

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

DEC 22 2010



In the Matter of the Application of Kansas)
City Power & Light Company for Approval)
to Implement a Portfolio of Demand Side)
Management Programs Including)
Affordability, Energy Efficiency, Demand)
Response and Educational Programs, and to)
Implement a Rider for Recovery of Program)
Costs and Incentives Associated with this)
Portfolio.)

Docket No. 10-KCPE-795-TAR

**CURB's Response to the
Motion of Kansas City Power & Light to Amend Application or
Alternative Motion to Withdraw Application and Request for Expedited Order**

The Citizens' Utility Ratepayer Board (CURB) herein responds to the *Motion of Kansas City Power & Light to Amend Application or Alternative Motion to Withdraw Application and Request for Expedited Order*, filed with the Kansas Corporation Commission (KCC or Commission] on December 15, 2010. In this response, CURB respectfully moves the Commission to:

- (1) Deny the motion of Kansas City Power & Light (KCPL) to amend its application;
- (2) Find that KCPL has met its obligations to develop and implement demand response programs under the regulatory plan established in KCC Docket No. 04-KCPE- 1025-GIE, and that its obligation to offer these programs expired on December 1, 2010;
- (3) Grant KCPL's motion to withdraw its application; OR

IN THE ALTERNATIVE, if the Commission is unwilling to grant the above motions of CURB, then CURB respectfully moves the Commission to:

- (4) Accept KCPL's amended application, but confine the January 5 hearing to the single issue of whether KCPL should become an Efficiency Kansas partner through implementation of its Energy Saver Loan Program, and either:

- (a) Schedule a second hearing at a later date on the remaining issues—cost recovery mechanisms, performance incentives, and whatever programs KCPL is willing to go forward with; OR
- (b) Permit KCPL to withdraw the balance of its proposals.

A. Background

1. KCPL, which has expressed its unhappiness with the recent decision in its rate case, has determined that it no longer can take the risk that the Commission will not approve performance incentives, a cost recovery mechanism acceptable to the company and its full portfolio of proposed programs. The fact that the company is reluctant to continue offering demand response and energy efficiency programs except under its own terms was explicit in its application: KCPL made it clear that it intended to withdraw the application if the Commission did not approve all of the proposed programs AND the performance incentives AND a “more equitable and reasonable” cost recovery than the Commission had approved previously.

2. The other parties to the docket made numerous recommendations, including removal or modification of several programs in the portfolio, denial of the performance incentives, and offered alternative cost recovery mechanisms. KCPL recognized that with so little support for its proposals among the parties, the risk of approval of its application without modification had increased considerably. The company also recognized that the source of much of the dissatisfaction with KCPL’s proposal was that the other parties’ interpretations of previous Commission orders explaining its policy regarding cost recovery and performance mechanisms varied significantly from KCPL’s interpretation. So the company requested an advisory opinion from the Commission to resolve this interpretive deadlock, as well as a break in the procedural schedule to allow time for the

parties to attempt to forge an acceptable compromise. The Commission declined KCPL's requests.

3. The parties, recognizing that they were at an impasse, moved unanimously for a 60-day extension of the procedural schedule to conduct further negotiations, and requested the hearing be cancelled and rescheduled at a later date.

4. The Commission granted a 21-day extension of the deadline in the docket to February 28, but denied the parties' request to cancel the hearing.

5. The Commission's denial of a unanimous request for a reasonable extension of the schedule has created concern that a negotiated settlement of this docket, even if unanimous, might not be approved by the Commission. Thus, KCPL, which clearly viewed this development as indicating an even greater risk that its application would not be approved *in toto*, has now submitted an amended application. The company proposes a much smaller portfolio of programs, but with the same cost recovery and performance incentive proposals.

6. CURB presents three motions below, recommending that the Commission deny the amended application, permit KCPL to withdraw its original application and find that KCPL's obligations to offer demand side management and energy efficiency programs terminated with the expiration on December 1, 2010, of its regulatory plan.

7. In the event these motions are denied, CURB also proposes a fourth motion, which offers a couple of alternatives that would accommodate the Commission's interest in holding the hearing on January 5, while also accommodating the parties' interest in being adequately prepared for the hearing. The alternative would eliminate all issues but one to be heard at the January 5 hearing. This would eliminate having to address most of the parties' objections to KCPL's proposals, reduce the magnitude of the costs to be recovered, and thus make preparing for the

hearing on January 5, if not an attractive prospect to the parties, at least a less onerous one.

B. Motions

(1) The Commission should deny the motion of KCPL to amend its application.

8. CURB's position on the amended application is founded on one basic concept: making good decisions requires good data and sufficient time to analyze the data. Assuming that the Commission's intention to hold the hearing on January 5 is firm, CURB must recommend that the Commission deny KCPL's motion to amend its application because there is simply not enough data, nor enough time before the hearing for the other parties to gather and analyze sufficient data to determine whether KCPL's amended application should be approved. Having a hearing on the amended application before the parties' witnesses can adequately prepare to answer questions with confidence in their answers is pointless. With sufficient time before the hearing, CURB might come to a different conclusion, but under the current schedule, there are simply too many unanswered questions.

9. Here are some of the unanswered questions that concern CURB:

- With no supporting data or information, KCPL eliminated three of its DSM programs (Energy Star New Homes, Cool Homes, and C&I Rebate program). KCPL's amended portfolio of programs now includes seven programs (Energy Saver Loan program, Energy Optimizer, MPower, Low Income Weatherization, Home and Business Energy Analyzers, and Building Operator Certification). However, the five-year budget for the amended portfolio of programs has been reduced over 77% from KCPL's original filing. KCPL provides no supporting data or information that supports a 77% reduction in program budgets. Without sufficient time to collect and analyze the data supporting KCPL's amended portfolio of programs, CURB cannot make a recommendation to the Commission as to whether these programs meet the Commission's goals for energy-efficiency.
- Appendix D to KCPL's Amended application indicates that the five-year budget for the Energy Optimizer program has been reduced to include only the maintenance of installed thermostats. However, KCPL's original application estimated that 12,266 new thermostats would be installed over the next five years. KCPL's amended application does not address

this substantial change to the Energy Optimizer program. Without sufficient time to collect and analyze the data supporting KCPL's changes to its Energy Optimizer program, CURB cannot make a recommendation to the Commission as to whether this program meets the Commission's goals for demand response programs.

- KCPL's amended application does not provide an updated cost-benefit analysis of any of its proposed DSM programs. Considering that KCPL is reducing the budget of its portfolio of programs by more than 77%, the benefit-cost analyses have more than likely experienced significant changes as well. Without sufficient time to collect and review the updated benefit-cost analyses, CURB cannot determine whether KCPL's portfolio of programs makes cost-effective use of energy-efficiency dollars.
- KCPL's Amended Application does not provide an updated analysis of the bill impacts for its portfolio of DSM programs. Without sufficient time to collect and analyze the data relating to bill impacts from KCPL's proposed portfolio of DSM programs, CURB cannot make a recommendation to the Commission.
- KCPL's Amended Application does not provide an estimate of the incentives it would receive through its performance incentive mechanism, nor does it indicate how its proposed portfolio of DSM programs meets the Commission's requirements for performance incentives. Without sufficient time to collect and analyze the data supporting performance incentive requested in KCPL's amended portfolio of programs, CURB cannot make a recommendation to the Commission as to whether KCPL's programs are eligible to receive a performance incentive or whether a performance incentive makes sense for this portfolio of DSM programs.

Given these and other questions, CURB cannot possibly make a determination of whether KCPL's amended application should be approved. And given the time constraints, these and other questions that may arise during the analysis of data responses provided by the company will not be answered in time for the hearing. CURB has no option other than to recommend that the Commission deny the company's amended petition.

- (2) The Commission should find that KCPL has met its obligations to develop and implement demand response programs under the regulatory plan established in KCC Docket No. 04-KCPE-1025-GIE, and that its obligation to offer these programs expired on December 1, 2010.**

10. KCPL's regulatory plan ended when the ruling on its recent rate case was issued. With the expiration of the regulatory plan, KCPL's obligation to offer energy-efficiency and demand response programs expired, as well. Until the legislature makes offering such programs mandatory, KCPL has the option of continuing current programs or terminating them. CURB agrees with KCPL that the company may terminate or wind down programs that it does not intend to continue, consistent with the expiration dates of its current agreements with vendors. CURB assumes that if the company seeks to recover through its energy efficiency rider filings any unbudgeted costs incurred as a result of terminating programs prematurely, that such costs will be thoroughly scrutinized in the course of reviewing the company's filings.

(3) The Commission should grant KCPL's motion to withdraw its original application.

11. KCPL made it clear in its original application that it retained the right to withdraw the application if the Commission chose not to approve it as filed. While CURB believes it is prudent to point out that no party making a request of the Commission is entitled to a guaranteed 100%-positive outcome, in circumstances where the party has requested permission to take an action that is entirely voluntary, the party should be able to withdraw that request if the Commission orders modifications to that request. If KCPL is not willing to go forward with any modifications to its proposals, then KCPL should be permitted to withdraw. A party making requests of the Commission has the burden to come forward with evidence supporting its request. If KCPL wants to withdraw the evidence that supported its request, it is within the right of the

company to do so. The Commission should grant KCPL's motion to withdraw its original application.

Alternative Motion

12. In the event that the Commission declines to grant the above motions, CURB respectfully offers the following alternative motion:

(4) The Commission should accept KCPL's amended application, but should confine the January 5 hearing to the single issue of whether KCPL should become an Efficiency Kansas partner, and either:

(a) Schedule a second hearing at a later date on the remaining issues—cost recovery mechanisms, performance incentives, and whatever programs KCPL is willing to go forward with; OR

(b) Permit KCPL to withdraw the balance of its proposals.

In spite of all the controversies that have been generated by KCPL's application, KCPL's request to become an Efficiency Kansas partner has generated no controversy whatsoever. If the parties must prepare hastily for a hearing on January 5, preparing for a hearing on a single, non-controversial issue would be a much more reasonable burden on those parties. Thus, CURB respectfully moves that the Commission order that the January 5 hearing will be limited to determining whether KCPL should become an Efficiency Kansas partner by implementing its Energy Saver Loan Program.

13. The Commission could resolve the remaining issues in the docket by ordering a second hearing to be held at a later date on the remaining issues—cost recovery mechanisms, performance incentives, and whatever programs KCPL is willing to go forward with, or the

Commission could resolve the remaining issues by allowing KCPL to withdraw the balance of its proposals.

14. Of course, KCPL ultimately has the choice of whether to go to hearing on a single program, but the company might be amenable to resolving this one issue, and either withdrawing the balance of the petition, or agreeing to a delay of the remaining issues to a later date.

15. However, the issues of what kind of cost recovery mechanism and performance incentives should or should not be granted cannot possibly be dealt with in this docket in the time remaining to prepare for the hearing. If these issues are to be heard at all, they should be heard after the parties have had the opportunity to gather and analyze the data pertinent to the amended petition that is currently before the Commission for consideration. Limiting the January 5 hearing to the single issue of whether KCPL should become an Efficiency Kansas partner by implementing its Energy Saver Loan Program would relieve the time constraints imposed on the parties to prepare for the hearing, while satisfying the preference of the Commission to issue a ruling prior to March 1, 2012.

16. Therefore, CURB respectfully requests that the Commission grant the above motions, or grant it any other such relief that would be appropriate to relieve the concerns that CURB has discussed herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

10-KCPE-795-TAR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, electronic service, or hand-delivered this 22nd day of December, 2010, to the following:

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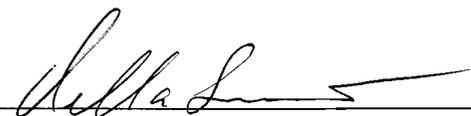
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