

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Brian J. Moline, Chair
 Robert E. Krehbiel
 Michael C. Moffet

In the Matter of a General Investigation)
Regarding Energy Efficiency Programs.) Docket No. 07-GIMX-247-GIV

ORDER INITIATING INVESTIGATION

The above captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being duly advised in the premises, the Commission enters this Order Initiating Investigation:

1. On May 4, 2005, the Commission approved a Stipulated Settlement Agreement (Settlement) in Docket 05-AQLG-367-RTS resolving all issues related to a requested rate increase made by Aquila, Inc. d/b/a Aquila Networks – KGO. Included in the Settlement was a provision requesting that the Commission defer consideration of a low-income weatherization program until it had the opportunity to examine the appropriateness of proposed evaluation methodologies for weatherization and demand side management programs generally. Stipulated Settlement Agreement, Docket No. 05-AQLG-367-RTS, 3.

2. On August 31, 2005, the Commission issued an Order accepting the Report and Recommendation of the Commission Staff (Staff) concerning special rates for electricity and gas service to low-income ratepayers in Docket No. 04-GIMX-531-GIV. Part of Staff's recommendation called for further inquiry into the potential for low-income weatherization programs such as demand side management (DSM) initiatives. The Commission agreed with Staff that such an investigation was warranted.

3. On August 9, 2006, the Commission sponsored an informal workshop on energy efficiency, conducted by Richard Sedano with the Regulatory Assistance Project. Approximately one hundred persons, including representatives of the electric and natural gas utilities, the Kansas legislative and executive branches, consumer groups and Commission Staff attended the workshop. The Commission held a similar workshop in January 2006 with a more limited audience.

4. In these times of high energy prices and anticipated need for new electric generation, there should be no doubt that efficient energy use by both natural gas and electric consumers is desirable. The recent release of a National Action Plan for Energy Efficiency by the U.S. Department of Energy and the U.S. Environmental Protection Agency indicates the increased attention energy efficiency is receiving. The general issues for the Commission are when and how should utilities promote energy efficiency by their customers and what ratemaking treatment, including special mechanisms, is appropriate or desirable. The Commission believes that the workshop was beneficial in highlighting various alternatives for addressing both the general and specific issues and providing an opportunity for expression of different viewpoints. However, the only real consensus appeared to be that the Commission should open a formal proceeding in order to make determinations on these issues. The Commission therefore hereby does so and initially asks for comments and reply comments on the questions that follow. (For shorthand purposes, references to "energy efficiency" programs are meant to include load management or demand response programs unless the context indicates otherwise.) Initial comments should be filed by October 31, 2006, and reply comments should be filed by November 21, 2006. The Commission will determine further procedural steps after reviewing the comments and reply comments.

5. 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. In addition, a copy of this Order should be delivered to the Sierra Club due to its participation in the 05-AQLG-367-RTS settlement. If the Sierra Club intends to participate in this docket, it may join the docket by filing a petition for intervention. This docket involves matters that may ultimately lead to rate design and other issues important to residential and small commercial utility customers. Therefore, the Commission invites participation by the Citizens' Utility Ratepayer Board, which may join the docket by filing a petition for intervention. A copy of this Order will also be served on municipal and cooperative utilities not subject to our jurisdiction and on other attendees of the workshop for their information. The Commission will accept written comments from the public while this docket is pending. Comments should reference Docket Number 07-GIME-247-GIV, *In the Matter of a General Investigation Regarding Energy Efficiency Programs*, and be sent to the Kansas Corporation Commission, Office of Public Affairs and Consumer Protection, 1500 SW Arrowhead Road, Topeka, Kansas 66604, or to public.affairs@kcc.state.ks.us. Comments can also be made by calling 1-800-662-0027. Any interested party may also petition the Commission to participate in the docket as a party. Petitions for intervention should be filed by October 15, 2006, but petitions filed after that date will be considered and no motion to file out of time will be necessary. All parties that want to participate actively in the docket and address the Commission on energy efficiency issues 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 October 15, 2006. Following the filing of comments and reply comments, Staff is

directed to file a report and recommendation summarizing any consensus or disagreement among the commentors as well as suggested further procedural steps. In addition, the Commission directs Staff to include in the report and recommendation a discussion of the pros and cons of the various options discussed in the comments and reply comments including any other options Staff suggests be pursued. Depending on the degree of consensus in comments and reply comments, the Commission may ask for an additional round of comments and reply comments on the Staff report and recommendation.

6. 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 States 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.*

7. The threshold question is the extent to which the Commission has legal authority to require or encourage electric and natural gas utilities to offer energy efficiency programs. Kansas law provides the Commission with authority to ensure that utilities provide reasonably efficient and sufficient services and facilities at just and reasonable rates. K.S.A. 66-101b, 66-117. Pursuant to K.S.A. 66-101 and 66-1,201, the Commission has full power, authority and jurisdiction to supervise and control the electric and natural gas public utilities and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. K.S.A. 66-101g and 66-1,207 state that the provisions of the Kansas Public Utilities Act and all grants of power, authority, and jurisdiction made to the

Commission should be liberally construed, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted and conferred upon the Commission. These general statutes appear to provide the Commission with sufficient authority to require or encourage utilities to provide energy efficiency programs, assuming the Commission finds that such programs would result in more reasonable rates or more efficient provision of utility services.

8. In addition, a specific statute addresses energy efficiency. K.S.A. 66-117(e) provides that the Commission may allow a return of an extra ½% to 2% on investments that "can be reasonably expected (1) to produce energy from a renewable resource other than nuclear for the use of its customers, (2) to cause the conservation of energy used by its customers, or (3) to bring about the more efficient use of energy by its customers" Such higher rate of return can also be provided to utility investment in "experimental projects, such as load management devices, which it determines after public hearing to be reasonably designed to cause more efficient utilization of energy and in energy conservation programs or measures which . . . provides (*sic*) a reduction in energy usage by its customers in a cost effective manner." This statute certainly indicates a legislative interest in encouraging energy conservation and efficiency since it grants the Commission discretion to provide for a higher return on such investment than on traditional generation resources.

9. We therefore seek comments on the Commission's legal authority with regard to energy efficiency programs, especially in light of K.S.A. 66-117(e). In addition to general comments, we seek answers to the following specific questions:

a) Are there limitations on the Commission's authority to require utility companies to offer energy efficiency programs to customers?

b) Are there any limitations on the kind of "incentives" that the Commission may offer to utilities for energy efficiency programs, other than or in addition to the extra return, such as nontraditional accounting treatment of expenses or investment?

c) May the Commission authorize a "decoupling" of revenue requirements from usage in order to remove disincentives for energy efficiency?

d) What are the legal parameters for KCC adoption of benefit-cost tests for efficiency programs; e.g. does the reference in the last sentence of K.S.A. 66-117(e) to a "cost effective manner" allow the imposition of a benefit-cost test even though the prior sentence only requires "projects or systems that can be reasonably expected . . . to cause conservation of energy . . . or bring about the more efficient use of energy" or do the two sentences refer to different programs? Further, do the statutes or case law either require or provide guidance on which benefit-cost test should be adopted?

e) Can the Commission consider societal benefits, such as external environmental benefits, in balancing interests to decide whether it should approve energy efficiency programs?

f) If the Commission's legal authority is unclear, should the Commission seek clarifying legislation? If so, what should be the specifics of such proposed legislation?

10. During the workshop, several suggestions were made that the Commission needed to establish the "rules of the game" with regard to energy efficiency, under the assumption that the Commission has the authority to do so. Please address the following questions in discussing the need to establish the "rules of the game."

a) In addition to the areas covered below, what other areas need to be addressed in order to establish such "rules"?

b) Should the Commission actually promulgate administrative rules and regulations governing this area rather than acting through various orders? Does the Commission have the legal authority to do so?¹

c) Whatever the form of the "rules," how detailed do they need to be?

11. There appear to be myriad potential approaches that the Commission could take to utility implementation of energy efficiency programs. For example, the Commission could require that utilities periodically submit and implement least cost integrated resource plans that treat energy efficiency programs as potential alternatives to traditional supply resource.² Or the utilities could be required to assess and screen potential energy efficiency efforts according to benefit-cost test(s) adopted by the Commission. On the other hand, the Commission could simply rely on the utility companies to propose programs that would presumably earn the extra return allowed by K.S.A. 66-117(e) or be given some other beneficial rate treatment. A middle ground approach might be to require utilities to offer specific types of programs such as those that have proven to be most effective in other states or those that are targeted toward low-income consumers who might not otherwise be able to install energy efficient measures. Or the Commission might require utilities to offer a net positive cash flow³ type program in which only participating customers repay the costs of energy efficiency measures with the savings achieved from reduced energy bills. Such a

¹ The Attorney General's office, which plays a role in the rules and regulations approval process, has indicated in correspondence to the Commission that it cannot approve a regulation that is without a "statute that *clearly authorizes* adoption of regulations on the specific topic being regulated by the regulation." Letter from Theresa Marcel Bush, Assistant Attorney General, to Matthew R. Tomc, Commission Assistant General Counsel, (October 4, 2005) (emphasis added).

² The Commission considered Integrated Resource Planning in the mid-1990's but did not adopt any requirements in light of the potential restructuring of the electric industry which might have deregulated generation resources. See Docket No. 92-GIMC-263-GIV, 180,056, *In the Matter of a General Investigation upon the Commission's own Motion to Establish General Policies with Regard to Integrated Resource Plans for all Kansas Jurisdictional Gas and Electric Utilities*.

³ An example of such a program is called Pay As You Save, or PAYS, a trademark of PAYS America. Information about PAYS programs can be found at: <http://paysamerica.org/index.html>

program for public institutions, the Facility Conservation Improvement Program (FCIP), K.S.A. 75-37,111 et seq., is conducted by the Commission's Energy Office and the Commission could consider a similar program that encompasses private sector facilities.⁴ Or the Commission might require utilities to implement demand side management programs, including time of use pricing, or a combination of strategies. Also, the Commission could also require certain limited efforts on a trial basis while studying the question of whether more comprehensive efforts are warranted. Please answer the following questions regarding alternative approaches the Commission can take.

a) Which among the alternatives discussed in this paragraph should the Commission pursue at this time, and why? Are there other alternatives that should be considered? What are the benefits and drawbacks of each approach?

b) Do you favor a limited trial basis type of approach or a comprehensive effort?

c) If the respondent is a utility, what approach to or type of programs would your company be willing to implement in the immediate future? What approach to funding the costs of projects aimed at low income customers and those which do not require non-participant funding such as a FCIP-type program for residential customers would your company support?

d) What monitoring, evaluation and verification protocols should be part of such programs?

12. Many of the potential approaches would require a determination of the amount of money or other level of resources to be committed to efficiency programs. As mentioned during the workshop, there are several different ways to establish that level, including: a

⁴ See: <http://www.kcc.state.ks.us/energy/fcip/index.htm>.

percentage of utility revenues; dollars per kwh of sales; a tie-in to projected load growth or some other energy savings target; or a case-by-case approach.

a) What method should be used to determine the level of commitment for the approach preferred by the respondent in response to question 11(a)?

b) What method should be used for other approaches?

c) If the respondent is a utility, what dollar level or other investment or savings measure does your company find to be appropriate?

13. The workshop included a panel discussion of the appropriate benefit-cost test to use in screening potential efficiency programs. Assuming that a benefit-cost test is necessary, the Commission needs to determine whether one or more of the various tests -- the Utility Cost Test, Ratepayer Impact Measure ("RIM") Test, Total Resources Cost ("TRC") Test, or Societal Cost Test -- should be used and for what purpose each test should be applied. Because of the potential importance of the issue, the Commission believes a formal record is desirable to make such a determination. Therefore, we seek comments and supporting information on the following questions.

a) Much of the discussion of the benefit-cost tests during the workshop was conceptual in nature. It would help the Commission's understanding of this issue if examples are submitted illustrating how the tests are applied, using numbers, which support arguments for and against the various tests. Please provide illustrations of the benefit-cost calculation as you would see it applied.

b) It appears that one of the issues concerning the appropriateness of the RIM test is whether consumers do not use efficiency measures on their own, without incentives, because of various barriers. What is the experience or evidence that such barriers exist and how do

such barriers impede cost-effective energy efficient investments from occurring? If it is your view that no barriers exist, or that they have an insignificant effect on investments in energy end uses, please offer experience or evidence for this perspective.

c) The role of energy efficiency as a power system resource was discussed at the workshop. Please describe whether you see energy efficiency as a power system resource, and how application of a benefit-cost test in program screening will affect the performance of energy efficiency as a resource.

14. During the workshop, participants briefly discussed whether energy efficiency efforts were best left in the hands of each utility or whether a third party provider of efficiency services, similar to Efficiency Vermont,⁵ might be more appropriate.

a) We seek more detailed comments on the pros and cons of each alternative.

b) We also seek comments as to whether there would be benefits to a hybrid model with centralized expertise provided by a third party but with efforts individualized for each company.

15. A major area that will likely need to be addressed is cost recovery of, and incentives for, efficiency programs, assuming that the Commission has legal authority to allow for non-traditional and non-explicit statutory treatment. The Commission does not expect to determine specific details of such mechanisms at this time but requests comments on general policy.

a) Should the cost recovery or incentive mechanisms be uniform for all companies?

If not, what factors should be considered in allowing differences?

b) What types of cost recovery mechanisms should be considered?

⁵ See: <http://www.encyvermont.com/pages/Common/AboutUs/>

c) Is the extra return on investment allowed by K.S.A. 66-117(e) sufficient incentive for utility companies? If not, why not?

d) Is "decoupling" of revenue requirements from sales volumes a necessary or desirable mechanism to remove disincentives for energy efficiency programs? What are the pros and cons of such a mechanism? If decoupling is not implemented, is it appropriate and desirable to have an *ex poste* mechanism to recover lost margins from sales not made due to energy efficiency investments? What are the pros and cons of this approach?

16. During the workshop there was limited discussion of what steps should be taken next. The Commission invites more detailed suggestions for the procedure to be followed in this investigation.

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 no later than October 15, 2006, 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 no later than October 15, 2006.

C. Comments or other responses to the questions set forth above shall be submitted by October 31, 2006. Replies shall be submitted by November 21, 2006.

D. A party may file a petition for reconsideration of this Order within fifteen (15) days from the date of service of this Order. If service is by mail, service is complete upon mailing and three (3) days shall 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 order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Krehbiel, Com.; Moffet, Com.

Dated: SEP 11 2006

ORDER MAILED

SEP 12 2006

 Executive Director

Susan K. Duffy
Executive Director