BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of Kansas City Power & Light Company's Application 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

POST-HEARING REPLY BRIEF OF KANSAS CITY POWER & LIGHT COMPANY

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COMES NOW Kansas City Power & Light Company ("KCP&L" or "Company") and hereby submits its *Post-Hearing Reply Brief* ("Reply Brief") responding to the Brief of 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., (collectively, the "gas companies"), the Staff of the State Corporation Commission of the State of Kansas ("Staff"), the Citizens' Utility Ratepayer Board ("CURB"), and National Housing Trust ("NHT"), Natural Resources Defense Council ("NRDC") and Climate & Energy Project ("CEP"), (collectively the "NHT Group") filed on May 8, 2017. KCP&L has attempted to avoid repeating arguments already fully set forth in its Initial Post-Hearing Brief filed April 14, 2017 ("KCP&L's Initial Brief"), so the fact that an argument or position of Staff or an intervener is not addressed in this Reply Brief should not be construed as KCP&L's agreement with the same.

For its Reply Brief, KCP&L states as follows:

I. INTRODUCTION AND OVERVIEW

1. The positions and arguments espoused by Staff and CURB in their Briefs fail to recognize two very important realities concerning the Kansas Energy Efficiency Investment Act ("KEEIA") and Demand Side Management ("DSM") in Kansas: (1) KEEIA's overall goal is "to *promote* the implementation of cost-effective demand-side programs in Kansas,"[1] and (2) KEEIA specifically recognizes and affirms that the offering of DSM in Kansas is a voluntary undertaking by a public utility company. Contrary to these two undisputable aspects of KEEIA, CURB and Staff take positions that, if adopted, will continue to serve as obstacles to implementing DSM, rather than promoting it. Their recommendations ignore the fact that, unlike a utility company's obligation to provide reliable service that comes with its receipt of a certificate from the

[1] K.S.A. 66-1283(b) (emphasis added).

Commission, a utility is not under any requirement to offer DSM programs to its Kansas customers. Without regulatory encouragement of DSM, the related benefits are lost. As such, encouraging DSM implementation requires a different approach than Staff's reliance upon traditional regulatory mechanisms and anti-progressive philosophies. The Kansas Legislature enacted KEEIA with these two overriding concepts – promote it and keep it voluntary – so the Commission needs to interpret KEEIA within that same framework and context. The positions taken by Staff and CURB on many of the pivotal issues in the case are inconsistent with these aspects of KEEIA.

2. If the Commission interprets KEEIA consistent with the stated goals of promoting cost-effective DSM implementation, valuing DSM investments equal to traditional investments in supply and delivery infrastructure, and allowing cost recovery mechanisms that further encourage investments in DSM, KCP&L's Application measures up favorably. Rejection of the Application only makes sense if the Commission chooses to adopt the positions of Staff and CURB which are in direct conflict with the stated goals of KEEIA, arguing that the Commission should:

- Analyze the impacts of the proposals on an individual customer basis, rather than by customer class or by overall impact on the system.
- Place emphasis on the RIM test in a manner that defeats programs that otherwise pass the TRC test.
- Use short-term spot market contract prices to calculate avoided capacity cost instead of long-term capacity investment costs.
- Employ a mismatch between how costs are incurred and how such costs may be recovered.

3. This is a case of first impression under the KEEIA. The interpretations and policies adopted by the Commission in this case will have a major impact on how DSM emerges in the future of our state, or whether it emerges at all. Approval of KCP&L's Application will set the process in motion, allowing the Commission to make changes as we go forward and gain experience and additional data. However, adoption of Staff and CURB's positions virtually guarantees no advancement of DSM in Kansas at all. It perpetuates the status quo, which has not worked well for Kansas and has put Kansas customers and communities at a disadvantage to its Missouri counterparts. It is time to move in a different direction.

4. KCP&L's Application presents a comprehensive portfolio of DSM programs that will allow all KCP&L Kansas customers the opportunity to participate and benefit. It uses benefit/cost tests already approved by this Commission. It also presents modifications to existing processes that incorporate better information available to us today that we did not have at the time of previous Commission DSM orders. And it presents a mechanism for cost recovery/throughput disincentive/earnings opportunity that is reasonable and fair to all stakeholders. KEEIA mandates that DSM should be part of our Kansas energy future. KCP&L has presented this Application with the intent of continuing DSM deployment into the future beyond this Cycle 1 three-year plan, allowing DSM to become an integral part of the Kansas energy landscape, as contemplated and endorsed by KEEIA. The first step in the right direction is Commission approval of this Application.

II. KEEIA AND DOCKET NO. 09-GIMX-160-GIV

5. Staff, CURB and the gas companies have put forth erroneous arguments regarding the interpretation of KEEIA and the Commission's February 15, 2012 Order in Docket No. 09-GIMX-160-GIV ("09-160 Order" and "09-160 Docket"). KCP&L addressed this issue extensively

in its Initial Post-Hearing Brief and will not repeat those arguments and analyses here. However, a few additional comments are necessary to respond to some of Staff, CURB and the gas companies' assertions.

A. Staff bases its interpretation of KEEIA on the incorrect premise that "using more electricity" is the equivalent of "being less efficient."

6. Staff argues that the section of KEEIA defining a "demand-side program" [K.S.A. 66-1283(a)(3)] "highlights the 'retail customer,' which indicates a reduction in electricity (or natural gas) consumption is specific to an individual customer rather than a particular customer class."[2] Staff asserts that KCP&L is incorrect in its position that KEEIA requires energy reductions at the customer class level. Staff criticizes KCP&L's interpretation on the basis that Staff believes it is inappropriate to read the definitional section in concert with KEEIA's program cost recovery section.[3] On the contrary, Kansas rules of statutory construction require that a statute be interpreted as a whole, and that one provision in a statute be interpreted in the context of the entire enactment. "Statutes relating to the same subject, although enacted at different times, are *in pari materia* and should be construed together."[4] The Kansas Supreme Court has made clear:

> In order to ascertain the legislative intent, courts are not permitted to consider only a certain isolated part or parts of an act but are required to consider and construe together all parts thereof *in pari materia*. When the interpretation of one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the strict letter of the law.[5]

By Staff's own admission, its interpretation of KEEIA in defining a demand-side program fails to follow basic statutory construction rules.[6]

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[2] Staff Brief, p. 4, ¶11.
[3] Staff Brief, p. 4, ¶11.
[4] *Flowers v. Marshall*, 208 Kan. 900, 905 (1972).
[5] *Hutchinson Human Relations Commission v. Midland Credit Management, Inc.*, 213 Kan. 308, 323 (1973).
[6] Staff specifically states that it is inappropriate, in Staff's view, to read the various parts of the KEEIA statute in the context of the entire enactment. (Staff Brief, p. 4.)

7. KEEIA's policies, guidelines and analyses clearly approach DSM from a broader perspective than the individual customer, just as the Commission does in its long-established practice of evaluating other types of utility proposals and setting rates with a view towards the overall impact on the public generally or the impact on a class of customers rather than individual customers within that class.[7] The public interest is defined from the same perspective in Kansas law. "Public convenience means the convenience of the public, not the convenience of particular individuals."[8]

8. So, while K.S.A. 66-1283(a)(3) defines demand-side program as any program "to reduce the net consumption of electricity by a retail electric customer," that definition must be interpreted in the context of KEEIA as a whole, and in the context of how the public interest is defined and historically applied by the Commission. Staff's argument to the contrary results in absurd outcomes. For example, K.S.A. 66-1283(d)(2) requires the Commission to "fairly apportion the costs and benefits of [DSM] programs to each customer class," not to each individual customer. Additionally, subsection (c)(2) requires the Commission to allow recovery of costs associated with delivering demand-side programs, so long as the program: "(A) Results in energy or demand savings; and (B) is beneficial to customers in the customer class for which the programs were implemented, whether or not the program is utilized by all customers in such class." Staff's interpretation of subsection (a)(3) ignores the fact that under subsection (c)(2) "demand-side programs" are assumed to be evaluated on a customer class basis, specifically making clear that evaluation on an individual customer basis is not appropriate. Staff's interpretation of subsection

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[7] *See, e.g.*, the Commission's analyses of merger proposals (Dockets No. 172,745-U/174,155-U and 97-WSRE-676-MER); the granting of certificates under K.S.A. 66-131; rate design determinations, such as customer charges, line-extension charges, and other rates established by class and not by individual customer.
[8] *Central Kansas Power Company v. State Corporation Commission*, 206 Kan. 670, 676 (1971).

(a)(3) makes these specific provisions in subsection (c)(2) meaningless since, for an individual customer who does not participate in a DSM program, the program would not "reduce the net consumption of electricity by the retail customer" and, therefore, that program would not meet KEEIA's definitional criteria of a "demand-side program." Staff is clearly wrong.

9. KCP&L's position that interpretations of KEEIA and analyses thereunder are to be done on a customer class basis is consistent with the overall policies and goals of KEEIA, allowing for each provision in KEEIA to be informed by the entirety of the statute. It is also an accurate application of the public interest under Kansas law and is consistent with the Commission's practices in evaluating the public interest and in setting rates and rate design. Staff's position is not; moreover, Staff's interpretation results in irreconcilable and absurd results. Therefore, it should be rejected.

B. Staff misinterprets the "as much as is practicable" phrase in K.S.A. 66-1283(b).

10. Staff misunderstands and misinterprets the phrase "as much as is practicable" in K.S.A. 66-1283(b). According to Staff, this term equates to giving the Commission unbridled discretion when determining the value of a demand-side program, and essentially makes no changes to the Commission's existing policy in evaluating the value of DSM programs.[9] Staff's assertion is inconsistent with the meaning of the language and how it is used in the statute, which reads:

> It is the goal of the state to promote the implementation of cost-effective demand-side programs in Kansas. *It shall be the policy of the state to value demand-side program investments equal to traditional investments in supply and delivery infrastructure* ***as much as is practicable***, but public utilities shall not be required to offer, implement or continue demand-side programs. (Emphasis added.)

[9] Staff Brief, p. 18, ¶41 and p. 36, ¶83.

11. This is an important provision in KEEIA and it should not be read in a way that gives it no real impact, as Staff has done with its interpretation. KEEIA states the general and overriding policy (to value DSM program investments equal to traditional investments in supply and delivery infrastructure), and then provides for a limitation (as much as is practicable.) The limitation should not be interpreted to nullify the policy, which is what Staff has done. This language recognizes that DSM investment can be valued in a manner similar to capital investments in actual infrastructure, but not identical because of fundamental differences. An investment in physical assets may be included in utility rate base, whereas the incurrence of DSM expenses would not. KEEIA policy requires that DSM be valued equal to physical investments, meaning there is a return of and a return on the investment made; it does not mean DSM investment is considered a resource to be valued equally only if the Commission decides it should be.[10]

12. KEEIA recognizes that investment in DSM and investment in physical assets have equal value to customers overall, so it should be valued the same. Staff's reliance upon the Commission's statement in the 08-GIMX-442-GIV Order Following Collaborative, stating that DSM programs are not a true energy resource because they cannot be used to generate electricity,[11] has been supplanted by the Legislature's finding that DSM is a true energy resource. Thus, KEEIA is consistent with the Commission's previous findings that energy efficiency should be considered

[10] Staff Brief, p. 18, ¶42. Staff alleges KCP&L's testimony before the Legislature stating KEEIA was consistent with the Commission's policy conflicts with KCP&L's position in this case that KEEIA requires DSM investment be valued equal to supply-side investment, including how avoided capacity costs are calculated. This divergence of opinion stems from the fact that Staff and KCP&L view differently the relevant portion of the Commission's 08-442 Order Following Collaborative. The Commission held that "[E]nergy efficiency should be considered a resource, along with more traditional supply-side generation resources, to meet present and future energy needs", which is consistent with KEEIA's mandate. The cost of the DSM program would be evaluated as part of the approval process using the benefit/cost test(s); it would not be a factor used to decide if the DSM investment should be valued equal to supply-side investments. It is Staff's view of the Commission's 08-442 Order that causes KCP&L in this case to find differences between the Order and KEEIA on this point.

[11] Staff Brief, p. 17, ¶37.

a resource along with more traditional supply-side generation resources, but to the extent the Commission has previously refused to treat them equally, KEEIA now controls.

13. Staff asserts that there are "fundamental differences between supply-side and demand-side investments" because "[t]raditional supply-side investments ... are necessary and required for an electric public utility to fulfill its service obligations," but "a demand-side program alone cannot meet a public utility's service obligations."[12] It is exactly this type of argument that KEEIA makes inappropriate. KEEIA supplanted the need for the Commission to decide if differences in the nature of the resources support or justify valuing them equally. They are to be valued equally unless it is impracticable to do so. Staff's approach results in the Commission re-evaluating the Legislature's express finding that the resources are to be valued equally, which is a completely erroneous interpretation. While KEEIA recognizes there might be instances where it may not be practicable to treat DSM investment exactly identical to supply-side resources, the two investments are to be treated as such to the extent they can be. The general rule is that they will be valued equally, and the burden is on the party alleging it is not practicable to give them equal treatment to prove their claim.[13]

C. KEEIA changed the status quo in Kansas so as to promote the implementation and growth of DSM; it does not simply codify pre-existing Commission policies.

14. Staff says "KEEIA's underpinnings are a combination of codifications of long-established Commission policies, supplemented with additional tools the Commission may use to

[12] Staff Brief, p. 39, ¶88. Similarly, Staff argues: "Supply-side investments can meet a utility's service obligations; demand-side programs cannot." (Staff Brief, p. 40, ¶90.)

[13] *Bowen v. Hathaway*, 202 Kan. 107, 110, 446 P.2d 723, 727 (1968) – "The burden of proving a disputed fact or issue rests upon the party asserting it as a basis of his claim and remains with him throughout the trial. (*See Wycoff v. Board of County Commissioners*, 191 Kan. 658, 383 P.2d 520 and cases cited at page 665 of the opinion.) This is true even though it may be incumbent upon the other party to proceed with the introduction of evidence at some stage of the proceedings. The burden of going forward with the evidence does not change the burden of proving a disputed issue. (*Miller v. Kruggel*, 165 Kan. 435, 195 P.2d 597.)"

advance energy efficiency programs."[14] The erroneous nature of this assertion is illustrated by the fact that Staff does not explain what "additional tools" KEEIA gave the Commission. That is because it did not give the Commission any additional tools; whatever the Commission can do now under KEEIA, it had the authority to do before KEEIA was enacted. What KEEIA did is supplant "long-established Commission policies" that were contrary to the promotion and implementation of DSM in Kansas. KEEIA provides more certainty for an appropriate cost recovery mechanism, which is necessary for KCP&L and other Kansas utilities to move forward with substantial DSM portfolio offerings.[15] KCP&L did not allege KEEIA "created an entirely new paradigm for demand-side programs," as Staff alleges in its Brief.[16] Additionally, KCP&L's request for waivers in its Application reflect the fact that KEEIA and past Commission Orders must be reconciled; it is not an indication that KCP&L believes KEEIA did not change past Commission policy, as Staff asserts.[17]

D. Neither KEEIA, nor the Commission's Order in the 09-160 Docket, applies to commercial customers or prohibits DSM programs that involve rebates.

(i) DSM programs involving rebates are not prohibited under KEEIA or the Commission's 09-160 Order.

15. KCP&L's Initial Brief explained the background underlying the ultimate Order issued in the 09-160 Docket. That 09-160 Order did no more than close a docket that had been lingering for too long with no resolution. The parties were far apart, with the gas companies going so far as to argue the Commission should establish rules that would endorse and promote fuel-switching by customers from electricity to natural gas. This "source-to-site" argument of the gas

[14] Staff Brief, p. 3, ¶8. The gas companies take a similar position, in that their arguments assume the Commission's previous orders remain untouched by the enactment of KEEIA.
[15] Nelson Rebuttal, p. 22.
[16] Staff Brief, p. 3, ¶9. Staff cites to KCP&L's Initial Brief, pp. 8-9, for this assertion, but a review of those pages do not contain any "new paradigm" language or support Staff's representation of KCP&L's position.
[17] Staff Brief, p. 3, ¶9.

companies was rejected by the Commission when it closed the docket, saying that, "[A]s a matter of public policy, the Commission concludes that it is inappropriate to implement rate structures designed to protect firms from competition," [18] which is what the gas companies were asking the Commission to do – protect them from the impact of electric companies offering DSM incentives to customers when the gas companies did not want to offer such programs in a competitive response. The Order stated that "an assessment of fuel-switching incentives is fact and rate specific, and should involve an examination of rate level and rate design that is utility-specific," which is what the Commission had been doing. The Commission explained that when it considers a proposed DSM program, it must "address whether the proposed rates are in the public interest, which necessarily involves an inquiry into the impact of rates on customers' incentives and inquiries into whether a rate is above or below cost, whether a rate affects demand and whether the Commission should change that rate or rate structure,"[19] again, what the Commission had already been doing. This is hardly a blanket finding that all rebate programs should be disallowed, as the gas companies argue.

16. The 09-160 Order refused to adopt any of the specific rules recommended by Staff and the parties, opting instead to endorse the status quo by concluding that "all utility providers shall continue to offer energy-efficiency programs in a manner that does not bias users toward a particular fuel source."[20] The Commission should not now allow the gas companies or Staff to read more into this sentence of the Order than was actually there. Only by interpreting this sentence in the context of the full spectrum of positions taken in the 09-160 Docket can the import and impact of the language be understood and properly applied.

[18] 09-160 Order, p. 6, ¶14.
[19] 09-160 Order, p. 6, ¶15.
[20] 09-160 Order, p. 7, ¶17, and Ordering ¶A.

17. KEEIA does not prohibit DSM programs which offer a rebate to customers for purchasing a more energy efficient appliance. The gas companies incorrectly argue that KEEIA says the same thing as the Commission's 09-160 Order, so the rebate prohibitions of the 09-160 Order should attach to KEEIA. There are two fundamental flaws in this position. First, the 09-160 Order does not prohibit rebates. Second, KEEIA and the 09-160 Order do not say the same thing. The language in the 09-160 Order relied upon by the gas companies says, "[u]tility providers shall continue to offer energy-efficiency programs in a manner *that does not bias users* toward a particular fuel source," whereas KEEIA says, in relevant part, that a demand-side program may include "[e]nergy efficiency measures, not to include any measures *to incent fuel switching* for residential heating systems." (Emphasis added.) KEEIA controls, and KCP&L's DSM programs contained in its Application in this case do not contain measures *to incent fuel switching* for residential heating systems. KCP&L specifically addressed this provision of KEEIA by offering rebates only on like-for-like exchange for residential heating systems. Fuel switching is not the purpose or goal of any of the programs in KCP&L's proposed DSM portfolio; the goal is to incent customers to upgrade the efficiency of their equipment.[21] The programs are focused on giving customers the opportunity to reduce their energy usage and better control their utility bills.

(ii) Neither KEEIA nor the Commission's 09-160 Order apply to commercial customers.

18. KEEIA specifically states that the prohibition on incenting fuel switching only applies to residential heating systems. The 09-160 Docket specifically defined its focus as applying only to residential customers, as well. As such, the statute and the Commission's Order are consistent at least in this one aspect. To the extent the gas companies are arguing that KEEIA or the 09-160 Order apply, in their own right, to commercial and industrial customers, their

[21] Tr. Vol. 1, File, pp. 195-197.

position is unsupported and contrary to the evidence in the record. However, the gas companies also argue that the general policy for restricting fuel switching incentives under KEEIA and the 09-160 Order are equally applicable to commercial and industrial customers. KCP&L next will address the gas companies' erroneous argument that the restrictions[22] should be extended to commercial and industrial customers because the reasons for the restrictions apply equally. It bears noting, however, that when KEEIA was being considered by the legislature, the gas companies only requested the inclusion of the fuel switching language for residential heating systems.[23]

E. The gas companies fail to properly interpret KEEIA because they attempt to harmonize it with existing Commission Orders.

19. The gas companies present a flawed interpretation because they improperly attempt to harmonize KEEIA with existing Commission Orders, such as the 09-160 Order, rather than harmonizing existing Commission Orders with KEEIA. As addressed in KCP&L's Initial Brief, statutory law controls and preempts, if necessary, existing agency orders, rules and regulations. Even if the gas companies were accurately representing the Commission's 09-160 Order - which they are not - they cannot mold KEEIA to make it fit within their view and interpretation of that Order. KEEIA is the starting point in the analysis. While it may serve the gas companies' self-interest to promote the 09-160 Order over KEEIA, the laws of statutory construction prohibit them from taking this approach, and their results derived therefrom must be disregarded.

20. The gas companies also seem to be arguing that, even absent KEEIA, the Commission must follow its past Orders and does not have the power to deviate from those

[22] Keeping in mind that KCP&L disagrees with the gas companies regarding the degree to which KEEIA or the 09-160 Order restricted incentives such as rebates.
[23] M. Turner Rebuttal, Schedule MBT-1.

previous findings. Of course, this is incorrect. The Commission has the power to modify a previous Order, and if the public interest warrants such modification, it has the responsibility to do so.[24] It is unclear why the gas companies rely so heavily on the fact that in the 09-160 Docket the Commission included the statement that the Order was intended to be precedential. The gas companies point out that this is not commonly included in Commission orders, apparently indicating it held some type of heightened importance in this case. In fact, what it reflects is that, in 2011, the Legislature amended K.S.A. 77-415 to say that administrative agencies can give an order binding legal effect if they so state in the order when it is issued. Whether this amendment had any real impact is debatable. However, after it was enacted, the Commission included the statement in some of its orders. Since then the practice has dropped off, possibly reflecting that the Commission can follow practices adopted in previous orders whether it so states in the previous order or not, and that the Commission can deviate from established policies and practices contained in previous orders if it explains the basis for the deviation, even if the previous order contained this precedential language. The Commission does not have to blindly follow its findings in previous orders if facts and the public interest warrant otherwise, as is the case here where the Commission is considering the benefits of a robust and effective DSM portfolio that the gas companies' interpretation of 09-160 Order would emasculate.

III. <u>ADDITIONAL RESPONSE TO STAFF'S BRIEF</u>

A. The DSMore™ Model is transparent and has been widely accepted in many jurisdictions, including Kansas.

21. In addition to the above responses to Staff's arguments regarding the interpretation of KEEIA and the Commission's 09-160 Order, Staff's Brief contains a few other comments that merit further response. Not the least of these is Staff's indication that KCP&L's DSMore™

[24] *Home Telephone Company Inc. v. State Corporation Commission of Kansas,* 31 Kan.App.2d 1002 (2003).

program used for demand-side modeling is of a "black box nature," implying lack of transparency.[25] This comment is unfounded, but also curious, because Staff has supported the use of DSMore™ in past proceedings.[26]

22. KCP&L does not understand Staff's issue with KCP&L's use of the DSMore™ model. While the DSMore™ model is complex, the complexity arises from the need for detailed hourly analysis of costs and benefits.[27] Because this analysis is difficult to replicate without the DSMore™ model, the Company was required to run Staff's sensitivity analyses for them, which it did. Further, Staff was offered the opportunity to discuss the DSMore™ model with the vendor but Staff declined. Instead, Staff opted to read the DSMore™ program manual.[28] To the extent Staff finds the DSMore™ model problematic, the Company is unable to address the concerns because Staff did not identify any specific problems in its Brief, nor did it avail itself of the opportunity to delve into the model itself with the vendor when given the opportunity to do so. Prior filings by Staff indicate an understanding and acceptance of the DSMore™ model.[29]

23. To the extent Staff's comments about DSMore™ being a black box indicates the modeling should be viewed as less than reliable and transparent, KCP&L respectfully requests the Commission reject that argument as unsupported. In fact, the DSMore™ model has been vetted

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[25] Staff Brief, p. 34, ¶79. Staff asserts that KCP&L "has an opaque estimate on when future generation will be needed", but KCP&L has not been opaque. All of KCP&L's assumptions, data, analysis and modeling have been made available to Staff.

[26] *See* Docket No. 11-KCPE-780-TAR, Staff's Reply to Responsive Comments of CURB and KCP&L, filed Nov. 10, 2011, p. 4, ¶¶9, 10; Staff Report and Recommendation (Public Version), Attachment A, filed Sep. 29, 2011, Benefit-Cost Analysis, p. 4; and Docket No. 10-KCPE-795-TAR, Direct Testimony of Michael W. Deupree (Public Version), filed Oct. 15, 2010, pp. 7-10, 14.

[27] Nelson Rebuttal, pp. 16-17.

[28] *Id.*, p. 17.

[29] Docket No. 10-KCPE-795-TAR, Direct Testimony of Michael W. Deupree (Public Version), filed Oct. 15, 2010, pp. 7-10, 14.

by regulators and used by utilities in over 30 states, including Ohio, North Carolina, Wisconsin, Missouri, Minnesota, Florida, Illinois, Indiana, and Michigan.[30]

B. Staff's avoided capacity cost is inconsistent with KEEIA and is not supported by the record.

24. Staff recognizes the importance of the avoided capacity cost figure adopted in this case for purposes of evaluating the proposed DSM programs.[31] Staff's unrealistically low avoided capacity cost amount guarantees viable, positive and popular programs will fail and never be offered to Kansas customers, causing the loss of 56% of the energy savings expected to be achieved under the portfolio of programs proposed by KCP&L in this docket.[32] Staff justifies its low avoided capacity cost by misstating and/or misinterpreting KEEIA. Staff says, "KEEIA does not require demand-side and supply-side investments be treated equally without exception."[33] In fact, that is precisely what KEEIA requires when it says "It shall be the policy of the state to value demand-side program investments equal to traditional investments in supply and delivery infrastructure as much as is practicable."[34] Rather than consider the entirety of the statutory provision, Staff focuses on the phrase "as much as is practicable" to defend its position, and even then, Staff has to inaccurately define "practicable" in an attempt to lend credibility to its position. Staff's attempt falls short. Staff defines "practicable" as "sensible" or "reasonable."[35] Staff then

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30 Nelson Rebuttal, p. 18

31 Tr. Vol. 3, Glass, p. 625; Staff Brief, p. 34, ¶80.

32 Ives Rebuttal, Schedule DRI-1, updated March 22, 2017. Staff represents that Staff's position retains 82% of KCP&L's proposed demand savings, but ignores the 56% loss of energy savings resulting from Staff's recommendations. Further, most of the 82% in demand savings Staff alludes to comes from the Residential Programmable Thermostat and Business Demand Response Incentive programs, which have both been in place for about 10 years. They add nothing new to the portfolio. Relying on the existing demand savings of those programs and rejecting new programs that will provide additional savings does not honor the KEEIA goal of moving DSM forward.

33 Staff Brief, p. 36, ¶83.

34 K.S.A. 66-1283(b).

35 Staff Brief, p. 36, ¶83.

goes on to replace the word "practicable" with "reasonable," as if the words are interchangeable.[36] Perhaps Staff is confusing the word "practicable" with "practical," because "practicable" has a much different meaning than "sensible" or "reasonable." According to Thesaurus.com, practicable means "within the realm of possibility."[37] Synonyms include: achievable, attainable, feasible.[38] This lends a much different connotation than sensible or reasonable. To read the policy again with the correct interpretation, KEEIA requires the Commission to value demand-side program investments equal to traditional investments in supply and delivery infrastructure as much as is achievable, attainable, or feasible; meaning, if it is within the realm of possibility or possible, then demand-side investments should be valued like traditional investments in supply and delivery infrastructure. Staff has provided no evidence suggesting it is not possible to value demand-side investments like traditional supply and delivery infrastructure; it simply does not like the avoided capacity cost which results from treating DSM like supply-side infrastructure. Because it is achievable and feasible to value demand-side investments like traditional supply and delivery infrastructure, the Commission should do so.

25. Staff also uses this language in the statute to claim that its position on avoided capacity cost is much more "practicable" than KCP&L's use of its Integrated Resource Plan ("IRP").[39] However, as explained above, Staff has improperly interpreted this phrase in subsection (b) as being a back-door vehicle for undoing the main thrust of subsection (b), which instructs the Commission that DSM investments are to be valued equal to traditional investments in supply and delivery infrastructure.

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[36] *See, e.g.*, Staff Brief, p. 37, ¶84.
[37] *See* http://www.thesaurus.com/browse/practicable?s=t.
[38] *Id*.
[39] Staff Brief, p. 37, ¶85.

26. Additionally, Staff now claims for the first time that Staff's avoided capacity cost is derived from KCP&L's own Potential Study,[40] as well as from KCP&L's 14-KCPE-042-TAR docket ("14-042 Docket").[41] KCP&L fully addressed in its Initial Brief why using the avoided capacity cost from the 14-042 Docket was inappropriate, so Staff is apparently trying to shore-up its unreasonably low number by now citing to the Potential Study. However, Staff's number was not based on the Potential Study and neither was KCP&L's. It would be irresponsible to use the Potential Study as the basis for an avoided capacity cost when there is much more current data available from KCP&L's IRP, which is what KCP&L used in this case to arrive at its avoided capacity cost and what is accepted as appropriate and reliable in Missouri.[42] Additionally, the Potential Study to which Staff refers uses a lower figure only for years 2014 and 2015; the avoided capacity cost increases significantly from 2016 to 2018, and beginning with 2019, the avoided capacity cost figure is 11% higher than the avoided capacity cost figure recommended by KCP&L in this docket. As such, if relying on the Potential Study to support its avoided capacity cost figure, Staff should have used a figure very near KCP&L's proposed avoided capacity cost because the timeframe of the program savings last beyond 2040. In fact, beginning in 2019, the avoided capacity cost in the 2013 Potential Study is 2.86 times Staff's avoided capacity cost.

27. Further, Staff's inference is misleading. Because Staff did not use the avoided capacity cost contained in KCP&L's Potential Study, to suggest that Staff's avoided capacity cost was *derived from* the Potential Study, at least in part, is disingenuous at best and deceptive at worse. Staff witness, Dr. Robert Glass, testified that he used only the avoided capacity cost adopted in the 14-042 Docket, stating that the per kW amount "was based on the cost in the market

[40] Staff Brief, p. 35, ¶80, *citing* to the KEEIA Report, Appendix L, p. 77, which is also contained in KCP&L Exhibit 6.
[41] *Id*.
[42] Nelson Rebuttal, pp. 22-23.

of purchasing capacity."[43] Clearly, the avoided capacity cost was taken directly from the amount used in the 14-042 Docket, and KCP&L's Potential Study had no bearing on the amount used by Staff. In any event, to remind the Commission, using the short-term market price for capacity as the avoided generation cost in the 14-042 Docket as the basis for the avoided capacity cost in this docket is entirely improper. As explained by KCP&L witness Timothy Nelson:

> The 14-042 Docket involved a two-year continuation (2014-2015) of the minimal DSM portfolio KCP&L had in place at that time and included a ramp down to zero its MPower program (its commercial demand response program) and a continued freeze on new participants to its Energy Optimizer program (its residential programmable thermostat demand response program). As such, the energy (kWh) savings and demand (kW) savings expected from the portfolio were low. Additionally, at the time of the filing, KCP&L was uncertain whether it would continue a DSM portfolio in Kansas following the requested two-year extension. The Company wanted time to review its options, including the possibility of legislation. ***Given this scenario - minimal demand savings and uncertainty of continued programs beyond 2015 - KCP&L chose to use a short-term capacity contract price as its avoided capacity cost as there was not enough demand savings anticipated to drive postponement of a combustion turbine further into the future and we did not have a long-term perspective on continuation of DSM programs into the future.[44]***

28. In other words, the use of a short-term market price for capacity as the avoided generation cost was appropriate in the context of programs in which minimal energy and demand savings were expected to occur, the programs were being ramped down to zero or unavailable to new participants, and the Company had no clear view to continuing the programs beyond the two-year extension requested in that docket. The instant docket neither reflects a ramp-down of programs nor minimal energy and demand savings; rather, the instant docket represents a ramping *up* of a robust portfolio of programs, which are intended to be in effect for the long term. Indeed, KCP&L's proposal herein "is supported by its 20-year corporate planning process, which selected

[43] Glass Direct, p. 24.
[44] Nelson Rebuttal, p. 21 (emphasis added).

DSM as a least-cost resource when it was evaluated on an equal basis to supply-side investments."[45]

29. Moreover, Staff's assumption of avoided capacity costs using the 14-042 Docket data is not consistent with KEEIA. KEEIA establishes a policy to value DSM investments on an equal basis to traditional investments in *infrastructure*.[46] Purchase capacity prices, as used by Staff, in no way are equivalent to an investment in supply and delivery infrastructure. As such, KEEIA implies long-term planning. KCP&L takes a long-term view toward DSM as a significant resource in its portfolio, alongside its supply-side resources.[47] In Missouri, KCP&L is on Cycle 2 with its MEEIA portfolio in both its KCP&L-MO and KCP&L-GMO jurisdictions. KCP&L's KEEIA portfolio has been proposed as its first three-year cycle, with every anticipation of a Cycle 2 and continuing cycles as in Missouri.[48]

30. In addition to its reliance on the 14-042 Docket data, Staff justifies its use of a short-term market price for capacity as the avoided generation cost based on surplus capacity within the Southwest Power Pool, Inc. ("SPP"). According to Staff, surplus capacity within SPP "is depressing capacity contract prices."[49] Therefore, Staff concludes the true price of avoided capacity is likely even lower than Staff's recommendation.[50] Staff's references to excess or surplus capacity within SPP is irrelevant. First, as repeatedly explained by the Company, Staff's

[45] Nelson Rebuttal, p. 23, *citing* KEEIA Report, p. 2-8.
[46] K.S.A. 66-1283(b).
[47] Nelson Rebuttal, p. 22.
[48] Frequently throughout the course of this docket, numerous parties have referred to KCP&L's KEEIA portfolio of programs as a "pilot" program. This is an inaccurate description of the KEEIA Cycle 1 portfolio. KEEIA Cycle 1 runs for three years in order to conduct timely evaluations, which could result in needed modifications. After Cycle 1 is completed, Cycle 2 would commence, then Cycle 3, and so on. As demonstrated by KCP&L's recent implementation of Cycle 2 in Missouri, KEEIA Cycle 1 is a long-term measure designed to postpone the construction of future generation based on a 20-year forecast.
[49] Staff Brief, p. 31, ¶81.
[50] *Id*.

use of short-term purchase capacity prices as equivalent to an investment in supply and delivery infrastructure is not an apples-to-apples comparison. By establishing a policy to value DSM investments on an equal basis to traditional investments in supply and delivery infrastructure, KEEIA, by definition, contemplates long-term planning. Purchase capacity prices, in contrast, are short-term in nature. Further, Staff admits its avoided capacity price is for a capacity contract and not for infrastructure or "steel in the ground," in violation of the express language in KEEIA.[51] The Company is not attempting to implement DSM measures in order to avoid purchasing short-term capacity from other suppliers to meet an immediate need; rather, the Company is implementing a long-term planning strategy. The avoided cost, therefore, "is what the next lowest cost of construction would be for the least cost option of the different alternatives."[52]

31. It is also misleading for Staff to represent that the Company's chief witness on avoided capacity cost, Mr. Tim Nelson, could not provide an answer at hearing when asked what would cause avoided capacity costs to increase six-fold over CURB's proposal in this case, and nearly three times that of Staff's proposal.[53] CURB's proposal (as well as Staff's) was unreasonable and was not based upon a long-term view of DSM. KCP&L's estimates were based upon a long-term view of DSM - Cost of New Entry ("CONE") - because DSM is a replacement for actual generation facilities. KCP&L's avoided costs are different from Staff's and CURB's because KCP&L's is based on the cost of infrastructure per KEEIA, while Staff and CURB base theirs on the current price of market capacity, with no assurance that it will always be available at that price. Staff counsel's questioning at hearing in this regard asked Mr. Nelson to provide some explanation of a comparison of two numbers measuring different things. Further, it asked him to

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[51] *Id*.
[52] Tr. Vol. 2, Nelson, p. 305.
[53] Staff Brief, p. 35, ¶81.

explain the increase over CURB's and Staff's numbers when CURB's and Staff's numbers were meaningless. Mr. Nelson was not unable to answer any question posed to him at hearing that was relevant to the analysis.

32. Importantly, Staff side-steps an important issue on avoided capacity costs that inarguably shows Staff used a completely invalid number. Staff included transmission and distribution costs in its avoided capacity costs even though they knew KCP&L disagreed with such inclusion[54] and Staff provides no support for including such costs. CURB excluded those costs in reliance upon KCP&L's explanation, but for some reason, Staff chose to continue to support what is, without question, an incorrect calculation. If Staff intended to provide its number to the Commission as some type of compromise between CURB and KCP&L simply because Staff's number falls in between CURB's and KCP&L's, that approach is fundamentally wrong and must be rejected. Staff's number is *not* a compromise; it is an unreasonable number based upon an unquestionably incorrect analysis.

33. Further, adjusting Staff's proposed avoided capacity cost number to exclude the transmission and distribution capacity costs would necessarily require re-evaluation and adjustment of Staff's recommended portfolio of programs and would likely remove most every remaining program. Staff indicates that their review methodology "aims to recommend approval of programs, not reject them,"[55] and Dr. Glass states: "Staff is looking for a way to say yes to the programs, not to say no."[56] However, knowingly using an incorrect avoided capacity cost figure to evaluate whether programs should be approved is inappropriate and it likely will result in problems in the future when the time comes to determine benefits under EM&V and when

[54] Tr. Vol. 3, Glass, pp. 626 - 628.
[55] Staff Brief, p. 34, ¶78.
[56] Tr. Vol. 3, p. 631.

determining the program portfolio for KEEIA Cycle 2. A fundamentally sound avoided capacity cost calculation methodology needs to be used in this case and followed consistently in future EM&V proceedings.

34. Staff goes on to argue that its very low avoided capacity cost is "practicable" because it is representative of capacity prices that exist today and will continue to exist into the foreseeable future.[57] Staff fails to explain what it considers "the foreseeable future," or what data it relies on for evaluating that period of time. Staff uses short-term capacity contracts, ignoring that (1) such contracts may not always be available; (2) the price for such contracts can fluctuate dramatically; (3) capacity contracts are temporary and currently priced at a steep discount because they represent the sale of unneeded capacity in the short-term; and (4) one benefit of reducing load through DSM versus building new generation is that there are no reliability concerns related to the load addressed by DSM, unlike the portion of the load served by new generation. Staff bases its assertion that the lower capacity contract price should be used on Staff's faulty assumption that KCP&L's DSM portfolio only lasts for three years. This is not correct, as explained above and in KCP&L's Initial Brief.[58] Using the price of short-term capacity sales on the market is not an appropriate standard to use for calculating the avoided capacity cost to be used for evaluating DSM programs in this case.

35. KCP&L's Initial Brief addressed why it is only reasonable to use an avoided capacity cost that is based upon the long-term resource planning data of KCP&L's IRP.[59] Staff says that the Commission's position on valuing energy efficiency recognizes "demand-side

[57] Staff Brief, p. 35, ¶80.
[58] Dr. Glass acknowledges that Staff's market value of capacity does not reflect "steel in the ground", so Staff is using the market price because of its erroneous belief that the DSM portfolio is short term. (Glass Direct, p. 25.)
[59] KCP&L Initial Brief, pp. 51-57.

programs should be long-term options, not short-term ... ."[60] KCP&L agrees with this position, as reflected in KCP&L's use of the cost of a combustion turbine ("CT") generator in its avoided capacity cost calculation. Because most measures in KCP&L's TRM have a life of 10 to 20 years, DSM is equivalent to a long-term resource and it is appropriate to look at the long-term cost savings occurring as a result of the deployment of DSM. Cost-effectiveness of DSM programs is evaluated over the life of the measures and requires looking at the avoided costs for all years of the measure life. For example, an LED lightbulb has a 20-year measure life. Therefore, a customer who installs an LED lightbulb in 2020 under KEEIA Cycle 1 will reap energy and demand savings through 2040. In contrast to KCP&L's long-term view, Staff's position of applying the short-term price of contract capacity for avoided cost of DSM in the cost-effectiveness tests assumes that such prices will remain at current levels through 2040, not just in 2020. It also assumes that the capacity purchased on the market will be priced at or near the price used by Staff in this case, and that relying on the market to continue to meet long-term customer demand is reasonable. These assumed premises are incorrect, particularly given that the price used by Staff in this case is insupportable.

36. Staff questioned the Company's projected capacity need date, demonstrating that pursuant to the KEEIA filing, the Company states it will need a combustion turbine by 2024, whereas the Company's most recent IRP indicates the earliest date the Company will need any new generation is 2030.[61] Staff says it cannot reconcile these different dates, referring to them as a "discrepancy."[62] To support its claim, Staff cites to the cross-examination at hearing of KCP&L witness Mary Turner, where she was asked some questions about Staff Exhibit 2, which is a portion

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[60] Staff Brief, p. 18, ¶42.
[61] Staff Brief, p. 38, ¶87.
[62] *Id*.

of the 2016 Annual Update of KCP&L's IRP filed with the Missouri Public Service Commission ("MPSC") and provided to the KCC in March 2016. During questioning, Ms. Turner advised Staff counsel that his questions would be better directed to Mr. Timothy Nelson, the KCP&L witness most familiar with the IRP.[63] Staff conveniently ignores Mr. Nelson's hearing testimony.

37. At the evidentiary hearing, both Staff and CURB questioned Mr. Nelson about different reports, which showed different dates by which the Company projected capacity needs. CURB introduced Exhibits 2-6, which represent KCP&L data request responses to CURB data requests in various dockets dating back to 2010 regarding future capacity needs, including IRP results over a similar time frame.[64] CURB attempts to question the validity of the IRP planning process based on the fact that the date for future capacity needs has changed over time; however, this is reasonable and expected given that the IRP process takes into account unfolding and projected changes in KCP&L's system and in the industry. As noted in KCP&L's response to CURB Data Request No. 15 in Docket No. 10-KCPE-795-TAR (CURB Exhibit 6), the timing of capacity needs is dependent upon a number of assumptions that change over time. That response reads in part,

> The timing of a new natural gas peaking facility is very uncertain as it depends on many unknown factors such as retail demand growth and generating plant retirements. However, assuming that no existing generating plants are retired, if KCP&L cancelled all of its Kansas programs proposed in the Application, KCP&L projects that it would become capacity deficient in 2021 and would consider adding additional generating resources in 2023. Short-term purchased power agreements could potentially fill the gap between 2021 and 2023 until the capacity shortfall justified the addition of 2 new combustion turbines.
>
> If future environmental regulations such as those addressing CO2 emissions and/or hazardous air pollutants results in the need to retire a portion of KCP&L's older coal fleet, additional capacity could be needed at the time of retirement.[65]

[63] Tr. Vol. 1, M. Turner, pp. 167, 169.
[64] *See* CURB Hearing Exhibits 2-6.
[65] CURB Hearing Exhibit 6.

Since the time of this response in 2010, KCP&L has retired one coal plant with several more planned retirements on the near-term horizon. Additionally, KCP&L has added substantial wind capacity and ramped up its Missouri DSM portfolio as a result of MEEIA. All of these changes affect the projected need for new generating capacity and is why KCP&L re-evaluates its IRP every three years with annual reviews. This is not a flaw in the process or results; it is merely the evolution of long-range planning.

38. In each of those CURB exhibits, the Company set out a different projected capacity need date;[66] however, each exhibit represents a different set of assumptions at a different point in time. One IRP is from 2012 (CURB Exhibit 4) and the other is from 2015 (CURB Exhibit 2), and, as noted above, CURB Exhibit 6 is from 2010. The remaining data request exhibits pose 'what if' scenarios CURB created. For example, CURB Data Request No. 39 (CURB Exhibit 3) asked when a new CT would be needed if the Company's KEEIA Cycle 1 programs were approved. KCP&L's response indicated the effect if they were approved for only three years as well as if they continued on for 20 years.[67] CURB Data Request No. 40 asked when a new CT would be needed if the Company's KEEIA Cycle 1 programs are not approved.[68] Additionally, Mr. Nelson was asked about the Company's IRP which includes both KEEIA and MEEIA continuing for 20 years. Each of these obviously have different dates by which the Company would require additional capacity. Those dates range from needing a new CT in 2024 with a second CT in 2033 in the event KEEIA is not approved but MEEIA remains for 20 years, to needing a new CT in 2027 with a second CT in 2033 in the event KEEIA does not continue after Cycle 1, to not needing

[66] *See* CURB Hearing Exhibits 2-6.
[67] CURB Exhibit 3; M. Turner Rebuttal, p. 25.
[68] Harden Direct, Appendix A.

the first CT at all and only needing one new CT in 2032/3033 if both KEEIA and MEEIA are continued for 20 years.

39. Additionally, Mr. Nelson explained that the capacity need date is fluid and not static, and the timing of the need to build generation is impacted by a number of factors. For example, KCP&L updates its Missouri IRP annually. Each update includes the Company's most recent information on such items as load forecast, actual capacity needs, the rated capacity level on existing generation plants, DSM measures, among myriad other factors.[69] According to Nelson, a change in any of these or other factors could change the timing of the capacity need date.[70] In addition to the annual IRP updates, the Company also has made numerous DSM filings over the past several years. Each of those filings would also provide updated - and, therefore, potentially different - capacity need dates. Mr. Nelson provided a concrete example when he indicated that the capacity need date contained in KCP&L's 10-KCPE-795-TAR Docket did not take into account the portfolio of programs proposed in this case, whereas the Company's current IRP does take into account implementing DSM in Kansas.[71] As a result, the capacity need date in each of those filings is different, which is exactly how long-term resource planning should, and does, work. Because the nature of IRP is that it adjusts with changing circumstances over time, it is both fairly simple and easy to reconcile the differing capacity need dates, despite Staff's statement to the contrary. Moreover, the fact that the capacity need dates differ does not mean there is a discrepancy, as suggested by Staff and CURB. It reflects the changing circumstances the Company faces over time.

[69] Tr. Vol. 2, Nelson, pp. 315-16.
[70] *Id*.
[71] *Id*.

40. Next, Staff claims that its market-based perspective is supported by the record, and the Company's levelized cost perspective is not.[72] Staff's wording is either based on a fundamental lack of understanding of KCP&L's filing or is misleading. While the Company supports using the levelized cost of a combustion turbine, levelized cost is not a *perspective*; rather, it is the calculation method that is used to compare demand-side and supply-side resources. Staff's market-based price is based on an annual price in $/kW-year that must be paid every year. When you build generation infrastructure, you spend all the money up front. The only way to compare these on an apples-to-apples basis is to convert the cost of the generation infrastructure to the same basis, which is the levelized cost ($/kW-year). Regardless of what source you use for the avoided capacity cost, you have to convert it to a $/kW-year basis to be able to do the calculation to value the demand-side program. Furthermore, the $/kW-year is the basis that is required for input into the DSMore™ model. The *perspective* is the choice of whether to use a market price or the price of infrastructure consistent with KEEIA. The Company chose the price of infrastructure, which is more accurate, appropriate and consistent with KEEIA.

41. Staff argues: "Supply-side investments can meet a utility's service obligations; demand-side programs cannot."[73] This statement, again, twists words. Demand-side programs do even better than *meet* a utility's service obligations; they *reduce* the utilities' service obligations. Hence, DSM programs are, in some ways, superior to supply-side investments. Further, Staff states: "KCP&L has relentlessly promoted altruistic reasons for implementing demand-side programs with claims of a long-term vision. However, the proposal before the Commission is limited in duration, with an ejection mechanism should the proposal turn against the Company's

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[72] Staff Brief, p. 39, ¶89.
[73] Staff Brief, p. 40, ¶90.

interests."[74] Staff adds, "Supply-side investments exist for decades, but no party truly knows how committed to demand-side programs KCP&L will be. KCP&L is aware of all of these data points indicating an avoided capacity cost should be lower and has chosen to ignore them."[75] KCP&L's motives are, in fact, partially altruistic. KCP&L believes demand-side programs are a legitimate means to assist customers in using electricity more efficiently, thereby reducing electricity usage.

42. In addition, the energy and demand savings from KCP&L's programs last for decades regardless of how long the programs are offered. As demonstrated by KCP&L's counterpart program in Missouri, the Company is committed to its proposed demand-side programs for the long term. The ejection mechanism referenced by Staff reflects the voluntary nature of DSM under KEEIA, and is included in the tariff to make clear that a program can be terminated in the event changes in circumstances occur that cause a program to no longer be viable or the Company to be harmed financially if the program continues. KCP&L does not intend to pursue DSM at any cost. Further, KEEIA Cycle 1 runs for three years, but as Staff is well aware, the Company has every intention of following up with KEEIA Cycle 2, and so on, which is entirely consistent with the Company's experience in Missouri. With regard to Staff's claim that KCP&L has chosen to ignore data points which indicate an avoided capacity cost should be lower, it is not the Company who has ignored data points, it is Staff. Staff ignores important KEEIA policy statements in order to justify its position. Most egregiously, Staff ignores KEEIA's requirement to value demand-side programs equal to infrastructure or "steel in the ground," and not short-term purchase power agreements.

[74] *Id*. (citations omitted).
[75] *Id*. (citations omitted).

43. Staff urges the Commission to reject KCP&L's recommendation to adopt an avoided capacity cost which is representative of the levelized cost of a combustion turbine.[76] Staff claims KCP&L justifies its avoided capacity cost with its Missouri IRP.[77] Staff further claims that KCP&L's Missouri IRP is unsupported by the record.[78] For example, Staff points out that MEEIA and Missouri PSC regulations explicitly call for MEEIA-sponsored demand-side programs to utilize the avoided cost from KCP&L's Missouri IRP and, further, that KEEIA has no such requirement.[79] While KEEIA does not require the use of an IRP, its provisions are consistent with the long-term generation planning analyses contained in an IRP. Further, the IRPs developed in Missouri under MEEIA are fully supported by the record.[80] The lack of a specific requirement in KEEIA to use the avoided capacity cost from the Company's IRP does not make that long-term avoided capacity cost inappropriate.

44. When DSM results in lowering demand on KCP&L's system, that benefit continues long-term. That is, even if the program underlying implementation of a measure were to terminate, the impact of that measure will continue for the life of the measure, often up to 20 years. As such, DSM can be, and for KCP&L is, a reasonable and viable part of a utility company's resource plan.[81] Utilities do not rely upon market purchases in their long-term resource planning because resource planning goes out 10-20 years or more and there is no way to know if capacity will be

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[76] Staff Brief, p. 36, ¶83.
[77] *See Id.*, pp. 36-36, ¶¶83-85.
[78] *Id.*, p. 36, ¶83.
[79] Staff Brief, p. 37, ¶84.
[80] During the evidentiary hearings held in this docket, the Commissioners requested that KCP&L file confidential and public versions of its most recent IRP, which was filed on behalf of KCP&L with the Missouri Public Service Commission. (Tr. Vol. 2, pp. 447-448.) A copy of KCP&L's 2015 IRP was filed in the docket on April 13, 2017.
[81] Staff argues that using the cost of a combustion turbine as the avoided cost is neither practicable, sensible, nor reasonable, and that KCP&L's use of its avoided cost from its IRP is unsupported by the record. (Staff Brief, pp. 36-37, ¶83.) On the contrary, KCP&L's IRP is now in the record and along with the other testimony and data presented by KCP&L, the record fully supports KCP&L's position on avoided capacity cost. It is the avoided capacity cost used by Staff that has no support in the record.

available on that market beyond the near future, and even if it is, what price will be demanded. KCP&L uses market capacity purchases in its resource provisioning only as a short-term "stop-gap" measure, to bridge a demand that exceeds generation resources for short periods of time until permanent supply can be brought on-line.[82]

45. Staff assumes that KCP&L's use of the CONE cost perspective of valuing avoided capacity cost must be based on the existence of constraints in its capacity market.[83] This argument is misleading. Capacity constraints would only be relevant if using the market price approach as Staff does. But that approach is inconsistent with KEEIA and should not be used. Regardless, Staff makes no effort to forecast future capacity contract pricing or the impact of plant closures across that market.

46. Staff's short-term approach is in conflict with the facts of this case and the most reliable data available. It is also inconsistent with the goals and policies of KEEIA. Avoided capacity costs must be evaluated within the context of framework established by the legislature, not estimated in a way guaranteed to result in a failure to honor the intent and purpose of KEEIA.

C. KCP&L is committed to long-term DSM, and its ability to terminate programs does not indicate otherwise.

47. The short-term nature of the programs in the 14-042 Docket and the long-term nature of the portfolio presented in this docket clearly establish that use of the avoided capacity cost from the 14-042 Docket, as Staff has done, is inappropriate. KCP&L's long-time efforts in Kansas (pursuing DSM since 2004, including KEEIA legislation in 2014, and this Application) and its track record on DSM in Missouri (initial efforts began in 2004, continuing through MEEIA legislation in 2008, and current MEEIA Cycle 2 in both Missouri jurisdictions with DSM included

[82] Tr. Vol. 2, Nelson, p. 359.
[83] Staff Brief, p. 39, ¶89.

in resource planning) should be adequate evidence to assure the Commission that KCP&L is committed to DSM as an energy resource. For some reason, however, Staff insinuates that KCP&L lacks that commitment based solely on the fact that KCP&L retains the ability to terminate a program with a 30-day notice to the Commission.[84] Staff chooses to disparage this aspect of KCP&L's Application as an "escape hatch ... based on hidden conditions," which is in error. Staff cites only to one part of Ms. Turner's answers at hearing where she was asked about the ability of KCP&L to terminate programs as contained in the tariffs. She said such termination could occur "if certain factors come into play," and acknowledged that those factors are not enumerated in the actual tariff.[85] Later in the hearing, Commissioner Feist Albrecht asked Ms. Turner if KCP&L would object to including descriptors in the tariff addressing the termination process and Ms. Turner stated that the Company could take a look at that possibility.[86]

48. Staff's attempt to undermine the credibility of KCP&L's commitment to DSM using the termination provision of the tariff is unfounded. There is nothing unusual or "hidden" about not attempting to list every potential situation that might cause the Company to need to terminate a program or programs. It is more telling that, in presenting this issue to the Commission and making this allegation against the Company, Staff chose to simply ignore the additional explanations and testimony of Ms. Turner. As CEP's counsel acknowledged at hearing, "[KEEIA] anticipates a certain amount of trial and error where these programs are concerned, as I just mentioned, opportunities to evaluate and modify or terminate these programs if necessary." The Commission should view the termination provisions of the Application as reasonably as CEP has,

[84] Staff Brief, p. 36, ¶82.
[85] Tr. Vol. 1, M. Turner, pp. 172-173.
[86] Tr. Vol. 1, M. Turner, pp. 181-182.

based on the complete explanation as provided by KCP&L's testimony, rather than impute into the termination provision a lack of commitment as Staff has chosen to do.

D. Emphasis should be placed on the Total Resource Cost test when evaluating demand-side programs.

49. One of the measures Staff used to reject certain programs proposed by KCP&L is poor Ratepayer Impact Measure ("RIM") scores. Staff claims that evaluating demand-side programs using the RIM test is "directly called for by Commission policy."[87] Staff's reliance on the RIM test to reject almost half of the KEEIA Cycle 1 programs, however, ignores the entirety of the Commission's policy. In its April 13, 2009 Order Following Collaborative in the 08-442 Docket, the Commission indicated the RIM test is useful to measure revenue shifts, to compare program options, and to consider the impact of programs on nonparticipants.[88] The Commission said: "These factors make it appropriate for the Commission to place *some* emphasis on the RIM test."[89] Importantly, the Commission added: "In doing so, the Commission is mindful of the considerations involved in using this test and the fact that the experience of other jurisdictions has proven negative test results are common."[90] Due to the unreliability of the RIM test, the Commission also considers the Total Resource Cost ("TRC") test. Referring to the TRC test, the Commission said: "Because of its scope, including all costs and benefits, and its similarity to project evaluations for supply-side options due to its treatment of revenue shifts and incentive payments, the California Manual states this test is a good means of comparing demand-side and supply-side resource options."[91] In fact, because the "TRC Test indicates whether a program is

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[87] Staff Brief, p. 33, ¶77.
[88] *See* Order Following Collaborative, 08-442 Docket, at pp. 8-9, ¶¶22-23.
[89] *Id*., p. 9, ¶23 (emphasis added).
[90] *Id*.
[91] *Id*., p. 9, ¶24.

beneficial to the utility and to the utility's consumers as a whole, both participants and non-participants,"[92] and "reflects the benefit to implementing an energy efficiency program throughout a utility's territory,"[93] the Commission stated it "will place emphasis on the TRC test."[94]

50. While Staff acknowledges it first analyzes programs under the TRC test,[95] it goes on to describe step two of its own devised three-part evaluation system. The second step of Staff's system is to evaluate for impact on customer rates using the RIM test.[96] Staff says the reason for evaluating under the RIM test is to protect non-participants from increased bills for programs that only benefit participants.[97] This argument highlights more of Staff's flawed analyses: that is, (1) the idea that every program offered by the Company must be available to all customers, and (2) that programs which result in an increased bill to non-participants should automatically be rejected. The nature of demand-side programs is that not all programs can be crafted for participation by all customers. Indeed, no single program can be designed to be uniformly, proportionally, or equitably available to all customers. This is why it is imperative to offer a wide array of programs to provide all customers a proportional opportunity to participate and benefit; hence, KCP&L's broad portfolio of offerings so that every customer can participate in at least one program. Staff states that it "does not use a failing RIM test as the basis for program rejection."[98]

[92] *See* 08-442 Docket, *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* (Jun. 6, 2008) ("Order Setting EE Policy Goals"), at p. 14, ¶35.
[93] *Id.*, p. 16, ¶39.
[94] *Id.*, pp. 15-16, ¶39.
[95] *See*, *e.g.*, Staff Brief, pp. 32-33, ¶¶75-77.
[96] *See*, *e.g.*, Staff Brief, p. 33, ¶77.
[97] *Id.*
[98] *Id.*, pp. 33-34, ¶78.

However, that statement is patently untrue as Staff did, in fact, reject programs based on low RIM test scores.[99]

51. The KEEIA states: "In making its decision whether or not to approve the proposed program, the commission shall determine the appropriate test for evaluating the cost effectiveness of the demand-side program."[100] The KEEIA also states: "It shall be the policy of the state to value demand-side program investments equal to traditional investments in supply and delivery infrastructure as much as is practicable."[101] Because the TRC test is the only cost-effectiveness test that is equivalent to the least-cost planning used in integrated utility planning, the TRC test is the clearly superior choice for the primary screening test for evaluating supply-side investments, as required by the KEEIA.[102] The Commission found likewise, which is why it previously determined it will place emphasis on the TRC test.[103] Use of the RIM test to check ratepayer impacts is certainly permissible; however, it should not be used as the basis to reject strong programs that benefit the system and customers overall.

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[99] The third prong of Staff's evaluation system is to evaluate the qualities and ease of participation of programs with borderline cost-effectiveness scores. Staff's Brief, at p. 33, ¶78. This part of Staff's analysis is not mentioned herein as it is not relevant to the above discussion. Further, Staff claims that the third step in its evaluation system is "not the primary dispositive force behind any one program recommendation - cost-effectiveness results are." *Id*. Therefore, because Staff accords little or no weight to that portion of its "system," KCP&L will do likewise.

[100] K.S.A. § 66- 1283(c)(1)(D).

[101] K.S.A. § 66- 1283(b).

[102] Nelson Rebuttal, pp. 4-5.

[103] *See* 08-442 Order Setting EE Policy Goals, pp. 15-16, ¶ 39.

E. The Commission should adopt the Net-to-Gross ratio recommended by the Company as reasonable.[104]

52. Staff initially recommended using a 0.8 NTG ratio, but resorted to the 0.9 NTG ratio contained within Staff's sensitivity runs due to time constraints.[105] In testimony, Staff justifies its NTG of 0.8 and 0.9 with the statements, "the assumption of one for net-to-gross violates common sense"[106] and "because of Staff's risk-aversion, we chose a net-to-gross ratio of 0.8 for our analysis."[107] In its brief, Staff says it recommended a reduced NTG ratio in order to temper expectations.[108] None of these reasons provide a compelling basis either to reject the Company's proposed NTG of 1.0 or adopt Staff's 0.9 NTG ratio. Given Staff's failure to provide sufficient justification to reject the Company's proposed 1.0 NTG ratio, coupled with Staff's statement that "varying the NTG ratio in its sensitivity analysis did not produce a large swing in overall program recommendations,"[109] the Company asserts the clear and convincing evidence in the case leads to adoption of the Company's proposed NTG ratio of 1.0. In reality, Staff chose a lower NTG ratio because it is risk averse, not because Staff's NTG is more accurate or based upon better data than KCP&L's NTG ratio.[110] Moreover, KCP&L has had very positive NTG ratios as a result of its Cycle 1 EM&V in Missouri, upwards of over 0.95 for an overall portfolio.[111] As noted by Mr. Nelson, "As [KCP&L has] seen from our experience running energy efficiency programs in

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[104] A key requirement for benefit/cost analysis is estimating the NTG ratio. The NTG ratio adjusts the gross energy and demand savings associated with a program to reflect the overall effectiveness of the program, taking into account free riders, participant spillover, and nonparticipant spillover. Establishing the NTG ratio is critical to understanding overall program success and identifying ways to improve program performance. Based on KCP&L's program experience, the Company proposes a NTG ratio of 1.0 for the initial evaluation of the programs. (KEEIA Report, pp. 3-4 and 3-5.) "This NTG ratio will be reviewed as part of the EM&V process, and the resulting NTG ratio will be used to true-up the components of the cost recovery mechanism." (M. Turner Rebuttal, p. 11.)

[105] Staff Brief, at ¶ 91.

[106] Glass Direct, at p. 23.

[107] *Id*.

[108] Staff Brief, at ¶ 91.

[109] Staff Brief, p. 41, ¶91.

[110] Glass Direct, at p. 23.

[111] Tr. Vol. 1, Winslow, p. 118.

Missouri, the downward and upward adjustment factors tend to roughly cancel each other out such that the net-to-gross is very close to 1.0. Without prior basis with Kansas programs, it is therefore reasonable to begin with NTG assumptions of 1.0 and adjust these as program evaluations are conducted that would potentially tell us differently."[112] Hence, it appears Staff's opinion that KCP&L's net-to-gross ratio of 1.0 "violates common sense" is a dramatic overstatement and not worthy of serious consideration

F. KCP&L and Staff support the use of the Company's Technical Resource Manual.

53. As a general proposition, Staff approves KCP&L's use of its Technical Resource Manual ("TRM") and the values contained therein as baselines for benefit-cost analyses.[113] Although "Commission policy indicates the California Database for Energy Efficient Resources ("DEER") savings estimates and useful life data consistent with Kansas should be utilized until a demand-side program's two-year EM&V,"[114] Staff acknowledges KCP&L's request for a waiver of this requirement.[115] Further, "Commission policy also states parties may utilize values outside of DEER if more accurate or if DEER data is unavailable."[116] Additionally, "Commission policy allows for the use of Kansas-based estimates once they are developed."[117] Staff stated its review of the Company's TRM indicates "it is a reasonable proxy for DEER and likely more representative of Kansas baselines."[118] Staff added that while the Company's proposed TRM may not be rooted entirely in Kansas data, Staff's review did not present any major concerns, with the exception of one caveat. Staff stated a TRM is "simply a compilation of estimates, and the

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[112] Nelson Rebuttal, p. 41.
[113] Staff Brief, p. 41, ¶92.
[114] *Id*., pp. 41-42, ¶93.
[115] *Id*.
[116] *Id*.
[117] *Id*.
[118] *Id*., p. 42, ¶94.

Commission should expect the post-verification values to be different."[119] KCP&L notes the same caveat would apply to the DEER. The DEER is a TRM with estimates too, only it is California specific, which is why the TRM that was developed specifically for KCP&L's service territory is likely to be more reliable than DEER. Staff concluded that KCP&L's TRM is "a reasonable resource for this Application, and if implemented will only become more accurate as Kansas-specific data is gathered and incorporated."[120]

G. Cost Recovery Mechanism.

(i) Timely Program Cost Recovery.

54. Staff recommends the Commission continue with the current method of historical, after the-fact, actual cost recovery, but recommends a procedural schedule for the annual rider filing that shortens the lag time from 18 months to 16 months, granting KCP&L carrying charges on the unrecovered balance of program costs beginning when incurred.[121] Staff recommends a process where KCP&L would make its annual filings on January 15, with a shortened time period for review by the Commission. Most of Staff's recommendations in this area have been fully addressed in KCP&L's Initial Brief.[122] In addition, KCP&L needs to respond to Staff's assertion that the part of KEEIA that states, "programs must result in energy or demand savings" supports using historical data for program cost recovery.[123] Staff seems to be arguing that the mechanism adopted by the Commission must refrain from recovering program costs until the actual results are known so as to comply with this part of the KEEIA statute. In other words, it is impermissible under KEEIA to use forecasted or estimated costs, even if they are later trued-up to actuals. First, this is not what KEEIA requires. Second, Staff's own recommended cost recovery mechanism

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119 *Id*.
120 *Id*.
121 Ives Rebuttal, at pp. 18-19. It appears the carrying charges would also apply to any TD and EO.
122 KCP&L's Initial Brief, pp. 70-76.
123 Staff's Brief, pp. 22.

and process would not comply with Staff's interpretation of this aspect of KEEIA. Historical costs are not mandated and Staff's argument otherwise must be rejected.

55. Staff also argues that KCP&L's own Application supports Staff's position that annual historical program cost recovery is "timely" because KCP&L proposes using actual costs in the EO calculation and, if that is considered "timely" for the EO, it must also be "timely" for the program cost recovery.[124] This position is unreasonable. Program costs and the EO are not the same things and, by their nature, the method of recovery should be expected to be different. While program costs are relatively easy to forecast and trued-up to actuals, the EO is not. The EO must be verifiable, and until actual data is received, it is not known whether an EO will be appropriate at all. As such, a forecasted EO is not appropriate and KCP&L did not propose one. However, because program costs will definitely be incurred and can be reasonably forecasted and then trued-up, timely recovery of those costs would encompass the proposal by KCP&L in its Application. As Mr. Grady testified at hearing, the word "timely" means "opportune" and "suitable".[125] What is "suitable" under one set of circumstances (program costs) is not necessarily suitable under a different set of facts (earnings opportunity). Additionally, Staff's own proposal treats the timing of recovery of program costs (and TD) differently than EO, undermining Staff's assertion that "timely" cost recovery for each should be identical under the statute.

(ii) Throughput Disincentive.

56. As explained in KCP&L's Initial Brief, Staff is proposing a form of partial decoupling to address the throughput disincentive ("TD").[126] Staff's recommendation is fundamentally flawed from a theoretical basis, and from a practical perspective will serve only to

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124 Staff's Brief, p. 27.
125 Grady Direct, p. 5.
126 KCP&L's Initial Brief, pp. 76-78.

stop further development of DSM in Kansas. Staff asserts KCP&L's position is too one-sided and only serves to align the Company's financial incentives with offering demand-side programs.[127] Staff says that KEEIA requires a "balancing of incentives."[128] Staff misstates KEEIA. K.S.A. 66-1283(e)(2) does not require a "balancing of incentives." This is another standard created by Staff. The statute states that the Commission shall ensure that the utilities' financial incentives are aligned with helping its customers use energy more efficiently. A TD mechanism that restricts the utilities' ability to earn its allowed return by offsetting the upside potential for growth in sales while customers benefit from using energy more efficiently does not align the utilities' interests with its customers' interests. Rather, it places the Company at a more disadvantageous position financially than it would otherwise have been without DSM. This is the disincentive KEEIA instructs the Commission to resolve, not perpetuate, as Staff's proposal does.

57. Further, Staff argues KCP&L's load growth is flat or declining, and has been for years.[129] Staff states that because KCP&L's load growth is flat or declining, there are no increased costs from load growth against which to net energy-efficiency savings.[130] However, simply because the Company has experienced flat or declining load growth does not mean it should be willing to further reduce its sales and forego the additional benefits and revenues from future potential growth while retaining all cost increases. That is what Staff is recommending. Although KCP&L disagrees, if Staff is correct that KEEIA requires the Commission to balance the incentives between utilities and their customers, Staff's position does not balance the incentives of the Company and its customers and is heavily one-sided in favor of customers. Although Staff

[127] Staff Brief, p. 62, ¶134.
[128] *Id*.
[129] *Id*., p. 61, ¶132.
[130] *Id*.

says it recognizes the inherent disincentive public utilities have regarding energy efficiency,[131] its position does reflect this recognition.

(iii) Timely Earnings Opportunity.

58. KEEIA requires the Commission to provide timely earnings opportunities to public utilities.[132] While both the Company and Staff recommend recovery of earnings opportunities based on similar methodologies, one significant point of departure between the Company's and Staff's recommendations is the deduction of TD when calculating the demand-side program portfolio's net benefits.[133] Staff includes TD as a cost when calculating net benefits, which is erroneous, as explained fully in KCP&L's Initial Brief.[134]

59. As stated in their Brief, "Staff includes throughput disincentive as a cost when calculating net benefits. While the throughput disincentive is not a 'cost' to KCP&L, it is certainly a cost to KCP&L's customers who must pay to receive these programs."[135] Staff's position is in error. KCP&L and Staff start at the same point in determining net benefits – comparing the program costs to net benefits. This is the common method for determining net benefits for DSM programs. However, Staff then creates an unbalanced view of net benefits by adding in the TD as a cost to customers but failing to balance that by also adding in the reduction in bills customers receive as a benefit of DSM. If Staff wants to include all costs to the customers in the net benefits calculation, then they need to include all benefits as well. While bill reductions are not a benefit for KCP&L, they are benefits customers receive.[136] However, since the customer bill reductions essentially mirror the TD, the TD "cost" and the bill reduction "benefit" cancel each other out,

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[131] *Id*., p. 60, ¶130.
[132] *See* K.S.A. 66-1283(e)(3).
[133] Staff Brief, pp. 62-63, ¶135.
[134] KCP&L's Initial Brief, pp. 78-81.
[135] Staff Brief, p. 63, ¶136 (citations in the original omitted).
[136] Nelson Rebuttal, p. 29.

which is why these are not included in the net benefits calculation, as KCP&L has done. Additionally, it is incorrect to subtract the TD from the benefits for the net benefits calculation as proposed by Staff because TRC net benefits are net of all of these types of cash flows so they do not affect the total.[137] Staff argues that they "did not use the TRC test when developing its earnings opportunity proposal and neither should the Commission."[138] Staff also argues that "no one single benefit-cost test attempts to identify all the costs of a particular demand-side program."[139] Staff's arguments are misleading. First, the system net benefits simply are the reduction in the net present value of revenue requirement and the representation of the reduced revenue that must be collected.[140] Further, the Company is not trying to blend all of the different perspectives of all the different benefit-cost test as Staff erroneously does. Rather, the Company's calculation simply represents the net benefits to the system.[141]

H. Staff's analysis of KCP&L's KEEIA Cycle 1 programs is flawed.

60. As a general overview, KCP&L's KEEIA Cycle 1 DSM portfolio is comprised of seven residential programs and seven business programs that will deliver an effective and balanced portfolio of energy and demand savings opportunities across all customer segments.[142]

(i) Residential Programs.

(a) The Home Energy Report Program

61. Staff rejected the Home Energy Report ("HER") program based on low TRC and RIM test scores under Staff's most stringent and unrealistic sensitivity analysis, Scenario 6.[143]

137 Nelson Rebuttal, p. 29.
138 Staff Brief, p. 63, ¶137.
139 Staff Brief, p. 63, ¶137.
140 *See* Nelson Rebuttal, pp. 29-31.
141 Nelson Rebuttal, p. 29.
142 A summary of the programs and Staff's recommendations for each is set forth in KCP&L's Initial Brief, pp. 13-17 and 37-50.
143 Staff Brief, p. 45, ¶100.

Scenario 6 utilizes Staff's short-term, market-based avoided capacity cost and a NTG ratio of 0.9.[144] Under Staff's Scenario 6, the HER program results in a 0.89 TRC test score and 0.35 RIM test score.[145] For all other scenarios analyzed by Staff, the HER program passes the TRC test with scores above 1.0.[146] Although in all scenarios the RIM test scores are below 1.0, this is counter-balanced by a TRC test score of 1.34 under KCP&L's analysis. The wide variance between the Company's 1.34 TRC test score and Staff's 0.89 Scenario 6 TRC test score, on which its recommendation is based, is due to Staff's unsupported and artificially low avoided capacity cost value, as addressed above in section III(B) herein and in KCP&L's Initial Brief.[147]

(b) The Whole House Efficiency Program

62. Staff rejected the Whole House Efficiency ("WHE") program based on low TRC and RIM test scores. Under Staff's sensitivity analysis Scenario 6, which utilizes Staff's short-term, market-based avoided capacity cost and a NTG ratio of 0.9, the WHE program results in a 0.83 TRC test score and a 0.42 RIM test score.[148] In addition, Staff criticizes the program based on potential limited participation. According to Staff, "this residential program is not truly available to everyone."[149] Based on the KEEIA Report, Staff estimates the number of participants who can receive energy-efficiency measures under Option 1 is between 1,200 and 2,200 customers per program year.[150] Because only Option 1 participants are eligible for the Option 2 energy-efficiency measures, Staff characterizes the number of customers entitled to take advantage

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[144] *Id*.
[145] *Id*.; *see also* Prince Supplemental, p. 4.
[146] Prince Supplemental, p. 4.
[147] KCP&L's Initial Brief, p. 42.
[148] Staff Brief, p. 47, ¶104. (Staff uses an unreasonably low avoided capacity cost in arriving at its 0.42 RIM test score. Using KCP&L's analysis, the RIM is 0.61.)
[149] *Id*.
[150] KEEIA Report, Appendix A, p. A-8.

of Option 2 as “a miniscule fraction of KCP&L’s customer base.”[151] Option 3 is available to any customer who either opts to replace a less efficient air conditioning unit with a more efficient unit, or has to replace a non-working unit.[152] Staff opines that while all customers are eligible to participate in Option 3, the customers who will actually be able to participate in the program “appear to be limited.”[153]

63. Given this program’s strong results under the TRC test, the Commission should reject Staff's disapproval of KCP&L’s proposed WHE program based solely on a 0.61 RIM test score as arbitrary, particularly since the Commission previously indicated the TRC test, not the RIM test, is the primary test by which programs should be evaluated.[154] Staff's disapproval based on its own Scenario 6, its most punitive sensitivity analysis, should also be rejected.[155] The values used by Staff to evaluate programs under its Scenario 6 are inappropriate. Staff’s use of a short-term, market-based avoided capacity cost violates KEEIA’s mandate to value demand-side investments equal to traditional investments in supply and delivery infrastructure (that is, “steel in the ground”).[156] Additionally, Staff’s use of a 0.70 benchmark for passing the RIM test should be rejected as arbitrary.

64. With regard to Staff’s rejection of the program based on low participation, Staff made a number of assumptions about participation levels based on affordability not eligibility.[157] Stated another way, Staff rejected the WHE program, in part, because of its unsupported assessment that customers will not choose to participate due to the cost of some of the energy-

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[151] Staff Brief, p. 47, ¶104.
[152] KEEIA Report, p. 3-8; KEEIA Report, Appendix A, p. A-6.
[153] Staff Brief, pp. 47-48, ¶104.
[154] *See* 08-442 Docket Order Setting EE Policy Goals, at ¶38; and 08-442 Order, at ¶37.
[155] *See* KCP&L’s Initial Brief, pp. 38-39.
[156] *See* K.S.A. 66-1283(b).
[157] Staff Brief, pp. 47-48, ¶104

efficiency measures available under the program, namely, new central air conditioners and/or heat pumps.[158] The Commission should not reject the WHE program based on the cost of the measures. While the Company itself has estimated the number of customers it anticipates participating in any of the three Options available under the program, those estimates do not vitiate the fact that the program is available to all customers. Further, if participation is low, there are factors other than cost or affordability of the measure that could impact a customer's decision to participate; for example, need for the measure (or lack thereof), rented premise vs. home ownership, age of home, age of HVAC equipment, lack of interest in energy efficiency, among others. Many of these factors represent temporary conditions that could change at any time. Therefore, the Commission should not reject the program based on Staff's belief that customers won't participate. "Won't participate" is very different than "ineligible to participate." Because all customers are eligible, the Commission should not deny approval of the program on the basis of speculation over potential participation levels. Additionally, if participation is significantly greater than KCP&L projects, the Company will review that with the Advisory Group and can make adjustments to accommodate greater participation, either by using the proposed budget flexibility provisions or by requesting additional budget dollars from the Commission.

(ii) Business Programs

(a) The Business Energy Efficiency Rebate-Custom

65. Staff rejects the Business Energy Efficiency Rebate-Custom ("BEER-Custom") program based on measure ambiguity and risk of free-ridership.[159] Staff claims it was unable to evaluate KCP&L's estimated program costs or energy/demand savings for this program because

158 *Id*.
159 Staff Brief, at p. 50.

there are "an unknown number of participants installing an unknown number of unknown measures," so "any savings estimates or budget proposals are conjectural at best."[160] Staff also claims there is a high likelihood of free-ridership for the program because the obligation is on the customer to develop and propose projects.[161] It is Staff's position that if a customer has made the effort to design a cost-effective program, it is likely the customer will implement the program regardless of whether KCP&L provides a rebate. Further, Staff argues verifying free-ridership will be difficult as "90% of program participants receiving less than $10,000 in rebates will never be audited."[162]

66. Staff's speculative concern that high free-ridership might or could result under the BEER-Custom program is baseless.[163] The Company structured the program to limit free-ridership by denying projects that have a less than two-year payback.[164] That is, projects with a short payback period should hold sufficient inherent incentive for a customer to implement a measure without the need for an additional incentive through KCP&L's DSM programs. In addition, Staff ignores the Company's response to Staff Data Request No. 15,[165] which evidences the high NTG ratio (resulting from low free-ridership) in the Company's BEER-Custom program in Missouri.[166] Further, under the Company's benefit-cost test, the BEER-Custom program passes the TRC test with a score of 1.28 and meets Staff's RIM test score of 0.70. On balance, the Company's use of a two-year payback criteria, in addition to the use of the benefit-cost tests and recent experience with obtaining a high NTG ratio, prevents the high free-ridership concerns

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[160] *Id*.
[161] *Id*.
[162] *Id*.
[163] *See* KCP&L's Initial Brief, pp. 47-48.
[164] File Rebuttal, p. 10.
[165] *Id*., p. 11.
[166] *Id*., p. 10.

expressed by Staff.[167] Finally, the fact that the BEER-Custom program requires pre-approval should mitigate Staff's concerns with ambiguity.

(b) The Strategic Energy Management Program

67. Staff expressed concerns about the Strategic Energy Management ("SEM") program. Staff's concerns include the estimated participation, the low RIM test score, and the complexity of savings attribution.[168] KCP&L has addressed these issues in its Initial Brief.[169] Further, Staff refers to the results of the benefit-cost analyses using a range of inputs. Under Staff's most stringent and unrealistic sensitivity analyses, Scenarios 5 and 6, the program fails.[170] Using the Company's more appropriate avoided capacity cost, however, yields positive results. The Company's positive benefit-cost test scores, along with its savings tracking and reporting methodology, obviates Staff's concerns and, therefore, approval of the program is warranted.

(c) The Block Bidding Program

68. With regard to the Company's proposed Block Bidding program, Staff expressed concern about the perceived ambiguity of project measure eligibility, high free-ridership, and overstatement of savings by bidders to win the reverse auction.[171] As explained in KCP&L's Initial Brief[172], Staff's concerns are not warranted. As with the BEER-Custom program, Block Bidding has a set of defined criteria for the types of projects that are eligible to receive incentives. Without a program offering for open projects, a significant amount of unique and valuable energy savings project types can be overlooked. Also, the open project type serves more complex projects

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167 *Id*.
168 Staff Brief, pp. 51-52.
169 KCP&L's Initial Brief, pp. 48-49.
171 Staff Brief, pp. 52-53, ¶116.
171 Staff Brief, pp. 52-53, ¶116.
172 KCP&L's Initial Brief, pp. 49-50.

often implemented by large commercial or industrial customers.[173] In addition, because the customers must identify their project ahead of time and then determine the exact incentive rate they will need to overcome, free-ridership is minimized with the Block Bidding program, similar to BEER- Custom.[174] Finally, the potential for overstatement of energy savings are accounted for within the program design implementation rate assumptions.[175]

(d) The Small Business Direct Install Program

69. As regards the Small Business Direct Install ("SBDI") program, Staff states no concerns with overall program design. Further, Staff states the SBDI program is beneficial to participants.[176] Staff's only reason for rejecting the program stems from the scenario analyses performed for Staff by KCP&L.[177] The SBDI program results are strong for each scenario and pass the TRC test criteria of greater than 1.0, with the exception of Staff's worst sensitivity analysis, Scenario 6, which uses Staff's most stringent avoided capacity cost and NTG. Because the SBDI program is beneficial to participants, and given that Staff can find no reason to disallow the program other than a low benefit-cost test scores solely under Staff's avoided capacity cost scenario, disapproval of the program is not warranted.[178]

I. The Commission should not disregard or discount the comments of the public received in this docket, as recommended by Staff.

70. Staff states that the majority of the public comments received in this matter are supportive of KCP&L's proposal or DSM in general. Unfortunately, Staff then recommends the Commission discount those comments because they were not received by the Commission

173 File Rebuttal, p. 13.
174 *Id*., pp. 13-14.
175 *Id*., pp. 14-15.
176 Staff Brief, p. 55, ¶120.
177 *Id*.
178 File Rebuttal, p. 16; KCP&L's Initial Brief, p. 50.

pursuant to "traditional public comment notice mediums." Staff then speculates that the comments "may have be (sic) different" had the traditional medium been employed.[179]

71. Staff's position on the public comments is incorrect, speculative (in a manner contrary to all evidence in the case), and insulting to the members of the public who took the time and made the effort to provide the Commission with their input. KCP&L has been advising the Commission for years that its customers have expressed a desire for more DSM programs to give them the ability to better manage their electric consumption and bills, and so they can be a part of the effort to protect our environment. The formal comments filed in this docket are completely consistent with the representations made by KCP&L regarding customer demand for DSM, giving both the comments and KCP&L's representations *more* credibility, not less. The Commission should not assume customers did not understand what they were saying, or assume they did not have important relevant facts, or speculate that their comments would have differed if the Commission had used a different process.

J. Staff's arguments regarding the Clean Power Plan should be given no weight.

72. It is unclear why Staff would argue that compliance with the Clean Power Plan is not an appropriate consideration in evaluating the benefits of this filing.[180] While Staff may disagree with the likelihood that the Clean Power Plan will ultimately be implemented in its present form, it does not change the fact that some form of environmental standards and controls is always going to be a part of the American energy landscape. It is unnecessary to speculate on timing or outcome of litigation over the Clean Power Plan to know it is a relevant consideration in evaluating the benefits of proposed DSM programs.

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179 Staff Brief, p. 65, ¶142.
180 Staff Brief, p. 66, ¶¶143, 144.

K. Staff's calculations in response to the Commissioners' questions fail to recognize the reduced program portfolio associated with Staff and CURB avoided capacity cost recommendations.

73. The calculations Staff provided[181] in response to the Commissioners' question E[182] adjust only the avoided capacity cost and fail to recognize that using a different avoided capacity cost figure can impact the program portfolio. In this case, Staff and CURB have proposed use of lower avoided capacity costs than the long-term avoided capacity cost recommended by the Company. This, in turn, reduced the recommended portfolio of programs and therefore the benefits and costs of the portfolio, the throughput disincentive associated with the portfolio and the earnings opportunity associated with the portfolio. All of these differences must be taken into account. In **Attachment 1** to this Reply Brief, KCP&L has provided updated calculations using the same format as Staff's Brief Attachment B.[183] KCP&L's calculations reflect both the different avoided capacity costs and the impacts of those avoided capacity costs. CURB's proposed avoided capacity cost resulted in no recommended DSM programs; therefore, the resulting calculation is zero across the board. KCP&L did calculate the cost of KEEIA using Staff's proposed avoided capacity cost; however, as noted earlier in this Reply Brief, Staff's proposed figure is invalid as it contains costs that KCP&L advised should no longer be included. If those invalid components of

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[181] *See* Attachment B to Staff's Brief.

[182] Commissioners' Question E: Please provide what the impact on retail rates will be at the end of the three-year pilot period. Please provide analysis based upon KCP&L, Staff, and CURB's avoided cost and with and without the throughput disincentive.

[183] While KCP&L used Staff's format from its Brief for the tables, as noted previously, KCP&L disagrees with Staff's contention that TD is a customer cost of DSM for purposes of determining net benefits of the portfolio. Including TD as a cost without including the offsetting benefits of lower bills for customers leads to an incorrect, unbalanced view of the net benefits. When both are appropriately included, they offset.

Staff's proposed avoided capacity cost are removed, then the calculations for Staff's proposal would look similar to those for CURB's.

IV. ADDITIONAL RESPONSE TO CURB BRIEF

74. The positions taken by CURB in this docket make KEEIA a nullity. Contrary to the policy and goals of KEEIA, and contrary to the stated wishes of many of the customers CURB represents, CURB has decided that Kansas does not need meaningful DSM programs. This attitude is reflected in CURB's position on avoided capacity costs, program analysis, and its unreasonable objections to reasonable requests contained in KCP&L's Application that would make the DSM process more efficient and less costly.

A. Avoided Capacity Costs.

75. CURB proposes use of an avoided capacity cost that is so unreasonably low that it appears its purpose is only to guarantee the failure of the portfolio of programs proposed in the Application. CURB's avoided capacity cost is not supported by the evidence in the record, nor is it supported by reasonable analysis. Like Staff's avoided capacity cost, it is simply drawn from a previous KCP&L docket that is in no way transferable to this KEEIA Application.[184] While CURB does not engage in the same error as Staff by including transmission and distribution in the calculation,[185] CURB's number is as equally unsupported and flawed as Staff's for the same reasons set out in KCP&L's Initial Brief and in response to Staff in this Reply Brief.

76. CURB makes the same error as Staff by arguing that the avoided capacity cost should be based on short-term capacity contracts because KEEIA Cycle 1 is only a three-year program. Like Staff, CURB fails to understand that the benefits of KEEIA Cycle 1 will continue long after the three-year term has ended, and that KCP&L has proven its intent to continue

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[184] CURB Brief, p. 14, ¶34.
[185] CURB Brief, p. 17, ¶41.

thereafter with Cycle 2, Cycle 3, and so on, as it has done in Missouri. The evidence supports treating DSM as a long-term resource, and KEEIA mandates the Commission value it equally to traditional supply-side resources. CURB violates the mandates of KEEIA by using short-term capacity contracts to calculate avoided capacity costs because utility companies do not use short-term capacity contracts as a supply-side resource except when needed as a temporary bridge to meet demand until a reliable, long-term generation resource can be brought on line.

B. Program analysis - CURB errs by evaluating the Application on a total portfolio basis.

77. CURB rejected the entirety of the KEEIA Cycle 1 portfolio. Inconsistent with the 08-442 Order,[186] CURB did not evaluate the programs individually, but rather, rejected them all based on Ms. Harden's inappropriate and unreasonable analysis of the portfolio as a whole.[187] CURB's rejection extended to all of the proposed programs, even those which would have benefited her client's constituents, such as programs designed for low income residential customers and educational programs for all residential customers. The Commission previously advised that DSM programs are to be evaluated on a program-by-program basis rather than on a total portfolio basis alone.[188] Ms. Harden ignores this aspect of the Commission's previous decisions, while strictly applying prior Commission orders to support her arguments related to other issues, such as the use of the California DEER over the Company's proposed TRM.[189]

78. In its brief, CURB states it "approached measuring the TRC and RIM for KCP&L's application as a portfolio, versus measuring each individual DSM program, because KCP&L requested its DSM programs as a portfolio of programs (not as individual programs)."[190] This new

[186] M. Turner Rebuttal, pp. 23-24.
[187] Ives Rebuttal, p. 33; Harden Direct, pp. 14-15.
[188] M. Turner Rebuttal, pp. 23-24; Ives Rebuttal, p. 33.
[189] Harden Direct, pp. 9, 12.
[190] CURB Brief, pp. 16-17.

argument is raised by CURB for the first time in its brief. The 08-442 Order contemplates the filing of a portfolio of DSM programs but clearly states evaluation should occur on a program-by-program basis. Because CURB failed to comply with the 08-442 Order, it is now trying to justify its rejection of the entire KEEIA Cycle 1 portfolio when it failed to evaluate any of the programs. CURB's unsupported position to reject the entire KEEIA Cycle 1 portfolio should be completely disregarded on the basis that CURB failed to analyze any of the programs.

C. EM&V provider.

79. CURB indicates that it is not in the public interest to allow KCP&L to use Navigant as its EM&V provider.[191] CURB recites portions of previous Commission Orders addressing EM&V to support its position that Navigant should not be used as the EM&V provider for KCP&L's portfolio.[192] Navigant was selected as the EM&V auditor for the MEEIA Cycle 2 portfolio after conducting a rigorous selection process and KCP&L proposes to utilize Navigant for KEEIA Cycle 1. While KCP&L has explained to the Commission that use of Navigant would provide cost advantages, KCP&L has not contracted with Navigant for the KEEIA evaluation. It makes sense to use the same EM&V provider for all three of KCP&L's jurisdictions because the program portfolios for each jurisdiction are similar.[193] However, CURB ignores the rationale behind using Navigant and incorrectly asserts that Navigant lacks independence because it provided the initial program evaluation of the KEEIA filing.[194] Navigant did not provide any evaluation of the KEEIA filing.[195]

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[191] CURB Brief, p. 56.
[192] CURB Brief, p. 57, ¶138.
[193] KEEIA Report, p. C-1.
[194] CURB Brief, p. 57, ¶138.
[195] It is possible that CURB arrived at this misunderstanding as a result of Navigant doing the presentation to the parties during the EM&V technical conference in this docket where they explained the process they would use for the evaluation if chosen as the provider.

80. CURB also complains that KCP&L's proposal, which is supported by Staff, for the Commission to independently audit the EM&V study results either through an EM&V auditor or directly by KCC Staff, leaves out small parties like CURB as a practical matter due to CURB's limited budget.[196] CURB's fears that its own resource limitations (which are outside the power of KCP&L or the Commission to remedy) could relegate it to the role of spectator under KCP&L's proposal, but that is not likely to happen. It certainly has not been the case in the past or in this docket. The Commission should decide the EM&V provider issue based upon what the evidence shows is most efficient and practicable. Additionally, the process KCP&L has proposed for EM&V includes participation by CURB as a member of the Advisory Group.[197] Navigant is the obvious candidate, and should not be rejected for the reasons asserted by CURB.

D. Flexibility to adjust portfolio budget by ten percent.

81. CURB objects to KCP&L's request, which is supported by Staff, for flexibility to adjust its DSM budget up to 10% on a portfolio basis rather than on a program basis.[198] CURB dramatically argues that granting this request "essentially results in no Commission oversight regarding program budget limitations".[199] This is an unreasonable concern considering that the Commission remains fully advised on any adjustments in the budget that might occur under this provision, and Staff did not object to this request. The flexibility requested will reduce the resources the Company and the Commission must devote to these reviews while maintaining full ratepayer protection.[200] CURB's objection to the request is unreasonable and should be disregarded.

[196] CURB Brief, p. 57, ¶140.
[197] KEEIA Report, p. 1-9.
[198] CURB Brief, p. 58.
[199] CURB Brief, p. 58, ¶142.
[200] Tr. Vol. 1, M. Turner, pp. 174-177.

E. KCP&L welcomes party collaboration in developing, implementing and evaluating DSM.

82. CURB recommends the Commission deny 100% of KCP&L's proposed portfolio, requesting that the Commission instruct KCP&L to collaborate with the parties to develop optimal EE programs.[201] CURB claims that KCP&L did not work with Staff or CURB to develop the programs included in its KEEIA Cycle 1 filing and MEEIA Cycle 2 portfolio.[202] KCP&L views it differently. Technical conferences were held with all parties throughout this proceeding at which each aspect of the Application was explained and discussed, with the opportunity for suggestions and questions. Despite this opportunity, no real input from CURB was forthcoming during or after these sessions. Thus, CURB's assertion that the Company did not work with them in this case is puzzling, and should not serve as a reason to reject KEEIA Cycle 1.

83. As for future collaborations as DSM is implemented and grows in Kansas, KCP&L welcomes the opportunity to receive ideas and input from interested parties. This is also reflected in the process KCP&L set forth for an Advisory Group to meet twice a year to discuss progress, issues, etc.[203] However, such collaborations cannot be productive until the parties have received the Commission's decisions on threshold issues posited in this case, such as the appropriate level and approach to calculating avoided capacity costs, whether an earnings opportunity will be allowed, and cost recovery issues such as how the earnings opportunity and throughput disincentive will be structured. Because of the fundamental disagreements of the parties on these issues, further collaborative discussions prior to receiving answers to these issues from the Commission cannot be productive.

[201] CURB Brief, pp. 65-66.
[202] CURB Brief, pp. 65-66.
[203] KEEIA Report, p.1-9.

V. ADDITIONAL RESPONSE TO GAS UTILITIES' BRIEF

84. The gas companies propose the Commission adopt a policy of rejecting any DSM program that involves an appliance rebate.[204] Such a broad and prescriptive policy is not mandated or supported by KEEIA. Properly structured, reasonable appliance rebates are an effective tool in achieving demand and energy savings through DSM programs. The portfolio, as proposed by KCP&L, provides sufficient limitations on residential rebates adequate to address any reasonable fuel switching concerns or restrictions contained in KEEIA.

85. The gas companies also argue KCP&L's proposed business appliance rebate programs do not qualify as energy efficiency measures because the KEEIA definition of "energy efficiency" states that programs must "reduce the amount of energy required to achieve a given end use", and since KCP&L's business appliance rebate programs could allow a business customer to replace its existing natural gas furnace with an electric heat pump, it could "increase, rather than reduce, the net consumption of electricity by that retail electric customer.[205] Again, the gas companies try to interpret specific KEEIA provisions in isolation rather than viewing the statute as a whole. As addressed above in section II(D),[206] the definition of "energy efficiency" must be interpreted in the context of KEEIA's goal of offering to customers DSM programs that will allow them to become more efficient in their energy use than they would be otherwise. If offering a rebate to a business customer results in the customer installing a more efficient electrical heat pump than would have otherwise been chosen, the program has complied with KEEIA.[207]

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[204] Gas companies' Brief, pp. 1, 11. The gas companies argue that the Commission's Order in the 09-160 Docket "effectively banned utility's from providing customer funded appliance rebate payments," but that is not an accurate reading of the Order, as already addressed by KCP&L in its Initial Brief, pp. 45-46, and as addressed further in Section II(D) of this Reply Brief.

[205] Gas companies' Brief, pp. 2-4.

[206] *See also* KCP&L's Initial Brief, pp. 11-13.

[207] Tr. Vol. 1, File, pp. 195, 198. ("Where we are trying to exert our influence is to go from a baseline heat pump to a more efficient heat pump.")

VI. RESPONSE TO NHT GROUP

86. The NHT Group correctly states that KEEIA is a recognition that generating energy is not the sole means to meet customers' demand for electricity, and that DSM has ratepayer value comparable to brick and mortar investments.[208] CEP (part of the NHT Group) is the only party to this docket other than KCP&L who has had any meaningful direct contact with KCP&L's customers regarding their position on DSM and their desire to have the programs in KCP&L's portfolio available in Kansas like it is in Missouri.[209] NHT Group provided input from the public; something essentially ignored by other parties purporting to represent the interests of that public. Additionally, NHT Group included in its Brief a helpful listing of the Kansas customers who filed comments in the docket supporting the Application[210]. KCP&L hopes the Commission will consider this information in its deliberations and not discount it as Staff has recommended.[211]

VII. CONCLUSION

87. The Kansas legislature has stated the policy of Kansas on DSM – it is to be supported, promoted, and valued equally to supply-side resources unless the inherent differences in the two resources make equal treatment impracticable. KCP&L's proposed portfolio of DSM programs presented in this docket comply with the requirements of KEEIA and will achieve the goals of KEEIA. KCP&L requests the Commission approve the Application and establish a foundation that will allow KCP&L and other utility companies to move forward with offering DSM options to their customers. It is what our customers want; it is what the Legislature has endorsed; and it is good for Kansas.

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[208] NHT Group Brief, p. 1.
[209] NHT Group Brief, pp. 9-12 and Attachments #2-5.
[210] NHT Group. Brief, Attachment #1.
[211] Staff Brief, p. 65.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing has been electronically served this 22nd day of May, 2017 to all counsel of record in this case constituting official service and no hard copy will follow.

/s/ Roger W. Steiner

Counsel for Kansas City Power & Light Company

ATTACHMENT 1
Pages 1-4

THESE DOCUMENTS CONTAIN CONFIDENTIAL INFORMATION NOT AVAILABLE TO THE PUBLIC ORIGINALS FILED UNDER SEAL

Cost of KEEIA to KCP&L Customers with Throughput Disincentive and with $20 per kW Avoided Cost (CURB's Assumption)

Not Applicable as no programs are cost-effective at a $20 per kW Avoided Cost (CURB's Assumption) and CURB recommends denial of the entire portfolio and recovery mechanism.

ATTACHMENT 1
Pages 6-7

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