an equivalent basis with supply-side investments. A utility must be allowed adequate recovery and compensation in all three categories if it is going to offer a robust portfolio of DSM programs to its customers.⁵⁵ Utility companies have consistently pursued a mechanism

⁵⁰ KEEIA Report, pp. 1-8 to 1-9.

⁵¹ KEEIA Report, p. 1-9.

⁵² Nelson Rebuttal, p. 32; John Turner Direct, p. 11.

⁵³ Ives Rebuttal, p. 4.

⁵⁴ Ives Rebuttal, pp. 9-13.

⁵⁵ Glass Direct, pp. 6-7, "However, returning to KCP&L, any lost demand revenue recovered through a lost revenue recovery mechanism does not encourage KCP&L to promote demand-side programs. It merely eliminates the negative incentive that prevents the utility from promoting successful demand-side programs such that the utility is now indifferent as to whether to offer the programs. To create a positive incentive for a utility to promote demand-side programs, the utility must first be neutralized from the negative effect of lost revenue and must also be given an opportunity to earn additional revenue from a sponsorship of demand-side programs beyond its allowed revenue requirement." Although KCP&L does not agree with Dr. Glass' use of the term "beyond its allowed revenue requirement", he correctly explains how both a TD and an EO is necessary to bring DSM on a par with traditional supply-side resources. *See also* Ives Rebuttal, p. 36.

that adequately addresses all three of these areas since DSM became an issue over ten years ago. KEEIA recognizes the need for appropriate recovery mechanisms, including TD and EO.⁵⁶

48. Under KCP&L's present interim EE Rider, recovery in all three of the listed cost categories is inadequate. The EE Rider recovery method takes a retrospective approach to recovery by filing for recovery of program costs after the end of each fiscal year and recovering such costs over a 12-month period beginning in July of the following year, thereby creating a lag of up to 18 months from the time costs are incurred until they are recovered from customers in rates.⁵⁷ KCP&L loses the time value of money on its program costs; it receives no compensation for lost revenues from lower kWh sales directly caused by energy efficiency investments;⁵⁸ and it has no ability to achieve an EO. KCP&L's existing EE Rider does not encourage the Company to invest in robust and meaningful DSM programs. In fact, the Company's existing EE Rider serves as a *disincentive* to implementation of any DSM measures.

49. The KEEIA establishes a state policy allowing for recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs. In furtherance of that goal, the KEEIA requires the Commission to:

- Provide timely cost recovery for utilities;
- Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and

⁵⁶ Glass Direct, p. 7, "KEEIA seems to imply a two-step method for aligning a utility's financial incentives with customers' desire to reduce energy usage. The first step is to neutralize the detrimental effect on the utility of the lost revenue caused by the demand-side programs. The second step is to provide the utility with a positive incentive to promote demand-side programs."

⁵⁷ KEEIA Report, p. 4-13.

⁵⁸ The utility does not recover lost revenues from the time kWh are reduced until the reduction is reflected in base rates following a rate case.

- Provide timely earnings opportunities associated with cost-effective, measureable, and verifiable efficiency savings.⁵⁹

Specifically, the KEEIA provides:

To comply with this section, the commission may allow cost recovery mechanisms that further encourage investments in demand-side programs. Such cost recovery mechanisms may include, but shall not be limited to: (A) Capitalization of investments in and expenditures for demand-side programs; (B) recovery of lost revenue associated with demand-side programs; (C) decoupling; (D) rate design modifications; (E) accelerated depreciation on demand-side investments; and (F) allowing the public utility to retain a portion of the net benefits of a demand-side program for its shareholders.⁶⁰

50. The DSIM Rider recommended by KCP&L is consistent with the KEEIA's directives. The DSIM Rider structure proposed by the Company includes timely, contemporaneous recovery of two components: program costs and the TD. It also includes an EO, which would be recovered over a two-year period following final determination based on EM&V review in the year following the 36-month program period. The Company's proposed DSIM Rider, if approved, would allow it to begin collecting forecasted program costs and forecasted TD directly attributable to the demand-side programs in this filing.⁶¹

51. The proposed DSIM Rider will be updated semi-annually with a more current future forecast and a reconciliation of the prior period's forecasted program costs and TD to calculated historical amounts with carrying costs on any under- or over-recovery. In other words, on a semi-annual basis, the Company will file an adjustment or "true-up" to the DSIM Rider for actual performance achieved based on monthly tracking of actual program costs and calculated TD based on actual participation.⁶² The TD recovery is also subject to retrospective EM&V

⁵⁹ KEEIA Report, p. 4-13.

⁶⁰ K.S.A. § 66-1283(d)(1).

⁶¹ KEEIA Report, p. 1-8.

⁶² KEEIA Report, p. 4-16.

review through adjustment of the EO. Lastly, the Company has proposed to defer current recovery of unrecovered EE Rider costs for January 2014 - September 2017 to be recovered through the DSIM Rider beginning in July 2018.⁶³

1. Program Costs Are Recovered Timely Under KCP&L's DSIM Rider

52. Direct program costs are the costs the Company spends to implement DSM programs, including program administration, implementation, and rebates to program participants.⁶⁴ The indirect costs associated with DSM programs, such as the costs of a potential study, marketing, and/or the Company's portion of a statewide TRM, if and when applicable, are also included in the program costs.⁶⁵ Program cost budgets for KCP&L's DSM portfolio include approximately \$29.7 million that will be incurred for the implementation of the DSM programs over the 36-month period following the effective date of the tariff sheets, including subsequent EM&V costs incurred in the year following the 36-month period of KEEIA Cycle 1.⁶⁶

53. The rate to be charged to residential and non-residential classes will initially be determined by dividing the total of the estimated program costs plus 100% of the estimated TD for residential and non-residential classes for the six-month period from January through June or July through December costing period. The costing periods will be divided by the projected energy sales for each class, excluding lighting classes, over that same six-month period. The Rider will be based on semi-annual collection of 100% of the forecasted program cost and TD, collected contemporaneously with their incurrence, with true-ups to match billed revenues to the costs and

⁶³ KEEIA Report, p. 1-8.

⁶⁴ KEEIA Report, pp. 4-13 to 4-14.

⁶⁵ KEEIA Report, p. 4-16.

⁶⁶ KEEIA Report, p. 4-14.

TD calculated. Monthly interest will be calculated for the monthly cumulative over-and under-monthly balances for KEEIA program costs, TD and any EO amount.⁶⁷

2. Lost Revenues and Foregone Earnings Opportunities

54. The tension between an electric utility company's desire to be an integral part of the DSM effort and the negative financial impacts on the utility of DSM implementation is clear. The reduction in kWh sales in between rate cases attributable to successful DSM programs results in lost revenues and lost earnings for the utility. Additionally, when a public utility meets a portion of its customers' demand by investing in DSM rather than generation or other physical facilities, this causes the utility to forego earnings it otherwise would have received on those traditional facility investments.

a. Lost Revenues – the Throughput Disincentive

55. The impact on revenues from lost kWh sales directly resulting from DSM investments is a disincentive to a utility company proposing DSM programs unless a cost recovery mechanism is adopted that allows for recovery of these lost revenues between rate cases. KCP&L's present EE Rider does not include any recovery for this TD loss.⁶⁸

56. The Company has estimated TD of approximately \$19.3 million⁶⁹ related to the KEEIA Cycle 1 to be recovered over an estimated 2017 – 2022 time period. This is the estimated reduction in revenues related to reduced kWh from KEEIA programs that must be recovered by the Company to keep them whole until such time as the reduced kWh are reflected in base rates. TD will be computed monthly based on estimated kWh savings determined by month by program. The kWh savings will be reflected in the TD by multiplying the estimated kWh savings resulting

⁶⁷ KEEIA Report, p. 4-15.

⁶⁸ KEEIA Report, pp. 4-13 to 4-14.

⁶⁹ KEEIA Report, p. 4-16, as revised by KCP&L's Sep. 12, 2016 Corrections filing.

from the implementation of DSM measures times the incremental rate for the respective class. If a rate case occurs during the program period, the cumulative kWh and kW savings will be included in the test period to reflect actual energy and demand savings in the weather-normalized/customer-annualized unit sales and sales revenues used in setting the revenue requirements in the rate case. This will result in establishing a rebased level to re-start the kWh and kW savings for the TD to be included through the remainder of the program period. The Company will use billing determinants from the last rate cases to establish incremental rates.⁷⁰

57. To be clear, recovery of the impact of reduced sales on utility financial performance through a TD does not, and is not intended to, provide additional earnings to the Company, but rather, to keep the Company whole, consistent with its existing regulatory framework and as required by KEEIA.⁷¹

b. Earnings Opportunities

58. The effect on shareholder value of investing in DSM compared to supply-side alternatives is a lost opportunity to earn a return for shareholders on investments in supply-side resources. KEEIA recognizes the opportunity cost to the utility of substituting DSM for supply-side alternatives. For DSM resources to be valued equally to supply-side resources, the cost recovery mechanism must allow for an equivalent opportunity to enhance shareholder value. Providing a timely EO moves demand-side resources beyond a break-even proposition for the Company, and allows fair competition with supply-side alternatives. Only in this way can the utility value the two options equally.⁷²

⁷⁰ KEEIA Report, pp. 4-16 to 4-17.

⁷¹ Ives Rebuttal, p. 27; KEEIA Report, p. 4-14; K.S.A. 66-1283(b) and (e).

⁷² KEEIA Report, p. 4-14; *see also* K.S.A. § 66-1283(b).

59. In order to align the Company's interests with "helping its customers to use energy more efficiently and in a manner that sustains or enhances such customer's incentives to use energy more efficiently,"⁷³ the Company proposes an EO which would allow the Company to retain a portion of the net benefits of providing a demand-side program for its shareholders. The proposed EO recognizes the value of energy (kWh) and demand (kW) savings, as well as the value of providing energy savings opportunities to income-eligible customers. The total KEEIA three-year Cycle 1 EO award at 100 percent of target is \$8.5 million for the Company, which represents approximately 17.0 percent of estimated net benefits of the proposed KEEIA Cycle 1 programs. The remaining 83.0 percent of estimated net benefits would be retained by KCP&L's Kansas customers.⁷⁴ Except for the HER and income-eligible programs, the EO will be earned proportionally to the actual kWh and kW achieved as determined by the EM&V evaluator, including ex post gross and NTG adjustments, not deemed values.⁷⁵

60. The EO will be adjusted as follows:⁷⁶

- TD Ex Post Gross Adjustment - At the end of the three-year KEEIA Cycle 1, the annual ex post gross measure for each program determined through the final EM&V will be used to recalculate the TD for each of the annual evaluation periods. The difference between the recalculated TD using ex post gross measures and the TD using the deemed numbers, whether an increase or a decrease, will be adjusted in the EO, including carrying costs at the short-term borrowing rate.

⁷³ K.S.A. § 66-1283(d)(2).

⁷⁴ The matrix which shows the mechanism by which the Company will earn EO is contained in the KEEIA Report at Appendix I.

⁷⁵ KEEIA Report, pp. 4-17 to 4-18.

⁷⁶ KEEIA Report, p. 4-18.

- TD NTG Adjustment - At the end of the three-year cycle, if the portfolio EM&V NTG is greater or less than the initial factor of 1.0, the difference between TD at 1.0 NTG ratio and the TD calculated using the EM&V NTG, subject to a NTG ratio cap of 1.10 and a floor of 0.90, will be recovered through the EO, including carrying costs at the short-term borrowing rate.

61. Like the TD, KCP&L is not presently allowed to recover EO in its existing EE Rider. The DSIM Rider proposed in this case corrects this deficiency by including a component that shares savings between KCP&L's customers and shareholders, as specifically contemplated under KEEIA.⁷⁷

E. Other Provisions and Issues

1. Existing DSM Programs and EE Rider

62. In addition to the above elements, the Company's KEEIA Cycle 1 Application includes tariffs to:

- Dissolve the current DSM program tariffs effective with the implementation of programs approved in this proceeding.
- Terminate the three DSM program tariffs currently frozen. In 2011, the Commission granted KCP&L the ability to freeze the offering of its Energy Audit and Energy Measures Rider (Schedule 9, also known as Schedule ER or the C&I Rebate Suite), Cool Homes Program (Schedule 13, also known as Schedule CHP), and ENERGY STAR[®] New Homes Program (Schedule 14, also known as Schedule NH or ESNH). As part of this Application, KCP&L requests these three tariffs as well as the Building Operator Certification ("BOC") tariff (Schedule 8) be terminated.

⁷⁷ K.S.A. § 66-1283(d)(2).

- Freeze the current EE Rider recovery mechanism effective October 1, 2017 until such time as all unrecovered DSM costs incurred through the end of September 30, 2017 are recovered through the DSIM Rider, at which time the Company will request to terminate the EE Rider.⁷⁸

2. Requested Waivers

63. Approval of KCP&L's Application is consistent with the terms of KEEIA. However, because the Commission's previous Orders in the 08-441, 08-442 and other DSM-related Dockets were promulgated in years prior to adoption of the KEEIA, those Orders contain some provisions that are inconsistent with KCP&L's requested KEEIA filing and DSIM Rider. To address the issue in a transparent manner, KCP&L's Application seeks variances from certain specific provisions of the Orders as follows:⁷⁹

a. Budget Related Variances

- In the 08-441 Docket, the Commission required applications to include a five-year budget.⁸⁰ KCP&L is requesting a variance on this requirement allowing it to provide a three-year budget in this case rather than a five-year budget.

64. This variance is necessary because KCP&L is only asking for Commission approval for a three-year program cycle. The three-year time frame will provide sufficient time for the Company, Staff and the Advisory Group⁸¹ to evaluate the program portfolio. KCP&L expects to extend the demand-side programs beyond this original KEEIA Cycle 1 three-year

⁷⁸ These dates reflect the extension of the timeline in this case.

⁷⁹ KEEIA Report, Appendix G.

⁸⁰ 08-441 Order, p. 12, ¶ 34 and Appendix A, Content of Energy Efficiency Program Application.

⁸¹ The Advisory Group is an aspect of KCP&L's proposal in this case consisting of certain stakeholders, formed to allow for collaborative input on the design, implementation, and review of DSM programs. KCP&L has suggested the Advisory Group meet twice a year to review portfolio status, EM&V progress, and savings progress. (KEEIA Report, p. 109.)

request with a new application for Commission approval for KEEIA Cycle 2, including a new budget.

- In the 08-442 Docket, the Commission allowed the utility the flexibility to adjust a program's budget up to 10% of the program's existing budget without seeking Commission approval.⁸²

65. KCP&L is requesting a variance that would allow it to apply the 10% budget flexibility on a portfolio basis rather than on a program-by-program basis. That is, filing for Commission approval of budget overages would only be necessary if the Company expected to exceed 10% of the Commission-approved three-year overall portfolio budget rather than the current policy requiring a filing when the Company expects to exceed the Commission-approved three-year budget of an individual program.

66. The proposed tariffs are structured to allow KCP&L the flexibility needed to effectively implement and operate its demand-side programs and to make improvements as necessary to adapt to evolving market conditions. One aspect of the proposal allows the Company to change the incentive level in a program if customer participation is lower than anticipated so long as the new incentive level remains within the Commission-approved incentive range. As explained by Company witness, Ms. Turner, the flexibility requested is intended to allow KCP&L to adjust for increased participation or changes that would occur where KCP&L would have to cover increased costs on various programs.⁸³

67. The Commission Staff is in agreement with this budget request.⁸⁴ At hearing, Commissioner Feist Albrecht asked questions attempting to clarify her understanding of this

⁸² 08-442 Docket, *Order Following Collaborative on Benefit-Cost Testing and Evaluation, Measurement, and Verification*, issued Apr. 13, 2009 ("08-442 Order"), p. 54, ¶¶ 181, 182.

⁸³ Tr. Vol. 1, Mary Turner, pp. 149-150.

⁸⁴ Glass Direct, p. 27.

requested variance. Specifically, Commissioner Feist Albrecht asked how the Commission would track any shifting in the budget as part of the EM&V process.⁸⁵ Ms. Turner explained that any such budget changes would be apparent in the annual reporting process that compares budgeted to actual costs for each program, and that the Advisory Group would be fully aware of these changes. Further, the Company would be tracking and providing this information to the Commission, and the actual costs would be used in the EM&V.⁸⁶

68. This variance is requested for administrative ease of Staff, the Commission, the EM&V evaluators and the Company.⁸⁷ Allowing for the 10% budget shifting does not undermine the Commission's review and control of DSM programs; it makes it less onerous. In fact, in Missouri the Missouri Public Service Commission ("MPSC") established this budget allowance at 20%, and the MPSC Staff and Working Group is considering proposing an increase to 40%.⁸⁸ It is clear that, after working with and gaining experience with KCP&L's DSM programs and processes, the MPSC has found that allowing flexibility in the budget provides a positive benefit to the parties and the overall process.

b. EM&V Related Variances/Waivers

69. To the extent necessary, KCP&L requests a variance/waiver of any existing EM&V requirements so as to allow the Company:⁸⁹

- to conduct EM&V in accordance with the EM&V plan and schedule outlined in Appendix C, EM&V Plan and Timeline, using an independent contractor hired by KCP&L with KCC Staff approval, with a Commission hired EM&V auditor to review the results;

⁸⁵ Tr. Vol. 1, Mary Turner, pp. 174-175.

⁸⁶ Tr. Vol. 1, Mary Turner, p. 175.

⁸⁷ Tr. Vol. 1, Mary Turner, pp. 175-176.

⁸⁸ Tr. Vol. 1, Mary Turner, p. 176.

⁸⁹ KEEIA Report, Appendix G, p. G-3.

- to provide reporting to the Commission in accordance with the KEEIA interim reports on KCP&L’s demand-side programs on an annual basis consistent with KEEIA rather than on a semi-annual basis;
- to file an EM&V report with the Commission twice during the three-year KEEIA program cycle, or every 18 months, in accordance with the timeline set out in Appendix C; and
- to use KCP&L’s developed TRM to determine deemed savings, which relies on EM&V results from GMO Cycle 1, the Navigant Potential Study and secondary sources, such as the Illinois TRM, rather than using only the California Manual.

70. As a result of several dockets,⁹⁰ the Commission has issued Orders that address how EM&V should be conducted for purposes of demand-side programs in Kansas. On EM&V, the Commission Orders require the KCC Staff to issue a Request-for-Proposal for a third party EM&V consultant to perform an independent EM&V study on a utility’s DSM programs after the first two years following implementation of the programs, with results to be issued six months after the initial two-year program period.⁹¹ On the benefit/cost tests, the orders require use of the California Energy Commission’s Database for Energy Efficient Resources (“California DEER”) values until the first EM&V is completed, and a myriad of other very specific guidance on exactly what information is to be used for benefit/cost calculations.⁹² These provisions were adopted by the Commission years ago. KCP&L has gained a wealth of experience over the past 10 years regarding DSM programs and has used that experience in developing its KEEIA Cycle 1 Application, including its EM&V plan and timeline recommendation set out in Appendix C of the KEEIA Report, its proposed TRM, and its cost-effectiveness test calculations. To the extent

⁹⁰ The 08-441 and 08-442 Dockets; Docket No. 07-GIMX-247-GIV, *In the Matter of a General Investigation Regarding Energy Efficiency Programs*; Docket No. 10-GIMX-013-GIV, *In the Matter of the General Investigation Regarding Development of an RFP for a Third-Party Provider or Providers of Energy Efficiency Program Evaluation, Measurement, & Verification Services*; Docket No. 14-KCPE-042-TAR, *In the Matter of the Application of Kansas City Power & Light Company for Approval to Extend Its Demand-Side Management Program*; Docket No. 14-KCPE-074-GIE, *In the Matter of a Proceeding for Evaluation, Measurement, and Verification of Kansas City Power & Light Company's Energy Efficiency Programs*.

⁹¹ 08-442 Order, pp. 45-47.

⁹² 08-442 Order, p. 13.

KCP&L has deviated from any of the prior Commission orders regarding these items, KCP&L requests the Commission grant a variance.

c. General Variance/Waiver

71. KCP&L carefully reviewed previous Commission Orders on DSM and attempted to identify any existing Commission rule, regulation, policy or other requirement that may be inconsistent with KCP&L's KEEIA Application and to request a specific variance or waiver of the same. Because there are so many Orders and pieces to DSM policy that are contained in those Orders over a number of years, KCP&L had a concern that it might have missed identifying for the Commission one of these inconsistent provisions, so it included a general request for any other waiver or variance that might not fall under the specific requests.⁹³ This was not intended to preemptively exclude KCP&L from the application of any future Commission Order on DSM, but rather, to keep the anticipated Order in this case aligned with past Commission DSM Orders, and keep the programs approved in this Cycle of the DSM process subject to the rules adopted in this case.⁹⁴

72. At hearing, Commissioner Feist Albrecht expressed her understanding of KCP&L's reason for requesting a general waiver, but asked why it needed to be granted now rather than later when an actual issue arises.⁹⁵ Ms. Turner explained that KCP&L was only being careful in requesting the general waiver, and that it did not believe the Commission specifically had to say it granted the Company a generic waiver for anything and everything.⁹⁶ If a future Order conflicts with the Order in this case, then the Commission's Order in this case would control.⁹⁷

⁹³ KEEIA Report, Appendix G, p. G-5; Tr. Vol. 1, Mary Turner, p. 150.

⁹⁴ Tr. Vol. 1, Mary Turner, pp. 150-151.

⁹⁵ Tr. Vol. 1, Mary Turner, pp. 177-178.

⁹⁶ Tr. Vol. 1, Mary Turner, p. 178.

⁹⁷ Tr. Vol. 1, Mary Turner, p. 188.

73. It seems apparent that if there is a difference between what the Commission orders in this case as compared to provisions established in previous generic dockets, the Order in this case would control and would constitute a *de facto* waiver of the earlier inconsistent provisions. However, to be clear that the outcome of this docket is intended to control for KCP&L's DSM program, KCP&L included in its Application a general request for any additional waivers not specifically set out if any such waivers are deemed necessary to effectuate the Order in this case. This general waiver request was intended to be very limited and it is unlikely to be triggered considering KCP&L's full review of the Commission's previous generic Orders and specific request for waivers. It was not intended to be a "blanket waiver", asking the Commission to blindly approve something not clearly contained in this Application. It was intended to allow KCP&L to implement the proposal it has requested in this docket.⁹⁸

3. Reservation of Ability to Terminate in Future

74. The tariffs proposed by KCP&L also allow the Company the discretion to discontinue programs⁹⁹ and the DSIM Rider in the future following appropriate notice to the Commission. Currently there are initiatives in the electric utility industry nationally - such as the Environmental Protection Agency's Clean Power Plan - that could impact the Company's proposed plan and its ability to recover its costs. Should this or any other matter materially adversely impact KCP&L's plan or ability to recover its costs as approved, the Company reserves the right to discontinue programs and/or its plan. In such event, the Company will file a notice with the Commission indicating the extent to which it will discontinue programs and/or its plan on

⁹⁸ Tr. Vol. 1, Mary Turner, p. 151.

⁹⁹ See for example, tariff Schedule 2.01, Sheet 1 of 6, Availability.

a date certain that is not less than 30 days after the filing of the notice. KCP&L will honor all eligible requests under the programs received prior to the effective date set forth in the notice.¹⁰⁰

75. KCP&L has repeatedly stated its intent for KEEIA Cycle 1 to be followed by KEEIA Cycle 2 upon the initial three-year completion of Cycle 1, and to continue into the future with additional cycles.¹⁰¹ At hearing, Staff indicated that reserving the right to discontinue the entire KEEIA Cycle 1 portfolio was somehow inconsistent with KCP&L's stated intent to continue with DSM beyond Cycle 1.¹⁰² Staff also pointed out that the proposed tariffs do not specifically list the factors that might cause KCP&L to terminate the programs.¹⁰³ Both of the points made by Staff reflect Staff's failure to consider that DSM is voluntary under KEEIA.

76. First, the tariff says only what the law provides; that KEEIA is voluntary, so the utility already has the ability to terminate a program, just as it has the right to choose not to propose DSM at all. Including this language in the tariff does not undermine KCP&L's representation regarding its view of DSM as a long-term resource plan, especially when KCP&L's actions in Kansas and Missouri over the past decade are consistent with its representation.

77. Second, as the nature of the reservation makes clear, KCP&L does not know what might happen in the future that would force it to terminate these programs. As such, not enumerating those factors in the tariff is not only reasonable, it should be expected. Even if KCP&L had a crystal ball (as Staff assumes), there is no point to enumerating such factors since termination can be effectuated by the utility upon its discretion as contemplated by the voluntary nature of the KEEIA.

¹⁰⁰ Application, pp. 5-6; Tr. Vol. 1, Mary Turner, pp. 181-182.

¹⁰¹ Tr. Vol. 2, Nelson, p. 390. In Missouri, Cycle 1 has ended and they are beginning Cycle 2 at this time. (KEEIA Report, p. 1-1.)

¹⁰² Tr. Vol. 1, Mary Turner, pp. 172-173.

¹⁰³ Tr. Vol. 1, Mary Turner, pp. 172-173.

VI. NON-UNANIMOUS STIPULATION AND AGREEMENT

78. The parties held settlement discussions in August 2016 as set forth in the Commission's procedural schedule. As a result of those discussions, several of the parties were able to come to settlement terms and thereafter filed the S&A, requesting Commission approval.¹⁰⁴ The parties to the S&A included CEP, NRDC, NHT, Brightergy¹⁰⁵ and KCP&L.¹⁰⁶ For those parties, the S&A resolves all issues of KCP&L's KEEIA Application and those parties recommend in testimony in support of the S&A that the Commission approve KCP&L's Application as filed with the changes noted in the S&A.¹⁰⁷ The three changes to KCP&L's Application included in the S&A are:

1. *Income-Eligible Multi-Family Program (IEMF)*: Increase the annual cap on participants in Year 2 and Year 3 along with the associated budget for those years. Modify the eligibility provisions to match KCP&L's Missouri IEMF eligibility requirements, with the exception of the Missouri low income housing tax credit.
2. *Business Energy Efficiency Rebate – Standard Program (BEER Standard)*: Modify the availability section of the tariff to allow customers with hours of use 20% or more greater than the Annual Operating Hours in the TRM the option of pursuing a rebate under the Business Energy Efficiency Rebate – Custom Program (BEER Custom). Additionally, modify the language in the purpose section of the tariff to note that BEER

¹⁰⁴ See Joint Motion for Approval of Non-Unanimous Stipulation and Agreement, filed Aug. 31, 2016 ("Joint Motion for Approval of S&A"). The Commission has not yet ruled on the S&A.

¹⁰⁵ As stated above, Brightergy has since withdrawn from the docket.

¹⁰⁶ Westar Energy, Inc. and Kansas Gas and Electric Company ("Westar") is not a signatory to the S&A; however, Westar indicated that it does not oppose the S&A.

¹⁰⁷ Ives Testimony in Support of Non-Unanimous S&A filed Aug. 31, 2016, and Barnett Testimony in Support of Non-Unanimous S&A filed Aug. 30, 2016. Ms. Brink of NHT also filed Testimony in Support of Non-Unanimous S&A on Aug. 31, 2016 (corrected to include attachment on Feb. 23, 2017).

Custom provides rebates for energy efficiency measures not specifically covered by BEER Standard.

3. *Benchmark reporting for municipalities, school districts, hospitals, colleges and multi-tenant building operators:* The Company agreed to certain provisions regarding benchmarking data and reporting of energy usage for these customers.

79. Provision 2 regarding the BEER Standard is a provision negotiated by Brightergy, and with Brightergy's withdrawal from the proceeding, is no longer a necessary part of the S&A.¹⁰⁸ KCP&L contacted the other non-Brightergy signatories to the S&A, and all are indifferent to this provision. Therefore, as Staff disagrees with these provisions, KCP&L is agreeable to the Commission denying this provision of the S&A. With the addition of Provisions 1 and 3, the signatories request the Commission approve KCP&L's KEEIA portfolio and recovery mechanism as filed.¹⁰⁹

80. Of the parties not signing the S&A, only Staff filed testimony regarding the S&A.¹¹⁰ Staff does "not object to the proposed modifications to the IEMF Program."¹¹¹ Staff does, however, take issue with the changes to the BEER Standard program¹¹² (no longer proposed to be a provision of the S&A) and with the offer of benchmarking and reporting,¹¹³ both of which Staff recommends the Commission not approve.

¹⁰⁸ See Brightergy's Withdrawal from Docket Participation, filed Mar. 20, 2017.

¹⁰⁹ See Joint Motion for Approval of S&A.

¹¹⁰ See Supplemental Testimony of Joshua Frantz, filed Jan. 20, 2017. Staff did not file testimony against the S&A at the time it was filed as required by K.A.R. 82-1-230a, but rather on January 20, 2017, with a request for out of time acceptance on March 13, 2017, which was accepted by the Commission during the Evidentiary Hearing.

¹¹¹ Frantz Surrebuttal and Supplemental, pp. 5-6.

¹¹² Frantz Surrebuttal and Supplemental, pp. 6-8.

¹¹³ Frantz Surrebuttal and Supplemental, pp. 8-10.

81. The modifications to the BEER-Standard program are set out in paragraph 6 of the S&A. As noted, the changes in this paragraph were included at the request of Brightergy.

82. The benchmarking and reporting provisions are set out in paragraph 8 of the S&A. Staff takes issue with the S&A proposal to charge the cost of providing aggregated whole-building electricity usage data, upon request, to owners of certain multi-tenant buildings to the BEER-Custom program and also states that this proposes “a new energy report program without the provision of supporting data.”¹¹⁴ At the time of drafting the S&A in August 2016, the requirement to provide such benchmarking and aggregated energy usage reporting was being addressed in conjunction with KCP&L’s MEEIA Cycle 2.¹¹⁵ The programming necessary to provide this information to KCP&L’s customers has already been completed and is in use based upon customer requests. Therefore, this service to our customers, both Kansas and Missouri, is currently provided at no additional cost. However, if additional costs in this area are incurred in the future during the KEEIA Cycle 1 three-year term, KCP&L needs the ability to include such costs in its DSIM Rider.

83. The parties in this case who have advocated in the past and in this docket for a plan that would achieve viable DSM programs in Kansas came together to work out their issues related to KCP&L’s Application. The S&A they developed and propose to the Commission for approval is a reasonable option for resolving this docket. KCP&L requests the Commission give the S&A serious consideration as it deliberates on how to proceed with KCP&L’s KEEIA Cycle 1 portfolio for the next three years.

¹¹⁴ Frantz Surrebuttal and Supplemental, p. 9.

¹¹⁵ This MEEIA requirement initiated from an ordinance in Kansas City, Missouri requiring certain building owners to provide aggregated building energy usage data for an Energy Star database. It ultimately included the provision of aggregated data for certain customers – school districts, colleges, hospitals and municipalities – to conduct benchmarking.

VII. MAJOR CONTESTED ISSUES

84. In deciding whether to approve KCP&L's request to implement the portfolio of DSM programs and corresponding cost recovery mechanism proposed by KCP&L, the following primary contested issues must be decided, and unless otherwise indicated, are addressed in this section of the Brief:

- 1) Interpretation of the KEEIA, especially in relation to the Commission's prior orders relating to DSM programs. (This issue is addressed above in Section IV.)
- 2) Determination of the appropriate avoided capacity cost to use for evaluating the DSM programs.
- 3) Determination of the appropriate NTG to use for evaluating the DSM programs and for recovery mechanism calculations.
- 4) Determination of the appropriate data source (*e.g.*, TRM, California DEER) to establish effective measure life and energy savings for evaluating the DSM programs.
- 5) Evaluation of the cost-effectiveness of each of the proposed DSM programs based on the above evaluation inputs.
- 6) Structure of the cost recovery mechanism including:
 - a. program costs – projected w/true-up or actual w/carrying charges;
 - b. the appropriate timing for cost recovery;
 - c. throughput disincentive – the appropriate methodology; and
 - d. earnings opportunity – the appropriate methodology.
- 7) Whether or not any of KCP&L's proposed DSM programs impermissibly incent fuel switching for residential heating systems. (This issue is addressed both in this Section and above in Section IV.)
- 8) There are also concerns by others regarding the design of some of the programs, certain variances requested by KCP&L, and a few other issues. (These will be addressed in this Section to the extent they are not addressed elsewhere in this Brief.)

A. Contested Programs – KCP&L Portfolio Offers Programs for All Customers

85. KCP&L's KEEIA Cycle 1 DSM portfolio is comprised of seven residential programs and seven business programs that will deliver an effective and balanced portfolio of energy and demand savings opportunities across all customer segments. Each non-educational

program was designed to leverage the optimal mix of best-practice measures and technologies, delivery strategies, and target markets in order to most effectively deliver programs and measures to the Company's customers. Both the Online Home Energy Audit and Online Business Energy Audit are educational programs.¹¹⁶ Staff recommends approval of eight of the fourteen programs, proposes a modification to one of the programs, and recommends denial of six of the programs. The gas companies object to four programs. CURB rejects the entire portfolio.

86. Consistent with the KEEIA, none of KCP&L's seven residential DSM programs proposed in its KEEIA Cycle 1 portfolio offer rebates or otherwise incent residential customers to switch fuel technologies. Of the seven business DSM programs proposed in its KEEIA Cycle 1 portfolio, BEER-Standard, the BEER-Custom, and the Block Bidding programs are the only programs which have the *potential* for rebates or other incentives to eligible customers to either upgrade or switch to high efficiency electric fuel source technologies.¹¹⁷

1. Contested Residential Programs

a. Whole House Efficiency and Home Energy Report Programs

87. Of the residential programs contained in KEEIA Cycle 1, Staff recommends disapproval of two programs: the Whole House Efficiency ("WHE") and the Home Energy Report ("HER") programs. With regard to the WHE program, Staff describes the program's performance under the TRC test as "dismal" in every scenario.¹¹⁸ Staff further said that under the best case scenario, the TRC test results show that the benefits are not much greater than the costs.¹¹⁹ Staff's characterization is misleading. A value of 1.0 demonstrates the total program costs and benefits

¹¹⁶ KEEIA Report, p. 3-5.

¹¹⁷ KEEIA Report, pp. 3-8 to 3-10.

¹¹⁸ Prince Direct, p. 21.

¹¹⁹ Prince Direct, p. 13.

are roughly equal. As a result, anything over a value of 1.0 indicates the benefits outweigh the costs and thus passes the test. Based on the Company's analysis, the WHE program scored a 1.2 under the TRC test.¹²⁰ It is unfathomable to think that a program whose benefits outweigh its costs by 20 percent would be considered dismal or not much more than break-even. While it is true the WHE program scored below 1.0 on the RIM test - namely, 0.61¹²¹ - Staff recommended approval of the Home Lighting Rebate program, which resulted in a 0.59 RIM test score.¹²² Given the program's strong results under the TRC test, the Commission should reject Staff's disapproval of KCP&L's proposed WHE program based solely on a 0.61 RIM test score as arbitrary, particularly since the Commission previously indicated the TRC test, not the RIM test, is the primary test by which programs should be evaluated.¹²³

88. Not surprisingly, the most vocal opponents of KCP&L's proposed WHE program are KCP&L's competitors, the gas companies. The gas companies recommend disapproval of KCP&L's residential WHE program, but for entirely different reasons than Staff. The gas companies reject all of KCP&L's proposed programs which offer rebates or other incentives for appliances, devices, or processes that can be powered by alternate fuels, such as natural gas or propane.¹²⁴ While none of KCP&L's residential programs provides an incentive to switch fuel technologies, KCP&L's WHE program incents customers who have already made their fuel choice (*i.e.*, electric heat and air conditioning) to replace aging or inefficient equipment with more efficient equipment of the same technology. This "like for like" program applies both to fuel

¹²⁰ Prince Direct, p. 13.

¹²¹ Prince Direct, p. 13.

¹²² Prince Direct, pp. 8, 10.

¹²³ See 08-442 Docket, *Order Setting Energy Efficiency Policy Goals, Determining a Benefit-Cost Test Framework, and Engaging a Collaborative Process to Develop Benefit-Cost Test Technical Matters and an Evaluation, Measurement, and Verification Scheme* ("Order Setting EE Policy Goals") (Jun. 2, 2008), ¶ 38; and 08-442 Order, ¶ 37.

¹²⁴ Raab Direct, p. 4.

technology and to equipment; meaning the Company will only offer incentives to existing customers and only for the replacement of the same equipment.¹²⁵ For example, existing air conditioning customers will only be incented to purchase a high efficiency air conditioner, and existing heat pump customers will only be incented to purchase a high efficiency heat pump. Residential customers who choose to upgrade from an air conditioner to a heat pump system will not be eligible for any rebate. As stated clearly by KCP&L witness Brian File, “[n]o incentive will be provided for a customer moving from an air conditioner to a high efficiency heat pump system or vice versa.”¹²⁶ Because this program is available only for existing KCP&L customers who already made the choice of fuel to heat their homes, it complies with the provision of KEEIA, which prohibits incentivizing “*fuel switching* for residential heating systems.”¹²⁷

89. In short, there is no incentive provided in KCP&L’s proposed programs for a residential natural gas heat customer to switch fuel technologies. Rather, incentives are only offered to KCP&L’s existing residential heat pump and air conditioning customers to become more energy efficient using the same fuel technology already chosen by the customer. Importantly, fuel switching is not a goal of KCP&L’s proposed portfolio of programs; helping customers become more energy efficient is the goal.¹²⁸

90. Although the gas companies’ witness, Mr. Paul Raab, spends much of his testimony discussing the potential customer price elasticity with regard to providing incentives for any measures, such claims are conclusory and unsupported.¹²⁹ In reality, Mr. Raab appears to reject the WHE program because he is opposed to any program which offers a rebate to an electric heat

¹²⁵ File Rebuttal, p. 4.

¹²⁶ File Rebuttal, p. 2.

¹²⁷ K.S.A. § 66-1283(a)(3), (emphasis added).

¹²⁸ Tr. Vol. 1, File, pp. 195-196.

¹²⁹ See Raab Direct, pp. 9-15; see also File Rebuttal, pp. 4-7.

customer to purchase a more efficient electric heat system (*i.e.*, heat pump). Mr. Raab complains that when a KCP&L residential customer replaces an existing electric appliance (*i.e.*, heat pump) with a new electric appliance, the customer is “biased” or “influenced” towards the use of a particular fuel, regardless of whether that customer is replacing an electric appliance or natural gas appliance, which he argues is unlawful under the KEEIA.¹³⁰ Mr. Raab’s arguments are incorrect.

91. First, in the case of an existing KCP&L residential heat pump customer, Mr. Raab ignores the crucial fact that the fuel choice has already been made; therefore, by only offering like for like incentives, fuel switching will not occur as a result. Second, Mr. Raab appears to misunderstand KCP&L’s WHE program, which provides rebates for its customers who upgrade aging or inefficient equipment with more efficient equipment of the same technology and fuel source on a like for like basis. That is, the Company will only offer incentives to existing customers and only for replacement with like equipment.¹³¹ Next, Mr. Raab’s claims that KCP&L’s WHE program “biases” and “influences” customers towards a particular fuel in contravention of the KEEIA misrepresents the statute. Specifically, Mr. Raab states: “Such influence or bias built into KCP&L’s energy efficiency plans is unlawful under KEEIA as it relates to residential customers... .”¹³² The KEEIA expressly states that fuel switching incentives for residential heating systems are prohibited. KCP&L’s like for like provisions under its proposed WHE program in no way incent fuel switching. Further, nowhere in the KEEIA are the terms “bias” or “influence” used. Mr. Raab has created his own standard not found in the statute and, therefore, the gas companies’ self-serving and unfounded position should be disregarded as irrelevant.

¹³⁰ Raab Direct, pp. 15-16.

¹³¹ File Rebuttal, p. 4.

¹³² Raab Direct, pp. 15-16.

b. Home Energy Report Program

92. Staff also rejected the residential HER program. Staff recommends disapproval of the HER program based on low TRC and RIM test scores under Staff's most stringent and unrealistic sensitivity analysis, Scenario 6.¹³³ Under Staff's Scenario 6, the HER program resulted in a 0.89 TRC test score and 0.35 RIM test score.¹³⁴ For all other scenarios analyzed by Staff, the HER program passed the TRC test with scores above 1.0.¹³⁵ Although in all scenarios the RIM test scores were below 1.0, this is counter-balanced by a TRC test score of 1.34 under KCP&L's analysis. The wide variance between the Company's 1.34 TRC test score and Staff's 0.89 Scenario 6 TRC test score, on which its recommendation is based, is due to Staff's unsupported and artificially low avoided capacity cost value. The value of Staff's avoided capacity cost does not reflect the cost of KCP&L's next incremental generation unit - that is, a combustion turbine ("CT") - per the Company's supply-side resource planning.¹³⁶ Rather, Staff's low avoided capacity cost value merely ensures that meaningful DSM programs will not be implemented and Kansas' DSM efforts will remain stagnant.

2. Contested Business Programs

93. Of the business programs contained in KEEIA Cycle 1, Staff recommends disapproval of four programs, BEER-Custom, Strategic Energy Management ("SEM"), Block Bidding, and Small Business Direct Install ("SBDI"). Depending on the Commission's decision regarding fuel switching for commercial and industrial customers, Staff could potentially add a fifth program to its rejection pile, the BEER-Standard program. With regard to the BEER-

¹³³ Prince Supplemental, p. 4.

¹³⁴ Prince Supplemental, p. 4.

¹³⁵ Prince Supplemental, p. 4.

¹³⁶ See Section VII.B addressing avoided capacity costs.

Standard, BEER-Custom, and Block Bidding programs, Staff believes there is a *potential* for these three programs to create a bias toward electricity as a fuel source.¹³⁷ While Staff recognizes the KEEIA does not prohibit commercial and industrial fuel switching, it leaves it to the Commission to determine if the elements of these programs comply with the KEEIA language and applicable Commission orders on fuel switching. If the Commission determines that they do not comply, then Staff recommends BEER-Standard, BEER-Custom, and Block Bidding be denied on that basis.

94. The gas companies expressly take issue with the incentives offered by KCP&L’s BEER-Standard and BEER-Custom programs available to eligible business customers based on a fuel switching argument. The gas companies recognize the KEEIA does not prohibit fuel switching for commercial and industrial customer classes.¹³⁸ Instead, the gas companies reject KCP&L’s proposed business programs, which they believe “bias users toward a particular fuel source,” based, in part, on their interpretation of prior Commission orders.¹³⁹ Mr. Raab argues that rebates or other incentives offered under the BEER-Standard and BEER-Custom programs are not “entirely consistent” with this Order.¹⁴⁰ Further, he states: “Such influence or bias built into

¹³⁷ Frantz Direct, p. 15. It should be noted that KEEIA does not use the word “bias.” It uses the phrase “measures to incent fuel switching.” See K.S.A. § 66-1283(a)(3). The gas companies’ use of the word “bias” appears to stem from the 09-160 Docket, and their interpretation of the word “bias” would prohibit any type of rebate because it could “bias” a customer toward whatever energy source is offering the rebate even if it is the fuel source already chosen by the customer and currently in use at their home or facility. If KEEIA intended to prohibit all rebates, it could have so stated, but it did not. Instead, it uses the less prescriptive phrase regarding fuel switching, and the gas companies agreed with this language. (See Schedule MBT-1 to the Rebuttal Testimony of Mary Turner.). It is equally important to note that both KEEIA and the 09-160 Docket apply only to residential fuel switching. See K.S.A. § 66-1283(a)(3); see also 09-160 Docket, Order Initiating Investigation and Assessing Costs (“Order Initiating Investigation”) (Sept. 29, 2008), at ¶ 11.

¹³⁸ Raab Direct, pp. 15-16.

¹³⁹ See 09-160 Docket, Amended Order to Close Docket (“Amended Order”) (Mar. 23, 2012). In addition, to the extent Staff witnesses Darren Prince and Joshua Frantz also suggest denial of KCP&L’s BEER-Standard, BEER-Custom, and Block Bidding programs based, in part, on policy pronouncements issued by the Commission in previous energy efficiency dockets, the arguments made herein by KCP&L apply equally to Staff’s testimony.

¹⁴⁰ Raab Direct, p. 4.

KCP&L's energy efficiency plans is unlawful...under the Commission's Order issued in the 09-160 Docket as it relates to other classes [non-residential] of customers."¹⁴¹

95. The gas companies' reliance on the Amended Order in the 09-160 Docket is misplaced. The Order cannot override the statute, which explicitly lists only residential customers. Under the legal maxim set out in *In re Lietz Const. Co.*, had the legislature intended to prohibit fuel switching for any customer class other than residential, it would have explicitly included business customer classes in K.S.A. § 66-1283(a)(3). In addition, applying *expressio unius*, the fact that the statute expressly mentions "residential" customers means that all other customer classes not mentioned are not subject to the fuel switching restrictions of the KEEIA or prior Commission orders.¹⁴²

96. Not only does the gas companies' argument that fuel switching for customer classes other than residential is prohibited by the Commission's Amended Order fail based on the rules of statutory construction, it also fails based on the scope of the 09-160 Docket itself. The gas companies asked the Commission to take administrative notice of the Amended Order in the 09-160 Docket - a singular, two-page order, the purpose of which was to amend the February 15, 2012 Order to Close Docket by designating it as precedent-setting - ignoring multiple other orders, pleadings, and comments which place the final Orders in context. The language in the Amended Order cited repeatedly by the gas companies to justify its position that the Commission has prohibited fuel switching for commercial and industrial customer classes states: "Utility providers shall continue to offer energy-efficiency programs in a manner that does not bias users toward a particular fuel source."¹⁴³

¹⁴¹ Raab Direct, pp. 15-16.

¹⁴² See also *City of Junction City v. Lee*, 216 Kan. 495, 498 (1975) (once the legislature has clearly manifested its intent to occupy the field of regulation, the statute is preemptive).

¹⁴³ Amended Order, at Ordering ¶ A.

97. Significantly, however, in its Order Initiating Investigation, the Commission clearly indicates the 09-160 Docket applies only to residential customers. Specifically, the order states: “This docket will address whether it is appropriate for utilities to use monetary incentives to encourage consumers to switch fuels *for end-use applications within their homes*.”¹⁴⁴ Further, in its Order to Close Docket, the order upon which the Amended Order cited by the gas companies is predicated, the Commission repeats the scope of the docket as a preliminary matter, stating: “On September 29, 2008, the Commission issued an Order Initiating Investigation and Assessing Costs, stating that it would consider the issue of whether it is appropriate for utilities to use monetary incentives to encourage consumers to switch fuels *for end-use applications within their homes*.”¹⁴⁵ From its inception, the 09-160 Docket has applied to residential customers only, not commercial or industrial. Further, nowhere in the 09-160 Docket does the Commission modify the scope of the docket to include business classes of customers. Therefore, the gas companies’ reliance on the Amended Order in the 09-160 Docket to support their position that programs, which have the potential for rebates or other incentives to eligible commercial and industrial customers to either upgrade or switch to high efficiency electric fuel source technologies,¹⁴⁶ are prohibited or unlawful based on prior Commission orders is inappropriate and in error.

98. Additionally, the Commission’s finding in the 09-160 Docket must be read in the context of the record of that docket. In the 09-160 Docket, the gas companies presented the extreme position that the Commission should require electric companies to assist their customers in switching from electric to natural gas appliances because, according to the gas companies,

¹⁴⁴ 09-160 Docket, Order Initiating Investigation, at ¶ 11 (emphasis added).

¹⁴⁵ 09-160 Docket, Order to Close Docket (Feb. 15, 2012), at ¶ 1 (emphasis added).

¹⁴⁶ To put this issue in its proper perspective, the impact of the potential energy savings measures in the BEER-Standard program, assuming the worst case that all participants fuel switch, is approximately 0.56% of the program’s estimated energy savings.

natural gas was a more energy efficient fuel when evaluated site-to-source.¹⁴⁷ The electric companies vehemently opposed this effort by the gas companies. After many rounds of comments being filed, and then months with no activity in the docket, the Staff filed a recommendation that the Commission close the docket and simply state that, “Utility providers *shall continue* to offer energy-efficiency programs in a manner that does not bias users toward a particular fuel source.”¹⁴⁸ Thus, when read in context, the Commission’s Order in the 09-160 Docket did two things: (1) it accepted the status quo, stating that the companies should *continue* offering programs as they had been doing; and (2) it rejected the gas companies’ attempt to gain Commission endorsement of fuel switching rules that would incent customers to switch from electric to natural gas.

99. Finally, as pointed out in the testimony of KCP&L witness Brian File, Mr. Raab spends the entirety of his testimony erroneously arguing the role of appliance incentives in causing fuel switching, while all three of his gas company clients in this case have energy efficiency rebate programs for appliances in other nearby states.¹⁴⁹ KCP&L Exhibits 1, 2, and 3, appearing in footnote 15 of Mr. File’s Rebuttal Testimony, detail some of the rebate programs offered by the gas companies, many of which are significantly more generous to customers who fuel switch than those who replace with like-fuel equipment.¹⁵⁰ Mr. Raab explained that different jurisdictions have different regulatory mandates and differences in the way they view DSM programs.¹⁵¹ However, Mr. File’s testimony and exhibits were not intended to compare other jurisdictions’ DSM provisions either favorably or unfavorably with the KEEIA, or to compare the gas

¹⁴⁷ See *Staff Report and Recommendation* filed on April 13, 2009 in the 09-160 Docket, p. 6, where Staff summarized the gas companies’ position on this issue as follows: “KGS and Atmos believe that fuel-switching incentives should be offered only to encourage an electric customer to switch to use of natural gas.” Ultimately, the Commission rejected the gas companies’ “source to site” position. Tr. Vol. 2, Raab, p. 481.

¹⁴⁸ Amended Order, at Ordering ¶ A, emphasis added.

¹⁴⁹ File Rebuttal, p. 7.

¹⁵⁰ See, e.g., KCP&L Exhibit 1, pp. 3, 4.

¹⁵¹ Tr. Vol. 2, Raab, pp. 478-480.

companies' programs in other states either favorably or unfavorably with KCP&L's; but rather, to highlight that, where fuel switching is permitted, the gas companies involved in this case have implemented fuel switching measures, apparently without the same concerns about price elasticity of demand, increased usage, and the misdirected nature of appliance incentives vis-à-vis fuel switching as Mr. Raab has articulated in this case.¹⁵²

a. Business Energy Efficiency Rebate – Custom Program

100. Aside from the potential fuel switching issue, Staff indicated its primary concern with the BEER-Custom program is the “ambiguity” of project measure eligibility and the likelihood of free-ridership. However, in an attempt to prove that free-ridership would result from the proposed program, Staff witness Joshua Frantz uses flawed logic based on non-analogous custom programs from 2009. Specifically, as explained by KCP&L witness Brian File, “Mr. Frantz implies that because KCP&L denies rebates on projects in 2009 due to the failure of benefit cost tests that there must have been some customers who did get approved and would have been free riders.”¹⁵³ However, the Company structured the program to limit free ridership by denying projects that have a less than two-year payback.¹⁵⁴ That is, projects with a short payback period should hold sufficient inherent incentive for a customer to implement without the need for an additional incentive through KCP&L's DSM programs. The Company's addition of a two-year payback criteria, in addition to the use of the benefit-cost tests, prevents the high free ridership

¹⁵² File Rebuttal, p. 7.

¹⁵³ File Rebuttal, p. 10.

¹⁵⁴ File Rebuttal, p. 10.

concerns expressed by Staff.¹⁵⁵ As a result, Staff's speculative concern that high free ridership might or could result under the BEER-Custom program is baseless.

101. In addition, Mr. Frantz ignores the Company's response to Staff Data Request No. 15,¹⁵⁶ which evidences the high NTG ratio (resulting from low free ridership) in the Company's BEER-Custom program in Missouri.¹⁵⁷ Further, the fact that the BEER-Custom program requires pre-approval should mitigate Staff's concerns with ambiguity. Lastly, Staff rejects the proposed BEER-Custom program based on Staff's unsupported and artificially low avoided capacity cost, which erroneously drives the benefit-cost test down.¹⁵⁸ To the extent the Commission adopts the Company's avoided capacity cost, which is reflective of the next incremental generation unit per the Company's supply-side resource planning, Staff's concern about benefit-cost values, and particularly a low RIM test score, is obviated. Further, the RIM test was never intended to be a test used as the primary basis for approving or disapproving a DSM program, which is ultimately what Mr. Frantz appears to be doing.¹⁵⁹ Staff, again, ignores the fact that this program passed the TRC test with a score of 1.28.

b. Strategic Energy Management Program

102. Staff expressed concerns about the Strategic Energy Management ("SEM") program. Staff's concerns include the estimated participation, the low RIM test score, and the complexity of savings attribution.¹⁶⁰ With regard to the issue of complexity, KCP&L witness Brian File stated that the Company, in partnership with its implementer and EM&V evaluator, will

¹⁵⁵ File Rebuttal, p. 10.

¹⁵⁶ File Rebuttal, p. 11.

¹⁵⁷ File Rebuttal, p. 10.

¹⁵⁸ File Rebuttal, pp. 10-12.

¹⁵⁹ File Rebuttal, p. 13.

¹⁶⁰ Frantz Direct, pp. 30-33.

use widely accepted monitoring, tracking and reporting savings attribution methodology in compliance with International Performance Measurement & Verification Protocol (“IPMVP”) Option C Whole Building for savings tracking and reporting.¹⁶¹ Further, like the argument against rejecting a program based on a low RIM test score in the BEER-Custom discussion above, the RIM test was never intended to be a test used as the primary basis for approving or disapproving a DSM program.¹⁶² Also, like the BEER-Custom discussion, Staff refers to the results of the benefit-cost analyses using a range of inputs. Under Staff’s most stringent and unrealistic sensitivity analyses, Scenarios 5 and 6, the program fails.¹⁶³ Using the Company’s realistic avoided capacity cost, however, yields positive results, which warrant approval of the program.

c. Block Bidding Program

103. With regard to the Company’s proposed Block Bidding program, Staff witness Frantz is concerned about his perceived ambiguity of project measure eligibility, high free ridership, and overstatement of savings by bidders to win the reverse auction.¹⁶⁴ Mr. Frantz’s concerns are not warranted. As with the BEER-Custom program, Block Bidding has a set of defined criteria for the types of projects that are eligible to receive incentives. Without a program offering for open projects, a significant amount of unique and valuable energy savings project types can be overlooked. Also, the open project type serves more complex projects often implemented by large commercial or industrial customers.¹⁶⁵ In addition, because the customers must identify their project ahead of time and then determine the exact incentive rate they will need to overcome, free ridership is minimized with the Block Bidding program, similar to BEER-

¹⁶¹ File Rebuttal, p. 12, *citing* IPMVP, <http://evo-world.org/en/>.

¹⁶² File Rebuttal, p. 13.

¹⁶³ Nelson Rebuttal, pp. 12-13.

¹⁶⁴ Frantz Direct, p. 35.

¹⁶⁵ File Rebuttal, p. 13.

Custom.¹⁶⁶ Finally, the potential for overstatement of energy savings are accounted for within the program design implementation rate assumptions.¹⁶⁷

d. Small Business Direct Install Program

104. With regard to the Small Business Direct Install (“SBDI”), Staff states no concerns with overall program design; Mr. Frantz’s only reason for recommending disapproval of the program stems from the scenario analyses performed for Staff by KCP&L.¹⁶⁸ The SBDI program results are strong for each scenario and pass the TRC test criteria of greater than 1.0, with the exception of the worst case scenario, Scenario 6, which uses the most stringent avoided capacity cost and NTG. Given that Mr. Frantz can find no reason to disallow the SBDI program other than the low avoided cost scenario, his reliance on analyses using an unsupported avoided capacity cost does not warrant disapproval of the program.¹⁶⁹

3. General Observations Regarding the Rejection of Programs by Staff, CURB, and the Gas Companies

105. From a general perspective, KCP&L is able to draw some universal conclusions about the recommendations to disapprove certain programs. First, if Staff had used an appropriate avoided capacity cost and NTG ratios in its analyses, instead of unrealistic and artificially low values, it is likely all the programs would have passed Staff’s scrutiny on a benefit-cost basis. It is important to remember that the only time the programs rejected by Staff fail the TRC is in the scenarios where Staff used a **\$■** avoided capacity cost.¹⁷⁰ When a more reasonable estimate is used, the programs would all be considered as passing the TRC test.¹⁷¹ Next, although CURB

¹⁶⁶ File Rebuttal, pp. 13-14.

¹⁶⁷ File Rebuttal, pp. 14-15.

¹⁶⁸ Frantz Direct, p. 43.

¹⁶⁹ File Rebuttal, p. 16.

¹⁷⁰ Nelson Rebuttal, pp. 12-13.

¹⁷¹ Nelson Rebuttal, pp. 12-13.

rejected the entirety of the KEEIA Cycle 1 portfolio, it did not analyze the portfolio on a program-by-program basis, as contemplated by the Commission's Order in the 08-442 Docket.¹⁷² (Failure to address CURB's portfolio level concerns should not be construed as acquiescence.) The gas companies' primary disagreement with KCP&L's portfolio pertains to the issue of fuel switching. In fact, the only programs challenged by the gas companies are those which provide rebates or other incentives to replace existing equipment with higher efficiency equipment. A Commission determination as to the permissibility of both the Company's residential and business programs based on current law will resolve the gas companies' dispute. Finally, disapproval of one or more programs lowers the overall benefits of the portfolio. Therefore, the Commission should carefully consider approving the entirety of the portfolio in order for all the savings to be realized.

B. Avoided Capacity Cost – KCP&L's Avoided Capacity Cost Reflects the Long-Term Nature of DSM as a Component of a Resource Portfolio

106. The avoided capacity cost is a major issue in this case and the decision reached by the Commission on which avoided capacity cost assumption to use for program evaluation will dictate the future of DSM in Kansas. As Mr. Ives explained at hearing, there was the potential for compromise in this docket on issues such as the amount of the spend on DSM programs, the size of the programs, or the terms of the program cost recovery component of the mechanism¹⁷³, but those are not really the areas causing the stale-mate between the parties in this case. The threshold argument in this case is over the appropriate avoided capacity cost to use in performing the benefit/cost tests. Staff and CURB insist that the short-term capacity value should be used¹⁷⁴ (buying capacity on the spot market), and KCP&L believes the construction capacity value should

¹⁷² 08-442 Order, p. 10, ¶s 26 and 27.

¹⁷³ Tr. Vol. 2, Ives, pp. 452, 455-456.

¹⁷⁴ CURB arrives at a different avoided capacity cost than Staff because CURB excludes costs related to transmission and distribution.

be used because the purpose here of DSM is to avoid or delay the construction of physical assets. KCP&L’s proposal in this case under KEEIA is to incorporate sustainable DSM into its long-term supply plan; Staff and CURB’s recommendation to use the price of a paper capacity contract is inconsistent with that concept.¹⁷⁵ Valuing DSM investments on an equal basis to traditional investment in supply and delivery infrastructure is consistent with KEEIA.¹⁷⁶

107. KCP&L engaged with Applied Energy Group (“AEG”) to construct the design of its MEEIA Cycle 2 program portfolio, considering the 20-year period from 2016 through 2035.¹⁷⁷ AEG’s analysis took into consideration the fact that large macro-level factors – such as reduced load-growth and the low cost of natural gas due to oversupply as a result of fracking and the shale gas boom - have driven down the cost of the marginal kWh in energy markets in the Midwest and nationwide.¹⁷⁸ KCP&L’s analysis uses the **\$██████** avoided capacity cost used for its Integrated Resource Plan (“IRP”)¹⁷⁹, which evaluates KCP&L’s resource needs for the next 20 years.¹⁸⁰ This is the avoided capacity cost accepted in Missouri for use in KCP&L’s MEEIA portfolio analyses. It entails viewing the avoided cost of capacity as the levelized cost of a new generating unit in all years of the KEEIA Cycle 1 planning horizon.¹⁸¹ This is referred to as the Cost of New Entry (“CONE”), and it calculates the estimated annual capital, operating, and other

¹⁷⁵ Tr. Vol. 2, Ives, pp. 452-453.

¹⁷⁶ Nelson Rebuttal, p. 9.

¹⁷⁷ KEEIA Report, p. 3-12.

¹⁷⁸ KEEIA Report, p. 3-16.

¹⁷⁹ This avoided capacity cost is developed by an outside engineering firm, SEGA, for KCP&L as part of its IRP process. (Tr. Vol. 2, Nelson, p. 311-312.)

¹⁸⁰ Nelson Rebuttal, p. 9. KCP&L is required to file its IRP with the MPSC in Missouri. There is no such filing requirement in Kansas; however, KCP&L provides a copy to the Kansas Staff. During the hearing in this case, the Commission requested KCP&L file its IRP in this proceeding, which was done on April 13, 2017.

¹⁸¹ KEEIA Report, p. 4-8.

costs that would be incurred to develop a capacity resource in lieu of incorporating DSM into KCP&L's resource portfolio.¹⁸²

108. Using CONE for determining the avoided cost of capacity is necessary to provide consistency for the value of demand response and the demand component of energy efficiency.¹⁸³ There are three perspectives generally taken in the DSM industry for calculating avoided capacity cost, and circumstances in each case dictate which is the most appropriate for the particular situation being evaluated. Perspective One uses the spot market price; Perspective Two starts at market prices for capacity and ramps up to CONE over time; and Perspective Three uses a single value based on CONE for all years.¹⁸⁴ KCP&L employs Perspective Three, as using a single value based on CONE most strongly focuses on the long-term value of demand-side resources in the planning process consistent with the purpose of avoiding or delaying the construction of physical assets. KCP&L's DSM portfolio is intended to be part of the Company's long-term resource planning mix. Perspective Three is most appropriate because it represents the long-term view and the primarily vertically-integrated nature of the KCP&L's business.¹⁸⁵

109. Staff adopts Perspective One in its analysis, resulting in the use of a **\$█** avoided capacity cost.¹⁸⁶ The **\$█** per kW for generation capacity included in this number was based on the 2012-2013 cost in the market for purchasing capacity. Staff tries to justify using

¹⁸² KEEIA Report, Appendix L, *Demand-Side Resource Potential Study Report*, prepared by Navigant Consulting, Inc.; KCP&L Hearing Exhibit 6.

¹⁸³ KEEIA Report, p. 4-8.

¹⁸⁴ KEEIA Report, p. 4-8.

¹⁸⁵ KEEIA Report, p. 4-8. Perspective Two is not recommended by any party to this docket. This method would result in a seesaw effect for the cost of avoided capacity as successive KEEIA plans are conducted. If the near-term market conditions are allowed to set the agenda and dictate the long-term valuation each time a new analysis is performed, it will be difficult to plan, design, and manage programs. As such, Perspective Two is not appropriate under the circumstances of this Application. (KEEIA Report, pp. 4-8 through 4-9.)

¹⁸⁶ Glass Direct, p. 14. Staff's amount breaks down into **\$█** for generation capacity and **\$█** for transmission.

this number by arguing that it is the avoided capacity cost number KCP&L used in a previous DSM case in Docket No. 14-KCPE-042-TAR (“14-042 Docket”).¹⁸⁷ As stated above, the choice of a Perspective depends upon the facts and circumstances in each case, and the 14-042 case was fundamentally different than the present case in crucial areas.

110. The 14-042 Docket involved only a two-year continuation of the minimal DSM portfolio KCP&L had in place at that time and modifications to its two demand response programs. It included a ramp down to zero for its business demand response program, MPower, and a continued freeze on new participants to its residential demand response program, Energy Optimizer programmable thermostat program. As such, the energy savings and demand savings expected from the 14-042 Docket portfolio were low.¹⁸⁸ Additionally, at the time of the filing, KCP&L was uncertain whether it would continue a DSM portfolio in Kansas following the requested two-year extension in that case.¹⁸⁹ KCP&L chose to use a short-term capacity contract price as its avoided cost as there was not enough demand savings anticipated to drive postponement of a CT further into the future and it did not have a long-term perspective on continuation of its DSM portfolio into the future.¹⁹⁰ A short-term capacity cost made sense for the avoided capacity cost assumption under the circumstances of the 14-042 Docket. These key circumstances are much different in the present case.

111. After conclusion of the 14-042 Docket, the KEEIA was passed, giving KCP&L more certainty for the viability and long-term nature of DSM to allow it to move forward with more robust DSM portfolio offerings. KCP&L’s KEEIA portfolio projects significant amounts of kWh and kW savings which will lead to postponement of future generation construction. KCP&L

¹⁸⁷ Glass Direct, pp. 24-25.

¹⁸⁸ Nelson Rebuttal, p. 21.

¹⁸⁹ Nelson Rebuttal, p. 21.

¹⁹⁰ Nelson Rebuttal, p. 21.

now has a construct in place in Kansas to support its long-term view toward DSM as a significant resource in its portfolio and sees a long-term role for DSM in its Kansas jurisdiction in light of the passage of the KEEIA.¹⁹¹ In addition, KCP&L has begun retiring some of its baseload coal-fired power plants and its IRP calls for more baseload plants to close in the reasonably near future making the need for DSM to postpone future generation construction greater in this case than it was in the 14-042 Docket. The major differences in underlying facts between the present Application and the 14-042 Docket make it clear that the reasoning underlying the chosen avoided capacity cost in the 14-042 Docket is not transferable to this Application.

112. Staff also argues that its use of Perspective One is reasonable because KCP&L's proposal is for only three years.¹⁹² This conveniently ignores the abundant evidence presented by KCP&L establishing that this is only the first phase of KEEIA, that the intent is to file KEEIA Cycle 2 when Cycle 1 ends, KCP&L's long-standing efforts to implement DSM in Kansas, KCP&L's continuation of MEEIA Cycle 1 in Missouri with the filing of MEEIA Cycle 2, and KCP&L's incorporation of DSM into its long-term resource planning as evidenced in its IRP. Furthermore, the impacts of these programs will persist for many years beyond the three-year period during which the programs are implemented. KCP&L's 20-year IRP selected DSM as the least-cost resource when it was evaluated on an equal basis to supply-side investments.¹⁹³ The reasons Staff gives for choosing to use the short-term market price of capacity cannot withstand the force and reality of the evidence in the record and must be rejected.

113. Staff's recommendation assumes one of two things: (1) that KCP&L will always have capacity available for purchase on the spot market at the price of approximately **\$██████████**,

¹⁹¹ Nelson Rebuttal, p. 22.

¹⁹² Glass Direct, p. 25.

¹⁹³ Nelson Rebuttal, p. 23; KEEIA Report, p. 2-8.

or (2) that DSM should not be considered as a resource for long-term planning purposes.¹⁹⁴ Both assumptions are unsupported, unreasonable, and inconsistent with the KEEIA.¹⁹⁵

114. Dr. Glass testified that he does not like long-term resource planning, preferring a five-year or ten-year forecast that is rolling.¹⁹⁶ He indicated that the avoided capacity cost should only consider “steel in the ground” at the point “where it’s not a theoretical thing but the plant is there, it’s going to be – you know, it’s been approved, then that should be the avoided cost.”¹⁹⁷ But that is not a feasible position to take. A utility must plan further ahead to meet its customers’ demand. Long-term planning is required as new generation cannot be built overnight, any more than DSM can be developed as a resource overnight. Further, it is unreasonable to say a utility cannot include in its avoided cost analysis the generation facilities its long-term planning indicates will be built absent DSM until those facilities are approved by the Commission. The Commission does not always preapprove generation construction, and at that point in the process, the decision has already been made. DSM is part of long-term planning and its actual impact on the results of that planning is the best information available for calculating avoided capacity costs.¹⁹⁸ Finally, shorter-term planning does not guarantee better information.

115. Additionally, delaying decisions until present unknowns become more predictable is not a reasonable approach either. A utility company cannot always hold off on making its resource decisions to see what happens in a particular area that might impact resource planning,

¹⁹⁴ Tr. Vol. 3, Glass, p. 654. Dr. Glass said he would not do a 20-year resource plan. But utility companies must plan long-term, so Dr. Glass’ alternative option is not viable in the real world.

¹⁹⁵ Nelson Rebuttal, pp. 22-23.

¹⁹⁶ Tr. Vol. 3, Glass, p. 680.

¹⁹⁷ Tr. Vol. 3, Glass, p. 680.

¹⁹⁸ Although Dr. Glass objects to a long-term supply plan, he admits that long-term supply plans reflect a reduced need to build generation at the level represented by the DSM demand reduction included in the plan, and that if the DSM was not in the plan, the utility would have to include the cost of other sources of supply like a CT. (Tr. Vol. 3, Glass, pp. 654-655.)

and as Commissioner Feist Albrecht pointed out at hearing, that approach would result in continually pushing the decision out further because there will always be unknowns.¹⁹⁹

116. Staff also excludes “firm gas costs” from its avoided capacity cost, which is **\$[REDACTED]** of KCP&L’s **\$[REDACTED]** calculation.²⁰⁰ Dr. Glass argues that firm gas cost is not a capacity cost, and that the cost of gas runs through KCP&L’S ECA rider.²⁰¹ Dr. Glass misunderstands the firm gas cost component of KCP&L’s avoided capacity estimate. The firm gas cost represents the cost of pipeline equipment and any upgrades that would be required to provide firm transportation service of gas to a new generation facility. The firm gas cost only represents the construction and/or equipment cost, and does not capture any of the energy cost for the gas that would be delivered as fuel. The firm gas cost is a cost that would be incurred if a CT were constructed and thus is a cost that is avoided if the CT is not built. Therefore, it is appropriate that the firm gas cost be included in the avoided cost of capacity. The fact that the firm gas cost would be recovered through the Company’s ECA Rider has nothing to do with the fact that they are capacity-related costs. The specific mechanism by which any of the components of the avoided capacity cost would be recovered is irrelevant. Without *full* recognition of *all* of the components of the costs avoided, demand-side programs would not be valued equal to supply-side investments in infrastructure as KEEIA requires. As such, the fixed component of gas costs should be included in the avoided capacity cost.²⁰²

117. Staff also chose to continue to include avoided transmission and distribution cost of **\$[REDACTED]** in its calculation of avoided costs, even though KCP&L explained it does not

¹⁹⁹ Tr. Vol. 3, Glass, p. 678.

²⁰⁰ Glass Direct, p. 24. KCP&L’s avoided capacity cost is composed of **\$[REDACTED]** per kW for generation capacity, **\$[REDACTED]** per kW for transmission capacity, **\$[REDACTED]** per kW for firm gas cost, and **\$[REDACTED]** per kW for fixed operations and maintenance cost.

²⁰¹ Glass Direct, p. 24.

²⁰² Nelson Rebuttal, p. 26.

currently include those costs. Transmission avoided cost are not included because KCP&L transmission projects included in the Southwest Power Pool (“SPP”) regional planning processes for reliability improvement or economic benefits would not be impacted by the implementation of DSM programs²⁰³ Distribution avoided cost is not included because KCP&L’s distribution planning’s annual review of 20-year load projections concluded that loads for the relevant areas continue to flatten and more commonly, decline, which has eliminated the need for expansion projects in these areas.²⁰⁴ As such, Staff has incorrectly included these types of costs by using the number from the 14-042 Docket that includes such costs.

118. CURB also relies on the avoided capacity cost from the 14-042 Docket, but excludes the transmission and distribution costs, arriving at an avoided capacity cost in this case of **\$██████**.²⁰⁵ Ms. Harden argues that the benefit to the consumers of the proposed DSM programs should only be the time value of money gained by delaying the construction of a new \$120 million power plant from 2024 to 2027.²⁰⁶ This incorrectly describes the value of the DSM programs. DSM programs will be saving energy in a way that is exactly analogous to a power plant generating energy in an alternate world where the DSM programs were not enacted. The value is measured by the cost of one more or one less kWh on the margin of the system. The kWh (or kW) saved by DSM are actually completely eliminated and do not occur on the system. They are not merely “delayed” as claimed by Ms. Harden.²⁰⁷ System demand growth is slowed.

119. As explained above, the avoided capacity cost the Commission chooses to use will heavily impact the results of the benefit/cost tests. The avoided capacity cost used by KCP&L has

²⁰³ Nelson Rebuttal, p. 25.

²⁰⁴ Nelson Rebuttal, p. 25.

²⁰⁵ Harden Direct, p. 22.

²⁰⁶ Nelson Rebuttal, p. 28.

²⁰⁷ Nelson Rebuttal, p. 28.

been accepted as appropriate in Missouri, it reflects the reality of what KCP&L's KEEIA DSM portfolio is intended to do, and it fairly values the benefits accruing to customers as a result of DSM. It should be adopted by the Commission for purposes of evaluating KCP&L's three-year KEEIA Cycle 1 proposal to allow the programs to proceed.

C. Net-To-Gross – KCP&L Uses a Reasonable NTG Based on Actual Data

120. A key requirement for cost benefit analysis is estimating the NTG ratio. The NTG ratio adjusts the gross energy and demand savings associated with a program to reflect the overall effectiveness of the program, taking into account free riders, participant spillover, and non-participant spillover.²⁰⁸ The NTG ratio is defined as:

$$NTG\ Ratio = 1 - FR\ rate + PSO\ rate + NPSO\ rate^{209}$$

Establishing the NTG ratio is critical to understanding overall program success and identifying ways to improve program performance. In MEEIA Cycle 1, for example, the Company utilized the EM&V annual results to incorporate changes to the programs to improve the NTG ratio.²¹⁰ Based on KCP&L's program experience, the Company proposes a NTG ratio of 1.0 for the initial evaluation of the programs.²¹¹ This NTG ratio will be reviewed as part of the EM&V process, and the resulting NTG ratio will be used to true-up the components of the cost recovery mechanism.²¹²

121. Staff proposes a 0.8 NTG ratio. In addressing the Company's proposed 1.0 NTG ratio, Staff said:

KCP&L assumed a net-to-gross ratio of one for all of its programs. For the demand response programs this might not be a horrible assumption. However,

²⁰⁸ KEEIA Report, pp. 3-4 to 3-5.

²⁰⁹ KEEIA Report, p. 3-5

²¹⁰ KEEIA Report, p. 3-5.

²¹¹ KEEIA Report, p. 4-15; Nelson Rebuttal, pp. 9-10.

²¹² Mary Turner Rebuttal, p. 11.

for the energy efficiency programs, the assumption of one for net-to-gross violates common sense. For example, the Home Lighting Rebate program where customers are given “an instant incentive at the point-of-purchase” seems to invite persons who are not KCP&L customers to stock up on LEDs when visiting the KCP&L service territory.²¹³

Staff further stated:

“Thus, *because of Staff’s risk-aversion*, we chose a net-to-gross ratio of 0.8 for our analysis, although changing the net-to-gross ratio did not have a large effect on the benefit cost tests.”²¹⁴

122. Staff provides no support for its NTG ratio assumption of 0.8. Further, in rejecting the Company’s proposed 1.0 NTG ratio, Staff’s only justification is “it might not be a horrible assumption” for demand response programs but it “violates common sense” for energy efficiency programs. Staff’s inadequate explanation for these criticisms is a reference to the Company’s Home Lighting Rebate program, which fails to explain how Staff’s 0.8 NTG ratio was derived and how it makes more sense than the Company’s proposed 1.0 NTG ratio. Additionally, given Staff’s conclusion that changing the NTG ratio to 0.8 “did not have a large effect on the benefit cost tests,” it appears Staff’s opinion that KCP&L’s net-to-gross ratio of 1.0 “violates common sense” is a dramatic overstatement. In fact, KCP&L has had very positive NTG ratios as a result of its Cycle 1 EM&V in Missouri, upwards of over 0.95 for an overall portfolio.²¹⁵

123. In reality, Staff chose a lower NTG ratio because it is risk averse, not because Staff’s NTG is more accurate or based upon better data than KCP&L’s NTG.²¹⁶

²¹³ Glass Direct, p. 23.

²¹⁴ Glass Direct, p. 23 (emphasis added).

²¹⁵ Tr. Vol. 1, Winslow, p. 118.

²¹⁶ Glass Direct, p. 23.

124. CURB also disputes KCP&L's use of a 1.0 NTG ratio, arguing the Commission requires the use of the NTG ratios set out in the California DEER for program evaluation.²¹⁷ As discussed more fully above, KCP&L proposes to use an initial NTG ratio of 1.0. To the extent the use of an NTG ratio of 1.0 requires a waiver or variance from the California DEER, such waiver or variance has been requested by KCP&L in this filing.²¹⁸ Further, KCP&L's justification for using a 1.0 NTG ratio is addressed in the KEEIA Report and Nelson Rebuttal Testimony.²¹⁹ CURB does not substantively argue KCP&L's proposed 1.0 NTG ratio is inappropriate or unsupported; rather, CURB's argument focuses on the Company's failure to use the NTG ratios set out in the California DEER, which CURB claims is required by the Commission's Order Following Collaborative in the 08-442 Docket. This argument fails to recognize the Company's request for a waiver/variance from this requirement and the Commission's authority to modify its earlier decision based upon evidence presented in this docket.

D. California DEER – KCP&L's TRM Better Reflects Kansas Conditions

125. In the 08-442 Docket, the Commission determined that utilities should use the California DEER until a Kansas-specific database is built.²²⁰ Although a Kansas-specific database has not yet been built, KCP&L did not use the California DEER in the instant case, a decision which was criticized in varying degrees by Staff and CURB. To put this issue into perspective, at the time the 08-442 Docket was open, the California DEER was among the only well-established TRMs in the country. In fact, the first comparable TRM in the central states did not become

²¹⁷ Harden Direct, p. 27.

²¹⁸ KEEIA Report, Appendix G.

²¹⁹ See KEEIA Report, pp. 3-4 to 3-5 and Nelson Rebuttal, pp. 9-10.

²²⁰ 08-442 Order, p. 14.

available until 2012 with the publication of the Illinois TRM version 1.0.²²¹ 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 until a Kansas-specific database is built because the Commission recognized that “[California] DEER data may not be the most accurate for Kansas and utilities may find other reliable sources which provide better data” and because Illinois conditions more closely represent Kansas conditions than California.²²² The 08-442 Order makes clear that the Commission’s goal was to move away from the California DEER over time toward data more relevant to Kansas. Today, eight years after the 08-442 Order, more appropriate and accurate data is now available for the Company’s Kansas service area.²²³ Staff witness John Turner agrees, saying: “It is important to reflect region specific assumptions such as climate data, baselines, and local codes and regulations as accurately as possible.”²²⁴

126. Furthermore, KCP&L would not have been able to complete the KEEIA Cycle 1 plan using the California DEER data exclusively because there would have been numerous missing values. In an analysis that KCP&L voluntarily developed for Staff in response to Staff Data Request No. 5 to compare KCP&L’s measure data to the California DEER measure data, many of the values for measure life, energy savings, and measure cost were left blank, unable to be found or reproduced using the California DEER and its associated work papers and auxiliary libraries.²²⁵ As a result, for measures in the KCP&L plans for which the California DEER has no values, there is no choice but to use other sources. Clearly, the California DEER is not an exhaustive database.

²²¹ Nelson Rebuttal, p. 33, *citing* Illinois Statewide Technical Reference Manual. <http://www.ilsag.info/technical-reference-manual.html>.

²²² 08-442 Order, p. 14.

²²³ 08-442 Order, ¶¶ 43-45.

²²⁴ John Turner Direct, p. 5.

²²⁵ Nelson Rebuttal, p. 34.

Indeed, no single data source has all of the answers, and the Commission recognized this fact in its 08-442 Order.²²⁶

127. While Staff witness, Mr. Turner, remarks on KCP&L's use of its own TRM and not the California DEER, he does not automatically reject KCP&L's TRM because it is not the California DEER. In fact, Mr. Turner recognizes that "[i]n most cases, KCP&L's baseline assumptions are somewhat similar with Illinois, California DEER or Mid-Atlantic."²²⁷ Staff's point of controversy with KCP&L's TRM has to do with the large variations in kWh and kW savings, as well as incremental costs, found in KCP&L's TRM compared to the Illinois and Mid-Atlantic TRMs and the California DEER, particularly when scaled to a large number of installations.²²⁸ Because of the large variations in kWh and kW savings among the various TRMs, Staff asserts KCP&L's deemed savings estimates should be understood to have "large error bands." Despite this concern, Staff's recommendation with regard to the use of KCP&L's TRM is merely cautionary. Staff does not reject KCP&L's TRM and, in fact, "views KCP&L's TRM as a useful resource for future EM&V."²²⁹ Further, Staff recognizes that KCP&L's requested variance would allow KCP&L to use its own TRM "to determine deemed savings, which relies on EM&V results from GMO Cycle 1, the Navigant Potential Study, and secondary sources, such as the Illinois TRM, rather than using only the California Manual."²³⁰ As KCP&L witness Timothy Nelson stated in rebuttal testimony, there are numerous reasons why TRMs from different regions will result in different deemed values for similar energy efficiency measures.²³¹ These differences

²²⁶ Nelson Rebuttal, p. 34.

²²⁷ John Turner Direct, p. 14.

²²⁸ John Turner Direct, pp. 14, 17.

²²⁹ John Turner Direct, p. 17.

²³⁰ John Turner Direct, p. 10, *citing* KEEIA Report, Appendix G-3.

²³¹ Nelson Rebuttal, p. 35.

are driven by variations in weather, baseline market conditions, building stock, state and local building codes and equipment standards, labor cost structures, customer awareness, DSM program maturity, and several other factors.²³² In fact, variability from one TRM to another is both expected and a natural result of the differences among regions and DSM portfolios.²³³ Hence, characterizing variability in TRMs as “error bands” does not reflect the differences between regions and the fact that these differences in measured values are entirely anticipated.²³⁴ The logical conclusion is that California DEER, the Illinois TRM, and the Mid-Atlantic TRM can all be very different from each other and it would not make sense to take a TRM from another state and apply it *carte blanche* to one’s own.²³⁵ This is precisely the reason KCP&L felt it important to ensure that the assumptions used for its KEEIA Cycle 1 plan were as well-tailored to the Kansas customer base and market as possible by selecting the most relevant sources available.²³⁶

128. At hearing, Commissioner Feist Albrecht engaged in the following exchange with Dr. Glass:

Q: (Commissioner Feist Albrecht) So what I heard you say is consistent with some of what has been said in previous Commission orders is that the Commission has a preference for Kansas-specific measures and values. And what I’m also hearing you say is that perhaps at least portions of KCP&L’s TRM gets us to more Kansas-specific, Kansas-specific information.

A: (Dr. Glass) Correct.

²³² Nelson Rebuttal, p. 35.

²³³ Nelson Rebuttal, p. 36.

²³⁴ Nelson Rebuttal, p. 36.

²³⁵ Nelson Rebuttal, p. 35.

²³⁶ Nelson Rebuttal p. 36.

Dr. Glass acknowledges that KCP&L's TRM is a step in the right direction, away from using the California DEER, towards measures and values that better represent conditions in Kansas, even if they are not yet 100% "Kansas-specific."

129. Like Staff, CURB witness Stacey Harden notes the variance between the California DEER standard values and KCP&L's TRM values, claiming KCP&L's TRM "generally overstates the benefits of measures, while at the same time understating the incremental cost of measures."²³⁷ Variations in TRMs for different regions of the country should be expected.²³⁸ The differences between the California DEER and the Company's TRM do not make KCP&L's TRM wrong; KCP&L's TRM is more closely aligned with results expected for DSM programs from the Midwest region.²³⁹ In addition, CURB characterizes KCP&L's use of its own TRM and not the California DEER as a failure to comply with the Commission's 08-442 Order.²⁴⁰ However, CURB conveniently fails to point out the Company's request for variance of the Commission's requirement to utilize the California DEER database,²⁴¹ rendering CURB's non-compliance argument invalid.²⁴²

130. Finally, because KCP&L proposes to apply a full retrospective EM&V with no floor or ceiling on the NTG factor or ex post gross factor, the majority of the TRM risk shifts from the customer to KCP&L. KCP&L has also proposed an adjustment of the TD using a floor and ceiling on the NTG ratio and an ex post gross adjustment with no floor or ceiling. Thus, KCP&L will only get TD recovery for EM&V verified energy savings and will only earn EO for EM&V verified energy and demand savings.

²³⁷ Harden Direct, p. 25.

²³⁸ Nelson Rebuttal, pp. 35-36.

²³⁹ Mary Turner Rebuttal, p. 7.

²⁴⁰ Harden Direct, p. 24.

²⁴¹ KEEIA Report, Appendix G, p. G-3.

²⁴² Mary Turner Rebuttal, pp. 6, 10-11.

E. Benefit-Cost Analysis – Primary Emphasis Should be on TRC Test

131. As part of the KEEIA legislation, KCP&L is required to benefit customers in the customer class for which the programs are implemented, regardless of whether the program is utilized by all customers in the class.²⁴³ This is accomplished by finding a balanced and optimized portfolio approach with respect to the relevant benefit-cost tests.²⁴⁴ There are four industry standard cost-effectiveness tests to gauge the economic merits of DSM measures and programs. These tests were addressed and approved by the Commission in the 08-442 Docket.²⁴⁵ Each test compares the benefits of the DSM activities to their costs - using the test's own unique perspectives and definitions - all defined in terms of the net present value of future cash flows. Three of the four tests directly consider ways in which the customer is affected, as described below:²⁴⁶

- **Total Resource Cost Test.** The TRC test focuses on the economic impact of the DSM activities to society as a whole. The benefits are the avoided utility energy and capacity costs. The costs are the incremental costs of end-use measures implemented due to the program, including both customer and utility costs, plus the utility costs to administer, deliver and evaluate the program. Since the TRC test ratio is greater than 1.0, the portfolio delivers more economic benefit to all the Company ratepayers (including participants and non-participants) than the total cost of the programs.²⁴⁷ Simply stated, the TRC test measures the net costs of a

²⁴³ K.S.A. §66-1283(c)(2)(B).

²⁴⁴ This is, in significant part, why it is crucial to approve the entirety of the KEEIA Cycle 1 portfolio. The portfolio as a whole works together to benefit both participants and non-participants in the DSM programs. Should approval be denied for one program, let alone the six recommended by Staff, it completely changes the dynamic of the portfolio, including the potential participation level, program costs, calculated savings, etc.

²⁴⁵ See 08-441 Order, ¶ 38, and 08-442 Order, ¶ 37.

²⁴⁶ KEEIA Report, p. 2-7.

²⁴⁷ KEEIA Report, p. 2-7.

DSM program as a resource option based on the total costs of the program, including both the participants' and the utility's costs.²⁴⁸

- Utility Cost Test (“UCT”) or Program Administrator Cost (“PAC”) Test. The UCT or PAC test measures the net costs of a DSM program as a resource option based on the costs incurred by the program administrator (including incentive costs) and excluding any net costs incurred by the participant. The benefits are similar to the TRC test benefits. Costs are defined more narrowly.²⁴⁹
- Participant Cost Test (“PCT”). The PCT is the measure of the quantifiable benefits and costs to the customer due to participation in a program. Since many customers do not base their decision to participate in a program entirely on quantifiable variables, this test cannot be a complete measure of the benefits and costs of a program to a customer.²⁵⁰ Stated another way, the benefits are the lifetime value of retail energy savings accrued by participating customers and the costs are those seen by the participant; in other words, the incremental measure costs minus the value of utility incentives paid out to them. The Company value for this benefit-cost ratio is significantly higher than 1.0, showing that participants overwhelmingly benefit from the programs.²⁵¹
- Rate Impact Measure Test. The RIM test measures what happens to customer bills or rates due to changes in utility revenues and operating costs caused by the

²⁴⁸ Nelson Rebuttal, p. 2, *citing* California Public Utilities Commission and California Energy Commission, Standard Practice Manual, Economic Analysis of Demand-Side Programs and Projects, July 2002, p. 18.

²⁴⁹ Nelson Rebuttal, p. 2, *citing* California Public Utilities Commission and California Energy Commission, Standard Practice Manual, Economic Analysis of Demand-Side Programs and Projects, July 2002, p. 23.

²⁵⁰ Nelson Rebuttal, pp. 2-3, *citing* California Public Utilities Commission and California Energy Commission, Standard Practice Manual, Economic Analysis of Demand-Side Programs and Projects, July 2002, p. 8.

²⁵¹ KEEIA Report, p. 2-7.

program. Rates will go down if the change in revenues from the program is greater than the change in utility costs. Conversely, the rates or bills will go up if revenues collected after program implementation are less than the total costs incurred by the utility in implementing the program. This test indicates the direction and magnitude of the expected change in customer bills or rate levels.²⁵² DSM portfolios almost always raise rates on a per unit basis (that is, the RIM test ratio is less than 1.0 for the vast majority of DSM portfolios). Thus, costs typically outweigh benefits from the point of view of this test, but if the absolute energy use decreases to a greater extent than per-unit rates are increased over time, the TRC test will be greater than 1.0 and lower average utility bills will result. Simply stated, the RIM test attempts to show the effect of the DSM portfolio on customer rates.²⁵³

132. The Company strives to have programs available to all who want to participate, but fully expects that some will not participate for a myriad of reasons related to their individual situations. Viewing the programs through the lenses of the cost-effectiveness metrics above allows all customers to understand that the Company's DSM investment is beneficial to them.²⁵⁴

133. Understanding the cost-benefit tests is necessary because the KEEIA requires the evaluation of the cost-effectiveness of demand-side programs. The KEEIA states: "In making its decision whether or not to approve the proposed program, the commission shall determine the appropriate test for evaluating the cost-effectiveness of the demand-side program."²⁵⁵ The KEEIA also states: "It shall be the policy of the state to value demand-side program investments equal to

²⁵² Nelson Rebuttal, p. 3, *citing* California Public Utilities Commission and California Energy Commission, Standard Practice Manual, Economic Analysis of Demand-Side Programs and Projects, July 2002, p. 13.

²⁵³ KEEIA Report, p. 2-8.

²⁵⁴ KEEIA Report, p. 2-8.

²⁵⁵ K.S.A. § 66-1283(c)(1)(D).

traditional investments in supply and delivery infrastructure as much as is practicable... .”²⁵⁶ The policy to “value demand-side program investments equal to traditional investments” has implications on the choice of the appropriate cost-benefit test. According to KCP&L witness Nelson, “[o]f all the cost-effectiveness ratios, only the TRC test measures the total *net costs* of a demand-side program to ratepayers and the utility in the same way that supply-side investments are measured. As explained in the California Standard Practice Manual regarding the TRC test:

This test represents the combination of the effects of a program on both the customers participating and those not participating in a program. In a sense, it is the summation of the benefit and cost terms in the Participant and the Ratepayer Impact Measure tests, where the revenue (bill) change and the incentive terms intuitively cancel (except for the differences in net and gross savings).²⁵⁷

134. While the other cost-benefit tests are not unimportant - indeed, they examine the impact of a demand-side program from the utilities’, the participants’, and the ratepayers’ perspectives - none of these other tests are used for supply-side investments. The TRC test is the only cost-effectiveness test that is equivalent to the least-cost planning used in integrated utility planning. Therefore, the TRC test is the clearly superior choice of the primary screening test for evaluating supply-side investments, as required by the KEEIA.²⁵⁸

135. Other states overwhelmingly agree. According to a 2012 ACEEE survey, 95 percent of states rely on a single, primary screening test. The TRC is used by 29 states (71 percent) as the primary methodology for defining energy efficiency cost-effectiveness; the Societal Cost test is used by six states (15 percent) as the primary methodology for defining energy efficiency cost-effectiveness; the PAC test is used by five states (12 percent) as the primary methodology for

²⁵⁶ K.S.A. § 66- 1283(b).

²⁵⁷ Nelson Rebuttal, p. 4, *citing* California Public Utilities Commission and California Energy Commission, Standard Practice Manual, Economic Analysis of Demand-Side Programs and Projects, July 2002, p. 13 (emphasis in the original).

²⁵⁸ Nelson Rebuttal, pp. 4-5.

defining energy efficiency cost-effectiveness; and the RIM test is used by one state (2 percent) as the primary methodology for defining energy efficiency cost-effectiveness.²⁵⁹

136. All of the parties in this case generally agree that the TRC test represents the most appropriate screening test to measure energy efficiency cost-effectiveness.²⁶⁰ More importantly, the Commission previously determined that emphasis should be placed on the TRC test. The Commission specifically determined that “reducing or postponing future construction of generation and reservation of capacity...are primary goals which may have benefits for all of a utility’s customers. Therefore, the Commission will place emphasis on the TRC Test since the TRC Test reflects the benefit to implementing an energy efficiency program throughout a utility’s territory.”²⁶¹ The Commission also found that utilities should submit the Participant, RIM, PAC, and TRC benefit-cost tests with a DSM or DR program application so that the Commission can evaluate the results on a case-by-case basis in a manner consistent with its stated goals.²⁶² However, the TRC is the only test the Commission explicitly stated should be emphasized when determining the cost-effectiveness of an energy efficiency program.

F. DSIM Rider

1. KCP&L’s DSIM Rider - Timely Recovery at Least Cost to Customers.

137. As detailed more comprehensively above, the Company has proposed the DSIM Rider for recovery of its KEEIA portfolio costs, lost revenues, and earnings opportunities. KCP&L’s proposed DSIM Rider provides for timely, contemporaneous recovery of two

²⁵⁹ Nelson Rebuttal, p. 6, *citing* Tim Woolf, Erin, Malone, Kenji Takahashi, William Steinhurst, Synapse Energy Economics, Best Practices in Energy Efficiency Screening: how to Ensure that the Value of Energy Efficiency is Properly Accounted For, Jul. 23, 2012.

²⁶⁰ *See, e.g.*, Harden Direct, pp. 9-10; Prince Direct, p. 3; Frantz Direct, p. 8.

²⁶¹ *See* 08-441Order, at ¶ 39.

²⁶² *Id.*, at ¶ 38.

components: program costs and TD, plus an EO which would be recovered over a two-year period following final determination based on EM&V review in the year following the 36-month program period. As proposed, the DSIM Rider will be updated semi-annually with a reconciliation of the prior period's forecasted program costs and TD to calculated historical amount with carrying costs on any under- or over-recovery. The TD recovery is also subject to retrospective EM&V review through adjustment of the EO.²⁶³ Each aspect of KCP&L's DSIM Rider is a critical part of the mechanism as a whole and contemplated under the KEEIA.

138. KCP&L has included DSM labor costs in the Rider. Under KCP&L's existing EE Rider, the Commission had limited the inclusion of internal labor expenses in energy efficiency cost recovery riders to employees whose sole job function is energy efficiency related activities, and whose salary, (or someone they replaced), was not included in base rates during the utility's last base rate proceeding.²⁶⁴ Since the issuance of the 10-636 Order, KCP&L has not included any labor costs in its EE Rider. The Company now estimates that it will need an additional 4.5 full-time employees ("FTEs") in order to implement the KEEIA Cycle 1 demand-side programs. The job functions of these employees will solely be related to energy efficiency activities, and their salaries are not currently in KCP&L's base rates. However, KCP&L recently received approval for demand-side programs in its KCP&L Missouri and GMO service territories, and some of these new employees are now in place to implement those programs. Employees assigned to implementation of demand-side programs will work for all three KCP&L jurisdictions and their time will be allocated among the jurisdictions accordingly. The sole job functions of these new

²⁶³ KEEIA Report, p. 1-8.

²⁶⁴ Docket No. 10-KCPE-636-TAR, *Order Approving Energy Efficiency Rider*, issued Jun. 21, 2010 ("10-636 Order"), p. 3, ¶ 10.

employees are DSM related, they did not replace a former employee, and their salaries are not in KCP&L's base rates.²⁶⁵

2. Staff

139. Staff proposes a three-part cost recovery mechanism that, like KCP&L's DSIM Rider, includes program costs, TD, and EO. However, unlike KCP&L's mechanism, Staff's TD and EO proposals fail to comply with the statutory requirements and guidelines contained in KEEIA. In addition, while Staff's proposal for recovering program costs complies with KEEIA, it unnecessarily increases the costs of DSM to Kansas customers and proposes a filing schedule that burdens the Commission and participants in the Company's annual filing, and one the Company cannot reasonably be expected to meet. Finally, Staff's proposal fails to provide for the timely recovery of the Company's costs.

3. Program Costs and Schedule – Staff's Mechanism Increases Costs to Customers and Proposes an Unworkable Process For the Parties.

140. Staff recommends the Commission continue with the current method of historical, after-the-fact, actual cost recovery, but recommends a procedural schedule for the annual rider filing that shortens the lag time from 18 months to 16 months, granting KCP&L carrying charges on the unrecovered balance of program costs beginning when incurred.²⁶⁶ Staff recommends a process where KCP&L would make its annual filings on January 15, with a shortened time period for review by the Commission.

141. Staff's proposed schedule is not realistic and would not support the parties' efforts in future DSIM Rider annual filings. As Mr. Foltz explained in testimony, Staff's recommended process "would make it complex, burdensome and frankly impossible to implement."²⁶⁷ Staff

²⁶⁵ KEEIA Report, p. G-5.

²⁶⁶ Ives Rebuttal, pp. 18-19. It appears the carrying charges would also apply to any TD and EO.

²⁶⁷ Foltz Rebuttal, p. 10.

attempts to reduce the lag by shortening the filing and approval schedule by 61 days, but achieves this primarily at the Company's expense. Under Staff's proposal, the Company would have to make its annual filing by January 15th of each year, giving only two weeks after the close of the year to gather and present more information than it is now allowed until March 31st to prepare. In other words, Staff proposes to cut 75 days from the Company's filing schedule, leaving the Company only 15 calendar days to prepare and file the DSIM Rider update request and testimony.²⁶⁸ This would be a "near impossibility" for the Company to meet this schedule.²⁶⁹

142. In addition to the logistical problems inherent in Staff's proposal, Staff's methodology increases costs to customers. While the Company agrees that carrying costs on over- or under-recovered balances should be symmetrical, the carrying costs associated with the regulatory lag intrinsic in Staff's proposal would result in \$598,000 of additional costs relative to the program costs incurred.²⁷⁰ Additionally, Staff's proposal would result in \$379,000 of additional carrying costs relative to the TD recovery.²⁷¹ In total, Staff's recommendation would add approximately \$1 million to the \$29 million of program costs anticipated by KCP&L.²⁷² Although Mr. Grady testified at hearing that this amount "sounds like a lot, but it's less than 2 percent of the program costs",²⁷³ it is an unnecessary cost to impose on customers because the Company's proposed contemporaneous recovery mechanism minimizes these additional costs.

²⁶⁸ Foltz Rebuttal, p. 11. Mr. Foltz pointed out in his rebuttal testimony that this 15-day time period encompasses a holiday and five business days that are consumed with the closing of the Company's year-end, quarter-end, and month-end books. He was asked by CURB's counsel at hearing whether the 15 days would be sufficient since, due to the delay in this docket, the effective date of the portfolio is now October 1st instead of January 1, assuming the annual filing would now be October 15th, instead of January 15th. Mr. Foltz explained that the delay in the docket would not change the January 15th filing date, and no matter when the filing date is, 15 days is not adequate time to gather, prepare and file the annual DSIM Rider application. (Tr. Vol. 2, pp. 409-410.)

²⁶⁹ Foltz Rebuttal, p. 11.

²⁷⁰ Foltz Rebuttal, p. 6.

²⁷¹ Foltz Rebuttal, p. 6.

²⁷² Foltz Rebuttal, p.6; Tr. Vol. 3, Grady, pp. 575-576.

²⁷³ Tr. Vol. 3, Grady, p. 576.

KCP&L's mechanism is based upon forecasts, but it is trued-up each six months so customers do not pay more than actual costs, and it results in a lower total cost passed through to customers over the program cycle.²⁷⁴

143. Finally, the Company does not consider the lag in program cost recovery inherent in Staff's proposed cost recovery mechanism to be timely under the circumstances.²⁷⁵ Perhaps it reflects Staff's erroneous perception of how long the lag period actually is under the existing and under Staff's proposed mechanism. Staff witness Justin Grady asserts KCP&L's current EE Rider produces only 12 months of regulatory lag and his proposal in this docket only produces 10 months of regulatory lag; however, Mr. Grady's assessment of regulatory lag mistakenly measures the lag from the middle of the cost accumulation period to the beginning of the period in which costs are recovered.²⁷⁶ In actuality, the lag associated with KCP&L's current EE Rider, from the beginning of the cost accumulation period to the beginning of the cost recovery period, is 18 months.²⁷⁷ While Mr. Grady's Direct Testimony states that 18 months of regulatory lag is the "worst case scenario" under KCP&L's existing EE Rider, he acknowledged at hearing that it could actually be 30 months, if, for example, you assumed the Company incurred 100% of its 2016 cost in January of 2016, because they would not fully recover those costs until June of 2018.²⁷⁸ Of course, all program costs are not incurred in January of each year, just as they are not all incurred in December

²⁷⁴ Foltz Rebuttal, p. 6.

²⁷⁵ Foltz Rebuttal, p. 4.

²⁷⁶ Foltz Rebuttal, p. 3; Tr. Vol. 3, Grady, pp. 570-571 – Mr. Grady admits that he computes regulatory lag by counting from the mid-point of the year in which costs are incurred (June 30th) to the date when the Company starts billing customers for the costs (July 1st). His "definition of regulatory lag" ignores the reality of when these costs are actually incurred and when they are actually recovered.

²⁷⁷ Foltz Rebuttal, pp. 3-4; Tr. Vol. 3, Grady, p. 569 – Mr. Grady was asked "So the date that costs are first incurred in January 2017. They cannot be recovered – the first time they can be recovered is 18 months later, right?" He responded, "That's true".

²⁷⁸ Tr. Vol. 3, Grady, p. 573.

of each year.²⁷⁹ The same analysis applies to Staff’s proposal for cost recovery. Although Staff proposes a somewhat shortened regulatory approval process, the result is still 16 months of regulatory lag.²⁸⁰ Given the KEEIA requires “timely cost recovery,” the lag associated with Staff’s proposal is not considered “timely” by the Company.

4. Labor Costs – Staff’s Recommendation Enforces the Disincentive of the Utility to Not Pursue DSM.

144. Staff’s proposal on recovery of labor costs related to DSM is also insufficient. Mr. Grady proposes that KCP&L should be allowed to recover such costs through the DSIM Rider if, (1) KCP&L’s actual internal labor costs, in aggregate, are higher than the level used to set its base rates in its last rate case, and, (2) KCP&L can show that the job functions of those positions whose costs are to be recovered through the DSIM Rider relate solely to DSM and EE.²⁸¹ KCP&L has no objection to the second part of Staff’s proposal. However, the first part is counter-productive and should be rejected.

145. Under Staff’s proposal, a reduction in labor costs in another (non-DSM) area would have to be utilized to offset any incremental DSM labor before consideration of labor recovery in the DSIM Rider.²⁸² In other words, reductions in labor costs achieved by the Company in other areas of operation would be used to subsidize DSM. Since these are cost reductions that would flow to the benefit of shareholders absent DSM, Staff’s recommendation effectively perpetuates

²⁷⁹ CURB witness, Ms. Harden, bases her argument that the actual lag time under the present EE Rider is closer to 6 months on a hypothetical that assumes 100% of costs are incurred on December 31st of the program year. (Tr. Vol. 2, Harden, pp. 504-505.) This is an unreasonable hypothetical, as costs are not incurred in that manner. During cross-examination of Mr. Grady, KCP&L used a similarly unlikely hypothetical where all costs are incurred in January of the program year. However, unlike CURB, KCP&L did not present its hypothetical to support its claim that the lag time was 18 months; KCP&L used it only to illustrate that Mr. Grady’s “worst case scenario” is incorrect. KCP&L’s position is that the lag time is 18 months, which reflects the reality that costs are incurred somewhat ratably throughout the program year.

²⁸⁰ Foltz Rebuttal, p. 4.

²⁸¹ Grady Direct, pp. 11-12.

²⁸² Ives Rebuttal, pp. 19-20.

the disincentive to pursuing DSM. Staff fails to explain why the Company would voluntarily implement DSM if it would cause shareholders to forfeit the benefits of cost reductions in other areas of the utility's operations that otherwise they would keep.

146. Like other DSM program costs, labor costs incurred solely for management and support of the DSM programs are appropriately included in the DSIM Rider. Separately recovering some DSM program costs through base rates and some through the DSIM Rider ultimately distorts the price signal to customers of the DSM programs and, more importantly, runs the risk of not capturing all DSM program costs in the program evaluation for purposes of the TRC test and any other evaluation tests.²⁸³ While it is true that KCP&L's DSIM Rider proposes to include only those labor costs over and above what is already included in base rates for positions required to implement the Company's DSM programs, this continuation of the separate recovery of these existing labor costs was left in place simply for ease of implementation.²⁸⁴

147. Once again, Staff's recommendation seems to ignore the fact that DSM is a voluntary endeavor by a utility company, and that incremental labor for KEEIA programs should be addressed so that it no longer serves as an obstacle to implementation of DSM in Kansas.

5. Staff's Throughput Disincentive is Undefined and Fails to Address the DSM Disincentive.

148. Dr. Glass fails to provide any details on his recommended TD in his direct testimony and supplements that with only a limited outline in his Cross Answering testimony, making it difficult to evaluate and respond to it in detail.²⁸⁵ Staff did not indicate its proposal has been accepted by other states, so we cannot even look to that source to find out necessary details

²⁸³ Ives Rebuttal, p. 20.

²⁸⁴ Ives Rebuttal, p. 20. There are presently some DSM labor costs in KCP&L's base rates and, for ease of implementation, KCP&L is not proposing to remove those into the DSIM Rider.

²⁸⁵ Ives Rebuttal, pp. 22-23; Harden Cross-Answering, p. 11.

about Staff's plan. In contrast, KCP&L's proposed methodology has been approved by the MPSC, after a full investigative process involving many interveners on behalf of customers and the overall public interest.²⁸⁶

149. Based on the limited information Staff provided, it appears Staff's intent is to inappropriately offset the loss of kWh sales from DSM programs with any growth in sales the Company may otherwise experience due to other factors and efforts. Even more problematic is the fact that Staff's proposal does this without considering any increased costs the Company may have experienced in the same time frame, including costs incurred to capture the growth in other areas.²⁸⁷

150. Staff's proposal is a form of partial decoupling to address the throughput disincentive.²⁸⁸ As Dr. Glass readily admits, his TD mechanism focuses on KCP&L's revenue requirement from its most recent rate case, not on lost revenues or other forfeited financial benefits of shareholders resulting from voluntarily implementing DSM.²⁸⁹ This is a fundamental error found throughout Staff's recommendations. The disincentive of DSM is not that it will cause a utility to fall below its last revenue requirement; it is that it will cause the utility to be in a worse financial situation than it would otherwise be absent DSM. The reason for including a TD component is so the utility will voluntarily offer programs that it otherwise has a disincentive to offer, and Staff's recommendation refuses to view the TD through this lens. The deficiencies in Staff's partial decoupling proposal are significant and, if accepted, would not provide sufficient throughput disincentive recovery for KCP&L to move forward with DSM programs in Kansas.²⁹⁰

²⁸⁶ Ives Rebuttal, p. 24.

²⁸⁷ Ives Rebuttal, pp. 24-25.

²⁸⁸ Ives Rebuttal, p. 21; Glass Direct, pp. 11-12.

²⁸⁹ Glass Direct, p. 12.

²⁹⁰ Ives Rebuttal, p. 24.

151. Staff argues that KCP&L's TD provides a "double dip" for the Company.²⁹¹ This is not accurate. KCP&L's TD mechanism is designed only to keep the utility whole against the effects of the proposed DSM programs until such time as the kWh sales are trued up in the Company's next general rate case.²⁹² When KCP&L has a general rate case, the kWh sales are trued up for the test year in that case, with an adjustment to annualize DSM program kWh impacts. Therefore, the TD is reset to exclude the kWh sales reduction that is now reflected through base rates. This effectively acts as a sunset provision for the DSIM Rider TD component; a concept endorsed by the Commission in its 12-337 Order.²⁹³

6. Staff's Recommendation for an Earnings Opportunity is Misdirected and Woefully Inadequate.

152. Staff's recommendation results in several changes to KCP&L's proposed earnings opportunity. First, because Staff recommends several of KCP&L's programs be rejected, it lowers the overall benefits of the portfolio. Second, Staff's use of a different avoided capacity cost for evaluating the benefits of the programs leads to lower overall benefits of the portfolio. Third, Staff contends that the TD component of KCP&L's DSIM Rider is a cost to customers that should be included as a cost in the net benefits calculation. Fourth, Staff lowers the sharing ratio so that customers receive 90% of the benefits and the Company retains only 10%.²⁹⁴ Thus, at target performance, Staff's calculation arrives at an earnings opportunity of just under \$300,000 for the entire three-year KEEIA Cycle 1 compared to KCP&L's proposal for an incentive of \$8.5 million.²⁹⁵ Staff's recommendations are unsound, inconsistent with the spirit of KEEIA, and, if

²⁹¹ CURB witness, Ms. Harden, also makes this argument. (Harden Cross-Answering, p. 9.)

²⁹² Ives Rebuttal, p. 27.

²⁹³ 12-337 Order, p. 5; Ives Rebuttal, p. 27.

²⁹⁴ Ives Rebuttal, p. 29.

²⁹⁵ Ives Rebuttal, p. 30.

accepted, would effectively terminate KCP&L's DSM portfolio proposed in this case. Even using KCP&L's sharing percentages, Staff's proposal would not come close to providing KCP&L a sufficient performance incentive to move forward with the KEEIA Cycle 1 portfolio.²⁹⁶

153. Staff's proposed level of incentive is unreasonable as it lowers the benefits associated with the programs, as well as inappropriately raises the cost side of the equation. It does not accurately reflect the net benefits accruing to customers, and it incorrectly classifies legitimate earnings of the Company as "overearnings."

154. By using the term "overearnings," Staff implies that inclusion of KCP&L's EO component in its DSIM Rider would cause KCP&L to experience earnings in excess of what has been determined appropriate by the Commission. However, Kansas law (KEEIA) provides for an EO, and the EO proposed by KCP&L would have Commission approval before it is included in rates. The return represented by the EO becomes part of KCP&L's authorized revenue requirement, so any revenues related to the EO are legitimate, legally sanctioned revenues and, therefore, cannot constitute "overearnings." The EO does not allow a utility to "over-earn" its authorized revenue requirement; rather, it modifies the authorized revenue requirement to include the return on DSM investment. The difference between the return on DSM investment versus supply-side investment is that the return on the supply-side investment is included in the revenue requirement of a general rate case, while the return on the DSM investment is included in the DSIM Rider.²⁹⁷ Both are authorized by the Commission, so both must be considered in determining KCP&L's authorized revenue requirement. Staff fails to do this analysis properly, reaching the fundamentally flawed conclusion that the EO results in "overearnings."

²⁹⁶ Ives Rebuttal, p. 31.

²⁹⁷ Ives Rebuttal, p. 31.

155. One of Staff's most significant errors in its analysis of KCP&L's KEEIA filing is subtracting the TD cost from net benefits before the calculation of the EO. This is a fatal flaw based on faulty analysis and reasoning. In short, Dr. Glass, erroneously asserts that the TD needs to be subtracted from KCP&L's calculation of net benefits. According to Dr. Glass, "[t]he TD is certainly not a cost for KCP&L, but for customers, it is a cost that they must pay."²⁹⁸ Dr. Glass's statement is, at best, illogical. As explained by KCP&L witness, Mr. Nelson, "[u]sing Dr. Glass's logic, customers' bill reductions and incentives (rebates) would then need to be added to the calculation as well. The bill reductions and incentive payments are not a benefit to KCP&L, but for customers, they are the benefits that customers receive."²⁹⁹ Mr. Nelson further explains how Dr. Glass's assertion that the TD should not be included in the calculation of benefits is erroneous "because TRC net benefits are net of all of these cash flows such that they do not affect the total."³⁰⁰ Although money transfers between the utility and ratepayers, these cash flows do not impact the total net benefits to the system. This is because even though there are many cash flows generated by DSM programs, some cancel each other out. It is the remaining cash flows that represent the true total net benefits and are used to calculate the TRC test. According to Mr. Nelson, the cash flows between the utility and the customers - including incentives, bill savings (*i.e.*, lost revenues), and TD - are internal to the utility's service territory and, as such, these payments "intuitively cancel."³⁰¹

156. In order to illustrate this principle in a tangible way, consider the purchase of an LED bulb. In this example, the costs are the incremental cost of the LED of \$15 plus the cost of

²⁹⁸ Glass Direct, p. 14.

²⁹⁹ Nelson Rebuttal, p. 29.

³⁰⁰ Nelson Rebuttal, p. 29.

³⁰¹ Nelson Rebuttal, p. 30, *citing* California Public Utilities Commission and California Energy Commission, Standard Practice Manual, Economic Analysis of Demand-Side Programs and Projects, July 2002, p. 18.

administering the program. The incremental cost is the difference in price between the LED and the baseline, which in this example is an EISA (Energy Independence and Security Act of 2007) tier 1 compliant Halogen. The benefits are the value of the avoided energy and demand savings over the life of the bulb. Period. All other cash flows are internal to the utility service territory and cancel out in the TRC test as described above.³⁰² Critically, what this demonstrates is that it is incorrect to subtract the TD from the net benefits for the EO calculation as incorrectly proposed by Dr. Glass.

157. Staff's attempt to deduct the TD from net benefits incorrectly assumes TD is a cost to customers, but it is not. TD is a redistribution of costs. Customers will pay the TD, but there will be offsetting cost reductions at the class or total customer level, and Staff fails to consider those offsetting savings experienced by program participants and the overall system that drive the redistribution. Staff uses costs redistributed among customers due to savings, but ignores the offsetting impact of the savings on a total system/customer class basis. Staff's method results in inadequate TD recovery and maintains the disincentive. At the aggregate level, TD redistribution only brings the class and total revenues back to zero impact; it does not result in a cost increase at the class or total customer level.

7. KCP&L's Tariffs are Not Overly Complex; They are Comprehensive and are Working Well in Missouri.

158. Staff argues that KCP&L's mechanism is too complex and burdensome as compared to the tariffs proposed by Staff for its mechanism. Staff points to the length of KCP&L's DSIM Rider tariffs, which are 10 pages as compared to Staff's tariffs of 6 pages.³⁰³ However, the tariffs proposed by Staff fail to define the TD and EO, or set out the calculations of those

³⁰² Nelson Rebuttal, p. 31.

³⁰³ Grady Direct, p. 7.

components and the target metrics. Staff's tariffs leave the Company – and the Commission – with no idea how these latter two components will be calculated or applied.³⁰⁴ While Staff is critical of the fact KCP&L's tariffs are 10 pages long, Staff had to acknowledge at hearing that the parties need to know the details of how the TD and EO are to be calculated, so Staff's tariff will ultimately be much longer than its present 6 pages once those necessary details are included.³⁰⁵

159. KCP&L's tariff may appear lengthy at first blush, but it provides detail to the parties on the mechanism – details that are needed for the parties to prepare and review future semi-annual filings and to conduct EM&V proceedings. The detail is important, and its implementation in future Kansas proceedings will not be from scratch, as the tariff has been working well in Missouri for three years and that experience will benefit Kansas. Further, the Company's employees and KCC Staff members who work with these tariffs are experts in DSM and will quickly become familiar with the calculations and processes, allowing them to efficiently prepare and evaluate each successive filing.

8. CURB

160. To the extent CURB's arguments are similar to those of Staff, KCP&L has addressed them above. However, unlike Staff, CURB's ultimate recommendation is that the entire DSM portfolio be rejected by the Commission. This is unfortunate for Kansas and for the individual customers CURB represents. Customers in Kansas have expressed a desire to have more DSM options available to them to assist them in managing their utility bills.³⁰⁶ This is reflected in the Public Comments filed in this docket by the Commission's Public Affairs and

³⁰⁴ Ives Rebuttal, p. 21.

³⁰⁵ Tr. Vol. 3, Grady, pp. 579-581.

³⁰⁶ Tr. Vol. 2, Ives, pp. 449-450.

Consumer Protection (“PACP”) Division on April 13, 2017.³⁰⁷ Of 108 public comments received, 102 supported KCP&L’s KEEIA Application. Supportive comments were received from residential customers – both homeowners and renters, businesses, a college, associations, public housing entities, and the government of Johnson County, Kansas.

161. CURB did not recommend approval for any of the proposed programs, even those for low income residential customers and educational programs for all residential customers. Inconsistent with the 08-442 Order³⁰⁸, CURB did not evaluate the programs individually, but rather, rejected them all based on Ms. Harden’s inappropriate and unreasonable analysis of the portfolio as a whole.³⁰⁹ The Commission has previously advised that DSM programs are to be evaluated on a program-by-program basis rather than on a total portfolio basis alone.³¹⁰ Ms. Harden ignores this aspect of the Commission’s previous decisions, while strictly applying prior Commission orders to support her arguments related to use of the California DEER and the Commission’s endorsement of the RIM test.³¹¹

162. Second, CURB chose to adopt an unreasonably low avoided capacity cost; one that is not supported by competent evidence and which guarantees the proposed programs will fail and DSM will not gain a foothold in Kansas.³¹² CURB’s use of the avoided capacity cost from the 14-042 Docket is addressed in response to Staff’s similar position.

163. Finally, CURB argues that KCP&L’s DSIM Rider should be “correspondingly discontinued” and the opportunity to collect upon the EO removed should KCP&L terminate its

³⁰⁷ The deadline for public comments ends on May 5, 2017. The April 13, 2017 PACP Division filing represents the public comments received at that point. On May 8, 2017, the PACP Division will file any additional public comments received through the deadline.

³⁰⁸ Mary Turner Rebuttal, pp. 23-24.

³⁰⁹ Ives Rebuttal, p. 33; Harden Direct, pp. 14-15.

³¹⁰ Mary Turner Rebuttal, pp. 23-24; Ives Rebuttal, p. 33.

³¹¹ Harden Direct, pp. 9, 12.

³¹² Ives Rebuttal, p. 33.

DSM portfolio in the future.³¹³ If this means that the DSIM Rider would be continued only so long as to recover the costs incurred for DSM programs up to that point in time, then this recommendation is reasonable. However, if Ms. Harden is recommending that the DSIM Rider be discontinued in a manner that results in KCP&L forfeiting any unrecovered costs (direct program costs and TD), then her position is inappropriate. Those costs would have been incurred in good faith and with Commission approval, just not yet recovered from customers due to the time lag inherent in the Rider mechanism. Approving the costs for recovery, then terminating the Rider mechanism prior to the costs actually being recovered in rates, is not only unreasonable and unfair, it could constitute a violation of the prohibition against retro-active ratemaking and an unconstitutional taking. This concern does not apply to the EO component of the recovery mechanism in the event KCP&L unilaterally halts its DSM programs, which is part of KCP&L's proposal.³¹⁴

G. Other Issues

1. The Clean Power Plan is Not Going Away and DSM Supports Compliance

164. CEP witness, Ms. Dorothy Barnett, indicates that effective DSM programs can and are expected to have a positive impact on compliance with the Clean Power Plan.³¹⁵ KCP&L agrees. Parties opposed to some or all of KCP&L's DSM portfolio have pointed out that the Clean

³¹³ Harden Direct, p. 50.

³¹⁴ KEEIA Report, Appendix E, DSIM Rider Tariff (Schedule 18), Sheet 9 of 10, Discontinuance of the DSIM Rider and KEEIA Programs; Ives Rebuttal, p. 34.

³¹⁵ Barnett Direct, pp. 5-6.

Power Plan has been stayed while undergoing court review; indicating that consideration of this benefit of DSM may not be important anymore.³¹⁶ KCP&L disagrees.

165. First, there is no justification for assuming the Clean Power Plan will disappear in its entirety, nor is it safe to assume there will be no pressure in the future to develop and use generation resources that are environmentally friendly. Such assumptions are not consistent with the information available to KCP&L.³¹⁷ Second, significant, sustainable kW and kWh savings benefits from DSM do not happen overnight – it takes several years of consistent, effective DSM programs to provide meaningful kW and kWh reductions sufficient to support compliance with the Clean Power Plan.³¹⁸ This is also true, generally, for successfully incorporating DSM into KCP&L’s IRP as a long-term resource. Like supply-side resources, it takes time to implement DSM. It requires planning and effort to develop DSM programs, contract with vendors, and achieve customer acceptance of such programs.³¹⁹ A balanced supply portfolio that includes effective DSM is a reasonable and responsible goal for an integrated electric utility like KCP&L because it provides protection from some of the uncertainties and related risks in the industry, and it is environmentally positive for our communities, our State, and our country.³²⁰

VIII. CONCLUSION

166. Since 2004 when KCP&L included DSM in its Comprehensive Energy Plan in Docket No. 04-KCPE-1025-GIE, KCP&L has actively supported the use of DSM programs to reduce energy consumption and lower peak demand in its service territory to postpone the construction of new generating facilities and to give customers the ability to better control and

³¹⁶ Tr. Vol. 3, Glass, p. 648.

³¹⁷ Ives Rebuttal, p. 34; Tr. Vol. 3, Glass, p. 708.

³¹⁸ Ives Rebuttal, p. 34.

³¹⁹ Tr. Vol. 3, Glass, p. 645.

³²⁰ Ives Rebuttal, pp. 34-35.

lower their energy bills. True to this philosophy, KCP&L has come before the Commission numerous times in an effort to gain approval of DSM proposals intended to allow the Company and its customers to move forward with DSM in Kansas.³²¹ These efforts underscore KCP&L's belief in DSM, especially considering the fact that KCP&L could avoid this fight by choosing to meet its customers' demand by using traditional supply-side generation resources where a return of all prudently incurred costs, and a return on such investment, is already considered acceptable and is not a concept Staff or CURB would oppose. However, KCP&L continues the fight for DSM because, as explained by Mr. Ives at hearing,

Part of the reason we keep coming back to Kansas, it is working in Missouri. Customers like it. It is moving out build. Stakeholders understand it and participate with us in our, in our advisory groups and in our process in our cases when we go through it. It, it works. So we are trying to bring it over here for customers in Kansas and for the stakeholders in Kansas.

167. The Commission has the opportunity in this case to approve a balanced portfolio of DSM programs for Kansas under the new KEEIA, but only if reasonable assumptions are used in the analysis and fair cost recovery is allowed. KCP&L's Application sets out a proposal that meets these standards. The Commission has the benefit of the experience and data gained in Missouri and can rely on that in approving KCP&L's proposal. KCP&L requests that the Commission issue and Order:

- 1) approving the Application as filed, including the proposed programs, the TRM and the DSIM Rider;
- 2) granting the requested waivers/variances; and

³²¹ See KCP&L Dockets No. 04-KCPE-1025-GIE, Docket No. 06-KCPE-223-TAR, Docket No. 06-KCPE-315-TAR, Docket No. 06-KCPE-497-TAR, Docket No. 06-KCPE-548-TAR, Docket No. 06-KCPE-581-TAR, Docket No. 06-KCPE-809-TAR, Docket No. 06-KCPE-1190-TAR, Docket No. 06-KCPE-1232-TAR, Docket No. 07-KCPE-683-TAR, Docket No. 07-KCPE-767-TAR, Docket No. 07-KCPE-909-TAR, Docket No. 08-KCPE-583-TAR, Docket No. 08-KCPE-848-TAR, Docket No. 10-KCPE-795-TAR, Docket No. 17-KCPE-446-TAR, et al.

- 3) approving termination and freezing of existing DSM tariffs as set forth in the Application.

Respectfully submitted,

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