

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

In the Matter of Kansas City Power &)
Light's Application to Deploy and Operate)
its Proposed Clean Charge Network) Docket No. 16-KCPE-160-MIS

POST-HEARING BRIEF OF THE CITIZENS' UTILITY RATEPAYER BOARD

COMES NOW, The Citizens' Utility Ratepayer Board (CURB) and respectively submits its *Post-Hearing Brief* pertaining to Kansas City Power and Light's (KCP&L) proposed Clean Charge Network (CCN) electric vehicle (EV) charging station program in Kansas. As set forth below, CURB recommends that the Commission deny approval of KCP&L's CCN project, including recovery of costs of its CCN program in base rates as part of its upcoming abbreviated rate case.

I. Introduction

A. Background

1. On June 17, 2015, in Docket 15-KCPE-116-RTS, Parties¹ filed with the State Corporation Commission of the State of Kansas (Commission) a Joint Motion for Approval of Unanimous Partial Settlement Agreement on Revenue Requirement (Settlement). The Settlement included an agreement by the Parties to open a generic docket to evaluate and investigate the issue of EV charging stations.²

2. On September 24, 2015, KCP&L, Commission Staff (Staff), and CURB filed in this docket a Joint Petition to Open a General Investigation Docket requesting the Commission

¹ Parties to the Settlement comprised of KCP&L, Commission Staff, CURB, and Midwest Electric Consumer Group.

² See Docket 15-KCPE-116-RTS, Joint Motion for Approval of Unanimous Partial Settlement Agreement on Revenue Requirement, p. 11, ¶ 10 (June 17, 2015).

open a docket to investigate issues related to EV charging stations.³

3. On February 2, 2016, the Commission, in this Docket, issued its Order Opening Docket (Order) to evaluate and investigate KCP&L's Clean Charge Network (CCN).⁴

4. On February 16, 2016, KCP&L filed its Application requesting approval of its CCN, electric vehicle (EV) charging station tariff, and approval to include costs of the CCN program in KCP&L's base rates in the upcoming abbreviated rate case.⁵ More specifically, KCP&L is asking for Commission approval to "include the Kansas jurisdictional share of the costs, both capital and O&M, of its CCN program in base rates as part of the upcoming abbreviated rate case."⁶

5. The total projected capital costs of KCP&L's CCN is \$16.6 million, in which approximately \$5.6 million would be invested in Kansas.⁷ KCP&L estimates that the annual revenue requirement associated with the CCN program to be about \$850,000.⁸ KCP&L also estimates that the annual operations and maintenance (O&M) expense for the project to be approximately \$250,000.⁹

6. KCP&L's CCN includes the installation of approximately 1,000 EV charging stations in its service territory.¹⁰ KCP&L plans on installing 315 EV charging stations at host locations in its Kansas Service territory, with a 350 EV station cap.¹¹ Commission approval is

³ See Joint Petition to Open General Investigation Docket (September 24, 2015) (Joint Petition).

⁴ See Order Opening Docket (February 2, 2016) (Order).

⁵ See Application for Kansas City Power & Light Company, p. 1 (February 16, 2016) (Application).

⁶ Direct Testimony of Darrin R. Ives on Behalf of Kansas City Power & Light Company, p. 14 (February 16, 2016) (Ives Direct).

⁷ Direct Testimony of Charles A. Caisley on Behalf of Kansas City Power & Light Company, p. 8 (February 16, 2016) (Caisley Direct).

⁸ Rebuttal Testimony of Darrin R. Ives, p. 23 (June 16, 2016) (Ives Rebuttal).

⁹ Ives Direct, p. 13.

¹⁰ *Id.*

¹¹ *Id.*

required for additional stations if the cap is met.¹² Fifteen of the EV charging stations will be Level 3 charging stations which will be capable of charging an empty EV battery to 80% capacity within 20 minutes.¹³ The remainder of the charging stations will be Level 2 charging stations which will provide a 20-25 mile capacity for every hour charged.¹⁴

7. KCP&L is proposing to charge \$0.1088 per kWh for Level 2 usage.¹⁵ Additionally, KCP&L is proposing \$0.1180 for Level 3 usage.¹⁶ In addition to these rates, applicable riders and surcharges would apply.¹⁷

8. On March 17, 2016, CURB filed its Petition to Intervene and Motion for Protective Order and Discovery Order, explaining KCP&L's CCN may substantially affect the rates paid, and services received by residential and small commercial ratepayers.¹⁸

9. On March 29, 2016, the Commission issued its Order Granting CURB's Petition to Intervene.¹⁹

10. On June 6, 2016, ChargePoint, Inc. (ChargePoint) filed its Petition for Leave to Intervene.²⁰

11. On June 16, 2016, the Commission issued its Prehearing Officer Order Granting Limited Intervention to ChargePoint, Inc.²¹

¹² *Id.*

¹³ Caisley Direct, p. 4.

¹⁴ *Id.*

¹⁵ Ives Direct, p. 9.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ CURB's Petition to Intervene and Motion for a Protective Order and Discovery Order, p. 2, ¶ 5 (March 17, 2016).

¹⁹ Discovery/Protective Order; Order Designating Prehearing Officer; Order Granting CURB's Petition to Intervene (March 29, 2016).

²⁰ Petition for Leave to Intervene of ChargePoint, Inc. (June 6, 2016).

²¹ Prehearing Officer Order Granting Limited Intervention to ChargePoint, Inc. (June 16, 2016).

B. Evidentiary Record

12. On February 16, 2016, KCP&L filed direct testimony of four witnesses²² in support of its Application.²³ In their testimony, KCP&L witnesses explained the CCN program, the proposed new tariff, and proposed cost recovery methods for the CCN program.²⁴ KCP&L witnesses also addressed regulatory policy issues related to KCP&L's CCN program, which included threshold questions presented by the Commission in its Order.²⁵

13. On June 6, 2016, Staff filed its direct testimony of two witnesses, Joshua P. Frantz and Dr. Robert Glass.²⁶ Staff opposes cost recovery of KCP&L's CCN program in base rates.²⁷ Mr. Frantz explained that there is no need, or demand for the program and thus EV charging is not necessary in KCP&L's service territory to provide sufficient and efficient service, along with the CCN not being used or required to be used.²⁸ Dr. Glass also explained in his testimony that there is a lack of demand or need for the CCN program, labeling it a speculative investment.²⁹

14. On June 6, 2016, CURB filed its Direct Testimony of Andrea Crane.³⁰ CURB also opposes cost recovery of KCP&L's CCN program in base rates.³¹ Ms. Crane explained that there is no need, or demand for the CCN program.³² Ms. Crane further explained that the program would result in cross-subsidization of EV owners by all KCP&L Kansas customers, that technology may become obsolete in the near future, and the proposed program is potentially anti-

²² Ives Direct; Caisley Direct; Direct Testimony of Kristin L. Riggins on Behalf of Kansas City Power & Light Company (February 16, 2016) (Riggins Direct); Direct Testimony of Daniel Bowermaster on Behalf of Kansas City Power & Light Company (February 16, 2016) (Bowermaster Direct).

²³ See Application.

²⁴ See Ives Direct, p. 2.

²⁵ See *id.* at p. 3.

²⁶ Direct Testimony of Joshua P. Frantz on Behalf of the Kansas Corporation Commission (June 6, 2016) (Frantz Direct); Direct Testimony of Robert Glass on Behalf of the Kansas Corporation Commission (June 6, 2016) (Glass Direct).

²⁷ Glass Direct, p. 26.

²⁸ Mr. Frantz's testimony is not limited to these arguments. See Frantz Direct, pp. 4-19, 25-30.

²⁹ Dr. Glass's testimony is not limited to these arguments. See Glass Direct, pp. 3, 7, 8.

³⁰ Direct Testimony of Andrea Crane on Behalf of CURB, p. 5 (June 6, 2016) (Crane Direct).

³¹ See Crane Direct, p. 34.

³² Ms. Crane's testimony is not limited to these arguments. See Crane Direct, p. 5.

competitive.³³

15. On June 16, 2016, KCP&L filed Rebuttal testimony of Darrin Ives and Charles A. Caisley.³⁴ In its rebuttal testimony KCP&L argues that there is a demand for EV charging stations and the CCN program will benefit all customers.³⁵

16. On June 28-29, 2016, the Commission held an evidentiary hearing in this matter. At hearing, a total of eight witnesses testified on behalf of CURB, Staff, KCP&L and ChargePoint.

II. Issues Before the Commission

17. In this docket, the Commission has asked the parties to examine policy concerns related to KCP&L's CCN program.³⁶ In addition to policy concerns, the parties were directed, in the Order, to address specific legal questions in their "testimony" to assist the Commission in evaluating KCP&L's CCN program.³⁷ Staff, KCP&L and CURB agree that some of the legal questions, in the Order, are policy questions, rather than legal.³⁸ KCP&L and Staff chose to address questions a. through d., from the Order, in a separate legal brief filed before the evidentiary hearing.³⁹

18. CURB chose not to file a separate legal brief, but instead chose to file testimony addressing questions e. through k. from the Order.⁴⁰ CURB did not feel that it could address questions a. through d. in testimony, as directed in the Order, but would instead address those

³³ *Id.*

³⁴ Ives Rebuttal; Rebuttal Testimony of Charles A. Caisley (June 16, 2016) (Caisley Rebuttal).

³⁵ *See* Ives Rebuttal, p. 3.

³⁶ *See* Order, pp. 2-3.

³⁷ *See* Order, pp. 3-4.

³⁸ *See* Application, Brief of Kansas City Power & Light Company on Legal Issues, p. 1, n.1 (KCP&L Legal Brief); Commission Staff's Brief on Legal Issues, p. 1, n.2 (June 6, 2016) (Staff Legal Brief).

³⁹ Staff chose to address question f., in their legal brief, in addition to addressing questions a. through d. *See* Staff Legal Brief; *See* KCP&L Legal Brief.

⁴⁰ *See* Crane Direct; *See* Order, p. 4.

questions in CURB's Post-Hearing Brief.⁴¹ Although CURB believes it has the right to address questions a. through d. in its Post-Hearing Brief, pursuant to the plain language of the Order, CURB chooses to not address those questions at this time.⁴² CURB will address policy concerns, in its analysis below, including e. through k. from the Order.⁴³

III. Arguments and Authorities

19. As stated above, CURB recommends that the Commission deny KCP&L's recovery of the Kansas jurisdictional share of costs, both capital and O&M, of its CCN program in base rates as part of the upcoming abbreviated rate case. More specifically, CURB recommends that the Commission reject KCP&L's recovery of costs of its CCN program in base rates because; 1) allowing KCP&L to recover those costs is not in the public's interest; and 2) there are general conflicts that exist between KCP&L's implementation of its CCN program and current Kansas policy. CURB recognizes the Commission as the policy maker and provides reasonable pricing alternatives in subsection C, should the Commission determine that KCP&L can recover the Kansas jurisdictional costs relating to its CCN.

A. It is not in the Public's Interest to Allow KCP&L to Recover Costs of its CCN in Base Rates

20. KCP&L's implementation of its CCN program is not in the public's interest. As a result, KCP&L should be denied cost recovery because; 1) KCP&L has not demonstrated that there is a need or demand for its CCN program and as a result the CCN does not meet the K.S.A. 66-128 requirement of "used and required to be used"; 2) KCP&L should not be able to enter into a potentially competitive marketplace because it has an unfair advantage and could potentially stifle the market; and 3) KCP&L's CCN results in cross-subsidization leading to rates

⁴¹ Order, p. 4, ¶ 8.

⁴² See Transcript of the Proceedings, p. 7 (Tr.); See Order, p. 4.

⁴³ CURB will address issues e. through k. throughout its analysis, as opposed to each issue being addressed individually. Order, pp. 3-4.

that are “unreasonably discriminatory” and “unduly preferential”.⁴⁴

1. KCP&L has not demonstrated that there is a need or demand for its CCN program and as a result the CCN does not meet the K.S.A. 66-128 requirement of “used and required to be used”

21. In Kansas, every electric public utility is required “to furnish reasonably efficient and sufficient service and facilities” in its service territory.⁴⁵ In furnishing “reasonably efficient and sufficient service” the Commission has the power to require an electric public utility to establish “just and reasonable” rates.⁴⁶ Furthermore, the Commission has the power to require all electric public utilities “to establish and maintain just and reasonable rates when the same are reasonably necessary in order to maintain reasonably sufficient and efficient service from such electric public utilities.”⁴⁷ The United States Supreme Court has stated that “the fixing of ‘just and reasonable’ rates involves a balancing of the investor and the consumer interests.”⁴⁸

22. In a rate investigation “there must be a determination of (1) rate base, (2) a fair rate of return, and (3) reasonable operating expenses.”⁴⁹ In order for an electric public utility to include property into rate base, the property must be “used and required to be used.”⁵⁰ More specifically, the Kansas Court of Appeals has stated that, “capital costs for new plants, generators, or other facilities are allowed into rates only when they become ‘used and required to be used’ in services to the ratepayers.”⁵¹ If the Commission determines that a utility invests in unnecessary infrastructure or infrastructure that is far in excess of current or future needs, then that infrastructure is not “used and required to be used” and the Commission must exclude those

⁴⁴ K.S.A. 66-101b.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944).

⁴⁹ *Sw. Bell Tel. Co. v. State Corp. Comm'n*, 192 Kan. 39, 47, 386 P.2d 515, 524 (1963).

⁵⁰ See K.S.A. 66-128(a).

⁵¹ *Kansas Indus. Consumers Grp., Inc. v. State Corp. Comm'n of State of Kan.*, 36 Kan. App. 2d 83, 97, 138 P.3d 338, 350 (2006).

costs from rate base.⁵²

23. KCP&L intends on installing and operating 1,000 EV charging stations in its service territory, approximately 315 to 350 of which will be located in KCP&L's Kansas service territory.⁵³ According to testimony, KCP&L's CCN is "capable of easily supporting more than 12,000 EVs with little or no waiting and as many as 25,000 EVs with moderate wait times."⁵⁴ Furthermore, KCP&L boasts that "upon completion it will be the largest fully deployed utility-owned EV charging station installation in the United States."⁵⁵

24. KCP&L states that it is, "installing EV charging stations based upon regional EV trends that indicate EV adoption is continuing to increase and that the installation of charging infrastructure positively impacts EV adoption."⁵⁶ Essentially KCP&L is arguing that there is a need or demand for its CCN program. The problem with KCP&L's argument is that the evidence does not support that there is any need or demand for the CCN program, in fact the evidence supports the opposite.

25. To begin with, EV adoption is low in KCP&L's service territory. According to Ms. Crane's direct testimony, and CURB Exhibit 7, it's estimated that only 969 EV's have been sold in KCP&L's service territory since 2010.⁵⁷ To put into context how low that adoption is, KCP&L serves over 800,000 customers in its service territory.⁵⁸ What is really striking is that EV adoption decreased by approximately 103 vehicles from 2014 to 2015.⁵⁹ At hearing, Mr.

⁵² See K.S.A. 66-128; See *Kansas Gas & Elec. Co. v. State Corp. Comm'n*, 218 Kan. 670, 674, 544 P.2d 1396, 1400 (1976).

⁵³ Ives Direct, p. 13.

⁵⁴ Caisley Direct, p. 4.

⁵⁵ Caisley Direct, p. 5.

⁵⁶ Ives Rebuttal, p. 5.

⁵⁷ Crane Direct, p. 10.

⁵⁸ Tr., p. 179.

⁵⁹ From 2013 to 2014 EV's sold in KCP&L's service territory increased from approximately 350 to 551 an increase of 201 vehicles. From 2014 to 2015 EV's sold in KCP&L's service territory increased from approximately 551 to 649 an increase of only 98 vehicles, down 103 vehicles from the year prior. CURB Exhibit 7.

Caisley stated that he believed 1,212 electric vehicles had been registered to date, however, neither he nor KCP&L provided any evidence into the record substantiating that number.⁶⁰

26. Staff agrees with CURB that EV sales are low and thus there is no need or demand for the CCN program.⁶¹ Mr. Frantz, in his direct testimony, states, “. . .I do not believe that the charging stations of the CCN will be useful or ‘used or required to be used’ throughout the expected lifespan of the project. This is largely because of the low current EV sales. . ..”⁶²

Additionally, Dr. Glass, Staff’s Chief of Economics and Rates states that:

EV sales in the U.S. declined from 118,773 in 2014 to 113,869 in 2015. The decline in sales is, at least in part, because of the fall in gasoline prices in the past year. In the KCP&L service territory, EV sales were also trending down in 2015.⁶³

27. In his direct testimony, Mr. Frantz also points out a startling fact relating to low EV adoption. Mr. Frantz states that the, “CCN will actually contain more charging stations than the number of EVs owned in KCP&L territories.”⁶⁴ KCP&L has not only built out a network that can support approximately 25,000 EV’s while serving only 967 EV’s, but it has also built out a network that at the present time contains more EV charging stations than vehicles themselves. Given that EV adoption is low, as stated above, there is not currently a demand for EV charging in KCP&L’s service territory.

28. Second, aside from the record showing that EV adoption is low, the evidence also indicates that future demand for EV’s is speculative at best. In Mr. Bowermaster’s direct testimony, he provides several scenarios for EV adoption through the year 2025, those numbers

⁶⁰ Tr., p. 34.

⁶¹ Frantz Direct, p. 9.

⁶² *Id.*

⁶³ Glass Direct, p. 8.

⁶⁴ Frantz Direct, p. 9.

range from approximately 5,559 to 73,533 EV's.⁶⁵ Given that Mr. Bowermaster's estimates for future EV sales are so wide in range, it is very hard to see how KCP&L's decision to build-out such an expansive CCN program is justifiable. Staff also agrees with CURB that future adoption is speculative at best. In his direct testimony, Dr. Glass, states that:

KCP&L has confused interest in EV's with demand for EV's. Further, KCP&L failed to present a forecast of EV adoption in its service territory. Without an estimate of the EV adoption rate, any guess as to the demand for charging stations and for the CCN is pure speculation.⁶⁶

To expand on KCP&L's lack of forecast Dr. Glass states:

EPRI's projections can be used to estimate the impact of an assumed particular EV growth path. The economic results of the tool are basically as valid as the assumed growth path. As noted above, EPRI characterized the projections as "highly speculative" and provided several caveats explaining that its projections are not forecasts.⁶⁷

29. The evidence clearly shows that current EV ownership is low. Furthermore, the evidence clearly shows that future EV adoption is speculative at best. KCP&L has failed to provide a reasonable forecast. In spite of these clear indicators, KCP&L argues that there is still customer demand for the CCN program. Mr. Ives, KCP&L's Vice President of Regulatory Affairs, states in his rebuttal testimony that, "Despite Staff's and CURB's questioning with regard to the need for the program, the fact remains that customers have requested and are utilizing the electric vehicle ('EV') charging stations installed as part of KCP&L's CCN."⁶⁸ The problem with that assertion is that the record shows that KCP&L customers have not requested this service.

30. Ms. Crane states in her direct testimony that, "there is no evidence that EV customers in Kansas are having difficulty charging their vehicles, or that such customers are

⁶⁵ Bowermaster Direct, Schedule A-I, p. 27.

⁶⁶ Glass Direct, p. 7.

⁶⁷ Glass Direct, pp. 12-13.

⁶⁸ Ives Rebuttal, p. 2.

looking to KCP&L to facilitate development of an EV charging market.”⁶⁹ Customers in KCP&L’s service territory did not approach the company demanding this service, and if they had KCP&L admits that they did not track those requests.⁷⁰

31. In response to whether or not KCP&L tracks requests for EV charging stations, Ms. Crane stated that, “According to the response to CURB-36, the Company does not track such requests. Thus, this program is not being driven by public demand from customers in the Company’s service territory for EV charging stations.”⁷¹ Moreover, at hearing, KCP&L witness Mr. Caisley admitted that the company did not track such requests:

Q. Okay. Mr. Caisley, according to response to DR 36 from CURB, subject to check, would you agree that the Company does not track driver requests for electrical vehicle charging stations?

A. You say driver requests?

Q. Yes, sir.

A. Residential driver requests or commercial or?

Q. Just driver requests in general?

A. Yeah, we don't, we don't keep a running list. We do track and respond to requests when -- particularly when businesses want them and have demonstrated a need for them.⁷²

32. In addition to not tracking customer requests, KCP&L also did not provide customer research specific to its Kansas service territory. KCP&L argues that “. . .customer research coupled with a myriad of national studies conducted on the subject of EV’s, shows significant customer interest in electric vehicles.”⁷³ However, as mentioned above, none of the research provided in the record conducted on demand was Kansas specific. According to Ms.

⁶⁹ Crane Direct, p. 13.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Tr., p. 44.

⁷³ Caisley Direct, p. 10.

Crane's direct testimony:

When asked in discovery to provide the customer research upon which he was relying, Mr. Caisley responded with three articles that were not specific to the Kansas territory and were in fact generic articles on electric car sales. Thus, the Company provided no customer research to demonstrate that customer demand in Kansas is driving the program.⁷⁴

Moreover, at hearing, in response to whether CURB DR 21 contained any information specific to KCP&L's service territory, Mr. Caisley admitted that, "No. The DR refers to the national pace of EVs outpacing the first 36 months of hybrid vehicles. . ." ⁷⁵ There is a stark difference between trends that are happening at a national level, as opposed to trends happening at a more regional and local level.⁷⁶ KCP&L touts that its CCN program is going to accelerate EV adoption in its Kansas service territory,⁷⁷ yet does not provide a shroud of evidence that supports this contention.

33. Aside from not tracking customer requests and not providing customer research specific to its Kansas service territory, the evidence also shows that KCP&L's customer surveys related to demand for the CCN program do ". . .not demonstrate either a high demand for electric charging stations or indicate that lack of such stations is responsible for the low demand for electric vehicles."⁷⁸ In Ms. Crane's Direct testimony, she points this out specifically, ". . .when asked if they would consider purchasing an electric vehicle if KCP&L expanded charging stations in their area, 64% of the respondents answered 'No'."⁷⁹

34. CURB also points out that KCP&L's customer surveys may not have been conducted objectively.⁸⁰ CURB has concerns about the way in which KCP&L selected its

⁷⁴ *Id.* at p. 14.

⁷⁵ Tr., p. 44.

⁷⁶ There is no indication that the Kansas EV market is similar to the California EV market. Crane Direct, p. 20.

⁷⁷ Caisley Direct, pp. 10-11.

⁷⁸ Crane Direct, p. 16.

⁷⁹ *Id.*

⁸⁰ *See* Crane Direct, pp. 14-16.

Customer Advisory Panels to determine demand for the CCN.⁸¹ Moreover, CURB has concerns about the way in which the surveys were introduced and distributed to KCP&L’s customers to determine demand for the CCN.⁸²

35. KCP&L asserts that it must build-out to meet EV demand, as well as, to remove barriers to EV adoption. Staff witness, Mr. Frantz, sums up the problem with KCP&L’s assertion, “. . .KCP&L did not construct the CCN to meet current charging demand, but rather as a speculative investment to create a demand for EVs (or so KCP&L hopes).”⁸³ KCP&L argues that it “locates and constructs facilities throughout its territory in anticipation of demand. . .this can occur with initial build-out of new commercial business locations and residential subdivisions.”⁸⁴ KCP&L likens its CCN to line extension provisions found in its tariff:

KCP&L’s line-extension provisions of its tariff (like most, if not all, Kansas utility companies) socializes a portion of the costs incurred to build a line to a new customer’s location. The first quarter mile of distribution line installed to serve a prospective customer is paid for by all customers in base rates. KCP&L’s tariff also allows the Company to consider whether construction to serve a new customer will likely result in load-related benefits to the system, in which case the Company has the option of socializing more of the costs than just the first quarter mile of line. The concept is the same for the CCN.⁸⁵

36. There are many problems with this argument. First, according to KCP&L’s tariff, regarding line extensions, the “Company will make free extensions of its distribution lines **as and when necessary to serve** any and all prospective customers. . .”⁸⁶ As was previously stated, KCP&L has not provided any evidence that there is a need or demand for EV charging, or

⁸¹ *Id.*

⁸² *Id.*

⁸³ Frantz Direct, p. 5.

⁸⁴ Ives Rebuttal, p. 5.

⁸⁵ Initial Post-Hearing Brief of Kansas City Power & Light Company, p. 32 (July 15, 2016) (KCP&L Post-Hearing Brief); KCP&L Hearing Exhibit No. 3, General Rules and Regulations Applying to Electric Service, Section 8 - Line Extensions and Distribution Policies (KCP&L Exhibit #3).

⁸⁶ KCP&L Exhibit #3.

evidence that customers are demanding this service. Therefore, because KCP&L has not proven that it is “necessary to serve” EV customers, KCP&L is not required and should not build-out its distribution system to meet non-existent demand. Furthermore, KCP&L should not be allowed to put those costs in base rates and arguably does not have that right according to its tariff.⁸⁷

37. In addition to not meeting the requirements set forth in its line extension tariff, KCP&L also fails to point out that there are mechanisms put in place, within the tariff, to prevent the build-out of excess facilities.⁸⁸ Those mechanisms protect KCP&L customers from paying for excess facilities in base rates.⁸⁹ According to the tariff:

In those instances where a Customer requests facilities beyond that which would normally be provided, this shall be considered an **Excess Facilities Request**. Where the Company chooses to provide facilities at applicant’s request in variance with the Line Extension standard, applicant shall be required to pay Company for the cost of such facilities including appropriate carrying charges, cost of insurance, replacement (or cost of removal), license and fees, taxes, operation and maintenance, and appropriate administrative and general expenses associated with such transmission, substation, and/or distribution facilities. . .⁹⁰

38. In this instance, there is no demand and KCP&L’s CCN is in excess of what is required to serve the EV class of customers. That being the case, under KCP&L’s line extension tariff premise, EV customers should be the only customers paying for those facilities, if in fact the CCN can be equated to that premise as KCP&L has put forth.⁹¹

39. KCP&L further argues that it has requirements in place to properly decide whether it is necessary to build facilities in anticipation of future growth.⁹² KCP&L witness, Mr. Ives states that it “. . .is essential to exercise a combination of historical trend data, economic and geographical projections and the seasoned judgement of subject matter experts to forecast system

⁸⁷ KCP&L Post-Hearing Brief, p. 32; KCP&L Exhibit #3.

⁸⁸ KCP&L Exhibit #3.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ KCP&L Post-Hearing Brief, p. 32.

⁹² Ives Rebuttal, p. 5.

needs.”⁹³ KCP&L has not provided forecasts, or provided evidence showing widespread EV adoption. KCP&L has only provided projections that at best are speculative as to what EV adoption might be.

40. KCP&L also contends that it needs to provide the CCN program because customers are having issues charging their EV’s, even to the point of having “range anxiety”.⁹⁴ KCP&L essentially argues that “range anxiety” is causing customers to avoid buying EV’s and in essence is creating a barrier to EV adoption.⁹⁵ First, there is no evidence that KCP&L customers are having trouble charging their EV’s without KCP&L’s CCN program.⁹⁶ CURB agrees with Staff that KCP&L is able to provide “reasonably efficient and sufficient service” to its EV customers without the CCN, in that customers are able to meet their charging needs at home.⁹⁷ Staff witness, Mr. Frantz, in his direct testimony states, “Because the average driver’s commute is within current EV driving ranges, the ‘Top-off Model’ is simply not a necessity for the majority of EV customers.”⁹⁸

41. Moreover, Staff witness, Dr. Glass reiterates that charging needs can be accomplished at home, stating, “...at the local level range anxiety can be handled with home charging. . .”⁹⁹ Furthermore, Mr. Frantz states, “While some charging seems to happen away from home, there is no evidence that a public charging option is *necessary*.”¹⁰⁰ KCP&L witness, Mr. Bowermaster, also indicates that the majority of charging is done at home, he states that, “studies show that people generally charge 80% at home and 20% at work.”¹⁰¹

⁹³ *Id.*

⁹⁴ Caisley Rebuttal, pp. 12-13.

⁹⁵ *Id.*

⁹⁶ Crane Direct, p. 13.

⁹⁷ Frantz Direct, pp. 7-9; K.S.A. 66-101b.

⁹⁸ Frantz Direct, p. 8.

⁹⁹ Glass Direct, p. 7.

¹⁰⁰ Frantz Direct, p. 7.

¹⁰¹ Bowermaster Direct, Schedule A-1, p. 21.

42. Second, “range anxiety” is not the main reason customers decline to purchase an EV. According to Ms. Crane’s testimony, “price” is the overwhelming barrier to EV adoption.¹⁰²

Ms. Crane states in her direct testimony that according to KCP&L’s survey:

. . .the overwhelming roadblock to the purchase of electric vehicle is “Price”, which 62% of the respondents selected as something that keeps them from owning an electric vehicle. This was more than double the respondents who indicated that the lack of charging stations on their driving route was the primary impediment.¹⁰³

Staff agrees with CURB that “range anxiety” is not the major barrier preventing EV adoption. Staff argues that it is battery limitations, not charging limitations, that is the greatest barrier to EV adoption.¹⁰⁴ Staff also acknowledges that price plays a major factor in whether or not customers decide to purchase an EV.¹⁰⁵

43. Third, technology continues to advance and it is likely that KCP&L’s CCN will not be “used and required to be used” throughout its expected lifespan.¹⁰⁶ According to Ms. Crane’s direct testimony, wireless charging technology is in development that could eliminate the need for charging stations altogether.¹⁰⁷ Ms. Crane states, “According to a recent article by Navigant Consulting, ‘several major automakers are planning to bring wireless systems to market within the next few years, and a significant portion of the industry believes that wireless technology represents the future of plug-in electric vehicle (PEV) charging.’”¹⁰⁸ CURB is concerned that KCP&L ratepayers will still be responsible for both capital and operating costs associated with the CCN, if new technology makes the CCN obsolete in the next few years.¹⁰⁹

44. Staff shares CURBs concerns regarding the possibility of KCP&L’s CCN being

¹⁰² See Crane Direct, pp. 15-16.

¹⁰³ *Id.* at p. 16.

¹⁰⁴ See Glass Direct, p. 7.

¹⁰⁵ See Glass Direct, pp. 15-16; See Frantz Direct, pp. 17-18.

¹⁰⁶ Frantz Direct, p. 13.

¹⁰⁷ See Crane Direct, p. 20.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

obsolete in the next few years.¹¹⁰ Staff believes that technological innovation poses a threat to KCP&L's CCN, including the possibility of wireless charging.¹¹¹ Additionally, Staff points out the fact that as battery life continues to improve, it will decrease the need for public charging.¹¹² Staff witness, Mr. Frantz, states, "Because of potentially rapid advancements in batteries and charging technology, I do not expect that the charging stations of the CCN will be useful or 'used and required to be used' throughout the expected lifespan of the project."¹¹³

45. KCP&L erroneously argues that "the only expert testimony presented in this matter, regarding the charging station technology came from KCP&L, EPRI, and ChargePoint."¹¹⁴ In contrast, KCP&L argues that Staff and CURB witnesses are not experts on "EV charging station technology".¹¹⁵ First, KCP&L witnesses Mr. Caisley, Mr. Ives, Ms. Riggins and ChargePoint's witness Ms. Smart are neither engineers, nor are they experts on EV charging station technology.¹¹⁶ While KCP&L and EPRI witness, Mr. Bowermaster, does have an engineering background, his testimony only addresses EPRI's projections as to the alleged "benefits" of EV's and charging infrastructure.¹¹⁷ Conveniently, all of the witnesses that KCP&L claims to be "experts" on EV's, either work for KCP&L, are contracted by KCP&L, or have been hired to conduct a study for KCP&L.¹¹⁸

46. Second, witnesses for Staff and CURB who presented testimony are more than qualified to analyze the potential impacts of KCP&L's CCN on ratepayers regardless of their expertise in EV charging station technology. This docket is not an investigation of the ins and

¹¹⁰ Frantz Direct, p. 9.

¹¹¹ *See id.* at pp. 11-13.

¹¹² *See id.* at p. 13.

¹¹³ *Id.*

¹¹⁴ *See* KCP&L Post-Hearing Brief, pp. 25-27.

¹¹⁵ *Id.*

¹¹⁶ Tr., p. 253; Ives Direct, pp. 1-2; Caisley Direct, pp. 1-2; Riggins Direct, pp. 1-2.

¹¹⁷ Bowermaster Direct, pp. 1-2.

¹¹⁸ Tr., p. 253; Ives Direct, pp. 1-2; Caisley Direct, pp. 1-2; Riggins Direct, pp. 1-2; Bowermaster Direct, pp. 1-2.

outs of EV technology, rather it is an investigation about the possible impacts the CCN could have on ratepayers.¹¹⁹ Furthermore, given the prestigious educational and professional backgrounds of both CURB and Staff witnesses, those witnesses are more than qualified to present expert analysis on the regulatory issues in this matter.¹²⁰

47. Lastly, KCP&L argues that the CCN program will fail if the Commission doesn't allow KCP&L to recover costs in base rates.¹²¹ If KCP&L truly believed that there was such great demand for EV charging stations currently and/or in the future, then it should have no problem having its shareholder's pay for the CCN in its entirety. The fact that KCP&L wants the ratepayers to pay for this investment is very telling. Either KCP&L doesn't believe the market is there currently, or KCP&L doesn't believe that the market is there and may never be there, and in that case wants to eliminate any risk the company may have by requiring ratepayers to pay for its investment.

48. As demonstrated by the evidence, KCP&L's CCN is unnecessary infrastructure, due to the fact that it is not necessary to provide "reasonably efficient and sufficient service", and is not "used and required to be used" under K.S.A. 66-128.¹²² Thus, CURB recommends that the Commission exclude KCP&L's CCN from base rates for the above-mentioned reasons.

2. KCP&L should not be able to enter into a potentially competitive marketplace because it has an unfair advantage and could potentially stifle the market

49. It is CURB's view that it is against the public interest for a regulated electric public utility to enter a potentially competitive marketplace. Allowing KCP&L, a regulated monopoly, to corner the EV market, while requiring all ratepayers to pay for its CCN investment,

¹¹⁹ See Order.

¹²⁰ Crane Direct, pp. 3-5, Appendix A, pp. 1-4; Glass Direct, p. 1; Frantz Direct, pp. 1-2.

¹²¹ KCP&L Post-Hearing Brief, p. 35.

¹²² K.S.A. 66-101b.

is troubling to say the very least.¹²³ CURB believes that this proposal “would discourage investment in EV charging stations by non-regulated entities” in the future.¹²⁴ Essentially, KCP&L would be able to “utilize its monopoly powers in order to cross-subsidize competitive business ventures.”¹²⁵ Ms. Crane elaborates on this point in her direct testimony stating:

This would result in ratepayers paying rates that are higher than necessary and could have a chilling effect on the marketplace itself. If a service is to be offered on a competitive basis, then the entrants to the market should be entering that market on a level playing field. This is obviously not possible if one of the entrants is a regulated monopoly that is using its regulated subscriber base to subsidize the competitive activity.¹²⁶

50. It would be very hard, if not impossible, for a non-regulated entity to enter the EV charging market and compete with KCP&L if it is allowed to build-out its CCN while ratepayers pick up the costs. The fact that KCP&L already has a foothold in the market is troubling. If no other entity can compete in this market, then it is CURB’s view that the market could become stifled and in turn would hurt economic and technological growth. Ms. Crane states in her direct testimony that, “. . .the CCN program will certainly constrain the development of EV charging stations in Kansas by other entities, which will impact both innovation and competition in Kansas.”¹²⁷

51. What is even more troubling is the fact that KCP&L does not try to hide its intentions in regards to its envisioned role in the EV marketplace; in fact at hearing, Mr. Caisley makes it very clear:

Q. Mr. Caisley, let's assume that the market for vehicle charging stations, again, is deregulated in the future. At that time, would KCP&L be willing to remove its investment from rate base and compete on a competitive basis?

¹²³ See Crane Direct, p. 25.

¹²⁴ Crane Direct, p. 25.

¹²⁵ Crane Direct, p. 30.

¹²⁶ *Id.*

¹²⁷ Crane Direct, p. 28.

A. I don't think -- so if you're asking would we want to remove the Clean Charge Network charge from rate base, no. . .

Q. So to summarize your point, if the market becomes deregulated and others are able to compete on a competitive basis, KCP&L is not willing to remove that from the rate base at that time to compete at that same level?

A. No. . .¹²⁸

52. In addition to the possibility of KCP&L cornering the market and stifling growth, if KCP&L is allowed to “require the captive regulated ratepayers to foot the bill” for the costs of the CCN program then it has nothing to lose, should the market not be there as it claims.¹²⁹ Generally, a non-regulated business invests in markets they believe will make money for the company and its shareholders. If it turns out that there is no demand for that service/product, essentially that the market is not there, then that non-regulated business has to decide either to stay in the market, risking the loss of money or the business if it doesn’t develop, or get out of that market altogether.

53. If the Commission allows KCP&L, or any other regulated utility for that matter, to invest in these types of markets, at the cost of all ratepayers, then this could become very problematic because those natural market consequences are not in place. Ratepayers would essentially become captured financiers for the regulated monopolies ventures, profitable or not, with the benefits, if successful, going solely to the shareholders and the company, and the risks being borne solely by the ratepayers. In Ms. Crane’s direct testimony she states, “The CCN Program could also open the door for KCP&L to pursue other anti-competitive activities, subsidized by ratepayers, on the basis that such activities promote the public good.”¹³⁰ In addition, Ms. Crane states, “a regulated utility should not be able to utilize its monopoly powers

¹²⁸ Tr., pp. 48-50.

¹²⁹ Crane Direct, p. 25.

¹³⁰ Crane Direct, p. 28.

in order to cross-subsidize competitive business ventures.”¹³¹

54. Staff argues that charging stations are better left to a competitive marketplace. Dr. Glass states in his direct testimony that, “A competitive marketplace will ensure that the buildout only occurs when there is demand for the service.”¹³²

55. KCP&L likens its CCN program to the early advent of the internet; however, the information presented on the topic assumes facts not in evidence.¹³³ As a result, that argument should be disregarded.

56. If KCP&L is allowed to compete, it should not do so in its regulated capacity, or at the very least not at the expense of the ratepayers who do not use the EV charging stations. Thus, CURB recommends the Commission exclude KCP&L’s CCN from base rates to prevent KCP&L from using its monopoly powers in order to cross-subsidize competitive business ventures.

3. KCP&L’s CCN results in cross-subsidization leading to rates that are “unreasonably discriminatory” and “unduly preferential”

57. Under K.S.A. 66-101b, “every unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, charge, or exaction is prohibited and is unlawful and void.” It is from this statutory language that the rule against cross-subsidization emerged. In *Jones v. Kansas Gas & Elec. Co.*, the Kansas Supreme Court heard an appeal in which the Appellant contested a late payment charge imposed by the Kansas Gas and Electric Company.¹³⁴ The Appellant, among other things, alleged that late charge payments were unreasonable “because it does not assess collection costs against those who create such costs.”¹³⁵ The Court

¹³¹ Crane Direct, p. 30.

¹³² Glass Direct, p. 31.

¹³³ See KCP&L Post-Hearing Brief, pp. 33-34; K.A.R. 82-1-230.

¹³⁴ *Jones v. Kansas Gas & Elec. Co.*, 222 Kan. 390, 391 (1977).

¹³⁵ *Id.* at 400.

held that it was unfair to charge a uniform penalty for all customers who are overdue in paying their bills.¹³⁶

58. More importantly, the Kansas Supreme Court in its holding defined the standard for the rule against cross-subsidization, the Court held, “the touchstone of public utility law is the rule that one class of consumers shall not be burdened with costs created by another class.”¹³⁷ Moreover, the Court held that, “the charge which is levied. . . must be reasonably related to the purpose to be achieved; and if the purpose is to recover collection costs the utility company must collect from the class of consumers creating the costs.”¹³⁸

59. In *Midwest Gas Users Ass’n v. State Corp. Comm’n*, the Kansas Court of Appeals upheld a District Court and Commission decision on a rate schedule relating to the retail sale of natural gas.¹³⁹ The Court in *Midwest* expounded on the general rule in *Jones*, holding:

. . .the weight to be given the resulting data when offered is peculiarly within the domain of the KCC. If the KCC is convinced or the evidence indisputably demonstrates that a rate structure in fact imposes on one class costs created by another, the rate structure cannot withstand the test of *Jones*. We do not, however, read *Jones* as requiring a cost of service analysis in every rate design case. A rate design fair on its face, with substantial evidence to support it, may be approved without a cost of service study absent a convincing showing of a *Jones* violation.¹⁴⁰

The Court in *Midwest*, also distinguished *Jones*, stating:

In *Jones* the court dealt with two commodities, credit and collection expense, which were quite distinct from the utilities' basic service, which was the sale of electricity. As to those collateral commodities costs were readily available from the companies' books, and were relatively easy to allocate to the classes of customers who created them. That is quite a different situation from attempts to allocate system-wide costs of operating an entire utility.¹⁴¹

¹³⁶ See *id.* at 401-02.

¹³⁷ *Id.* at 401.

¹³⁸ *Id.* at 402.

¹³⁹ *Midwest Gas Users Ass'n v. State Corp. Comm'n*, 3 Kan. App. 2d 376, 377 (1979).

¹⁴⁰ See *id.* at 391, 393, 394.

¹⁴¹ *Id.* at 390.

The Court in *Midwest* concluded that although cost of service studies are generally not legally required for rate design purposes, a growing number of experts believe they are desirable.¹⁴²

60. The holding in *Midwest* indicates that the Commission may approve rates that seemingly differentiate as long as those differences are reasonable.¹⁴³ Put another way, the Commission may approve rates that seemingly differentiate if those rates are not “unreasonably discriminatory or unduly preferential.”¹⁴⁴

61. KCP&L’s application, requesting approval from the Commission to require Non-EV drivers to help pay for the costs associated with its charging stations (CCN) is an unreasonable cross-subsidization. Moreover, it is unreasonable to require ratepayers to subsidize a small number of EV drivers who are the only class deriving the benefit of charging at those stations. Allowing KCP&L to include costs of its CCN in base rates is the very definition of one class creating costs that burdens another class, in violation of the rule against cross-subsidization in *Jones*.¹⁴⁵ Furthermore, CURB believes that allowing KCP&L to put the costs of its CCN into base rates will result in rates that are “unreasonably discriminatory” and “unduly preferential”.¹⁴⁶

62. Staff agrees with CURB that KCP&L’s CCN may result in cross-subsidization that would result in rates that are “unreasonably discriminatory” and “unduly preferential”.¹⁴⁷ Staff witness Dr. Glass states in his direct testimony that, “. . .the cross-subsidization created by EV’s is the relatively poor subsidizing the relatively rich. . .Staff is not in favor of subsidizing the electric rates of relatively affluent EV owners, on the backs of those ratepayers who cannot afford EV’s.”¹⁴⁸ CURB agrees with Staff, that this program may cause the relatively poor to

¹⁴² *See id.* at 391.

¹⁴³ *See id.* at 388.

¹⁴⁴ K.S.A. 66-101b.

¹⁴⁵ *Jones*, 222 Kan. at 391; Crane Direct, p. 30.

¹⁴⁶ K.S.A. 66-101b; Crane Direct, p. 30.

¹⁴⁷ K.S.A. 66-101b; Glass Direct, p. 25.

¹⁴⁸ Glass Direct, pp. 25-26.

subsidize the relatively rich.

63. The issue of cross-subsidization is much more extensive than Non-EV drivers who are customers of KCP&L, subsidizing EV drivers who are also customers of KCP&L. First, if KCP&L is allowed to include costs of the CCN in base rates, they will not only be subsidizing EV drivers who are customers in their service territory, but this may also lead to cross-subsidization of EV drivers who are not customers of KCP&L at all. In Ms. Crane's direct testimony, she states:

It is troublesome because as a regulated monopoly, KCP&L would be requiring ratepayers to pay for EV charging stations that would be used by electric vehicle customers that are not even customers of KCP&L – or customers of any Kansas utilities. This is because the charging stations will be available to customers nationwide as they drive through Kansas – as long as they have a ChargePoint account. Therefore, the Company's proposal would require Kansas ratepayers to subsidize EV users who were residents of other States and customers of other utilities.¹⁴⁹

CURB is troubled by the fact that there is no way for KCP&L to ensure that customers using its CCN are customers of KCP&L.¹⁵⁰ Moreover, KCP&L will not be able to ensure that customers of its CCN will be Kansas ratepayers from another utility, there could be instances where customers using the CCN could be residents of other states just passing through Kansas.¹⁵¹ As mentioned above, this would result in KCP&L's ratepayers subsidizing EV drivers who are not ratepayers within KCP&L's service territory. CURB believes this type of subsidy is clearly unreasonable.

64. The second reason this cross-subsidization would lead to rates that are “unreasonably discriminatory” and “unduly preferential” is that there is a real chance that ratepayers living in KCP&L's service territory where charging stations are not located, will be

¹⁴⁹ Crane Direct, p. 25.

¹⁵⁰ Andrea Direct, p. 30.

¹⁵¹ *Id.*

subsidizing ratepayers in counties within KCP&L's service territory that do have access to charging stations.¹⁵² KCP&L claims it will not just target high population areas given that its CCN will be located in urban, suburban, and rural areas.¹⁵³ KCP&L also claims that its CCN will be deployed in outlying areas to ensure geographical coverage across the entire service area.¹⁵⁴ Furthermore, KCP&L witness Mr. Caisley states in his direct testimony that, "The whole point of the network is not to have any area within the KCP&L service territory where you cannot find a place to charge."¹⁵⁵ The problem with this, is that at hearing KCP&L witness, Mr. Caisley, admitted that all of the 225 EV charging stations or CCN host sites in service today or contracted for are located in Johnson county:

A. Absolutely. To date all 225 EV charging stations have been deployed within Johnson County.¹⁵⁶

65. What is more troubling is the fact that there seems to be some contradiction as to where these stations will actually be placed. At hearing, KCP&L witness, Mr. Ives agreed that according to his direct testimony, the CCN would be located throughout the "greater Kansas City region within KCP&L and GMO territories."¹⁵⁷ CURB then asked Mr. Ives if he was aware of what counties made up the greater Kansas City metropolitan area:

Q. . . . Okay. Can we agree subject to check that the Kansas counties that make up the greater Kansas City metropolitan area are Johnson County, Leavenworth County, Miami County, Wyandotte County and Linn County?

A. I think I heard earlier that there might be eight counties that we serve in Kansas.

Q. I'm just talking about the greater Kansas City area, the metropolitan area, are made up of those counties?

¹⁵² K.S.A. 66-101b.

¹⁵³ See Caisley Direct, pp. 7-8.

¹⁵⁴ *Id.*

¹⁵⁵ Caisley Direct, p. 7.

¹⁵⁶ Tr., p. 35.

¹⁵⁷ Tr., p. 172.

A. Yeah. I'm not aware one way or the other of where the split is, if it's in those counties.¹⁵⁸

Mr. Ives was then asked about whether or not KCP&L would be subsidizing counties that were not in the greater Kansas City area:

Q. So customers located in KCP&L's Kansas service territory in the counties of Douglas, Osage, Anderson, Franklin and Bourbon will be paying a portion of the capital costs, depreciation and O&M costs or maybe put a different way, EV and non EV drivers in those counties without charging stations will be subsidizing those in the Greater Kansas City region with charging stations, is that correct?

A. I think this discussion was held with Mr. Caisley when he was up earlier. All of the stations are not yet deployed in Kansas. We don't currently have stations in those territories. That is not to say that we won't end up with hosts in those counties similar to Mr. Caisley's discussion. A number of our counties that are outside the metro area in Missouri have charging stations. . .

Q. But just earlier you stated -- or on Page 3, Lines 4 through 6, you stated that 1,000 EV charging stations would be built throughout the Greater Kansas City region, which is made up of those counties that I just mentioned prior?

A. I guess I would consider the Greater Kansas City region to be our service territories. . .

Q. So you would consider Osage County in the Greater Kansas City area?

A. I would say that I'm referring to our service territories when I talk -- when we talk about the deployment of Clean Charge Network. . .¹⁵⁹

66. Despite the fact that there seems to be confusion as to where these charging stations will actually be placed, KCP&L argues that they still have the opportunity to place charging stations in other counties, in its service territory. The problem here is that KCP&L has almost built out its CCN already. To put this into better perspective, according to CURB Exhibit 2, KCP&L serves eight counties, as part of its Kansas service territory. KCP&L plans on deploying roughly 300 to 350 charging stations throughout its Kansas service territory, and as

¹⁵⁸ Tr., pp. 173-75.

¹⁵⁹ *Id.*

mentioned above has currently established 225 charging stations, all of which are located in Johnson County.¹⁶⁰ That only leaves roughly 75 to 125 more charging stations to be spread across seven other counties. This hardly equates to ensuring “geographical coverage across the entire service area.”¹⁶¹ Furthermore, as mentioned above, it will cause ratepayers in counties who do not have access to charging stations, to subsidize those ratepayers in counties that do.

67. The third reason this cross-subsidization would lead to rates that are “unreasonably discriminatory” and “unduly preferential,” is it would provide an additional subsidy to those driving electric vehicles.¹⁶² Ms. Crane’s states this concern in her direct testimony:

In addition, the proposed tariff does not attempt to equate the cost of EV charging with gasoline prices but in fact provides even a further subsidy to EV users. The Company states that its proposed CCN Program tariff equates to filling up a traditional gasoline-powered vehicle rated at 33 MPG with gas priced from \$1.34 to \$1.42 per gallon. The tariff results in an effective gasoline rate that is well below current levels, even with currently modest gasoline prices. Therefore, the Company’s proposal does more than simply eliminate the price differential between gasoline and electric vehicle charging, it actually provides an additional subsidy to drive the effective electric vehicle rate below the comparable price for gasoline.¹⁶³

68. KCP&L does not argue that there will not be any cross-subsidization, however, they do argue that the “benefits” derived from its CCN outweigh the detriments of the cross-subsidization and as a result do not lead to rates that are “unreasonably discriminatory”, nor “unduly preferential”.¹⁶⁴ KCP&L claims that the CCN will provide beneficial electrification, environmental benefits, economic benefits, customer programs, and cost and installation

¹⁶⁰ Tr., pp. 35-37.

¹⁶¹ Tr., p. 34.

¹⁶² Crane Direct, p. 28; K.S.A. 66-101b.

¹⁶³ *Id.*

¹⁶⁴ *See* Caisley Direct, pp. 25-26; Ives Direct, pp. 16, 19, 20; K.S.A. 66-101b.

efficiency.¹⁶⁵ CURB does not agree that the “supposed” benefits will offset the cross-subsidization that is created by KCP&L’s CCN, nor does CURB agree that the benefits from KCP&L’s CCN will lead to rates that are not “unreasonably discriminatory” and “unduly preferential”.¹⁶⁶ Ms. Crane states in her direct testimony that, “given that the Company has not demonstrated any real demand for the CCN Program at this time, it is difficult to justify the detriment to ratepayers based on speculative ‘benefits’ that may or may not materialize.”¹⁶⁷

69. Similarly, Staff believes that KCP&L’s CCN will not create additional benefits.¹⁶⁸ Additionally, Staff indicates several problems with each of KCP&L’s claimed benefits that allegedly make the CCN program in the public interest.¹⁶⁹ In terms of beneficial electrification, Staff argues that the CCN would create cross-subsidization, higher rates for customers, and an increase in usage during peak hours.¹⁷⁰ As far as alleged environmental benefits are concerned, Staff notes that, “the Commission policy is not to consider externalities in the Total Resources Cost test.”¹⁷¹

70. Next, Staff doubts that the CCN will cause a large scale shift toward electrification, at least to the point that would result in modest air quality improvement in KCP&L’s service territory.¹⁷² In addition, Staff reiterates that the environmental benefits are based on a projection, and not a forecast.¹⁷³ Regarding alleged economic benefits, Staff is skeptical of “the benefit/cost results derived by assuming the projected EV sales path.”¹⁷⁴ In terms of the alleged cost and installation efficiencies KCP&L claims the CCN will create, Staff

¹⁶⁵ Caisley Direct, pp. 25-26.

¹⁶⁶ See Crane Direct, pp. 27-28; K.S.A. 66-101b.

¹⁶⁷ Crane Direct, pp. 27-28.

¹⁶⁸ Glass Direct, p. 18.

¹⁶⁹ *Id.*

¹⁷⁰ See *id.* at p. 20.

¹⁷¹ *Id.* at p. 21.

¹⁷² See *id.*

¹⁷³ *Id.* at p. 22.

¹⁷⁴ *Id.*

argues that, “. . .without KCP&L directing the installation, ChargePoint would still have the experience and would be able to do the job as an independent entity if Kansas statutes were changed to explicitly allow ChargePoint to operate in a competitive market.”¹⁷⁵ It is clear from the evidence that KCP&L’s alleged “benefits” are highly speculative. In light of the fact that these benefits are highly speculative, CURB does not believe KCP&L has justified that the cross-subsidization from having the CCN is offset by those alleged benefits.

71. Lastly, like *Jones*, and unlike *Midwest*, costs associated with KCP&L’s CCN are easy to identify and therefore easy to allocate to the customers who created them, in this case the EV drivers themselves. KCP&L has contracted with a third party vendor called ChargePoint for the billing and collection functions related to its CCN.¹⁷⁶ EV drivers who elect to charge their vehicles at a charging station within KCP&L’s network will be billed through the meters at the charging station they used.¹⁷⁷ In addition to customers being billed individually at the meter, KCP&L witness, Mr. Caisley, states:

The charging station would be able to tell them the rate they were going to be charged as well as whether or not and when a session fee would be charged for charging at the station. The payment will be collected by ChargePoint, pursuant to an agreement between ChargePoint and the charging customer, and remitted to the utility. KCP&L will be able to compare usage recorded and paid for by all of the stations at an installation cumulatively, to the monthly usage recorded by the utility meter at the installation.¹⁷⁸

72. KCP&L has contracted and implemented a sophisticated billing system, through its third party vendor, ChargePoint, to keep track of specific information, including every individual transaction that happens at the charging stations. This is not a situation where KCP&L has to figure out how to allocate system wide costs, in fact it is the opposite. In this case we are

¹⁷⁵ *Id.* at p. 24.

¹⁷⁶ Caisley Direct, p. 9.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

able to identify specifically, and with certainty, what class (EV drivers) of ratepayers are using KCP&L's CCN, and as such are able to easily allocate costs to that class of customers (EV drivers) who created them. Furthermore, if there is truly a demand for EV charging, as KCP&L has alleged, then KCP&L should not be worried about getting a return on its investment, and similarly should have no problem allocating all of the costs to the only class that is using the service. Moreover, allocating the costs to EV drivers, eliminates the issue of cross-subsidization.

73. As described above, allowing KCP&L to put the costs of its CCN program into base rates, resulting in all ratepayers paying for KCP&L's CCN, will result in rates that are "unreasonably discriminatory" and "unduly preferential".¹⁷⁹ Thus, CURB recommends that the Commission exclude costs associated with KCP&L's CCN from base rates.

B. There are General Conflicts that Exist between KCP&L's Implementation of its CCN Program and Current Kansas Policy

74. KCP&L's implementation of its CCN program could result in general conflicts with current Kansas policy. Those general conflicts are 1) KCP&L as a regulated utility should not be the public policy maker; and 2) KCP&L as a regulated utility should not be promoting EV adoption.

1. KCP&L as a regulated utility should not be the public policy maker

75. KCP&L, in implementing its CCN program, has essentially become a public policy maker. CURB does not believe that "the electric utility is the appropriate entity to be selecting ratepayer-funded public policy programs".¹⁸⁰ Furthermore, CURB does not see the role of a regulated utility to promote public policy, instead it is the role of the public utility to "carry out the policies that are adopted by the duly-elected representatives of the citizens of each

¹⁷⁹ K.S.A. 66-101b; Crane Direct, p. 30.

¹⁸⁰ Crane Direct, p. 26.

state.”¹⁸¹ CURB recognizes that Kansas policy makers may need to address issues relating to EV adoption, however CURB believes again that those decisions are left to the policy makers and not KCP&L.¹⁸² In this particular case it is troubling because KCP&L did not get prior authorization from the Commission before its expansive build-out of its CCN and the CCN investment, at least to some extent, was undertaken to increase earnings for shareholders.¹⁸³ Moreover, KCP&L did not ask for its Board approval prior to building out its CCN.¹⁸⁴

76. First, CURB believes that KCP&L should have received prior approval from the Commission, before building out of its CCN.¹⁸⁵ In a letter from Staff, KCP&L was warned prior to constructing its CCN that Staff had objections to the program.¹⁸⁶ Despite those objections KCP&L decided to build-out 1,000 charging stations without prior Commission approval. If KCP&L had waited for approval from the Commission for some sort of pilot program, prior to build-out, or any type of decision on the CCN for that matter, they would not be in this position. Additionally, if KCP&L had waited for a decision from the Commission prior to building out its CCN, the ratepayers would not be put in a position to fund a program they may never use. In Ms. Crane’s direct testimony she states, “From a policy perspective, I don’t think the Company’s decision was wise, unless it believes that the KCC will have no choice but to approve the program now that implementation has begun – and in fact is almost complete.”¹⁸⁷

77. Next, by allowing a regulated utility, like KCP&L, to dictate policy to all ratepayers, it removes the objectivity from those policy decisions when it is the goal of the utility

¹⁸¹ *Id.* at p. 27.

¹⁸² *Id.* at p. 22.

¹⁸³ *Id.* at pp. 22-23.

¹⁸⁴ Tr., p. 41.

¹⁸⁵ *Id.* at p. 22.

¹⁸⁶ Glass Direct, p. 29, Exhibit RHG-1.

¹⁸⁷ Crane Direct, p. 22.

to benefit shareholders.¹⁸⁸ When a utility increases investment, it anticipates that it will result in increased earnings or benefits for its shareholders.¹⁸⁹ So a utility will make investments generally on projects that will benefit its shareholders. This being the case, it removes objectivity in deciding what projects, or policy to put forth. Ms. Crane addresses this very issue in her direct testimony:

The Company's decision to begin widespread implementation prior to obtaining KCC authorization also calls into question how objective the Company could be in any proceeding designed to investigate the issues relating to EV charging stations. Since KCP&L has already invested a significant amount in this enterprise, it is difficult to see how the Company could objectively evaluate either the need for the program or whether any such program should be funded by regulated ratepayers.¹⁹⁰

78. As mentioned above, CURB believes that it is the role of the Commission to decide public policy, not the utility. If the utility decides to implement public policy outside of Commission approval it should not expect to have ratepayers pay for that decision based on the fact that those decisions are made to benefit shareholders.

2. KCP&L as a regulated utility should not be promoting EV adoption

79. As stated above, it is the duty of an electric public utility to “to furnish reasonably efficient and sufficient service and facilities” in its service territory.¹⁹¹ It is not the duty of KCP&L as a public utility, however, to promote or drive the EV market. KCP&L witness, Mr. Caisley explains that KCP&L intends to do just that:

. . . the industry can only advance if there are adequate charging stations throughout the country, similar to what we now have for gasoline-powered vehicles. The lack of EV charging station infrastructure presents a **barrier to market penetration** at scale in the industry and the lack of a standardized financial transaction infrastructure also inhibits the industry's growth. KCP&L

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at p. 23.

¹⁹⁰ *Id.* at p. 22.

¹⁹¹ K.S.A. 101b.

can help alleviate those barriers in its service territory.¹⁹²

CURB does not believe it is KCP&L's duty to remove so called market barriers for EV adoption. Moreover, CURB does not believe that it is the role of a public utility in general to remove barriers in other markets. CURB is not aware of any Kansas statute or any Commission policy that requires KCP&L to promote the sale of a particular style of vehicle in the automobile industry. As stated above, what is the most troubling is that if KCP&L is allowed to recover the costs of its CCN in base rates, it will be done at the expense of the ratepayers. The EV market should be left to those within that industry. If KCP&L is allowed to promote other markets, on the backs of ratepayers, this could become a very slippery slope.

80. Staff agrees with CURB that it is not the role of KCP&L to promote the EV industry. Staff witness, Mr. Frantz, addresses this in his direct testimony, he states, "The idea that a Kansas electric public utility must advance the tangential EV industry because it is 'the last major sector of the economy that is not electrified' goes far beyond its statutory obligation of furnishing sufficient and efficient service."¹⁹³ For these reasons, CURB recommends that the Commission not allow these types of investments to be recovered in base rates.

C. Reasonable Pricing Alternatives for KCP&L's CCN

81. As stated above, CURB recognizes that the Commission is the policy maker and as such provides reasonable pricing alternatives, should the Commission determine that KCP&L can recover the Kansas jurisdictional costs relating to its CCN. CURB believes that the most reasonable price alternative to KCP&L's CCN is to require EV users to pay all of the direct costs of the program.¹⁹⁴ Requiring EV users to pay for the costs of the CCN would eliminate any cross-subsidization issues that CURB has with the program. Furthermore, it puts KCP&L in the

¹⁹² Caisley Direct, pp. 10-11.

¹⁹³ Frantz Direct, pp. 13-14.

¹⁹⁴ Crane Direct, p. 33.

same position as a non-regulated entity should the market become competitive. CURB believes that if the market is there, as KCP&L has argued, then KCP&L should have no problem with this pricing alternative. Should the market not be there, it alleviates putting the ratepayer in a position to fund a failed investment.

82. Another pricing alternative is to have KCP&L's shareholders fund all of the costs of the CCN.¹⁹⁵ If the Commission believes that the detriments of the CCN outweigh the benefits of the program, CURB recommends that Commission deny the application. Again, if the demand is there, as KCP&L has argued, then this will not be problematic for KCP&L's shareholders or its CCN. If the demand is not there, then this is a program that KCP&L should not have undertaken in the first place, for all the reasons stated above.

83. CURB supports Staff's proposal to have the Commission recommend to the Kansas Legislature an amendment to RESA.¹⁹⁶ The amendment to RESA would allow private, non-utility charging stations to serve Kansas customers. CURB agrees that a competitive marketplace would encourage innovation and would ensure that this service is provided when there is actual demand.

IV. Conclusion

84. As set forth above, it is clear from the evidence that there isn't a demand or need for KCP&L's CCN program. KCP&L is able to provide reasonably "efficient and sufficient service" to its EV customers without its CCN program.¹⁹⁷ Moreover, it is clear that if KCP&L is allowed to include the costs of its CCN in base rates it will result in rates that are "unreasonably discriminatory" and "unduly preferential."¹⁹⁸ Allowing KCP&L to corner the EV charging

¹⁹⁵ *Id.*

¹⁹⁶ *See* K.S.A. 66-1,170 *et seq.*

¹⁹⁷ K.S.A. 66-101b.

¹⁹⁸ *Id.*

market on the backs of shareholders may discourage investment in EV charging stations by non-regulated entities in the future. Finally, KCP&L should not be dictating public policy, and does not have a statutory obligation to promote EV adoption.

WHEREFORE CURB submits its *Post-Hearing Brief* and recommends that the Commission deny approval of KCP&L's CCN project, including recovery of costs of its CCN program in base rates as part of its upcoming abbreviated rate case.

Respectfully submitted,



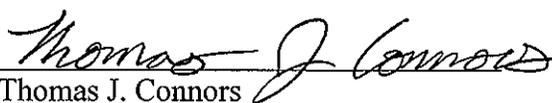
Thomas J. Connors, Attorney #27039
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604
(785) 271-3200
(785) 271-3116 Fax
tj.connors@curb.kansas.gov

VERIFICATION

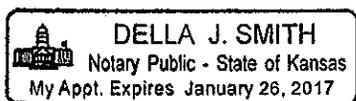
STATE OF KANSAS)

COUNTY OF SHAWNEE) ss:

I, Thomas J. Connors, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.


Thomas J. Connors

SUBSCRIBED AND SWORN to before me this 29th day of July, 2016.




Notary Public

My Commission expires: 01-26-2017.

CERTIFICATE OF SERVICE

16-KCPE-160-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 29th day of July, 2016, to the following:

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
jflaherty@andersonbyrd.com

GLENDA CAFER, ATTORNEY
CAFER PEMBERTON LLC
3321 SW 6TH ST
TOPEKA, KS 66606
glenda@caferlaw.com

TERRI PEMBERTON, ATTORNEY
CAFER PEMBERTON LLC
3321 SW 6TH ST
TOPEKA, KS 66606
terri@caferlaw.com

JAMES ELLIS
CHARGEPOINT, INC.
254 EAST HACIENDA AVENUE
CAMPBELL, CA 95008
james.ellis@chargepoint.com

DAVE PACKARD
CHARGEPOINT, INC.
254 EAST HACIENDA AVENUE
CAMPBELL, CA 95008
dave.packard@chargepoint.com

ANNE SMART
CHARGEPOINT, INC.
254 EAST HACIENDA AVENUE
CAMPBELL, CA 95008
anne.smart@chargepoint.com

ROBERT J. HACK, LEAD REGULATORY COUNSEL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST 19th FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
ROB.HACK@KCPL.COM

CERTIFICATE OF SERVICE

16-KCPE-160-MIS

DARRIN R. IVES, VICE PRESIDENT, REGULATORY AFFAIRS
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST 19th FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
darrin.ives@kcpl.com

ROGER W. STEINER, CORPORATE COUNSEL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST 19th FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
roger.steiner@kcpl.com

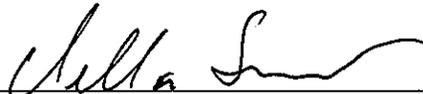
MARY TURNER, DIRECTOR, REGULATORY AFFAIR
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST 19th FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
MARY.TURNER@KCPL.COM

NICOLE A. WEHRY, SENIOR PARALEGAL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST 19th FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
NICOLE.WEHRY@KCPL.COM

MICHAEL DUENES, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
m.duenes@kcc.ks.gov

BRIAN G. FEDOTIN, DEPUTY GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
b.fedotin@kcc.ks.gov

ANDREW FRENCH, SENIOR LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
a.french@kcc.ks.gov



Della Smith
Administrative Specialist