

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

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

**THE GAS UTILITIES' POST HEARING BRIEF**

Atmos Energy Corporation ("Atmos Energy"), Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy ("Black Hills Energy") and Kansas Gas Service, a division of ONE Gas, Inc., ("Kansas Gas Service"), (collectively the "Gas Utilities"), file the following Post Hearing Brief pursuant to the Kansas Corporation Commission's ("Commission") Order Amending Procedural Schedule dated December 15, 2016.

**I. INTRODUCTION**

1. Those portions of Kansas City Power & Light Company's ("KCPL") proposed residential and business Demand Side Management ("DSM") programs, which provide its customers rebates to purchase electrical appliances -- rebates which are funded and subsidized solely by other KCPL customers -- violate the Commission's effective ban against appliance rebate programs because they bias users toward a particular fuel source.<sup>1</sup> KCPL's proposed business appliance rebate programs also violate the Kansas Energy Efficiency Investment Act's ("KEEIA") prohibition against utility customer subsidized load building programs, i.e., programs that increase rather than reduce the net consumption of electricity by a retail electric customer.<sup>2</sup> Therefore, those proposed programs should

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<sup>1</sup>Docket No. 09-GIMX-160-GIV ("160 Docket") Order to Close Docket dated February 15, 2012, page 7, paragraph A; Amended Order to Close Docket dated March 23, 2012, page 1, paragraph A (Gas Utilities Exhibit 3)("Utility providers shall continue to offer energy-efficiency programs **in a manner that does not bias users toward a particular fuel source.**") (Emphasis added).

<sup>2</sup>K.S.A. 66-1283(a)(3) (Gas Utilities Exhibit 4) ("demand-side program" means any program conducted by: (A) An electric utility **to reduce the net consumption of electricity by a retail electric customer, ...**") (Emphasis added).

be rejected as being contrary to both Commission policy and Kansas law.

2. In an order dated February 15, 2012, and amended on March 23, 2012, the Commission effectively banned appliance rebate programs by holding that DSM programs should be done in a manner in which they do not "bias users toward a particular fuel source."<sup>3</sup> Appliance rebates offered by utilities and subsidized by those utilities' customers, by their very nature, *incent* or *bias* users to use a particular fuel source, and are therefore prohibited by Commission policy.<sup>4</sup> Contrary to the argument made by KCPL in this case, this ban applies whether the appliance rebate is targeted at a customer who is deciding to replace her furnace or her heat pump.<sup>5</sup> In addition, the policy adopted by the Commission to ban appliance rebates was not limited or changed by KEEIA as suggested by KCPL.<sup>6</sup> Nor was the Commission's policy and ban only applicable to residential programs as argued by KCPL.<sup>7</sup> Each of these issues and the factual evidence and legal arguments presented with respect to these issues is discussed in detail in this Post Hearing Brief. Such analysis supports a finding and conclusion that KCPL's proposed residential and business appliance rebate programs should be rejected on the basis they are contrary to the binding precedential policy established by this Commission.

3. KCPL's proposed business appliance rebate programs should also be rejected because they are contrary to Kansas law. The uncontroverted evidence submitted during the hearing in this matter, demonstrated that KCPL's proposed business appliance rebate programs, which may target a business to replace its existing natural gas furnace with an electrical heat pump, will *increase* rather

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<sup>3</sup>See, Footnote 1.

<sup>4</sup>Raab Prefiled Direct Testimony, page 11, line 12 through page 13, line 4.

<sup>5</sup>Raab Prefiled Direct Testimony, page 15, line 14 through page 16, line 3.

<sup>6</sup>See, Section II.C. of this Post Hearing Brief.

<sup>7</sup>See, Section II.D. of this Post Hearing Brief.

than *reduce* the net consumption of electricity by that retail electric customer.<sup>8</sup> Under the clear language contained in KEEIA, for a DSM program to qualify under that statute it must "**reduce the net consumption of electricity by a retail electric customer.**" (Emphasis added).<sup>9</sup> The Kansas legislature in passing KEEIA, like this Commission, was unwilling to sanction utility customer subsidized load building programs disguised as DSM programs.<sup>10</sup> Contrary to the argument made by KCPL in this case, under the above-emphasized and unambiguous language in the statute, whether a program meets the reduction in net consumption element in order to qualify as a DSM program under KEEIA, depends upon whether the appliance rebate reduces the net consumption of electricity of the business customer who receives that rebate and not whether net consumption of an entire customer class is reduced by said appliance rebate as argued by KCPL.<sup>11</sup> KCPL's strained interpretation of this portion of the statute in a futile attempt to qualify its proposed business appliance rebate programs as DSM programs completely ignores the straight-forward language contained in KEEIA and the legislature's clear intent not to sanction utility customer funded and subsidized load building programs.<sup>12</sup> The same is true with respect to the Legislature's definition of an "energy efficiency measure" that qualifies under KEEIA.<sup>13</sup> In order for an energy efficiency measure to qualify under KEEIA it must "**reduce the amount of energy required to achieve a given end use.**" (Emphasis added).<sup>14</sup> The evidence presented in this case clearly showed KCPL's proposed business appliance rebate programs, which may target a business to replace its natural gas furnace with a heat

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<sup>8</sup>Turner, Vol. I, Tr. 142, lines 7-22; Frantz, Vol. II, Tr. 530, line 6 through Tr. 533, line 1.

<sup>9</sup>K.S.A. 66-1283(a)(3) (Gas Utilities Exhibit 4).

<sup>10</sup>*Id.*

<sup>11</sup>*See*, pages 11-12, paragraphs 32-33 of KCPL's Post Hearing Brief.

<sup>12</sup>*Id.*

<sup>13</sup>K.S.A. 66-1283(a)(4) (Gas Utilities Exhibit 4) ("energy efficiency" means measures that **reduce the amount of energy required to achieve a given end use; ...**) (Emphasis added).

<sup>14</sup>*Id.*

pump, will *increase* rather than *reduce* the amount of energy required to achieve that given end use, and therefore, do not qualify as energy efficiency measures under KEEIA.<sup>15</sup> These issues and the evidence presented with respect to these issues are also discussed in detail in this Post Hearing Brief and support a finding by the Commission that KCPL's proposed business appliance rebate programs fail to qualify as DSM programs or energy efficiency measures under KEEIA and should be rejected.

4. Finally, this Post Hearing Brief addresses some additional issues regarding KCPL's proposed residential and business appliance rebate programs. It explains why the DSM and energy efficiency programs offered in other states, in compliance with those other states' laws and regulations, are not relevant to whether KCPL's proposed programs violate this Commission's policy or Kansas law.<sup>16</sup> This Post Hearing Brief points out some concerns with respect to KCPL's proposed evaluation, measurement and verification ("EM&V") process, and in particular, concerns about how the utility and the Commission can verify that residential appliance rebates are not provided to customers to replace their natural gas furnaces with heat pumps.<sup>17</sup> It also addresses concerns about how KCPL's technical resource manual ("TRM") and the utility's calculation of lost revenues and its throughput disincentive ("TD") charges fail to account for increased kilowatt hour (kWh) sales that would occur under its proposed business appliance rebate programs in those cases where a business customer is provided an appliance rebate to replace its gas furnace with a heat pump and where that business customer's electric usage is increased and not reduced.<sup>18</sup>

5. For all of the reasons set forth herein, KCPL's proposed residential and business appliance rebate programs should be rejected as being contrary to both Commission policy and

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<sup>15</sup>Raab Prefiled Direct Testimony, page 20, line 22 through page 23, line 11.

<sup>16</sup>*See*, Section IV.A. of this Post Hearing Brief; Code of Colorado Regulations, 4 CCR 723.4-4750 through 4 CCR 723.4-4760 and Oklahoma Code Sections 165:45-23-1 through 165:45-23-9, filed in docket on March 27, 2017.

<sup>17</sup>Raab Prefiled Direct Testimony, page 19, line 11 through page 20, line 2.

<sup>18</sup>Raab Prefiled Direct Testimony, page 18, line 10 through page 19, line 19.

Kansas law.

**II. KCPL'S PROPOSED RESIDENTIAL AND BUSINESS APPLIANCE REBATE PROGRAMS SHOULD BE REJECTED BECAUSE THEY VIOLATE THE COMMISSION'S POLICY THAT EFFECTIVELY BANS UTILITY CUSTOMER SUBSIDIZED APPLIANCE REBATE PROGRAMS**

**A. KCPL'S PROPOSED RESIDENTIAL AND BUSINESS APPLIANCE REBATE PROGRAMS VIOLATE THE COMMISSION'S FUEL SWITCHING POLICY AND SHOULD BE REJECTED**

6. Under KCPL's proposed Whole House Efficiency Program, residential customers are eligible to receive incentives for qualifying HVAC equipment installed by a participating contractor.<sup>19</sup> Qualifying measures include electric appliance heat pump water heaters, heat pump ductless mini splits, central air conditioning and heat pumps.<sup>20</sup> Early retirement incentives are provided to customers with central air conditioners and/or heat pumps in operable condition and at least five years of age.<sup>21</sup> Appliance rebate payments, which are funded and subsidized by KCPL's other customers, range from \$150 to \$1,500.<sup>22</sup> As originally filed, this program was open to all residential customers.<sup>23</sup> KCPL later amended the program so a residential customer with an existing natural gas furnace or gas water heater would not be eligible for the appliance rebate program.<sup>24</sup> KCPL claimed that this modification, which it referred to as a "like-for like replacement" restriction, i.e., an existing heat pump being replaced by a new heat pump, complied with this Commission's policy on fuel switching and avoided KEEIA's specific prohibition against any measures to incent fuel switching for residential heating systems.<sup>25</sup> However, as set forth below, this modification does not bring the program into

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<sup>19</sup>Raab Prefiled Direct Testimony, page 7, line 15 through page 8, line 5.

<sup>20</sup>*Id.*, page 8, lines 1-3.

<sup>21</sup>*Id.*, page 8, lines 3-5.

<sup>22</sup>Gas Utilities Exhibit 1; Winslow, Vol. I, Tr. 79, line 15 through Tr. 83, line 8; Raab Prefiled Direct Testimony, page 9, lines 7-21.

<sup>23</sup>KCPL Kansas KEEIA Report, pages A-6 through A-9.

<sup>24</sup>Raab Prefiled Direct Testimony, page 15, line 14 through page 16, line 3.

<sup>25</sup>*See*, KCPL Post Hearing Brief, pages 39-40, paragraph 88.

compliance with either Commission policy or KEEIA.<sup>26</sup>

7. Under KCPL's proposed Business Standard Rebates program and Business Energy Efficiency Rebate Custom program, business customers are eligible to receive customer funded and subsidized appliance rebate payments that could encourage a business to replace equipment or appliances fueled by natural gas with equipment or appliances powered by electricity.<sup>27</sup> Customer funded and subsidized rebate payments can range from \$500 to install a heat pump water heater, to \$50 per ton for an air conditioning unit.<sup>28</sup>

8. KCPL does not currently offer customer funded electric appliance rebate programs in Kansas and should not be granted permission to do so in this case.<sup>29</sup> As noted by Mr. Paul Raab, who filed testimony on behalf of the Gas Utilities, KCPL's application in this matter as it related to the above-mentioned proposed residential and business appliance rebate programs, completely failed to recognize and account for the Commission's policy on fuel switching.<sup>30</sup> That policy effectively bans Kansas utilities from offering the very type of customer funded and subsidized appliance rebate payment programs being proposed by KCPL in this case.<sup>31</sup> Mr. Raab pointed out that in Docket No. 09-GIMX-160-GIV ("160 Docket") the Commission issued a precedential order pursuant to K.S.A. 77-415, which prohibited Kansas utilities from offering programs in a manner that "bias users toward a particular fuel source."<sup>32</sup> He explained how such appliance rebate payment programs, like the ones proposed by KCPL in this case, lower the cost of heating with electricity relative to the cost of heating

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<sup>26</sup>See, Sections II.B. and III.A. and B. of this Post Hearing Brief.

<sup>27</sup>Raab Prefiled Direct Testimony, page 8, lines 1-24.

<sup>28</sup>Gas Utilities Exhibit 2; Winslow, Vol. I, Tr. 83, line 9 through Tr. 86, line 12; Raab Prefiled Direct Testimony, page 8, lines 14-18.

<sup>29</sup>Winslow, Vol. I, Tr. 79, line 2-9; Turner, Vol. I, Tr. 129, lines 17-25.

<sup>30</sup>Raab Prefiled Direct Testimony, page 5, lines 1-16.

<sup>31</sup>*Id.*, See, Footnote 1 of this Post Hearing Brief.

<sup>32</sup>*Id.*

with an alternative fuel such as natural gas, and thus effectively "bias users toward a particular fuel source," which specifically violates the policy adopted by the Commission in the 160 Docket.<sup>33</sup> Mr. Frantz, who testified on behalf of Staff, also testified that measures that bias users toward a particular fuel source would not qualify under the Commission's current fuel switching policy.<sup>34</sup> Mr. Frantz explained how KCPL's proposed business appliance rebate programs could bias users toward a particular fuel source:

Q. Could you explain how those programs (business appliance rebate programs) could create a bias towards electricity as a fuel source?

A. Yes. Further in that same paragraph I note that HVAC and water heating equipment is eligible for incentives through the standard rebate programs prescriptive list of measures. And so if a -- I will, I will clarify that when I wrote my -- put together my direct testimony I was not aware of the like for like policy. So this was written without knowledge of that facet to the program. So in writing this I, I was under the impression that a -- that there were really no limits on what could be replaced for what. And so yes, the Business Standard and Custom and Block Bidding Programs could incentivize the, the purchase of an electric HVAC or water heating equipment. And that could potentially replace a gas unit or, or could sway a customer that hadn't necessarily decided on a particular piece of equipment towards, towards an electric appliance.

Q. I guess my question to you was how? 'Cause you don't really in your testimony explain how that could happen.

A. I mean it's a financial incentive. You wouldn't, you wouldn't provide a rebate without the intent of incenting some sort of action. So a rebate on this equipment obviously has the intent to, to cause the customer to purchase this equipment where they may not otherwise have had that intent. And if not, you know, that customer -- if the rebate had no influence on their decision, then that customer would, would be basically -- I mean that's the definition of a free rider.<sup>35</sup>

Accordingly, KCPL's proposed residential and business appliance rebate programs should be rejected

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<sup>33</sup>Raab Prefiled Direct Testimony, page 10, line 1 through page 15, line 13.

<sup>34</sup>Frantz, Vol. II, Tr. 540, line 7 through Tr. 542, line 24.

<sup>35</sup>Frantz, Vol. II, Tr. 540, line 2through Tr. 541, line 18.

on the basis that they are contrary to this Commission's precedential fuel switching policy, which effectively bans utilities from offering such programs.

9. Upon being called out on its complete failure in its Application to recognize and account for the Commission's fuel switching policy and its effective ban on customer funded and subsidized appliance rebate programs, KCPL argued its programs did not violate the Commission's policy for a number of reasons. First, KCPL contended that because its appliance rebate program only targeted customers who sought to replace existing electric appliances with new electric appliances that such like-for-like exchanges were allowed as an exception to the Commission's policy.<sup>36</sup> Second, KCPL argued that KEEIA effectively changed or limited the Commission's policy and under that change KCPL was allowed under KEEIA to offer customer funded and subsidized appliance rebate programs that may target business customers to replace appliances and equipment fueled by natural gas with appliances and equipment powered by electricity.<sup>37</sup> Finally, KCPL argued the Commission's effective ban on customer funded appliance rebate programs only applied to the residential customer class and not to the business customer class.<sup>38</sup> For the reasons set forth below in the following sections of this Post Hearing Brief, KCPL's arguments are neither legally or factually supportable and should be rejected by the Commission.

10. Before discussing why each of KCPL's arguments that the Commission's effective ban on customer funded and subsidized appliance rebate programs does not apply to its proposed programs fail both factually and legally, it is important to note that the Commission specifically designated its orders in the 160 Docket as a precedent under K.S.A. 77-415.<sup>39</sup> That statute states in

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<sup>36</sup>KCPL Post Hearing Brief, pages 39-40, paragraph 88; page 41, paragraph 91.

<sup>37</sup>KCPL Post Hearing Brief, page 44, paragraph 95.

<sup>38</sup>KCPL Post Hearing Brief, page 45, paragraph 97.

<sup>39</sup>Gas Utilities Exhibit 3, Amended Order to Close Docket dated March 23, 2012, page 1, paragraph 2; K.S.A. 77-415(b)(2)(A).



pertinent part:

(b)(2)(A) An agency may bind parties, establish policies, and interpret statutes or regulations by order in an adjudication under the Kansas administrative procedure act or other procedures required by law, except that such order shall not be used as precedent in any subsequent adjudication against a person who was not a party to the original adjudication unless the order is (i) designated by the agency as precedent.<sup>40</sup>

The fact that the Commission specifically designated its order in the 160 Docket as a precedent under K.S.A. 77-415, an action that is rarely taken by the Commission,<sup>41</sup> means the policy established by the Commission in those orders is binding on KCPL and the other utilities in Kansas. It also means KCPL clearly has the burden to prove in this case why the policy established by the Commission in the 160 Docket should not be applied in this case to prohibit KCPL from offering customer funded and subsidized appliance rebate programs. Finally, it is important to note KCPL did not challenge the orders issued by the Commission in the 160 docket, either by filing for reconsideration or by appealing those orders.<sup>42</sup> The Gas Utilities submit KCPL has failed to meet its burden of proof in this case and the Commission should reject KCPL's residential and business appliance rebate programs because they are contrary to the Commission's policy established in the 160 Docket.

B. THE COMMISSION'S EFFECTIVE BAN ON APPLIANCE REBATE PROGRAMS APPLIES WHETHER THE APPLIANCE REBATE PROGRAM IS TARGETED AT A CUSTOMER WHO IS DECIDING TO REPLACE HER FURNACE OR HER HEAT PUMP

11. KCPL contended that because it amended its residential electric appliance rebate program to limit the rebate in those cases where the customer is replacing an existing electric appliance with a new electric appliance, it is not in violation of the Commission's policy or the prohibition against measures that incent fuel switching for residential heating systems under KEEIA.<sup>43</sup>

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<sup>40</sup>K.S.A. 77-415(b)(2)(A).

<sup>41</sup>See, Footnote 39 of this Post Hearing Brief.

<sup>42</sup>Turner, Vol. I, Tr. 130, line 19 through Tr. 131, line 12.

<sup>43</sup>KCPL Post Hearing Brief, pages 39-40, paragraph 88; page 41, paragraph 91.

KCPL argued that these so-called "like-for-like" replacements don't bias or incent the customer towards a particular fuel source because that customer has previously already made her or his choice as to which fuel source she or he prefers.<sup>44</sup> However, KCPL's argument is factually flawed as shown by the testimony presented by KCPL witness Mr. File during the hearing.<sup>45</sup> Mr. File conceded that although the customer may have previously chosen a fuel source regarding the appliance that is being replaced, such doesn't mean the customer no longer has a choice between fuel sources at the time she or he decides to replace the old appliance, and such doesn't mean an electric appliance rebate won't influence or bias her or him towards a particular fuel source, which, of course, would be a violation of the Commission's fuel switching policy.<sup>46</sup> Consider the following testimony of Mr. File:

Q. Wouldn't you agree, though, that when my neighbor's heat pump goes out and has to be replaced and she calls A.B. May, that A.B. May can offer her the choice of a new heat pump or a gas furnace?

A. Yeah, customers really have lots of choices, right? They could have a baseline efficiency furnace. They could have a more efficient furnace. They could have a baseline level heat pump. They could have a more efficient heat pump. Where we are trying to exert our influence is to go from a baseline heat pump to a more efficient heat pump.

Q. So she's not limited to only being able to install another heat pump, right? She can take all of the actions that you just mentioned including selecting a gas furnace?

A. Yeah, a customer has the choice of course, yes.

**Q. And if that is the case, my neighbor is back to having to make a choice of a particular fuel, either electricity or natural gas correct?**

**A. Yeah, they have always had the choice all the way through, correct.**

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<sup>44</sup>*Id.*

<sup>45</sup>File, Vol. I, Tr. 195, line 25 through Tr. 198, line 19.

<sup>46</sup>*Id.*

Q. But if in the situation where my neighbor decides that I'm going to decide to use the new heat pump because I get a rebate, and on the new gas furnace I don't get the rebate, that, that choice has been decided based upon the fact that KCPL is offering that rebate, correct?

A. It's sounds like maybe in your hypothetical example that could be either way.

(Emphasis added).<sup>47</sup>

Mr. Raab, on behalf of the Gas Utilities also explained how KCPL's like-for-like replacement restriction still violated the Commission's policy and the prohibition in KEEIA:

Q. Does the fact that KCPL's whole house program limits the payment of rebate incentives to its trade partners only in those cases where the new electric appliance (heat pump; water heater) replaces an existing electric appliance adequately address the fuel switching prohibition either in KEEIA for residential customers or the Commission's order in the 160 Docket for all customer classes?

A. No ... any rebate offered by KCPL and paid and subsidized by KCPL's customers through their rates, is going to influence or "bias" a customer towards the use of a particular fuel, i.e. electricity, regardless of whether the customer is replacing an electric appliance or a natural gas appliance. Such influence or bias built into KCPL's energy efficiency plans is unlawful under KEEIA as it relates to residential customers and under the Commission's order issued in the 160 Docket as it relates to other classes of customers.<sup>48</sup>

12. KCPL's argument is also legally flawed because when the Commission established its fuel switching policy in the 160 Docket, which effectively banned utility's from providing customer funded appliance rebate payments, the Commission's orders in the 160 Docket did not include a "like-for-like" replacement program exception to the policy like what is being proposed by KCPL in this case and no such exception exists.<sup>49</sup> Mr. Frantz, on behalf of the KCC Staff, testified that to the best of his recollection the Commission did not carve out an exception to its fuel switching policy for

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<sup>47</sup>File, Vol. I, Tr. 196, line 18 through Tr. 198, line 19.

<sup>48</sup>Raab Prefiled Direct Testimony, page 15, line 14 through page 16, line 3.

<sup>49</sup>See, Footnote 1 of this Post Hearing Brief.

like-for-like replacements.<sup>50</sup> Ms. Turner, who testified for KCPL, conceded that there was no language in the Commission's order in the 160 Docket that carved out an exception to its fuel switching policy for like-for-like replacements, even though that particular exception was brought forward and discussed in that docket and included in several reports issued by the Staff.<sup>51</sup> Consider Ms. Turner's testimony:

Q. Going back to the Paragraph A in this order (order in the 160 Docket) and looking at that language used by the Commission in requiring utilities to offer energy efficiency programs in a manner that does not bias users toward a particular fuel source, did the Commission in this order include any exceptions or qualifying language in stating that the requirement in -- I'll give you an example, the like for like exchange that we -- that you mentioned in your testimony, is there any language in that order part of this order that says we are excluding like for like exchanges from this, this requirement?

A. That particular language doesn't. But there is an awful lot of, of pages of Staff reports and recommendations and what not behind it.<sup>52</sup>

13. Because there is no factual or legal support for KCPL's argument that its like-for-like replacement restriction does not violate the Commission's fuel switching policy, its argument should be rejected.

C. KEEIA DID NOT LIMIT OR CHANGE THE COMMISSION'S BAN ON APPLIANCE REBATE PROGRAMS

14. Next, KCPL argued that in passing KEEIA, the Legislature effectively changed or limited the Commission's fuel switching policy and its effective ban on appliance rebate programs so as to allow KCPL to offer like-for-like replacement appliance rebate programs to residential customers who currently use heat pumps and appliance rebate programs to all business customers.<sup>53</sup>

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<sup>50</sup>Frantz, Vol. II, Tr. 539, line 14 through Tr. 540, line 3.

<sup>51</sup>Turner, Vol. I, Tr. 138, lines 3-17.

<sup>52</sup>*Id.*

<sup>53</sup>KCPL Post Hearing Brief, page 10, paragraph 31.

This argument was part of an overall argument or theme presented by KCPL in this proceeding.<sup>54</sup> For the most part, the overall argument is not legally supported because it completely fails to take into account that portion of KEEIA that specifically continues to provide the Commission with the "independent authority to accept or reject any proposed establishment, continuation or modification of a demand-side program, portfolio of programs or associated cost-recovery or incentive mechanisms..."<sup>55</sup> Ms. Turner, on behalf of KCPL, acknowledged that there was nothing in KEEIA, or the legislative history that she reviewed, which suggested the Legislature had usurped the Commission's authority over whether or not to approve DSM programs proposed by utilities overall and nothing in KEEIA that prohibited the Commission from maintaining its fuel switching policy and effective ban on customer subsidized appliance rebate programs:

Q. And based upon your review of that Legislative history (of KEEIA), did you come across anything that suggested that it was the intent of the Legislature to overturn any Commission policy or order that was issued prior to when KEEIA became effective?

A. I don't know if that is stated specifically...

Q. Based upon your review of that Legislative history, did you come away with the understanding that the Legislature still intended for the Commission to retain end authority over whether or not to adopt any energy efficiency program proposed by a utility?

A. That's correct.

Q. So if the Commission decides based upon hearing the evidence in this case that it simply does not believe that it is appropriate to have all KCPL Kansas ratepayers fund a \$500 rebate so my neighbor can pay less for her new heat pump that she was going to have to pay for anyway since her old heat pump no longer works, and instead customers should have to pay for their own heat pumps, there is nothing in KEEIA that prevents the Commission from making that decision in this case right?

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<sup>54</sup>KCPL Post Hearing Brief, page 44, paragraph 95.

<sup>55</sup>K.S.A. 66-1283(c)(1)(B) (Gas Utilities Exhibit 4) ("The public utility and the Commission shall both have the independent authority to accept or reject any proposed establishment, continuation or modification of a demand-side program, portfolio of programs or associated cost-recovery or incentive mechanisms...").

A. In KEEIA they obviously considered the issue of fuel switching for that Legislation. And in there they specifically set out only residential heating systems that should not be incentive for fuel switching. So I think that should be considered.

Q. But in looking at, looking at Legislative history that you reviewed and the Act itself, was there anything in there that if the Commission wanted to make the decision that I just indicated in my question to you, is there anything in there that you believe would prevent them from making that decision?

A. No.

Q. And would the same be true if this Commission decides based upon hearing the evidence in this case that it simply does not believe that it is appropriate to have all KCPL Kansas ratepayers fund a \$5,000 rebate so the Polsinelli law firm can pay less for its new air conditioner that it's going to have to pay for anyway since its old air conditioner was no longer working, there is nothing in KEEIA that prevents the Commission from making that decision, is that correct?

A. That's correct.<sup>56</sup>

15. In addition, the fact KEEIA specifically prohibited utilities from offering any energy efficiency measures that included measures to incent fuel switching for residential heating systems did not mean the Legislature intended to change or limit the Commission's fuel switching policy effectively banning customer subsidized appliance rebate programs as suggested by KCPL. In fact, as conceded by KCPL's witness who reviewed the Legislative history of KEEIA there is nothing in the Legislative record that indicated the Legislature was changing or limiting the Commission's 2012 fuel switching policy.<sup>57</sup> The prohibition contained in KEEIA is in fact totally consistent with the Commission's policy.<sup>58</sup> It is a stretch for KCPL to argue that because KEEIA specifically prohibited

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<sup>56</sup>Turner, Vol. I, Tr. 139, line 13 through Tr. 141, line 9.

<sup>57</sup>*Id.*

<sup>58</sup>KCPL cites *In re Lietz Const. Co.*, 273 Kan. 890, 911, 47 P.3d 1275, 1290 (Kan. 2002) to support its position that because the Legislature specifically prohibited utilities from proposing residential appliance rebate programs for heating systems that the Legislature meant to not prohibit utilities from proposing other appliance rebate programs under the rule that inclusion of one thing implies the exclusion of another, and that courts can presume that when the Legislature expressly includes specific terms, it intends to exclude any items not expressly included in the specific list. However, KCPL fails to point out that in the *Lietz Const. Co.* case, the Kansas Supreme Court also held that the above-mentioned

utilities from offering heating system rebates to residential customers, that the Legislature intended to allow utilities to offer business customers appliance rebates notwithstanding the Commission's policy prohibiting such rebates.

16. Finally, as set forth below in Section III of this Post Hearing Brief, KCPL's proposed business appliance rebate payment programs, which may target businesses to replace appliances and equipment fueled by natural gas with appliances and equipment powered by electricity, violate the Legislature's prohibition against customer subsidized load building programs disguised as DSM programs, or energy efficiency measures because such programs increase rather than reduce that customer's electric usage and the amount of energy required to achieve a given end use.<sup>59</sup> This part of KEEIA is clearly consistent with the Commission's fuel switching policy, which effectively bans appliance rebate payment programs like the ones proposed by KCPL in this case.

D. THE COMMISSION'S POLICY AND BAN ON APPLIANCE REBATE PROGRAMS WAS NOT LIMITED TO THE RESIDENTIAL CLASS

17. KCPL's final effort to skirt the Commission's ban on customer subsidized appliance rebate payment programs is based on its argument that the Commission's fuel switching policy only applied to the residential class and did not prohibit a utility from offering such programs to the business class of customers.<sup>60</sup> However, the regulatory principles, which form the basis for the Commission's decision to ban customer subsidized appliance rebate payment programs, apply equally to all classes of customers and would not differ depending upon whether the appliance rebate was offered to replace an appliance located in a home or a business. KCPL does not attempt to explain

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rule shall not be employed to override or defeat a clearly contrary Legislative intention or the clear intent of the Legislature. Moreover, the rule applies to lists, and the language in KEEIA that is referred to by KCPL is not a list of items.

<sup>59</sup>See, Section III. A. and B. of this Post Hearing Brief.

<sup>60</sup>KCPL Post Hearing Brief, page 45, paragraph 97.

why those regulatory principles would result in a different conclusion depending upon which class of customers was being considered. Instead, in order to support its position, KCPL pointed to a few references in the 160 Docket that discussed incentives to encourage customers to switch fuels for end-use applications within their homes and argued that such meant that the Commission's policy only applied to the residential class and not the business class because of its use of the word "home."<sup>61</sup> However, KCPL's argument fails for at least three reasons. First, there are also references in the 160 Docket that discuss appliance rebate programs offered to businesses.<sup>62</sup> The best example of this is found in paragraph 4 of the order issued by the Commission in the 160 Docket, where the Commission sets forth its fuel switching policy. In that particular paragraph, the Commission summarized the comments provided by Westar Energy Inc.'s and Kansas Gas and Electric Company's (collectively referred to as Westar), comments that the Commission obviously relied upon and used in forming its policy. The Commission summarized the comments filed by Westar as follows:

4. ...Westar filed initial comments as well. Westar stated that it did not intend to use incentives paid to end-users to promote fuel-switching because it believes that switching from a natural gas furnace to use of electricity for heating can be economically justified and that if cost information is provided to customers, customers will be able to make informed decisions on these issues. Westar recommended the Commission adopt an approach that allows utilities to educate their customers regarding various fuel options, **and allow customers to make the ultimate decision regarding energy sources for their homes and businesses.** (Emphasis added).<sup>63</sup>

18. The second reason KCPL's argument fails is because there is nothing in the ordering part of the Commission's orders that limits its policy to residential customers.<sup>64</sup>

19. Finally, as indicated above, there is no reasonable rationale as to why the

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<sup>61</sup>*Id.*

<sup>62</sup>160 Docket Order to Close Docket dated February 15, 2012, page 2, paragraph 4.

<sup>63</sup>*Id.*

<sup>64</sup>*See*, Footnote 1 of this Post Hearing Brief.



Commission's policy would be applied differently depending upon the class of customers that are targeted under a an appliance rebate program. The basis for not allowing customer subsidized appliance rebate programs would apply regardless of whether the appliance is located in a home or a business.

**III. KCPL'S PROPOSED BUSINESS APPLIANCE REBATE PROGRAMS SHOULD BE REJECTED BECAUSE THEY VIOLATE KEEIA'S PROHIBITION AGAINST LOAD BUILDING PROGRAMS GUISED AS DSM PROGRAMS**

**A. KCPL'S PROPOSED BUSINESS APPLIANCE REBATE PROGRAMS DO NOT QUALIFY AS DSM PROGRAMS UNDER KEEIA BECAUSE THEY INCREASE RATHER THAN REDUCE THE NET CONSUMPTION OF ELECTRICITY BY A RETAIL BUSINESS CUSTOMER**

20. KEEIA defines a demand-side program as a program conducted by the electric utility "to reduce the net consumption of electricity by a retail electric customer."<sup>65</sup> This definition means that customer subsidized load building programs guised as DSM programs do not qualify under KEEIA. This would include both of KCPL's proposed business appliance rebate payment programs, which may target a business to replace its appliances and equipment fueled by natural gas with appliances and equipment powered by electricity. This is because those programs would increase rather than reduce the net consumption of electricity by that business customer.<sup>66</sup> Consider the testimony provided by both Ms. Turner and Mr. Frantz during the hearing. First, Ms. Turner:

Q. In the case where KCPL offers a commercial business a rebate incentive under its Business Energy Efficiency Program to switch from a natural gas furnace to a heat pump that is fueled by electricity, the net consumption of electricity by that retail electric customer after the installation of that heat pump will increase because it will be heating its— using electricity and not gas, correct?

A. Its use of electricity would increase?

Q. Yes.

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<sup>65</sup>K.S.A. 66-1283(a)(3) (Gas Utilities Exhibit 4).

<sup>66</sup>Turner, Vol. I, Tr. 142, lines 7-22; Frantz, Vol. II, Tr. 530, line 6 through Tr. 533, line 1.

A. For that business, correct.

**Q. So this portion of KCPL's Business Energy Efficiency Program would result in an increase and not a reduction in net consumption of electricity by a business customer, correct?**

A. It could, yes.

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**Q. So reading that part of the KEEIA statute, in order for an energy efficiency program to be considered a Demand Side Program, it has to be a program conducted by an electric utility to reduce the net consumption of electricity by a retail electric customer, correct?**

A. That is what it says, yes.

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Q. Ms. Turner, in preparing this case, was there any discussion that you had with other KCPL member which addressed whether or not the business portion -- the rebate portion of the business program would not, would not comply or not qualify as a demand side program under the KEEIA statute because as you previously testified replacing a gas furnace with a heat pump could actually increase the net consumption of electricity by that customer instead of reducing that consumption?

A. We did not have that discussion.

(Emphasis added).<sup>67</sup>

Also consider Mr. Frantz' testimony on this same point:

Q. Let me direct your attention to your direct testimony to the top of Page 6. Let me know when you're there.

A. I'm there. Thank you.

Q. At that point in your testimony you define the term demand side program as it's used in KEEIA, correct?

A. That is correct.

Q. And as part of that definition, demand side program means any program

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<sup>67</sup>Turner, Vol. I, Tr. 142, lines 7-22; Tr. 147, lines 1-11.

conducted by an electric utility to reduce the net consumption of electricity by a retail electric customer, is that correct?

A. Yes. That is how it is defined in KEEIA.

Q. Did Staff conduct an analysis to determine whether KCPL's Business Standard electric appliance rebate incentive reduces the net consumption of electricity by a business customer who switches a gas furnace out for a heat pump under KCPL Business Standard Rebate Program?

A. No, Staff did not take that detailed of an approach.

Q. So you didn't do that type of analysis, then?

A. That's correct.

Q. And through the discovery that Staff did and your personal review of the Application, the testimony, the KEEIA Report that KCPL filed, did you see anywhere in any of that information where KCPL conducted any analysis to determine whether KCPL Business Standard Electric Appliance Rebate Incentive reduces the net consumption of electricity by a business customer who switches out a gas furnace out for a heat pump under the rebate program?

A. No, I did not.

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**Q. Would you agree that again under the KEEIA definition of the term demand side program, if there is a program that is conducted by an electric utility that instead of reducing the net consumption of that specific retail electric customer, it actually increases the consumption, would that program qualify as a demand side program under KEEIA?**

**A. It is my opinion that in that situation -- that situation does not meet the specific verbiage used in KEEIA.**

(Emphasis added).<sup>68</sup>

21. Despite Ms. Turner's candid admission during the hearing that KEEIA provides that in order for a program to qualify as a demand side program it has to be a program that *reduces* rather

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<sup>68</sup>Frantz, Vol. II, Tr. 530, line 6 through Tr. 533, line 1.

than *increases* the net consumption of electricity by a retail electric customer,<sup>69</sup> and her candid testimony that KCPL did not discuss whether its business appliance rebate program met the restriction contained in KEEIA that effectively prohibited load building programs,<sup>70</sup> KCPL argued in its post hearing brief that a program could still qualify under KEEIA even if the program *increases* instead of *reduces* the net consumption of electricity by a retail electric customer, as long as the total program resulted in a reduction in the consumption of electricity.<sup>71</sup> The problem with KCPL's argument is that it ignores the clear meaning of the unambiguous language used by the Legislature. KCPL's interpretation of this portion of the statute would require the Commission to replace what is a straight-forward requirement, i.e., the program must reduce the net consumption of electricity by a retail customer, in other words it can't be a load building program, with language that is obviously not included in the statute and which would substantially change that straight-forward requirement, i.e., a program that reduces the net consumption of electricity of a customer class, or all of the customers who participate in the program but which may increase the net consumption of electricity by a retail electric customer.<sup>72</sup> KCPL's attempt to ignore or rewrite that portion of KEEIA, where the Legislature was prohibiting utilities from proposing customer subsidized load building programs guised as demand side programs as qualifying under KEEIA, in order for it to qualify its business appliance rebate programs under KEEIA, should be rejected.

22. At a minimum, KCPL's business appliance rebate programs under KEEIA should be rejected under this portion of KEEIA because there has been no analysis submitted into evidence to

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<sup>69</sup>Turner, Vol. I, Tr. 142, lines 7-22.

<sup>70</sup>Turner, Vol. I, Tr. 147, lines 1-11.

<sup>71</sup>KCPL Post Hearing Brief, page 11, paragraph 32.

<sup>72</sup>The fundamental rule of statutory interpretation is the intent of the Legislature is dispositive if it is possible to ascertain that intent. Courts look to the plain and unambiguous language of the statute as the primary basis for determining Legislative intent and such plain language trumps the policies advocated by the parties. *Merryfield v. Sullivan*, 301 Kan. 397, 399, 343 P.3d 515 (2015).

show that those programs will reduce as opposed to increase the net consumption of electricity of the retail electric customer who takes advantage of such programs and KCPL has, therefore, failed to meet its burden to show that this requirement of KEEIA has been met.<sup>73</sup> In addition, it is obvious that any business customer who may be targeted under these programs to be influenced to replace its appliances and equipment fueled by natural gas with appliances and equipment powered by electricity will have its net consumption of electricity increased and not reduced.<sup>74</sup> Therefore, KCPL's business appliance rebate programs, as structured, fail to meet the KEEIA requirements and should be rejected by the Commission.

B. KCPL'S PROPOSED BUSINESS APPLIANCE REBATE PROGRAMS DO NOT QUALIFY AS ENERGY EFFICIENCY MEASURES UNDER KEEIA BECAUSE THEY INCREASE RATHER THAN REDUCE THE AMOUNT OF ENERGY REQUIRED TO ACHIEVE THE END USE

23. It is interesting to note that in addition to the Legislature's intent to prohibit utilities from proposing load building programs disguised as demand-side programs in choosing its definition of demand-side programs that would qualify under KEEIA, the Legislature also expressed its intent on a related matter in choosing its definition of an energy efficiency measure.<sup>75</sup> In order for a measure to qualify as an energy efficiency measure under KEEIA the measure must reduce the amount of energy required to achieve a given end use.<sup>76</sup> In other words, measures that result in the increased consumption of energy do not qualify under KEEIA as energy efficiency measures.

24. Staff was asked during the hearing whether it conducted any type of analysis to determine whether KCPL's business appliance rebate programs, which may target business customers to switch a gas furnace out for a heat pump in order to heat their businesses would result in the

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<sup>73</sup>See, Footnote 66.

<sup>74</sup>*Id.*

<sup>75</sup>K.S.A. 66-1283(a)(4) (Gas Utilities Exhibit 4).

<sup>76</sup>*Id.*; Frantz, Vol. II, Tr. 533, line 2 through Tr. 537, line 9.

increased consumption of energy for that given use, and thus, not qualify as an energy efficiency measure under KEEIA. Staff indicated that no such analysis was performed.<sup>77</sup> Staff was also asked whether KCPL had completed such an analysis and the Staff witness indicated that no such analysis was performed to his recollection.<sup>78</sup>

25. Staff did acknowledge during the hearing that Mr. Raab did include such an analysis in his testimony and that Mr. Raab had concluded any natural gas to electricity fuel switching that occurs as a result of DSM payment incentives was likely to result in the increase and not reduction in the consumption of energy.<sup>79</sup> Mr. Raab's analysis showed that KCPL's proposed appliance rebate programs were contrary to the State's goal and policy as set forth in KEEIA of reducing the consumption of energy.<sup>80</sup> Mr. Raab provided the following testimony on this point:

Q. You stated above that any natural gas to electricity fuel switching that occurs as a result of DSM incentive payments is likely to result in the increased consumption of energy. Why is this the case?

A. That conclusion follows logically from two undisputed facts:

1. Increased consumption of electricity implies increased usage of the fossil fuel needed to produce that electricity.

2. More fossil fuel energy is required to provide a Btu of electric energy at the point of usage (a home, for example) than to provide a Btu of the fossil fuel energy at the same point of usage.

This latter fact is often explained as the difference between "source energy" and "site energy."

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When natural gas, for example is substituted for electricity at the site of usage, (i.e., the given use referred to in the KEEIA definition of an energy efficiency

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<sup>77</sup>*Id.*

<sup>78</sup>*Id.*

<sup>79</sup>*Id.*

<sup>80</sup>Raab Prefiled Direct Testimony, page 16, line 6 through page 23, line 11.

measure), it enjoys a three times energy efficiency advantage over electricity. Although not the only argument against electricity for natural gas fuel switching, this is certainly a powerful one.<sup>81</sup>

26. Under KEEIA, KCPL had the burden to prove the energy efficiency measures contained in its proposed business appliance rebate programs would not increase the consumption of energy to achieve a given end use. KCPL did not conduct an analysis to demonstrate that the measures contained in its business appliance rebate program, which may target customers to replace appliances and equipment fueled by natural gas with appliances and equipment powered by electricity, would not increase the consumption of energy to achieve a given end use.<sup>82</sup> Mr. Raab's testimony shows that such measures would likely increase the consumption of energy.<sup>83</sup> KCPL failed to meet its burden of proof, and therefore, these programs should not be approved.

#### **IV. OTHER ISSUES**

A. DSM AND ENERGY EFFICIENCY PROGRAMS OFFERED IN OTHER STATES AS MANDATED BY THOSE OTHER STATES' LAWS AND REGULATIONS ARE NOT RELEVANT TO WHETHER KCPL'S PROPOSED PROGRAMS VIOLATE THIS COMMISSION'S POLICY OR KANSAS LAW

27. During the hearing, KCPL offered evidence showing Atmos Energy and Black Hills Energy offer appliance rebate programs in Colorado and Kansas Gas Service offers appliance rebate programs in Oklahoma.<sup>84</sup> The Gas Utilities and one of the Commissioners during the hearing questioned the relevance of such evidence as it related to whether KCPL's proposed appliance rebate programs should be approved under KEEIA and this Commission's fuel switching policy and effective ban on customer subsidized appliance rebate programs.<sup>85</sup> This was especially the case, given the fact

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<sup>81</sup>Raab Prefiled Direct Testimony, page 20, line 22 through page 21, line 10; page 22, line 15 through page 23, line 3.

<sup>82</sup>Frantz, Vol. II, Tr. 533, lines 15-20.

<sup>83</sup>Raab Prefiled Direct Testimony, page 22, line 15 through page 23, line 3.

<sup>84</sup>KCPL Exhibits 1-3.

<sup>85</sup>Vol. I, Tr. 250, line 23 through Tr. 254, line 9; Vol. III, Tr. 714, lines 11-15.

that in those other states, the Gas Utilities were mandated to offer such programs under those states' laws and regulations.<sup>86</sup> Also, as pointed out by Mr. Raab when questioned about those programs, those natural gas appliance rebate programs were mandated in those other states as a result of those states and their utility commissions embracing the conclusion that using natural gas fueled appliances reduces the amount of energy for a given use because of the fossil fuels burned to generate electricity.<sup>87</sup> Accordingly, the Gas Utilities renew their objection made during the hearing and ask the Commission to find the information relating to the appliance rebate programs offered in Colorado and Oklahoma are not relevant to whether KCPL's proposed appliance rebate programs comply with the Commission's fuel switching policy and the provisions contained in KEEIA.

B. KCPL PROVIDES NO PROCESS TO VERIFY ITS LIKE-FOR-LIKE APPLIANCE REBATE

28. Mr. Raab pointed out in his testimony that KCPL's EM&V process does not allow for any verification such as sworn affidavits from the customer, trade vendor, or utility, that verifies what appliance was being replaced so that there is an audit trail.<sup>88</sup> Staff also confirmed during the hearing there were no provisions in the EM&V portion of KCPL's filing that called for the verification by the utility that appliance rebates offered to residential customers were only being offered by HVAC companies to customers who were replacing their electric appliances.<sup>89</sup> KCPL suggested that it was open to modifying its EM&V requirements to require such verification.<sup>90</sup> However, any verification would be placed on the HVAC companies and not KCPL.<sup>91</sup> KCPL should be the entity required to make the verification.

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<sup>86</sup>See, Footnote 16 of this Post Hearing Brief; Raab Vol. II, Tr. 478, line 6 through Tr. 481, line 15.

<sup>87</sup>Raab, Vol. II, Tr. 478, line 6 through Tr. 480, line 18.

<sup>88</sup>Raab Prefiled Direct Testimony, page 19, line 11 through page 20, line 2.

<sup>89</sup>Frantz, Vol. II, Tr. 542, line 25 through Tr. 543, line 20.

<sup>90</sup>File, Vol. I, Tr. 200, line 14 through Tr. 201, line 20.

<sup>91</sup>*Id.*



C. KCPL FAILS TO ACCOUNT FOR INCREASED KILOWATT SALES THAT WOULD OCCUR UNDER ITS PROPOSED BUSINESS APPLIANCE REBATE PROGRAMS

30. As conceded by Ms. Turner during the hearing, business customers, who switch out appliances and equipment fueled by natural gas for appliances and equipment powered by electricity under KCPL's proposed appliance rebate programs, will increase their usage of electricity, which will result in increased kWh sales for KCPL.<sup>92</sup> However, these increased kilowatt sales are not reflected in KCPL's TRM.<sup>93</sup> Nor are those increased kWh sales included in KCPL's calculation of its lost revenues, which it seeks to recover in its TD charge to customers.<sup>94</sup>

31. Mr. Raab explained in his testimony that a review of the assumptions and the electric energy savings algorithms associated with an evaluation of heat pump measures shows that the TRM simply assumes away the fuel switching problem by ignoring the very real possibility that the substantial incentive to be paid for the installation of a heat pump under the program will cause some consumers to replace natural gas furnaces with an electric heat pump.<sup>95</sup> Mr Raab, also explained that although KCPL promised a rigorous EM&V process, because the TRM as currently proposed by KCPL does not depend on an estimate of the amount of electricity load gained at the expense of natural gas load, there will be no need for KCPL to keep track of this information to implement its EM&V plan.<sup>96</sup> If the Commission were to approve the business appliance rebate programs, it should require, at a minimum, that KCPL collect the data necessary to quantify the fuel switching promoted by the programs and to incorporate this into its EM&V process so the collection of the information

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<sup>92</sup>Turner, Vol. I, Tr. 142, lines 7-22.

<sup>93</sup>J. Turner, Vol. II, Tr. 552, line 4 through Tr. 553, line 19; Foltz, Vol. II, Tr. 398, line 23 through Tr. 400, line 2.

<sup>94</sup>Raab Prefiled Direct Testimony, page 18, line 10 through page 19, line 10.

<sup>95</sup>*Id.*

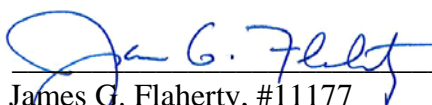
<sup>96</sup>*Id.*

would either confirm or deny the effectiveness of the subsidy provided by KCPL's customers.<sup>97</sup>

**V. CONCLUSION**

32. For the reasons set forth herein, the Commission should reject KCPL's proposed appliance rebate programs. Those programs violate the Commission's fuel switching policy, which effectively bans appliance rebate programs because they incent or bias the use of a particular fuel source. The business appliance rebate programs also violate KEEIA because they may result in a net increase and not reduction in electricity usage by a retail electric customer and may result in an increase in energy used by the customer.

Respectfully submitted,



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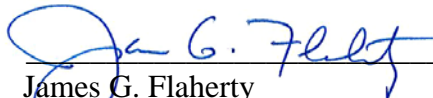
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<sup>97</sup>*Id.* at page 19, line 11 through page 20, line 21.

## VERIFICATION

STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, states: That he is an attorney for Atmos Energy Corporation, Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy, and Kansas Gas Service, a Division of ONE Gas, Inc., and is duly authorized to make this affidavit; that he has read the foregoing Post Hearing Brief, knows the contents thereof; and that the facts set forth therein are true and correct.

  
James G. Flaherty

SUBSCRIBED AND SWORN to before me this 5<sup>th</sup> day of May, 2017.





Notary Public

Appointment/Commission Expires:

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing was sent via U.S. Mail, postage prepaid, hand-delivery, or electronically, this 5<sup>th</sup> day of May, 2017, addressed to:

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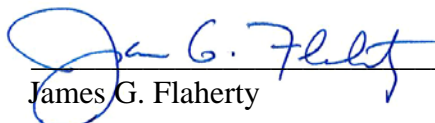
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