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Kansas Corporation Commission
/S/ Susan K. Duffy

BEFORE THE
KANSAS CORPORATION COMMISSION

STATE CORPORATION COMMISSION

MAY 0 5 2010

Susan Talbuffy

In the Matter of the Application of The Empire District Electric Company for Approval to Implement its Portfolio of Energy Efficiency and Demand Response Programs for its Kansas Customers, to Provide for Program Cost Recovery and Lost Revenues Through a Rider Mechanism, to Obtain any Necessary Waivers from the Commission, and for Appropriate Accounting Authority to Defer Expenses and Revenues Associated with the Filing.	))))))))))	Docket 10-EPDE-497-TAR

DIRECT TESTIMONY

OF

STACEY HARDEN

ON BEHALF OF

THE CITIZENS' UTILITY RATEPAYER BOARD

MAY 5, 2010

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I. STATEMENT OF QUALIFICATIONS

Q. Please state your name and business address.

A. My name is Stacey Harden and my business address is 1500 SW Arrowhead Road, Topeka, KS 66604-4027.

Q. By whom and in what capacity are you employed?

A. I am employed by the Citizens' Utility Ratepayer Board ("CURB") as a Regulatory Analyst.

Q. Please describe your educational background?

A. I received a Bachelors Degree in Business Administration from Baker University in 2001. I received a Masters Degree in Business Administration from Baker University in 2004.

Q. Please summarize your professional experience.

A. I joined the Citizens' Utility Ratepayer Board as a Regulatory Analyst in February 2008. Prior to joining CURB, I was the manager of a rural water district in Shawnee County, Kansas for five years. I am currently an adjunct faculty member at Friends University, where I am an undergraduate instructor in business courses such as Data Development and Analysis, Financial Decision Making, Financial Reporting of Debt & Equity, and Managerial Statistics.

Q. Have you previously testified before the Commission?

A. Yes. I previously offered testimony in KCC Docket Nos. 08-WSEE-1041-RTS and 10-KGSG-421-TAR.

II. <u>PURPOSE OF TESTIMONY</u>

Q. What is the purpose of your testimony?

A. On January 29, 2010, Empire District Electric Company ("Empire" or "company") filed an application with the Kansas Corporation Commission ("KCC" or "Commission") seeking:

- approval of a portfolio of energy-efficiency and demand response programs,
- program cost recovery, including a mechanism to recover lost revenues associated with the portfolio of energy-efficiency programs,
- permission to waive certain requirements that were set forth by the Commission in its two energy-efficiency dockets, and
- specific Commission authority to defer all program costs and accrued revenue pursuant to the proposed rider.

In my testimony, I will evaluate Empire's planned energy-efficiency portfolio. In addition, my testimony will evaluate the company's program cost recovery as well as the lost revenue recovery mechanism and will provide recommendations for consideration by the Commission. In my evaluation of the company's energy-efficiency portfolio and cost recovery mechanism, I will assess whether these programs conform to the recommendations of the Commission's June 2, 2008, *Order Setting Energy Efficiency Policy Goals* in Docket No. 08-GIMX-442-GIV ("442 Docket") as well as the Commission's November 14, 2008, *Final Order Regarding Cost Recovery and Incentives for Energy Efficiency Programs* In Docket No. 08-GIMX-441-GIV ("441 Docket").

III. <u>SUMMARY OF CONCLUSIONS</u>

Q. Please summarize your conclusions and recommendations.

A. Based on my analysis of the Company's filing and other documentation in this case, my conclusions are as follows:

- If the Commission decides to approve the company's Residential High Efficiency Central Air Conditioning ("CAC") Program, the program should be divided into three separate programs: one that provides incentives for customers to replace inefficient central air conditioning systems, one that provides an incentive for a seasonal tune-up of the customers' cooling systems, and one that provides an incentive payment to customers who install a programmable thermostat.
- The Commission should deny the CAC seasonal tune-up and programmable thermostat programs, because they do not address energy efficiency in a comprehensive, "whole-house" way, as was directed by the Commission's Order in the 442 Docket.
- The Commission should deny Empire's request to recover estimated expenses upfront and instead require Empire to seek cost recovery after a showing that it has incurred significant expenses.

- The Commission should disallow carrying costs on deferred program costs and lost revenues because carrying costs will rapidly inflate these costs.
- The Commission should deny the company's request for a lost revenue recovery mechanism because it is too administratively burdensome and the amount requested for recovery is not significant.

IV. DISCUSSION OF THE ISSUES

A. Portfolio of Energy-Efficiency Programs

Q. Please describe the company's energy-efficiency portfolio.

A. Empire has requested Commission approval for a suite of five energy-efficiency programs, as well as general project management and marketing. The suite of energy-efficiency programs includes:

- Low-Income Weatherization Program
- Residential High Efficiency CAC Program
- Commercial & Industrial Rebate Program
- Building Operator Certification Program
- Commercial & Industrial Peak Load Reduction Program

Q. Do you have concerns about the company's portfolio of programs?

A. Yes, I do. I have specific concerns regarding the Residential High Efficiency CAC Program.

Q. Please describe the proposed Residential High Efficiency CAC program.

A. Empire's residential high efficiency CAC program consists of three individual components. The program:

(1) provides incentives ranging from $400 - $500 for customers to install new central air conditioner systems, including heat pumps with a minimum Seasonal Energy Efficiency Ratio ("SEER") of 15,

(2) provides a $50 incentive payment to customers who complete a seasonal tune-up of their CAC, and

(3) provides a $25 incentive payment for a programmable setback thermostat for customers who install a new high-efficiency CAC unit or complete the seasonal tune-up.

Q. What are your concerns regarding the Residential High Efficiency CAC Program?

A. My initial concern is that Empire is "bundling" three different energy-efficiency programs into one consolidated program. The three components, as described by Empire, are functionally three stand-alone energy-efficiency programs. By combining three components into one consolidated program, it will be difficult to measure the benefits provided by each individual component.

Q. What action do you recommend the Commission take regarding the Residential High Efficiency CAC Program?

A. I recommend that if the Commission approves Empire's proposed Residential High Efficiency CAC Program the Commission should require Empire to split the program into three individual energy-efficiency programs, each with its own budget, estimates of savings, and benefit-cost test results. The three programs are:

(1) a heating/cooling system replacement program,

(2) a seasonal CAC tune-up program, and

(3) a programmable thermostat program.

Q. Why should the Commission require Empire to split up these three programs?

A. If Empire is allowed to keep these three programs bundled together, it will be difficult—likely impossible—for the Commission to ascertain whether any of the three programs is thriving and whether any of the programs is not performing well. In addition, bundling these three programs into one consolidated program will further diminish an evaluator's ability to perform a full and accurate evaluation, measurement and verification (EM&V). A full EM&V is required by the Commission's order in the 441 Docket, where it states that "each energy efficiency program must maintain separate records for evaluation, measurement, and verification purposes, whether an independent program or a part of a program suite."[1] As suggested by the Commission in the 441 Docket, Empire should

[1] November 14, 2008 Final Order in KCC Docket No. 08-GIMX-441-GIV at paragraph 40.

divide this one program into three separate programs, and should also be required to track costs and benefits for each program separately.

Q. Do you recommend Commission approval for each of these three energy-efficiency programs?

A. No, I do not. Specifically, I recommend that the Commission deny the company's seasonal CAC tune-up program and its programmable thermostat program. In addition, the Commission should require the company to remove the budgeted amounts for these two programs from its estimated total budget of the portfolio of energy-efficiency programs.

Q. Why do you recommend the Commission disallow the seasonal CAC tune-up program?

A. The seasonal CAC tune-up program does not conform to the Commission's ruling in the 442 Docket. In the 442 Docket, the Commission encouraged utilities to consider programs or a suite of programs that will address energy efficiency in a comprehensive way and that will recognize the need to address the total home or building, utilizing sound building science principles to achieve energy efficiency.[2]

Further, this program requires only an analysis of the customer's central air conditioning system and the replacement of filters, if necessary, for a customer to receive an incentive payment. If a check-up of a customer's central air conditioning system requires no further customer action, no energy savings would be gained as a result of the check-up, but the customer would still receive the

[2] June 2, 2008 *Order Setting Energy Efficiency Policy Goals* in Docket No. 08-GIMX-442-GIV at paragraph 71.

incentive payment. There is also no requirement that the customer carry out any of the recommendations of the contractor performing the check-up in order to receive the incentive payment. Thus, there is a substantial possibility that a customer's participation will not result in any energy savings at all. This clearly contradicts the Commission's order in the 442 Docket.

Q. Has the Commission made a previous ruling that supports your recommendation?

A. Yes, it has. In Docket No. 08-KCPE-581-TAR ("581 Docket") the Commission denied the application of Kansas City Power & Light ("KCP&L") to implement a Home Performance with ENERGY STAR® Program. The Commission rejected the program – which, as part of a comprehensive portfolio of programs, would have provided a rebate to customers to help offset the cost of a home energy audit – because it did not require the participant to implement recommended improvements in a manner that is logical and cost-effective from a whole-house concept point of view, nor did it require the customer to select the most effective energy-efficiency improvement identified by the audit. The Commission specifically expressed its concern that "because a participant is not required to implement recommended improvements in a comprehensive and logical way, energy efficiency savings from the program are not likely to be as dependable as possible, in the sense of a resource."[3] This Commission decision set a standard that disapproves of energy-efficiency programs that offer an incentive payment yet do not require that actual energy-efficiency measures be installed.

[3] Docket No. 08-KCPE-581-TAR, Order on Staff's Report and on Petition for Reconsideration at paragraph 30 & 31.

Q. Does Empire offer a seasonal tune-up program in other jurisdictions?

A. Yes. Empire offers a similar seasonal tune-up program to its customers in Arkansas. The program is functionally the same as the proposal by Empire in this proceeding. The only significant difference is that the customer incentive in Arkansas is $30, whereas the proposal by Empire in Kansas provides a $50 incentive.

Q. How has the seasonal tune-up program performed in Arkansas?

A. Empire's seasonal tune-up program has not met its estimated participation or savings in Arkansas. Ms. McCormack informed the Arkansas Public Service Commission ("APSC") on April 1, 2009, that the seasonal tune-up program, as well as the C&I rebate program, "have seen very low customer participation levels during the first 15 months of operation."[4] In fact, according to Ms. McCormack's Exhibit SLM-2 – provided to the APSC on April 1, 2009 – only $210 in customer incentive payments have been distributed through the seasonal tune-up program. At the rate of $30 per tune-up, in the first 14 months of this program's operations (November 2007 – December 2008), only seven customers in Arkansas completed the seasonal tune-up of their air conditioning system and received an incentive payment.[5]

[4] April 1, 2009, Empire's Energy Efficiency Cost Recovery Tariff as amended, presented to the Arkansas Public Service Commission in Docket No. 07-076-TF at page 3.
[5] April 1, 2009, Empire's Energy Efficiency Cost Recovery Tariff as amended, presented to the Arkansas Public Service Commission in Docket No. 07-076-TF, Exhibit SLM-2.

Q. Why is the seasonal tune-up program's lack of success in Arkansas important in this case?

A. While the Commission is considering Empire's application for a seasonal tune-up program in Kansas, it should look closely at the program's performance in Arkansas. Empire estimated that 300 of its customers in Arkansas would take advantage of the seasonal tune-up program. After a full fourteen months, only seven customers took part in the seasonal tune-up program. Further, Empire pre-collected the program's first-year estimated budget of $18,000 despite the fact that only seven customers participated.[6] I will discuss the pre-collection of customer funds later in my testimony, but the threshold question for the Commission to consider is whether Empire, given the program's overwhelming lack of success in Arkansas, should be requesting permission from the Commission to implement a similar program here. Given the lack of customer interest and participation in this program, as well as the over-recovery of ratepayer dollars, there is compelling evidence that the seasonal tune-up program will not be an efficient use of ratepayer dollars in Kansas.

Q. Why do you recommend the Commission disallow the programmable thermostat rebate program?

A. Simply providing customers with an incentive payment to purchase and install a programmable thermostat does not guarantee any reduction in energy consumption. While programmable thermostats may make it easier for customers

[6] June 29, 2007, Empire's Energy Efficiency Cost Recovery Tariff as amended, presented to the Arkansas Public Service Commission in Docket No. 07-076-TF, Exhibit SLM-2 at page 9.

to control their heating and air conditioning units, they do nothing to ensure that customers will set the thermostat at levels which save energy. A programmable thermostat is a useful tool for the customer who is motivated to change her energy-consumptive behavior, but without that motivation, the money spent to incent the customer to buy the thermostat is wasted. Further, there is no guarantee that the changed behavior will actually result in energy savings: if the customer sets her thermostat at 68 degrees during the hottest days of the summer, whether the thermostat is programmable is irrelevant. Since there is no level of assured savings, similar to the seasonal tune-up program, the Commission should deny the programmable thermostat program because it does not address energy efficiency in a whole-house manner, as was suggested by the Commission in the 442 Docket and further emphasized in its decision in the 581 Docket.

Q. Do you have another general comment regarding the company's energy-efficiency portfolio?

A. Yes, I do. While I expressed no opinion regarding the company's proposed low-income weatherization, heating/cooling system replacement program, building operator certification program, or its C&I rebate and peak-load reduction program, I encourage the Commission to consider the economic impacts of adding another charge to the bill of Empire's Kansas Customers. A Commission decision is due in July 2010 in the Empire's base rate case. If approved, Empire's proposed rate increase of $5.2 million, along with surcharges and fuel costs, would increase rates for Empire's Kansas customers by 40%.[7] In its final order in the 441 Docket, the Commission expressed concern whether "raising short term costs" was appropriate "at this time." [8] I encourage the Commission to review the proposed programs and costs carefully, making sure that all approved programs are economically beneficial and make the best use of energy-efficiency dollars for all of Empire's Kansas customers.

B. Cost Recovery Mechanism

Q. Please describe Empire's proposed cost recovery mechanism.

A. Empire has requested Commission approval for a Demand Side Management Cost Recovery Rider ("Rider"). The Rider will allow Empire to collect estimated program costs, which include program development costs. The Rider will also collect revenues based on Empire's estimated revenues that will be lost due to the implementation of its energy-efficiency programs. In addition, Empire has requested an accounting authority order that will allow it to defer all program costs and lost revenues. Empire has further requested to earn a return on all deferred costs, equivalent to the return approved on rate base in Empire's most recent Kansas rate case.

[7] November 4, 2009, In the Matter of Empire District Electric Company for Approval of the Commission to Make Certain Changes in Its Charges for Electric Service. KCC Docket No. 10-EPDE-314-RTS.
[8] November 14, 2008 Final Order in KCC Docket No. 08-GIMX-441-GIV at paragraphs 9.

Q. What is your recommendation to the Commission regarding Empire's proposed cost recovery mechanism?

A. I recommend the Commission deny the company's proposed cost recovery mechanism. Specifically, the Commission should deny the mechanism because:

(1) it does not conform with the Commission's ruling in the 441 Docket, which states that a rider will take affect only after the company can show it has incurred significant program costs;

(2) it includes carrying costs applied to deferred revenues, which is in direct conflict with the Commission's order in the 441 Docket, where it is stated that "(t)he Commission believes the essentially contemporaneous cost recovery provided by the rider cost-recovery mechanism alleviates carrying cost issues …"[9]; and

(3) it includes a lost revenue recovery mechanism, which the Commission specifically discouraged in the 441 Docket, stating that it does not favor lost revenue recovery mechanisms because of "the high premium this method places on accurate evaluation of program impacts and the increased potential for expensive and time-consuming litigation arising from disputes. Furthermore, while Commission staff expertise is growing in this highly technical field, at this time the Commission does not have the depth of experience available to consider this method without reliance on outside firms."[10]

[9] November 14, 2008 Final Order in KCC Docket No. 08-GIMX-441-GIV at paragraphs 107

[10] November 14, 2008 Final Order in KCC Docket No. 08-GIMX-441-GIV at paragraphs 66

Q. Discuss the Commission's requirement that a rider take effect after the company can show it is incurring significant program expenses.

A. In the 441 Docket, the Commission encouraged utilities to seek pre-approval from the Commission for energy-efficiency programs, but indicated that a rider would take effect only after the programs are implemented and the company has begun incurring significant expenses. This requirement was adopted from the Commission's Staff ("Staff") recommendation that an annual rider mechanism to recover costs associated with Commission-approved energy-efficiency programs should not be established until the "company is incurring program costs that are significant."[11]

Q. Is Empire incurring significant program costs from its energy-efficiency programs?

A. No, it is not. Empire does not currently offer any energy-efficiency programs in Kansas, nor is it suggesting that its energy-efficiency programs will be implemented prior to cost recovery. Instead, Empire is requesting Commission approval to immediately begin recovering its estimated energy-efficiency budget of $133,755, before the programs are offered in Kansas

[11] October 10, 2008 Notice of Filing Staff's Report to the Commission in KCC Docket No. 08-GIMX-441-GIV at page 26.

Q. Should Empire be allowed to collect estimated program expenses before implementing its energy-efficiency programs?

A. No. The Commission's order in the 441 Docket clearly identifies its preference that utilities must first show that it is incurring significant program expenses, which allows these expenses to be reviewed for accuracy and prudence, and then the utility may receive Commission approval for recovery of the expenses. Empire is requesting approval for just the opposite - using an estimated budget and estimated savings to calculate the amount of the surcharge. These estimates are highly dependent on the company's estimates of the numbers of customers who will participate in each program.

Q. Why is it preferable to recover actual energy-efficiency expenses, as opposed to collecting budgeted expenses?

A. For two reasons – first because recovery of actual energy-efficiency expenses through a rider mechanism will allow the Commission the opportunity to review the expenses for prudence and accuracy, *before* the amount is collected from ratepayers. In its order in the 441 Docket, the Commission stated that a rider to recover energy-efficiency program expenses should be implemented in a manner that maintains the Commission's responsibility to review costs for prudence. Because a rider mechanism, as suggested by the Commission in the 441 Docket, allows a utility to receive "nearly contemporaneous" recovery of energy-efficiency costs, the utility's need for pre-payment of such expenses is lessened.

Second, the historical recovery of actual, expended costs will ensure that ratepayers are not funding flawed or inefficient programs. As an example, I will refer to Empire's seasonal tune-up program currently offered in Arkansas, which I discussed previously in my testimony. In Arkansas, Empire uses an Energy Efficiency Cost Recovery Tariff ("EECR") to recover estimated expenses for its energy-efficiency programs, which is trued-up to the actual expenses annually. From November 2007 to December 2008, Empire's EECR recovered more money from ratepayers than it expended in each month, with the exception of the first month. At the end of the reporting period, Empire had pre-collected $29,353 through its EECR from ratepayers for programs like the seasonal tune-up program, which fell far short of the company's performance estimate.[12] The Commission can avoid the Arkansas problem of over-collecting from customers (if the programs don't meet expectations) by denying Empire's request for collection of estimated energy-efficiency expenses.

Q. Is there another reason to review actual expenses before allowing cost recovery?

A. Yes. Using Empire's estimates of programs costs and annual savings, it will cost Empire's customers $.36 for each kWh that is saved through these energy-efficiency programs.[13] This extraordinary level of expense warrants a complete review before the company is allowed cost recovery.

[12] April 1, 2009, Empire's Energy Efficiency Cost Recovery Tariff as amended, presented to the Arkansas Public Service Commission in Docket No. 07-076-TF, Exhibit SLM-2.
[13] Exhibit SLM-1 & 7: estimated program costs of $133,755 divided by Year 1 estimated energy savings is 369,721 kWh = .36 kWh saved

Q. How can Empire's proposed programs be cost-effective if it costs $0.36 for each kWh saved?

A. To make its programs appear cost-effective, Empire is relying upon its predictions that there will be reductions not only in energy, but also substantial reductions in demand. Before Empire is allowed cost recovery for programs intended to reduce demand, a full EM&V should be completed to verify the actual program expenses and the actual level of demand reduction.

Q. Discuss the Commission's position that energy-efficiency programs exclude carrying costs.

A. In the 441 Docket, the Commission articulated that if carrying costs are applied to deferred expenses, the account balances can grow quickly. Further, because a rider offers nearly contemporaneous recovery of energy-efficiency program costs for utilities, the need for carrying costs, creation of regulatory assets, and a return on such deferred accounts is reduced.

Q. Does Empire's proposal include carrying costs?

A. Yes, it does. Empire's proposed rider will recover the incremental program costs, the revenue lost due to the implementation of the energy-savings measures, and the carrying costs and true-up of actual recovery. The carrying costs requested by Empire will be based on the approved return on rate base in Empire's most recent Kansas rate case.

Q. Why has Empire included carrying costs in its program costs?

A. Simply put, Empire wants its investments in energy-efficiency programs to receive the same regulatory treatment as a supply-side investment that is recovered in base rates. In its 2007-2026 Integrated Resource Plan presented to the Missouri Public Service Commission, it stated that "Empire believes that earning a return of and return on capital for DSM program investments increases the effectiveness of such programs and provides a financial incentive for electric utilities to engage in DSM."[14]

Q. What is your recommendation to the Commission regarding the company's request for carrying costs to be included in its rider?

A. The Commission should not allow carrying costs to be applied to energy-efficiency expenses. Previously in my testimony, I recommended that the Commission deny two individual programs within the company's suite of energy-efficiency programs because economically, the programs did not make good use of ratepayers' dollars. The company's proposal to include carrying costs to deferred account balances increases the programs' ultimate cost for ratepayers. If the Commission chooses to allow Empire's proposed programs, the Commission should, at minimum, require that the company eliminate carrying costs to the deferred expenses associated with its energy-efficiency portfolio.

[14] September 2007, 2007-2026 Integrated Resource Plan, Missouri Public Service Commission, at page ES-4

Q. Please discuss the company's request for a lost revenue recovery mechanism.

A. Empire has requested approval for a lost revenue recovery mechanism that is calculated by estimating the reduction in sales that will result from the implementation of the DSM programs and multiplying the reduction in sales by the appropriate rate. The amount of lost revenue will be included in the company's Rider, and will be trued-up annually.

Q. Please discuss lost revenue recovery mechanisms in general.

A. Lost revenue recovery mechanisms are designed as a way to remove the throughput disincentive for utilities offering energy-efficiency programs. A lost revenue recovery mechanism allows a utility to recover the margins that are lost because of successful implementation of energy-efficiency programs.

Q. Is a lost revenue recovery mechanism an appropriate method to encourage utility conservation programs?

A. No. According to the National Action Plan's *Aligning Utility Incentives with Investment in Energy Efficiency*, a lost revenue recovery mechanism may remove the disincentive to offer successful energy-efficiency programs, but it does not remove the utility's incentive to sell more energy. Specifically, "lost revenue recovery mechanisms do not remove a utility's disincentive to promote/support other energy saving policies, such as building codes and appliance standards, or their incentive to see sales increase generally, since the utility still earns more profit with additional sales."[15]

Q. Did the Commission approve the use of a lost revenue recovery mechanism in the 441 Docket?

A. No, it did not.

Q. Why did the Commission reject the use of a lost revenue recovery mechanism?

A. In Staff's report to the Commission in the 441 Docket, Staff stated that "(a) lost margin recovery mechanism is too administratively burdensome especially in light of the fact that the Commission has currently limited the evaluation, measurement and verification budget associated with a particular energy program to 5% of the project costs." [16] The Commission stated in its order that it would not favor a lost revenue recovery mechanism because of "the high premium this method places on accurate evaluation of program impacts and the increased potential for expensive and time-consuming litigation arising from disputes. Furthermore, while Commission staff expertise is growing in this highly technical field, at this time the Commission does not have the depth of experience available to consider this method without reliance on outside firms."[17]

[15] Aligning Utility Incentives with Investment in Energy Efficiency: A resource of the National Action Plan for Energy-Efficiency, November 2007 at page 5-10.
[16] October 10, 2008 Notice of Filing Staff's Report to the Commission in KCC Docket No. 08-GIMX-441-GIV at page 28.
[17] November 14, 2008 Final Order in KCC Docket No. 08-GIMX-441-GIV at paragraphs 66

Q. Why is a lost revenue recovery mechanism considered to be administratively burdensome?

A. Lost revenue recovery mechanisms rely heavily upon estimates, which take substantial time and resources to verify. Because estimates are not always accurate, the actual performance may not meet the expectation of savings. Further, if the estimates of savings are set too high, customers will be over-charged and Empire will be allowed to over-collect, based on actual savings. In addition, accurately quantifying the actual savings achieved from an energy-efficiency program is difficult. During a complete EM&V of a program, actual savings may be estimated through a series of statistical measures. The difficulty in correctly estimating an amount, that is trued-up to an estimate of an actual, can be time consuming and very costly.

Simply put, it's virtually impossible to accurately determine whether there have been any actual losses in a utility's sales directly attributable to specific programs. This calculation is dependent on opinions of what revenues would have been, absent the energy-efficiency measures adopted by participants in these programs. Any calculation that is based on opinions is bound to be controversial and subject to protracted litigation. Further, isolating the impact of each particular program on energy usage is difficult, because customers' usage can be impacted by numerous factors unrelated to these specific programs. Verifying lost revenues retrospectively is difficult. Predicting lost revenues is highly susceptible to error and skewing in favor of the party promoting the program, leaving customers vulnerable to paying in advance for performance that ultimately is found to be lacking.

Q. Have the Commissions in Missouri, Oklahoma, or Arkansas approved lost revenue recovery for Empire?

A. No, they have not.

Q. Why has Empire suggested that a lost revenue recovery mechanism be implemented in Kansas?

A. It is not clear why Empire is proposing a lost revenue recovery mechanism. The application and direct testimony provided by Ms. McCormack simply inform the Commission what the lost revenue recovery factor is and how it is to be calculated. Empire did not quantify or discuss at any level how the lost revenue recovery mechanism may assist in removing its disincentive to offer energy-efficiency programs.

Q. Is Empire required to show a need for a lost revenue recovery mechanism?

A. Yes. In the 441 Docket, the Commission recognized that addressing the throughput incentive may be necessary to avoid utilities experiencing loss of margin as a result of implementing energy efficiency programs. In its final order in the 441 Docket the Commission accepted Staff's position that utilities should not be given a throughput incentive "without evidence a utility will experience loss of margin."[18]

Q. What did Empire estimate its loss of margin will be due to the implementation of the proposed energy-efficiency programs?

A. Empire has estimated that the lost margins during the first year its energy-efficiency programs are offered will be $10,943.

Q. Did the Commission quantify what "significant" is, when considering a lost revenue recovery mechanism?

A. No. In the 441 Docket the Commission provided a guideline that may be used to define what is considered "significant" for recovery of program expenses. [19] However, in the context of a lost revenue recovery mechanism, the Commission did not define or provide a guideline of what a "significant" loss of margin would have to be in order for a utility to recoup the revenues lost due to the efficiency programs

Q. Do you think the amount of lost margin estimated by Empire is significant?

A. No, I do not. The company estimates that in the first year of its portfolio of energy-efficiency programs, it will experience lost margins of $10,943. Using Empire's base revenue as established in its last rate case, the lost margin requested by Empire is only 0.08% of its base revenue. Further, Empire currently

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[18] November 14, 2008 Final Order in KCC Docket No. 08-GIMX-441-GIV at paragraphs 47.

[19] November 14, 2008 Final Order in KCC Docket No. 08-GIMX-441-GIV at paragraph 36.

has a rate case before the Commission that requests an increase to its base rates. Any increase granted by the Commission will only further reduce the significance of the estimated lost margins

Q. In your opinion, why is Empire requesting approval for a lost revenue recovery mechanism despite the insignificant level of lost margins?

A. This is a classic "have your cake and eat it too" scenario. Empire wants to implement an energy-efficiency portfolio or programs that will be funded by ratepayers in Kansas, and Empire wants the ratepayers to pay for the amount of electricity that Empire won't sell because of participation in energy-efficiency programs. Because it is clear that the margins lost due to energy-efficiency programs implemented by Empire are insignificant, its request for a lost revenue recovery mechanism is simply a method to increase earnings and further insulate the company from any level of risk. It is my opinion that Empire is attempting to comply with the Commission's desire to have more energy-efficiency programs in Kansas, but by requesting carrying charges and a lost revenue recovery mechanism, Empire is clearly trying to make money from its energy-efficiency programs, at the expense of ratepayers.

Q. Do you have any other general concerns regarding Empire's proposal?

A. Yes, I do. When the Commission issued its order in the 441 Docket, the nation was just entering what appeared to be a recession. In its final order, the Commission expressed concern whether "raising short term costs" was appropriate "at this time." The Commission also expressed concern that "this potential economic downturn may have a negative effect on energy usage, independent of any energy efficiency program."[20]

Empire's Kansas customers are likely facing a rate increase when the Commission issues its order in the KCC Docket No. 10-EPDE-314-RTS ("314 Docket"). The rate increase requested by Empire is $5.2 million, which, if granted, will raise the average customer's monthly bills by $25.18.[21] Further, Empire acknowledges in its current rate case that it plans to file another abbreviated rate case within a year following the Commission's decision in the 314 Docket. The Commission should remain mindful of the economic circumstances that Kansans in Empire's territory are facing, and should appropriately disallow any programs that do not make the best use of energy-efficiency dollars.

Q. What is your recommendation regarding the company's proposed cost-recovery mechanism?

A. It should be denied. The Commission stated in the 441 Docket that it would consider only the recovery of actual energy-efficiency expenses and would deny carrying costs on account balances, and does not favor lost revenue recovery mechanisms. Empire's proposal is inconsistent with the Commission's stated preferences and policies as established in the 441 Docket. Therefore, I

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[20] November 14, 2008 Final Order in KCC Docket No. 08-GIMX-441-GIV at paragraphs 9 & 61.
[21] November 4, 2009, In the Matter of Empire District Electric Company for Approval of the Commission to Make Certain Changes in Its Charges for Electric Service. KCC Docket No. 10-EPDE-314-RTS at section 2

recommend the Commission deny the company's proposed cost recovery mechanism.

Q. Do you have a recommendation, in the event that the Commission approves the company's proposed cost recovery mechanism?

A. Yes. If the Commission were to grant Empire's petition and approve its cost recovery mechanism, the Commission should require the following:

(1) only actual expenses that have been reviewed for accuracy and prudence by the Commission shall be considered for recovery through a rider;

(2) no carrying costs that are applied to deferred energy-efficiency program expenses should be considered for cost recovery; and

(3) a lost revenue recovery mechanism to recover lost margins associated with its energy-efficiency portfolio should not be included as part of the company's actual cost recovery.

Q. Does this conclude your testimony?

A. Yes.

VERIFICATION

STATE OF KANSAS)

COUNTY OF SHAWNEE) ss:

I, Stacey Harden, of lawful age, being first duly sworn upon her oath states:

That she is a regulatory analyst for the Citizens' Utility Ratepayer Board, that she has read the above and foregoing testimony, and, upon information and belief, states that the matters therein appearing are true and correct.

Stacey Harden

SUBSCRIBED AND SWORN to before me this 5th day of May, 2010.

Notary Public

My Commission expires: 01-26-2013.

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

CERTIFICATE OF SERVICE

10-EPDE-497-TAR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, e-mailed, or hand-delivered this 5th day of May, 2010, to the following:

JAMES G. FLAHERTY, ATTORNEY
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