

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

NOV 18 2008

Suzanne T. Lafferty Docket Room

In the Matter of a General Investigation)
Into Incentives For Fuel Switching.) Docket No. 09-GIMX-160-GIV

INITIAL COMMENTS OF KANSAS CITY POWER & LIGHT COMPANY

COMES NOW Kansas City Power & Light Company (“KCP&L” or “Company”) and files these Initial Comments pursuant to the Order of the Kansas Corporation Commission (“KCC” or “Commission”) dated September 29, 2008 (“September 29 Order”).

I. INTRODUCTION.

1. KCP&L believes that before the Commission can make a reasonable and fair ruling on the complex issues involved in fuel-switching analysis related to energy efficiency (“EE”) programs, an equal playing field needs to be established or assumed. This means that both electric and gas utilities should be offering EE programs to their customers to reduce usage and lower bills. When programs are being offered to customers by both electric and gas utilities, fuel-switching can be more fairly reviewed and should be less of an issue. Any rules on fuel switching developed by the Commission should be designed to apply in such an environment. Where such an environment does not exist, the Commission should take care not to negatively impact utilities that have been proactive in developing and implementing EE and demand response (“DR”) strategies solely because other utilities have chosen not to offer such programs to their customers or have not yet implemented such programs. KCP&L believes that customer choice and preference should and does dictate the choice of appliances, heating, cooling and other equipment used in the home. Customers should not be precluded from availing themselves

of EE/DR programs on the basis that their current utility does not offer such programs. To do so would not be reasonable or fair and may impede the development of EE/DR programs in the State of Kansas.

2. Additionally, as is discussed in the next two sections, fuel switching is but one element of consideration in reviewing EE/DR programs and, in KCP&L's opinion, should not be the driving factor when the Commission reviews programs for approval.

II. DOES THE COMMISSION HAVE AUTHORITY TO CONTROL A UTILITY'S EFFORTS TO ENCOURAGE CUSTOMERS TO SWITCH FROM A COMPETING FUEL?

3. Some preliminary clarification is necessary prior to addressing whether the Commission has the requisite jurisdictional authority to control a utility's efforts to encourage customers to switch from a competing fuel. KCP&L believes this narrow question is very unlikely to be presented to the Commission as it evaluates proposed EE/DR programs. KCP&L has not and will not propose EE/DR programs for the direct and intended purpose of encouraging customers to engage in fuel switching. However, based on the relative price of competing fuels at any given time, just about any EE or DR program could potentially have the unintended consequence of creating an incentive to switch fuels, at least for some customers in some instances.

4. With the above clarification in mind, KCP&L believes the question before the Commission is to what extent it has the authority to consider the possibility of fuel switching incentives when it evaluates EE/DR programs. K.S.A. § 66-101d, which appears to be the applicable statute, provides in pertinent part:

It shall be the duty of the commission, either upon complaint or upon its own initiative, to investigate all rates, joint rates, tolls,

charges and exactions, classifications or schedules of rates or joint rates and rules and regulations of electric public utilities. If after hearing and investigation the commission finds that such rates, joint rates, tolls, charges or exactions, classifications or schedules of rates or joint rates or rules and regulations are **unjust, unreasonable, unjustly discriminatory or unduly preferential**, the commission shall have the power to fix and order substituted therefor such rates, tolls, charges, exactions, classifications or schedules of rates or joint rates and such rules and regulations as are just and reasonable. (Emphasis added.)

5. Based on the foregoing, the Commission has the authority to determine whether any “rates, tolls, charges or exactions, classifications or schedules of rates or joint rates or rules and regulations” associated with EE/DR programs are “unjust, unreasonable, unjustly discriminatory or unduly preferential.”¹ Similarly, the Commission likely has the authority to consider the potential for fuel switching as it applies to the more general “public interest” standard. In either instance, however, rejecting or approving an EE or DR program based solely on the potential fuel switching incentives it might create is too narrow a view of the Commission’s jurisdictional responsibility and would, in KCP&L’s view, be an inappropriate abdication of the Commission’s duty under the statute. To determine whether an EE or DR program is “unjust, unreasonable, unjustly discriminatory or unduly preferential” or to determine whether it is in the public interest requires the Commission to balance numerous interests and policy objectives, not just the possibility that the program might create an incentive for some customers to switch from one fuel source to another.

6. Although the Commission has broad authority under Chapter 66 of the Kansas Statutes Annotated, its authority is not unlimited. In approaching any issue, including fuel-

¹ It should be noted that the “unjust, unreasonable, unjustly discriminatory or unduly preferential” analysis is from the perspective of the utility company’s customer, not the perspective of the utility company or its competitors. In other words, a rate or practice of KCP&L that a competing gas company perceives as discriminating against gas usage or as being preferential to electricity usage, is not the focus of this statute.

switching, the Commission must remain mindful not to cross the line between regulating the companies, and moving into the sphere of managing their businesses. The Commission is authorized to perform the former, while the latter is within the realm of the companies' management and board of directors. The Commission's regulatory power over the operations of a public utility is not absolute, even if the Commission believes such intervention is necessary to carry out its public policy objectives. *See, Williams Natural Gas Co. v. Kansas Corporation Comm'n*, 22 Kan. App. 2d 326, 338, 916 P.2d 52, *rev. denied*, 260 Kan. 1002 (1996)(rejecting argument that the KCC may do nearly anything it desires if achieving a laudable goal and finding the KCC to be controlled by the rule of law). The Commission is the regulator, not the co-manager, of the companies. Generally, the Commission may govern rates and services of a utility within the limits imposed by statutory and constitutional guaranties and inhibitions, but may not extend itself into the areas of decision-making reserved to the company's management. *Union Pac. Rld. Co. v. State Corp. Commission*, 165 Kan. 368, 371, 194 P.2d 939 (1948).

7. It is management's right and obligation to decide how to conduct its operations in order to provide high quality service to its customers, including a portfolio of programs to assist its customers in achieving improved energy efficiency and reduced usage and cost. Management also has a fiduciary obligation to act in the best interests of its shareholders/investors. The management of each individual company will approach its EE/DR operations from the perspective of its customers and its shareholders. There has always been a jurisdictional line between regulatory authority and management prerogative. That line is far from clear, and can shift as the facts of a specific situation warrant. The Commission must be careful not to inject itself into the EE/DR decision-making process to the point that the Commission has crossed from regulating the companies into making management decisions for each company. The standards

the Commission adopts in this case must remain cognizant of, and respectful of, that division of responsibility and authority.

8. KCP&L believes it is within the Commission's authority to engage in regulation related to fuel-switching concerns, such as reviewing a proposed program to determine whether the program is genuinely focused on achieving energy efficiency gains, or whether it appears primarily designed to incentivize gas customers to switch to electricity or vice-versa. However, KCP&L does not believe the Commission has the authority to engage in more pervasive intervention, such as mandating companies to offer programs unilaterally developed by the Commission that would harm the company's business, and thus, its shareholders. As is always the case, the Commission must find the point where its authority is clear, and exercise its authority in a manner that is consistent with allowing the utilities' management to operate its business in a manner responsive to its customers and shareholders.

9. KCP&L believes the Commission's statutory responsibility supports the continued use of its current approach to evaluate EE/DR programs. Currently, the Commission evaluates such programs on a case-by-case basis, carefully balancing the interests of the various stakeholders and policy objectives. KCP&L's experience has been that customers want, and are quite responsive to, EE/DR programs. Customers see a benefit to such programs even if those programs might create a fuel switching incentive under certain circumstances. To narrowly focus the Commission's evaluation on the fuel switching issue would largely ignore the customer's interests. KCP&L would also note that the Commission's current approach is also consistent with Staff's recommendation for evaluating EE/DR programs, as explained in Docket No. 08-GIMX-442-GIE.

10. The approach KCP&L is advocating is not radical. To the contrary, it is consistent with nearly every decision the Commission makes. Rarely, if ever, is the Commission in a position to render a decision based on such a narrowly-defined issue or such a limited consideration of stakeholder interests. The Commission is routinely required to balance many and often competing interests. Such is the case here. In order for the Commission to determine whether an EE or DR program is “unjust, unreasonable, unjustly discriminatory or unduly preferential” or whether it is in the public interest, it must carefully balance the interests of all affected stakeholders.

11. In sum, although the Commission has authority to consider as one of many factors whether an EE or DR program might create an incentive for a customer to switch from one competing fuel to another and the potential impact of such switching, it would be inconsistent with the Commission’s statutory responsibility to limit its review of a proposed EE or DR program so narrowly. The Commission must weigh the interests of all stakeholders. In this case specifically, the Commission must balance customer benefits as well as the potential impacts a program may have on a customer’s choice of fuel source.

III. ASSUMING THE COMMISSION HAS THE REQUISITE AUTHORITY, SHOULD THE COMMISSION ESTABLISH POLICIES LIMITING A UTILITY’S EFFORTS TO ENCOURAGE CUSTOMERS TO SWITCH FROM A COMPETING FUEL? WHAT ARE THE PUBLIC POLICY CONSIDERATIONS OF ADOPTING SUCH POLICIES AND LIMITING A UTILITY COMPANY’S ABILITY TO COMPETE?

12. Similar to the discussion provided above, KCP&L is concerned that the question posed might be too narrowly focused to render meaningful comment for the Commission’s consideration. EE/DR programs might create an incentive for some customers in some

circumstances to switch from one competing fuel source to another, but that is not the purpose of such programs and should not be the Commission's focus.

13. The potential for fuel switching is exacerbated where one utility has aggressive EE/DR programs and a competing utility has none. Customers might reasonably be expected to migrate toward the utility with programs designed to meet their needs. Notwithstanding this fact, the Commission's objective should not be to limit the development or implementation of EE/DR programs because they might result in fuel switching. The objective should be for both competing utilities to develop the best EE/DR programs they can and let the customers decide what best meets their needs. Competition leads to innovation and a more efficient allocation of resources. In an industry largely shielded from competition, the development of EE/DR programs is a good example of where the industry could benefit from competition. The industry is just beginning to understand and realize the benefits of EE/DR programs. It would be a shame to thwart their development at so early a stage.

14. Additionally, this is not an area where the Commission should be picking winners and losers. By focusing narrowly on the potential for fuel switching, the Commission is in essence protecting one utility from having to compete with another. In addition to questioning whether this is the proper role for the Commission, KCP&L notes that it would be extremely difficult for the Commission to make an informed decision in this regard. In its development of EE/DR programs, KCP&L has found that its customers are quite sophisticated. Moreover, their interests are diverse and complex. Customers consider and weigh the relative benefits and detriments of numerous factors when deciding whether to switch fuel sources in response to an EE or DR program, including (i) the up-front cost to the customer of participating in the program, *e.g.*, buying new heating equipment; (ii) the relative cost of the competing fuel sources,

both at today's price and as forecast into the future; (iii) the anticipated relative price volatility of the competing fuel sources; (iv) the customer's willingness to bear the risk associated with being wrong about their price and volatility assumptions; (v) the customer's personal preference for a particular technology, *e.g.*, some customers simply do not like electric heat pumps; and (vi) increasingly, the customer's understanding of the impact their choice might have on the environment. Such an analysis is complicated and in many ways is a subjective personal choice for the customer. KCP&L maintains that the Commission should be more focused on expanding rather than limiting the options available to utility customers in Kansas. In this instance, more so than most, Customers are in the best position to decide what is right for them.

15. In addition, as a practical matter it would be difficult for the Commission to determine the extent to which a particular EE or DR program creates an incentive for a customer to switch from one competing fuel source to another. This is true because of the customer considerations enumerated above. Many of the criteria are subjective and very customer-specific. However, even the objective criteria are problematic to evaluate.

16. It is likely that the most significant objective factor affecting the possibility for fuel switching is the anticipated future cost of the competing fuel sources. Consequently, to evaluate for example whether a particular EE or DR program would create an incentive for a customer to switch from natural gas heating to electric heating, the Commission would need to make certain assumptions about the price of natural gas in the future. The same EE or DR program that might create a strong incentive to switch to electric heating when gas costs \$14 per million Btu (the spot price in July 2008) might not create any discernable incentive when the price of gas is \$6 per million Btu (the spot price in October 2008—just three months later).

17. Setting aside for a moment the fact that the Commission should not be in the business of forecasting natural gas prices, it is also important to consider the reality of doing so. If the Commission is correct, customers would likely benefit from its guidance. If it is wrong and an EE or DR program is rejected as a result, customers who might have participated and benefited from that program would be harmed.

18. In sum, the Commission can and probably should consider the potential for fuel switching as one of many factors it evaluates and weighs when determining whether to approve an EE or DR program. However, review of this issue should be limited to whether the structure or terms of a proposed EE/DR program seem to be excessively or unnecessarily crafted with a view toward promoting fuel switching. KCP&L would like to emphasize that EE/DR programs represent a rare and valuable instance of customer choice in an industry otherwise devoid of customer options. Customers are in the best position to evaluate what is best for them.

IV. KCP&L'S COMMENTS ON THE COMMISSION'S INITIAL QUESTIONS POSITED FOR COMMENT.

19. In paragraph 14 of the September 29 Order, the Commission identified the following specific questions to be addressed by the parties in these initial comments:

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

20. KCP&L's EE/DR programs are not designed to encourage customers to switch fuels. The focus of these programs, and of any incentive offered to customers within the context of these programs, is to encourage customers to utilize energy more efficiently. KCP&L believes its customer programs can be economically and environmentally justified -- through design, evaluation, measurement and verification of its programs. Additionally, KCP&L

believes customers should be able to use the fuel of their choice, while utilities provide customers with programs to use that fuel choice in an efficient manner.

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.

21. KCP&L directs the Commission to the Final Order issued on March 27, 2008, in Case No. 07-00376-UT before the New Mexico Public Regulation Commission, where fuel-switching was at issue relating to Southwest Public Service Company's (SPS) heat pump program. The New Mexico Public Regulation Commission found:

...Although it may be true that heat pumps are more efficient for space heating in terms of BTU consumption than natural gas forced air furnaces, the Commission may not wish to endorse using funds provided by customer tariff riders to encourage fuel switching that benefits the company. This is especially true when one of the goals of electric efficiency programs is to provide systematic benefits by avoiding the need to acquire additional generation capacity. The Commission instead would rely on the testimony presented that SPS's rebate is not designed to sell more heat pumps, but rather is targeted at getting customers who are already in the market for a heat pump to purchase a more efficient unit.

22. KCP&L also directs the Commission to an Agreement and Joint Stipulation of Settlement reached between Duke Energy Carolinas, L.L.C. (Duke) and Piedmont Natural Gas Company, Incorporated (Piedmont) in Docket No. E-8, Sub 831, before the North Carolina Utilities Commission (June 26, 2008). As with KCP&L's programs, the energy efficiency programs included in Duke's Energy Efficiency Plan: (a) are not intended to displace or replace natural gas appliances with competing electric appliances; (b) are not designed to encourage fuel-switching; and (c) require demonstrated electric energy savings in each application utilizing cost-effectiveness testing. (See p. 3 of Agreement and Joint Stipulation of Settlement.) In that Agreement, Duke agreed to revise the description of the SmartSaver for Residential Customers program. The SmartSaver program provides incentives to promote the use of high-efficiency air

conditioners and heat pumps with electronically commutated fan motors (ECM). Owner-occupied residences, condominiums and mobile homes served by Duke are eligible for both the air conditioner and heat pump components of this program. Duke agreed to file a revised description of the SmartSaver program to specify that if a home is either currently heated by a natural gas furnace, or if natural gas is available at a new home, then a heat pump incentive is available if a heat pump is installed with ECM as part of a dual-fuel system that uses natural gas as the supplemental heat source.

23. Duke and Piedmont also stipulated to work together in good faith for the benefit of consumers to design and implement joint energy efficiency programs that promote high-efficiency improvements to (i) new home or building construction, (ii) existing buildings or homes, (iii) energy audits, and (iv) home or building weatherization programs. (Duke/Piedmont Agreement and Joint Stipulation of Settlement, p. 4.)

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.*

24. The 2008 Update to the California Energy Action Plan (EAP) provides evidence of end-use applications providing benefits to the environment, energy use and energy costs. To address California's future energy needs, a set of strategies was developed. Energy efficiency and demand side resources were the first priority. On page 7 of the EAP, the three most powerful strategies for increasing energy efficiency are outlined as being: building codes, appliance standards and *utility energy efficiency programs*. Gas and electric utilities are expected to participate in energy efficiency measures by having programs available to their customers.

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

25. The cost of fuel switching varies greatly depending on the customer class installing the technology, fuel market price volatility, and the end-use measure installation costs. Replacing a residential water heater may cost several hundred dollars while installation of a residential heat pump could easily run thousands of dollars. Industrial boiler replacement can run into the millions of dollars. A consumer needs to take all of the costs for their particular situation into account when deciding on the appropriate end-use application.

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

26. As noted in paragraph 3 above, KCP&L does not believe that EE/DR programs should be designed with fuel switching as a goal. KCP&L feels customers should be provided options that include energy savings, environmental benefits and comfort choices. Ultimately, customers choose the best options for their particular circumstances.

27. KCP&L adds that programs should educate consumers about EE and incent the installation of high efficiency equipment and the application of energy efficient measures such as caulking, weather-stripping, etc. Where equipment or appliances are concerned, electric rebates should encourage the use of high efficiency electric end uses and gas rebates should encourage the use of high efficiency gas end uses. (KCP&L's April 16, 2008 Reply Comments filed in Docket No. 08-GIMX-442-GIV). Utility incentives should encourage customers to select high efficiency energy use measures that use less of the fuel chosen by the customers. Such incentives should be offered through the utility that supplies the chosen fuel. In other words, electric ratepayers should not be required to subsidize measures on behalf of gas customers.

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?*

28. EE/DR programs in any form, whether the customer continues their current source or switches to a new source, result in lost revenue to the utility. The amount of revenue lost under these two scenarios may vary, but they both still lead to lower revenues. Whether or not a recovery mechanism for lost revenue is provided may impact the level of EE/DR pursued by a utility. If a reasonable lost revenue recovery mechanism is provided, utilities would likely pursue EE/DR programs without being “required” to do so.

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?*

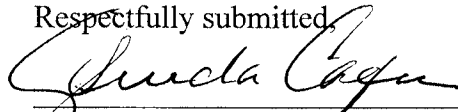
29. Please see KCP&L’s comments under Section II above.

V. CONCLUSION

30. KCP&L believes in the benefits of energy efficiency and demand response programs for both consumers and the environment, and has been actively and successfully working to implement programs to this end for the past several years. These programs are designed to educate customers regarding energy efficiency and demand response and to incent customers to take action to implement energy efficient measures. With a broad customer base and a wide array of energy efficiency applications for customers to employ, KCP&L believes that a portfolio of programs providing options to customers works best to implement the greatest efficiency gains. KCP&L also employed nationally recognized EE/DR programs within its portfolio to leverage the administrative costs associated with development and implementation of programs. Many of these programs affect both gas and electric energy efficiency. Such efforts

should not be limited because they might have the potential to create for some customers in some circumstances an incentive to switch from one fuel source to another.

Respectfully submitted,



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VERIFICATION

STATE OF MISSOURI)
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The undersigned, Mary Britt Turner, upon oath first duly sworn, states that she is the Director, Regulatory Affairs of Kansas City Power & Light Company, that she has reviewed the foregoing Comments, that she is familiar with the contents thereof, and that the statements contained therein are true and correct to the best of her knowledge and belief.

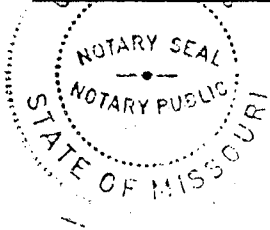
Mary Britt Turner
Mary Britt Turner
Director, Regulatory Affairs
Kansas City Power & Light Company

Subscribed and sworn to before me this 18th day of November, 2008.

Carol Sivils
Notary public

My commission expires:

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Commissioned for Clay County
My Commission Expires: June 15, 2011
Commission Number: 07480467



CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Comments of KCP&L was hand-delivered or mailed, postage prepaid, on this 18th day of November, 2008 to:

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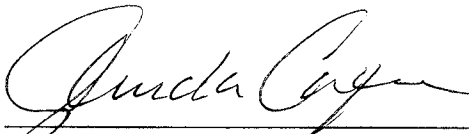
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