

3. The Commission found that it has broad authority to provide incentives to promote efficiency and conservation of energy. The Commission also found it has wide discretion to consider and apply methodologies for approving energy efficiency programs, including different cost-benefit tests, and that the Commission is not limited to any particular approach. The Commission found there is a need to develop Commission policy for key elements of a comprehensive energy efficiency/conservation program and ordered the opening of two concurrent investigations to facilitate development and subsequent action on these key elements. Docket No. 07-GIMX-247-GIV.

4. The issue of whether it is appropriate to offer incentives to encourage consumers to engage in fuel-switching behavior was raised in comments filed in Docket No. 08-GIMX-442-GIV.¹ On June 3, 2008, the Commission determined it would open a new docket to review this policy issue within 90 days.² While the issue was raised in a docket concerning energy efficiency issues, the concerns related to fuel-switching are more general.

5. In response to the Commission's directive to open a new docket regarding fuel-switching incentives, Staff filed a Motion to Open a Generic Investigation into a Policy on Incentives for Fuel-Switching on August 8, 2008. Attached to that Motion was Staff's supporting Memorandum explaining, *inter alia*, the importance of and rationale for conducting such an investigation. Staff explained that discussions regarding fuel-switching have been held over the years in various forums.

6. Staff cannot find evidence that the National Association of Regulatory Utility Commissioners (NARUC) has taken a position on the issue of incentives for fuel-switching.

¹ [Kansas Gas Service] Reply Comments for the Workshop, Docket No. 08-GIMX-442-GIV, April 16, 2008; and, Reply Comments of Kansas City Power & Light Company on KCC Energy Efficiency Workshop, Docket No. 08-GIMX-442-GIV, April 16, 2008..

² Order Setting Energy Efficiency Policy Goals, Determining a Benefit-Cost Test Framework, and Engaging a Collaborative Process to Develop Benefit-Cost Test Technical Matters and an Evaluation, Measurement, and Verification Scheme, Docket No. 08-GIMX-442-GIV, paragraph 31, June 3, 2008

Fuel-switching is mentioned in a 2003 Resolution on state commission responses to high prices in the natural gas market and its limited supply, yet the resolution focuses on energy efficiency/conservation efforts for all sources of energy³.

7. The National Regulatory Research Institute (NRRI) has not published a report on this subject, but does list it as a “research project in search of a researcher[.]”⁴ and notes that state commissions must determine whether they should encourage fuel-switching for direct applications, posing several questions for further research.

8. The Energy Trust of Oregon (Energy Trust), the entity charged by the Oregon Public Utility Commission (OPUC) with investing in cost-effective energy conservation in Oregon, has developed a policy on fuel-switching and has determined that it “. . . should not advocate fuel-switching, but may provide fuel neutral technical information on efficiency options However, the Energy Trust should not provide financial incentives for converting or replacing electric or gas equipment to another fuel.”⁵

9. Staff located a relevant discussion of fuel-switching policy by the Northwest Power and Conservation Council (NPC).⁶ The NPC Council lays out its analysis in an issue paper dated July 17, 2007.⁷ At that time the NPC Council determined that consumers should make the decision to switch fuels based on information in the marketplace rather than through incentives provided by a utility.

10. The Commission believes the scope of this docket should be limited to the appropriateness of encouraging fuel-switching for end-use or direct use applications, defined as the mechanism used at the point of consumption (as opposed to the point of energy production),

³ <http://www.naruc.org/Resolutions/responses.pdf>

⁴ http://nrri2.org/index.php?option=com_content&task=view&id=34&Itemid=51

⁵ <http://www.energytrust.org/kibrary/policies/4.03.000-P.pdf>

⁶ <http://www.nwcouncil.org/library/releases/2001/0926.htm>

⁷ <http://www.nwcouncil.org/library/2001/2001-17.htm>

since this is the context in which the issue was raised. Staff has been unable to locate significant research on this topic from which to provide guidance to the Commission and, to assist the Commission in its review of the fuel-switching issue, Staff recommended the Commission request interested parties comment on questions intended to gather additional information on fuel-switching.

11. This docket will address whether it is appropriate for utilities to use monetary incentives to encourage consumers to switch fuels for end-use applications within their homes.

FINDINGS AND CONCLUSIONS

12. The Commission intends to use this docket to address the issues in two Phases:

PHASE 1 - Does the Commission have authority to deny or limit a utility company's efforts, including but not limited to financial incentives, to encourage their customers to switch from a competing fuel to that utility's energy service either for specific applications or in a whole-service application? If the Commission has such authority and jurisdiction, should the Commission establish such policies? What are the public policy considerations of adopting such policies and limiting utility companies' ability to compete for customers by providing incentives or other promotions?

PHASE 2 - If the Commission determines that it should establish such policies and if the Commission has jurisdiction to do so, the Commission will determine policy, rules, and regulatory framework within the limits of such jurisdiction to govern a utility's efforts to encourage consumers to engage in fuel-switching behavior.

13. To determine whether it is appropriate to regulate financial incentives to encourage consumers to engage in fuel-switching for end-use applications, the Commission will likely need to evaluate whether programs can be economically and/or environmentally justified within its jurisdictional limits, which will be addressed in Phase 1. If such programs cannot be justified or if the Commission does not have jurisdiction to establish such policy and/or rules, then this docket shall be concluded following Phase 1. If such programs can be justified and the Commission has jurisdiction to act on the issues discussed herein, this docket will proceed to Phase 2 in which the Commission will address various standards, rate structures, pricing issues, cost-benefit tests, and overall implications with regard to fuel-switching for end-use applications to determine whether a utility should be authorized to recover costs of energy efficiency programs involving fuel switching..

14. The Commission believes the following initial questions are at issue with regard to fuel-switching for end-use applications in Phase 1 of this docket:

A. Can end-use application programs for fuel-switching incentives be economically and/or environmentally justified?

B. Is general research available regarding the costs and benefits of fuel-switching for end-use applications that can be provided for the Commission's review? If so, please elaborate and provide citations.

C. Is there research available which indicates the effect of fuel-switching for end-use applications on the environment, energy use and energy costs? If so, please elaborate and provide citations.

D. What is the cost of switching fuels for end-use applications?

E. Under what conditions would it be appropriate for a utility to offer an incentive to switch fuels?

F. If utilities should be required to promote the most economical or environmentally beneficial fuel, is the issue regarding lost revenue recovery any different than for energy efficiency programs in general?

G. Does the Commission have jurisdiction to consider issues related to fuel switching programs, incentives, rulemaking, policy, and/or regulation? If so, are there any limits to the Commission's jurisdiction? Should this be the first question?

15. If these initial issues indicate that fuel-switching for end-use application programs can be economically justified and the Commission can effectively act within its jurisdictional limits, then this docket will move on to Phase 2 in which additional issues will be defined and developed without duplicating the related efforts in Docket No. 08-GIMX-442-GIV.

16. Specifically, the Commission solicits comments and, if possible, clear proposals, on the issues listed in paragraph 14 above, as well as any additional comments that parties believe will assist the Commission in its initial determinations on fuel-switching for end-use applications including any issues raised in other company-specific dockets and deferred to this docket.

17. After receiving comments, the Commission may hold an informal workshop. If such workshop is held, interested parties will have an opportunity to present the Commission with additional comments and testimony.

18. The Commission notes that the timelines for a decision in this docket are intended as goals. The timelines are not meant to have any effect on the parties' substantive comments or stances, but are set forth based on the considerations that the Commission wishes to pursue this investigation vigorously. Should circumstances develop through the course of this investigation that would suggest alternative timelines

or other changes would result in a more useful and productive dialogue and outcome, the Commission will consider such changes.

19. The Commission concludes that all jurisdictional electric and natural gas utilities should be made parties to this docket and will be served with a copy of this Order. This docket involves matters that may lead to issues important to residential and small commercial utility customers so the Commission invites the Citizens' Utility Ratepayer Board (CURB) to file a petition for intervention to join this docket. This Order will also be served on municipal and cooperative utilities not subject to our jurisdiction. A copy of this Order will also be served upon the Kansas Energy Council.

20. The Commission will accept written comments from the public while this docket is pending. Comments should reference Docket Number 09-GIMT-160-GIV, *In the Matter of a General Investigation Into Incentives for Fuel Switching*, and be sent to the Kansas Corporation Commission, Office of Public Affairs and Consumer Protection, 1500 SW Arrowhead Road, Topeka, Kansas 66604, or to publicaffairs@kcc.state.ks.us. Comments may also be made by calling 1-800-662-0027.

21. Any interested person may petition the Commission to participate in this docket as a party. Petitions for intervention should be filed within 20 days of this Order, but petitions filed after that date will be considered and a motion to file out of time will not be necessary. All parties that wish to participate actively in this docket and address the Commission on the issues noted above must file an entry of appearance to be included on a restricted service list, which will assure receipt of copies of comments and other pleadings. To assure being on the initial restricted service list, an entry of appearance shall be filed no later than 20 days of this Order.

22. Proposals and comments should be filed no later than November 14, 2008. Replies shall be submitted by December 12, 2008.

23. If the Commission concludes, after considering all issues and comments in Phase 1, that this matter is resolved, the Commission would make all reasonable attempts to issue a final order in this docket by January 15, 2009.

24. Pursuant to K.S.A. 66-1502, the Commission finds that expenses reasonably attributable to this investigation will exceed \$100 and hereby assesses the expenses against all jurisdictional electric and natural gas utilities. These expenses shall be assessed beginning three business days after the Commission gives the utilities notice of the assessment through service of this Order by United State Mail. These public utilities are hereby notified that they have an opportunity to request a hearing on this assessment in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*

25. **Designating Prehearing Officer** - The Commission will appoint a prehearing officer for this docket to conduct any prehearing conferences that might be needed and to address any matters that are appropriately considered in a prehearing conference, including all items listed in the Kansas Administrative Procedure Act (KAPA) at K.S.A. 77-517(b). These items may include, for example, conversion of the proceeding to another type; exploration of settlement possibilities; clarification of issues; rulings on identity and limitation of the number of witnesses; objections to proffers of evidence; determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form, and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person; order of presentation of evidence and cross-examination; discovery orders and protective orders;

and such other matters as will promote the orderly and prompt conduct of the hearing, if necessary. The Commission designates Patrick T. Smith, Litigation Counsel, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, telephone 785-271-3173, email address p.smith@kcc.ks.gov, to act as Prehearing Officer in this docket. K.S.A. 2007 Supp. 77-514; K.S.A. 77-516; K.S.A. 2007 Supp. 77-551. The Commission, as it deems necessary, may designate other staff members to serve in this capacity.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT.

A. All jurisdictional electric and natural gas public utilities are hereby made a party to this docket and assessed the costs of this investigation and will be served with a copy of this Order.

B. Petitions for intervention should be filed within 20 days of this Order, but petitions filed after that date will be considered and no motion to file out of time will be necessary. Entries of appearance should be filed within 20 days of this Order.

C. Proposals and comments to the questions set forth in paragraph 14 above shall be submitted by November 14, 2008. Replies shall be submitted by December 12, 2008.

D. The Commission designates Patrick T. Smith, Litigation Counsel, to act as Prehearing Officer in this docket, as set forth above in paragraph 25.

E. This order will be served as described in paragraph 20, above.

F. A party may file a petition for reconsideration of this order within 15 days of the service of this order. If this order is mailed, service is complete upon mailing and 3 days may be added to the above time frame.

G. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn.; Moffet, Com.; Harkins, Com.

Dated SEP 29 2008

ORDERED MAILED

SEP 29 2008

 EXECUTIVE
DIRECTOR

Susan K. Duffy
Executive Director

PTS:kkd