

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

Before Commissioners:                      Shari Feist Albrecht, Chair  
                                                         Jay Scott Emler  
                                                         Dwight D. Keen

In the Matter of the Application of Kansas    )  
City Power & Light Company for            )  
Approval to Extend its Demand-Side        ) Docket No. 18-KCPE-124-TAR  
Management Programs.                        )  
\_\_\_\_\_ )

**ORDER APPROVING JOINT SETTLEMENT AGREEMENT**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

**Background:**

1. On September 11, 2017, Kansas City Power & Light Company (KCP&L) filed an Application to extend five of its Demand-Side Management (DSM) programs set to expire September 30, 2017 for an additional five years and to terminate one of its DSM programs, the Demand Response Incentive Rider.<sup>1</sup> KCP&L requested approval to continue the following DSM programs:

- Low Income Weatherization
- Home Energy Analyzer
- Business Energy Analyzer
- Building Operator Certification
- Programmable Thermostat<sup>2</sup>

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<sup>1</sup> Application of KCP&L for Approval of Extended Demand-Side Management Programs at 2, 4 (Sep. 11, 2017).

<sup>2</sup> *Id.* at 2.

2. On September 14, 2017, the Citizens' Utility Ratepayer Board (CURB) filed a Petition to Intervene.

3. On October 10, 2017, the Commission approved a joint motion by KCP&L, Commission Staff (Staff) and CURB for an interim order continuing the five DSM programs listed in paragraph one during the pendency and consideration in this Docket and approving the use of the unspent portion of the previously approved DSM budget to fund the interim continuation.<sup>3</sup>

4. On November 16, 2017, KCP&L filed its first Addendum to the Application adding budgetary information for the Low Income Weatherization, Home Energy Analyzer, Business Energy Analyzer and Building Operator Certification programs.<sup>4</sup>

5. On March 5, 2018, KCP&L filed its Second Addendum to Application. KCP&L renewed a request, already approved by the Commission in *Application of Kansas City Power & Light Company for Approval of its Demand-Side Management Portfolio Pursuant to the Kansas Energy Efficiency Investment Act ("KEEIA")*, K.S.A. 66-1283, Docket No. 16-KCPE-446-TAR (Jun. 22, 2017) [hereinafter Docket No. 16-446]. The Application in Docket No. 16-446, which was subsequently withdrawn by KCP&L, proposed to terminate three additional DSM programs: Energy Audit and Energy Measures Rider, Cool Homes, and ENERGY STAR® New Homes programs.<sup>5</sup>

6. On April 17, 2018, Staff filed their Report and Recommendation (R&R).

7. On April 27, 2018, CURB filed a Reply to Staff's R&R.

8. On May 7, 2018, KCP&L filed a Response to CURB's Reply to Staff's R&R. On the same date, Staff also responded to CURB's Reply.

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<sup>3</sup> Order Granting Joint Motion for Interim Order at 2 (Oct. 10, 2017).

<sup>4</sup> See generally Addendum to Application of KCP&L (Nov. 16, 2017).

<sup>5</sup> Second Addendum to Application of KCP&L at 1-2 (Mar. 5, 2017).

9. On May 17, 2018, CURB responded to KCP&L and Staff.

10. On July 6, 2018, the Parties filed a Joint Motion to Approve Settlement Agreement and attached the Settlement Agreement (SA). The Parties agreed to an extension of the five DSM programs until February 1, 2020 and to terminate, upon Commission approval, the Demand Response Incentive Rider, Energy Audit and Energy Measures Rider, Cool Homes, and ENERGY STAR® New Homes programs.<sup>6</sup> During the extension, KCP&L agreed to conduct a limited evaluation, measurement and verification study and file the results with the Commission no later than October 1, 2019.<sup>7</sup> The SA also stated that if continuation of the DSM programs was desired, KCP&L would file an application no later than October 1, 2019.<sup>8</sup> Finally, the SA contained a proposed budget for program years 2018-2020 that may require a waiver of the budget guidelines established in previous dockets.<sup>9</sup> In addition, the Parties agreed the unrecovered DSM costs of \$785,821 will flow through KCP&L's Energy Efficiency Rider (EER), rather than being recovered in the current KCP&L rate case.<sup>10</sup> The SA provided however, that KCP&L may propose to defer costs that would otherwise flow through its EER until its next general rate proceeding.<sup>11</sup>

### **Findings and Conclusions:**

11. The Commission finds that the Joint Motion to Approve the SA should be granted. The law generally favors compromise and settlement of disputes between parties.<sup>12</sup> The Commission may accept a settlement agreement provided an independent finding is made,

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<sup>6</sup> SA at 3-4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* at 4-5; see *Application of Kansas City Power & Light Co. for Approval of its 2018 Energy Efficiency Rider for Program Costs Incurred January 1 Through December 31, 2017*, Docket No. 18-KCPE-420-TAR (Mar. 29, 2018); *Application of Kansas City Power & Light Co. to Make Certain Changes in Its Charges for Electric Service*, Docket No. 18-KCPE-480-RTS (May 1, 2018).

<sup>11</sup> SA at 5.

<sup>12</sup> *Krantz v. Univ. of Kansas*, 271 Kan. 234, 241-242 (2001).

supported by substantial evidence in the record as a whole, that the settlement will establish just and reasonable rates.<sup>13</sup> The Commission may utilize a five-factor test to aid in the review of settlement agreements.<sup>14</sup> The factors are as follows:

- [a] whether there was an opportunity for the opposing party to be heard on their reasons for opposition to the stipulation and agreement;
- [b] whether the stipulation and agreement is supported by substantial competent evidence;
- [c] whether the stipulation and agreement conforms with applicable law;
- [d] whether the stipulation and agreement results in just and reasonable rates;
- [e] whether the results of the stipulation and agreement are in the public interest  
...<sup>15</sup>

12. A full analysis of the five factors is not always necessary when a unanimous settlement is before the Commission.<sup>16</sup> Under such circumstances, certain factors may be applied and satisfied in short order. In reaching a unanimous settlement, no party can be said to be in opposition. In lieu of making arguments upon the evidence in the record, the Parties are acknowledging that the record is sufficient to commit to compromise. The proceedings establish the scope and breadth of the record in this case. The Commission finds that the record, and the related docket<sup>17</sup> (which the Commission takes official notice) used to support the SA, establishes the substantial competent evidence necessary to support approval. Therefore, the Commission finds that the first two factors are satisfied.

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<sup>13</sup> *Citizens' Util. Ratepayer Bd. v. State Corp. Comm 'n of State of Kansas*, 28 Kan. App. 2d 313, 316 (2000).

<sup>14</sup> Order Approving Stipulation & Agreement and Granting Certificate at 13-14, *Application of Grain Belt Express Clean Line LLC for a Limited Certificate of Public Convenience to Transact the Business of Public Utility in the State of Kansas*, Docket No. 11-GBEE-624-COC (Dec. 07, 2011).

<sup>15</sup> Order Approving Contested Settlement Agreement at 5, *Application of Atmos Energy for Adjustment of its Natural Gas Rates in the State of Kansas*, Docket No. 08-ATMG-280-RTS (May 12, 2008).

<sup>16</sup> See Order adopting Staff's Recommendation and Granting Joint Motion for Approval of Settlement Agreement at 4, *Application of Mid-America Pipeline Company, LLC Seeking Commission Approval for KCC Tariff No. 18.3.0 to Replace KCC Tariff No. 18.2.0*, Docket No. 15-MDAP-253-TAR (Dec. 01, 2015).

<sup>17</sup> See *infra* fn. 16.

13. Additionally, the Commission finds, for the same reasons, the remaining factors have been met. The Commission has previously found that the DSM programs conform to applicable law, result in just and reasonable rates and are in the public interest.<sup>18</sup> Due to the Parties waiving testimony and the general nature of the compromise, the Commission concludes that those findings remain valid.

14. Regarding termination of the Energy Audit and Energy Measures Rider, Cool Homes, and ENERGY STAR® New Homes, the programs have previously been approved for termination but survive, at least on paper, due to KCP&L's withdrawal of the application to terminate.<sup>19</sup> The Demand Response Incentive Rider, having not been approved for continuation during the interim, has lapsed. Again, without any evidence or testimony to the contrary, the Commission finds that the formal termination of these programs is appropriate.

15. Finally, regarding the DSM program budget guidelines, the Parties appear to have agreed to leave the Commission discretion as to whether the budget guidelines mentioned in paragraph twelve (12) would need to be waived.<sup>20</sup> Staff raised the issue of the 5% cap for education programs and income-eligible programs but recommended they be waived.<sup>21</sup> No Party responded to Staff's recommendations on this point. It stands to reason then, that during this Docket's contentiousness, the Parties conceded that the budget guidelines were applicable. Since the Parties agree that "[t]he record evidence already filed in this docket clearly supports the terms of the Settlement, and additional pre-filed testimony would offer no additional facts on which the Commission will base its decision," the Commission finds waiver is necessary and grants the same.

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<sup>18</sup> See generally Final Order, Docket No. 16-446; see also Staff's Report & Recommendation at 9 (Apr. 17, 2018) (explaining that although the Commission denied a replacement thermostat program in Docket 16-446, the current program at issue in this docket survived as was previously approved by the Commission but since frozen to new customers).

<sup>19</sup> See *supra* ¶ 5.

<sup>20</sup> SA at 5.

<sup>21</sup> R&R at 6-8.

16. The Commission therefore finds that the Settlement Agreement complies with applicable law, will result in rates that are just, reasonable, and not unduly burdensome, unduly preferential, or unreasonably discriminatory, and is in the public interest. Having examined all of the factors and applicable law, the Commission concludes that the SA should be approved.

**THEREFORE, THE COMMISSION ORDERS:**

A. The Joint Motion to Approve Settlement Agreement is granted and the Settlement Agreement is adopted.

B. The budget guidelines for KCP&L's DSM programs are hereby waived.

C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>22</sup>


D. 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.**

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 08/07/2018 \_\_\_\_\_

DLK/sc

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Lynn M. Retz  
Secretary to the Commission

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<sup>22</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

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

In the Matter of the Application of Kansas City     )  
Power & Light Company for Approval to Extend its     ) Docket No. 18-KCPE-124-TAR  
Demand-Side Management Programs.                     )

**SETTLEMENT AGREEMENT**

As a result of discussions between Kansas City Power & Light Company (“KCP&L”), the Staff of the State Corporation Commission of the State of Kansas (“Staff” and “Commission”, respectively), and the Citizens’ Utility Ratepayer Board (“CURB”) (collectively, “Signatories”), the Signatories hereby submit to the Commission for its consideration and approval the following Settlement Agreement (“Settlement”).

**I.     BACKGROUND**

1.     On September 11, 2017, KCP&L filed its Application requesting Commission approval to extend five of its six Demand-Side Management (“DSM”) pilot programs for an additional five years and terminate one of its DSM programs, the Demand Response Incentive Rider. These programs were originally implemented as pilot programs under the Settlement Agreement in Docket No. 04-KCPE-1025-GIE (04-1025 Docket).<sup>1</sup> The six programs comprising KCP&L’s current DSM portfolio and the date of the original tariff for each was approved are as follows:

- |                                       |                            |
|---------------------------------------|----------------------------|
| ▪     Low Income Weatherization       | Approved December 9, 2005  |
| ▪     Home Energy Analyzer            | Approved March 7, 2006     |
| ▪     Business Energy Analyzer        | Approved December 22, 2006 |
| ▪     Building Operator Certification | Approved May 15, 2007      |

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<sup>1</sup> See Joint Motion to Approve Stipulation and Agreement, Appendices B and B-1, filed April 27, 2005, in the 04-1025 Docket and Order Approving Stipulation and Agreement, issued August 5, 2005, also in the 04-1025 Docket.

- Programmable Thermostat                      Approved January 10, 2006
- Demand Response Incentive Rider<sup>2</sup>    Approved September 25, 2006

2. Also on September 11, 2017, KC&L, Staff, and CURB filed a joint motion for an order (1) allowing continuation of five Demand-Side Management (“DSM”) programs, and (2) approving the use of a previously approved unspent budget as an interim budget to allow continuation of the subject DSM pilot programs until further order of the Commission. The Commission approved the joint motion on October 10, 2017.

3. On November 16, 2017, KPC&L filed its first addendum to the Application to provide the Commission with additional information and budget support for its low-income and educational programs.

4. On March 5, 2018, KCP&L filed its second addendum to the Application seeking approval to terminate three DSM programs that were previously frozen to new customers. Specifically, the following:

- Energy Audit and Energy Savings Measures Rider (Schedule ER)
- Cool Homes Program (Schedule CHP)
- ENERGY STAR<sup>®</sup> New Homes (Schedule NH)<sup>3</sup>

5. On April 17, 2018, Staff filed its Report and Recommendation (“Staff’s Report”). On April 27, 2018, CURB filed its reply to Staff’s Report. On May 7, 2018, Staff and KCP&L filed responses to CURB’s reply, to which CURB responded on May 17, 2018.

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<sup>2</sup> KCP&L seeks to terminate this program.

<sup>3</sup> KCP&L sought to terminate these programs as part of its Application in Docket No. 16-KCPE-446-TAR (16-446 Docket). The Commission approved the termination of the programs in that docket, however, upon final order from the Commission, KCP&L withdrew its application based on other considerations as permitted by law, which resulted in the programs not being terminated at that time. As part of the instant proceeding, KCP&L has renewed its request to terminate these three previously-frozen programs.



## **II. KCP&L APPLICATION**<sup>4</sup>

6. As noted above, KCP&L's Application seeks approval to extend five of its Demand-Side Management (DSM) pilot programs for an additional five years, and to terminate four programs, three of which were previously frozen. KCP&L submitted the required information including descriptions of the program and corresponding five-year budgets. Three of the programs are classified as educational, consistent with the guidelines set out by the Commission in Docket No. 08-GIMX-442-GIV. Those programs are Home Energy Analyzer, Business Energy Analyzer, and Building Operator Certification. KCP&L requested the continuation of the following five programs:

- Low Income Weatherization
- Home Energy Analyzer
- Business Energy Analyzer
- Building Operator Certification
- Programmable Thermostat

## **III. TERMS OF SETTLEMENT**

7. Extension of the DSM programs. The Signatories agree that the DSM programs contained within KCP&L's Application will be extended until February 1, 2020. KCP&L will utilize Navigant to conduct a limited evaluation, measurement and verification ("EM&V") study (impact analysis and cost-benefit test results only).<sup>5</sup> The cycling events included in the EM&V

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<sup>4</sup> Application as referred to herein includes KCP&L's original Application filed on Sept. 11, 2017, and its two addendums filed on Nov. 16, 2017 and Mar. 5, 2018, respectively.

<sup>5</sup> 2017 cycling data is available and can be provided to Navigant for purposes of an EM&V. Additionally, KCP&L will continue to collect data from 2018 cycling events for the purpose of Navigant's EM&V.

will adhere to the parameters specified in Staff's Report.<sup>6</sup> The completed EM&V will be filed no later than October 1, 2019 and will cover only the 2017 and 2018 program years.

8. Further Extension of DSM Programs. The Signatories agree that if, based upon the results of a completed EM&V, KCP&L wishes to petition the Commission for extension of its existing programs, KCP&L must submit an application no later than October 1, 2019, or else the programs will automatically terminate on February 1, 2020.

9. Discontinuance of DSM programs. The Signatories agree that Cool Homes, Energy Star New Homes, Energy Audit and Energy Measure Rider, and Demand Response Incentive Riders programs should be terminated and requests that the Commission authorize such termination.

10. Budget. The Signatories agree that the Commission should approve the following budget (2018-2020) for KCP&L's DSM programs as reflected in the table below.

Program	2018	2019	2020 (2)	Total
Low Income Weatherization	\$ 43,000	\$ 44,200	\$ 3,536	\$ 90,736
Home/Business Energy Analyzer	\$ 95,000	\$ 97,400	\$ 7,073	\$ 199,473
Building Operator Certification	\$ 20,433	\$ 20,433	\$ -	\$ 40,865
Programmable Thermostat	\$ 240,000	\$ 296,083	(1) \$ 19,892	\$ 555,975
Total	\$ 398,433	\$ 458,116	\$ 30,501	\$ 887,049

(1) EM&V costs of 5% are included only for Programmable Thermostat Program and is based on 5% of actual costs for 2015-2017 and projected costs for 2018-2020. An impact evaluation will be completed by a third-party consultant no later than 10/1/2019.

(2) Costs in 2020 for Low Income Weatherization, Analyzers and Programmable Thermostat are 1/12 of annual budget pursuant to settlement agreement.

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<sup>6</sup> KCP&L will collect data from 400 PT program subscribers and 400 non-subscribers and provide to Staff and CURB. Data provided from the PT program subscribers and non-subscribers shall come from subscribers and non-subscribers within the same zip code.

11. The Signatories agree that in the current EER application (18-KCPE-420-TAR), the unrecovered DSM costs of \$785,821 will flow through the EER, and will not be recovered in KCPL's rate case (18-KCPE-480-RTS). The EER will remain in effect. KCP&L may propose to defer costs that would otherwise flow through its EER until its next general rate proceeding.

12. Waivers. The Signatories agree to the following waivers, if necessary:

- (a) A waiver of the educational program budget guideline established by the Commission in Docket No. 08-GIMX-442-GIV.
- (b) A waiver of the income-eligible program budget guideline established by the Commission in Docket No. 16-KCPE-446-TAR.

#### **IV. MISCELLANEOUS PROVISIONS**

##### **A. Commission's Rights**

13. Nothing in this Settlement is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation, including the obligation to ensure that KCP&L is providing efficient and sufficient service at just and reasonable rates.

##### **B. Signatories' Rights**

14. The Signatories waive the right to file testimony in support of the Settlement, unless otherwise directed by the Commission. The record evidence already filed in this docket clearly supports the terms of the Settlement, and additional pre-filed testimony would offer no additional facts on which the Commission will base its decision.

##### **C. Waiver of Cross-Examination**

15. In the event the Commission elects to conduct an evidentiary hearing on this matter, the Signatories waive cross-examination on all testimony or other record evidence filed

prior to the filing of this Settlement. The Signatories agree that all such pre-filed testimony, reports, and responses may be incorporated into the record without objection.

**D. Negotiated Settlement**

16. This Settlement represents a negotiated settlement that fully resolves the issues among the Signatories in this docket for the purposes of this proceeding. The Signatories represent that the terms of this Settlement constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the Signatories shall not be prejudiced, bound by, or in any way affected by the terms of this Settlement (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Settlement in the instant proceeding. If the Commission accepts this Settlement in its entirety and incorporates the same into a final order without material modification, the Signatories shall be bound by the terms and the Commission's order incorporating the terms as to all issues addressed herein, and in accordance with the terms hereof, and will not appeal the Commission's order on these issues.

**E. Interdependent Provisions**

17. The provisions of this Settlement have resulted from negotiations among the Parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Settlement in total, the Settlement shall be voidable and no signatory hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof. Further, in such event, this Settlement shall be considered privileged and not admissible as evidence or made a part of the record in any proceeding.

**IN WITNESS THEREOF**, the Signatories have executed and approved this Settlement, effective as of the 6<sup>th</sup> day of July 2018, by subscribing their signatures below.

Respectfully submitted,

/s/ Robert H. Hack

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*/s/ Thomas J. Connors*

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**ATTORNEYS FOR CURB**

## **CERTIFICATE OF SERVICE**

18-KCPE-124-TAR

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 08/07/2018.

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## **CERTIFICATE OF SERVICE**

18-KCPE-124-TAR

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/S/ DeeAnn Shupe

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